

Customary Lands Administration and Good Governance – The State and the Traditional Rulers Interface¹

Kumbun-Naa Yiri II, Ghana

REMARKS

The object of this paper is to discuss the changing interface between the Traditional Rulers and Central Government, in pursuit of good governance in customary land and other forms of administration of Ghana. In the face of the usurpation of almost all the managerial, administrative and economic controls of Customary Lands and other powers of Chiefs in Ghana.

In the paper I have relied on National House of Chiefs documents and views accepted by the House including the report of the Stool / Skin Lands Committee of which I am the current Chairman.

1. INTRODUCTION

The Native states, comprising of centralised states (such as Dagbon and Ashanti) and others, as well as acephalous societies that make up Ghana today were viable entities, in land and other forms of administration, which the (White man) colonizers came to meet. By conquest (Ashanti), or through pretended friendship treaties (Dagbon) they established control over these state, from that time to the year of our independence, now popularly called the “Colonial era”, colonial administration’s legal systems were imposed on the people, overlaying the customary land tenure and administration systems, resulting in a situation where local oral land tenure system have co-existed with National Legislation based on the English Common Law System. These two systems have governed the way transactions over land have been carried out.

Since independence the constitution of Ghana recognises this legal pluralism within the Ghanaian legal system. Article 11 (e) of the 1992 Constitution provides that the “laws of Ghana, shall comprise the constitution; statutes, orders, rules and regulations and the common law”. The “common law” is defined by the constitution to include received English law and the Customary law. This firmly establishes the plurality of the Ghanaian legal system.

2. PARTNERS IN GOVERNANCE

Article 270 (1) of the 1992 Constitution provides that the “institution of chieftaincy, together with its traditional councils as established by customary law and usage, is hereby guaranteed”. The nature, role and rules governing chieftaincy are therefore determinable by reference to customary law. Article 267 (1) also provides that “All stool lands in Ghana shall vest in the appropriate stool on behalf of and in trust for the subjects of the stool in accordance with

¹ This paper has been prepared for the 5th FIG Regional Conference – Promoting Land Administration and Good Governance to be held in Accra, Ghana, March 8-11, 2006.

customary law and usage”. Deficiency in the knowledge of customary law, therefore will have serious implications for the institution of chieftaincy as well as in the management of stool lands (which constitute a very crucial resource in this country). Presently customary law is mostly undocumented. It is not surprising therefore, to see that there are some problems in customary land management in Ghana.

Customary lands, comprising of lands owned by stools, skins, clans and families and Tendamba etc. constitute about 80% of all lands in Ghana. These customary lands cover most of the rural lands and some of the urban lands. Customary lands support the livelihoods of the majority of the population and therefore the sustainable management of such lands is critical to the socio-economic development of the country. So Traditional Rulers (Chiefs) who are the occupants of stools and skins etc. who hold those lands in trust for their subjects are important stakeholders in customary land administration and can play a key role in complimenting Government’s efforts in the Good Governance of the Country.

Ghana as a country is heavily dependent on primary land – based products for its socio-economic growth. Cocoa, Timber, Gold, Diamonds and other precious mineral etc. are leading in sector contributions to the country’s gross domestic products. The implication of this is that, easy access to land, security of land tenure and the wise use of the national land resource will indicate the pace of our national socio-economic growth. For this and other reasons neither the Government holding about 20% of the lands of Ghana nor the Traditional Rulers (Chiefs) – holding about 80% acting alone can address the numerous problems in the land sector. They are therefore partners in good governance.

2.1 Contribution of Traditional Rulers to Good Governance: Current Position of a Chief

In present day Ghana the position of the chief is complimentary to the government. The chief is the single most visible governance institution in Ghana today, there is a chief in every town and village. The central Government is not so visible.

In many towns and villages, the chief is responsible for law and order. He is also a doctor and a councillor. The first person to receive any report of any breach of peace is the Chief. The Ghana Police Service is a very small force and is not present in every town or village. Further the Chief is the centre of social cohesion today and virtually every segment of society revolves round the chief and the chief holds all parts of the society together. In addition and even more important the chief is the leader for development. Prominent chiefs such as Nana Okyenhene Amoatia Ofori Panyin, Nana Otumfuo Osei Tutu II and Ya-Naa Yakubu II have demonstrated on the National level the critical developmental role of the chief in modern times, to varying degrees the rest of us other chiefs are playing our roles. The chief is also a political mediator. He mediates between different groups in conflict both within the state and society.

Finally, the chiefs have become a major source of advice for government (Article 272 of 1992 Constitution) especially on traditional matters. The importance of the chief in contemporary Ghana is a significant and incontrovertible fact of our political life. In addition to all the above, the Traditional Rulers own 80% of the lands of Ghana and of course the 20% public by created law.

From time immemorial the institution of chieftaincy has long ensured fair distribution of land and land resource among the people. The institution encourages resource mobilization such as fund raising, levies and communal labour. At the local level, the chief ensures that resources are both fairly mobilised and distributed for development in both local and national contexts.

At political party level, even though the Ghanaian Constitution in Article 276 (1) bars chiefs from participation in active party politics, all politicians at time of elections try to outwit each to catch the eye of the chief. The Palaces of Chiefs are also centres where government policies are explained and advertised to the people in the rural areas.

By Article 272 (a) the institution of chieftaincy is responsible for advising Government on any matter relating to or affecting chieftaincy. In the opinion of the Traditional Rulers a matter affecting the administration of customary land is a matter relating to or affecting the institution of chieftaincy. Therefore Traditional Authorities have the constitutional responsibility to advise Government on the types of laws that will ensure good governance in the administration of customary lands of this country and in other matters relating to the institution of chieftaincy.

3. CUSTOMARY LAND ADMINISTRATION AT THE TRADITIONAL LEVEL

Under customary law practices, the chief is the Father of his people and custodian of customary practices.. Under the customary law, the chief is also “in charge” and responsible for the legal alienation of customary lands under his jurisdiction in consultation with his elders.

The ownership or control of land under customary law starts at the paramountcy holding the allodial Title, followed by Divisional and Sub-Chiefs (appointed by the Paramount) who hold, “Customary Freehold” the indigenes hold usufruct interest in the land. Thus the Hierarchy of Customary Land holdings are:

The Paramount Chief	-	Allodial Owner
The Divisional Chief	-	Customary Freehold
The Sub-Chief	-	Customary Freehold
The Indigenes (subjects)	-	Usufruct Interest

In centralised states like Dagbon, in Northern Ghana and Ashanti in the Southern Ghana and in some other Traditional Areas, the land cannot be sold outright ie. be permanently alienated but can only be leased with approval of the chief. The question of buying land outright was never an issue under customary land administration. All citizens had access to land for whatever purpose they desired to use it. No indigene was ever denied land in the traditional state. The same exists up to today in the rural areas. Under Traditional Rule all citizens of the state have access to land.

It is true that boundaries of lands, be they farm lands, residential lands or lands under the supervision of chiefs were marked by natural features or landmarks such as trees, rivers, anthills, hills or even mounts constructed by two parties sharing the boundaries, together with oral description were the hallmarks of boundary identification under customary law.

When land was used mostly for agricultural purposes little problems existed between neighbours. But today, greed for land ownership expressed in land speculation in the cities and urban areas have rendered natural features, which are subject to disappearance and change, as boundary marks, uncertain and insecure. This coupled with the need to hold documents that show “ownership” of the land held and the nature of interest held in the land are among the issues that have ushered in the multiple problems in land tenure systems in this country particularly at the customary level. Furthermore increase in population leading to the general rush of people to the cities and towns from the rural areas as well as land degradation in the savanna areas leading to a drift of farmers of the North to the fertile areas of Southern Ghana have further compounded the land problems.

4. PROBLEMS BESETING CUSTOMARY LAND ADMINISTRATION

In view of the traditional ways of land allocation and land alienation in the past, the modern day management of customary lands by Traditional Authorities has been beset with some problems, including, as already stated, indeterminate boundaries of customary lands, poor records or no record keeping, which sometimes results in the allocation of the same parcel of land to more than one person, registering at Deeds Registry and at Land Title Registry of the same document by different people, agricultural tenancies based on oral agreement, different tenorial arrangements at different parts of the country, depending on the Traditional area, chieftaincy / land disputes between two Traditional Overlords, claims and counter claims over disputed land due to lack of proper maps and plans of scientific accuracy and the disappearance of natural features marking the boundaries leading to lack of security of tenure.

5. OBSERVATIONS AND CONCERNS OF TRADITIONAL RULERS ON GOVERNMENT INTERVENTIONS IN STOOL LANDS ADMINISTRATION

In solving the problems enumerated and other problems of Customary Land Administration, Government enacted stifling laws and regulations that have been of great concern to Traditional Rulers.

In looking at these laws Traditional Authorities are concerned that whatever the good intentions or utterances of the state with regards to none direct intervention or interference in customary land administration and management, practical actions of state functionaries are often to the contrary.

Historically, it has been observed that the immediate post – independence era, when national governance came into the hands of fellow Ghanaians, was characterised by a marked increase in the land capacity of the Central Government. A rapid succession of statutes armed the Republic with far reaching powers to expropriate land, to control land use and to administer a considerable sector of landed property. With respect to stool lands, the legislation conferring sweeping powers on the Republic revolved around four themes: The conservation of natural resources, the control of land use, enhanced powers of expropriation and the assumption of the managerial and judiciary powers of stools in respect of unencumbered stool lands.

6. EXPROPRIATION AND APPROPRIATION OF STOOLS LANDS

“Although the formal trappings of ownership of stool lands were left in the hands of stools, the management of the stool lands was expressly vested in the Government. Management in this context consisted of an impressive array of regulatory powers such as the power to approve dispositions of stool lands for valuable consideration, the power to grant concessions affecting stools, the power of the President to intervene in litigation concerning stool lands, and the power of summary expropriation and appropriation of use in the public interest (Administration of Land Act. 123)”.

The 1992 Constitution, however, has ushered in a more liberal regime with respect to stool lands. First, Article 267 (1) unequivocally affirms stool ownership of stool lands as follows :

“All stool lands in Ghana shall be vested in the appropriate stool on behalf of, and in trust for, the subjects of the stool in accordance with customary law and usage”.

However, the Constitution does not vest the management of stool lands in the Government or the Lands Commission or any other public office or body. The managerial jurisdiction of the Lands Commission is limited to public lands (Article 258 (1)). The Constitution establishes the Office of the Administrator of Stool Lands, which is responsible for collecting all revenues accruing from each stool and distributing them in accordance with a formula explicitly stipulated by the Constitution (Article 267 (1)). But the Administrator of Stool Lands does not have a general constitutional mandate to manage stool lands.

Beyond the above powers of the Administrator of Stool Lands, the only managerial power vested in an authority other than the appropriate stool is the requirement of a planning certification from the appropriate Regional Lands Commission as a prerequisite for the disposition or development of any stool as stipulated in Article 267(3).

Happily, the summary powers of expropriation vested in the President in 1962 enactment are superseded by the emphatic guarantees against expropriation or deprivation of property under Article 20 of the 1992 Constitution which stipulates that, “no property of any description or interest in or right over any property shall be compulsorily taken possession of or acquired by the state unless certain conditions are satisfied”. Namely, the acquisition is in the public interest, the necessity for such acquisition is clearly stated and that the acquisition is affected by a law, which makes provision for the prompt payment of fair and adequate compensation. This was not the case in Act 123. The President had power to vest any stool land in himself if it appeared or seemed to the President to be in the public interest to do so. Monies accruing from this vested stool land was to be paid to an Account administered by Central Government called “Stool Land Account”.

Even though the new constitutional provision promises a more liberal regime for stool lands with the unequivocal vesting of stool lands in the appropriate stools in trust for their subjects, the incidents of this ownership have become nebulous by the persistence of old intrusive legislation and administrative practices as well as by the enactment of new legislation which appears to contravene the constitutional protections for the stool land. The enactment of the Lands Commission Act pursuant to the constitutional provisions on the Land Commission, the Administration of Lands Act and many other laws regulating stool lands still remain in the

statute books. These laws are not only repugnant to the constitution but are also inimical to sound economic management of stool lands.

7. ILLEGAL EXPROPRIATION OF STOOL LANDS TIMBER REVENUE

The hope that the 1992 Constitution has ushered in a more liberal regime for stool lands has been dashed by recent enactment of statutes and regulations governing the utilization and management of forest resources on stool lands. Royalties from the utilization of timber formerly constituted the bulk of stool land revenues. Recent legislation and regulations affecting timber exploitation have expropriated the bulk of this revenues - as much as 60% of these royalties- ostensibly as management fees charged by the Forestry Commission. When this exorbitant charge is added to the constitutionally sanctioned administrative fee of 10% payable to the Administration of Stool Lands, and the mandatory 55% of the remaining revenues allocated to District Assemblies, then it is no exaggeration to assert that recent legislation and regulations constitute expropriation of stool property without compensation, and a grave violation of the Constitution.

District Assemblies have notoriously failed to expend their portion of stool revenues on the development of traditional areas concerned.

It appears that the assumptions of National Land Policy framers are:

- (1) Customary Landowners Stool / Skins etc. are incapable of administering stool lands and stool revenues efficiently and in the interests of their subjects. Chiefs and Traditional Authorities are not enlightened enough to be entrusted with rational administration of their lands.
- (2) The real solution for our land problems lies in entrusting land administration, whether in respect of public lands or stool lands, to government departments, or other public institutions such as the Lands Commission or the Forestry Commission.

8. TRADITIONAL AUTHORITIES SHARE OF THE BLAME

In addressing the above issues, it has to be conceded that the Administration of Stool Lands by the traditional authorities in the past has been unblemished. There has been some incidence of breach of trust or inept administration on the part of some traditional authorities in the past such as encroachments, double sale of parcels of land, use of unapproved schemes and use of land guards and misappropriation of stool revenue.

But it is naïve to proceed on that basis that the solution lies in the administration of lands by state bureaucracies. The frustrations encountered by domestic and foreign investors in processing land acquisitions at various State Agencies will dispose of any lingering assumptions about the efficacy of state management of lands.

9. STATE LAND MANAGEMENT

State administration of land has proved to be one of the most inefficient and unproductive undertakings in the public sector. Nor can it be confidently asserted that the management of forests by state officials has enhanced our forestry resources. The degradation of forests and

the environment, the indiscriminate exploitation of timber without corresponding re-forestation and the wanton destruction of agriculture crops by timber operators have been the hallmark of state control over forest resources. State agencies should not desist from depriving stools as landowners of their legitimate revenues but should consult them for appropriate inputs in the management of these natural resources.

What traditional authorities need from state agencies with respect to the administration of stool lands generally is not depriving or stifling control but sound technical advice and financial support in harnessing the resources for the benefit of the entire community.

They, the Traditional Authorities, being more representative at the grass roots, of this country, do not need stifling laws and regulations that make them and their subjects tenants on their own lands or at best gaping spectators while stifling laws whittle away their lands and source of income, birthrights, and authorities. The deprivation of stool resources diminishes the capacity of chiefs to deliver the social and economic services expected of them.

9.1 Nananom, The Traditional Rulers and LAP

In yet another attempt to address land problems, the National Land Policy was inaugurated. Ghana's Land Administration Project (LAP) is said to be the Government of Ghana's programme to implement the National Land Policy of 1999. It is a departure from past practice in the sense that LAP was designed to apply participatory processes in policy development and legislative reform. Since about 80% of the lands of Ghana is under customary tenure and in view of the centrality of (Nananom) Traditional Authorities in land administration and management the programme has identified (Nananom) Chiefs as indispensable stakeholders with whom sustained engagement is imperative, if the reform effort is to yield the desired results. This without doubt is very welcome to the National House of Chiefs (NHC), the Traditional Rulers of this country. For that and other reasons the document entitled Legislative and Judicial Review Draft Final Report was presented to the NHC for their comments and suggestions. It was on the score of this and to contribute to the Good Governance of Ghana that the National House of Chiefs (NHC) undertook through its stool /skin lands committee to go through the Ministry of Lands, Forestry and Mines commissioned draft report "Ghana Land Administration Project, Legislative and Judicial Review – Draft Final Report".

Comments on the draft final report which was submitted to Nananom / Traditional Rulers of this country at the National House of Chiefs have since been submitted to the Ministry for inclusion in the Final Report.

The purpose now for touching on it is to indicate of the many ways Traditional Rulers of Ghana have been contributing to good governance in the area of land administration and other areas of governance.

10. METHODOLOGY ADOPTED BY THE STOOL / SKIN LANDS COMMITTEE IN THE STUDY OF THE DOCUMENT

In discussing the Report of the consultants it was first agreed that where no comment was made by Nananom, the Traditional Rulers, concerning any statement or recommendations in the Draft Final Report, it indicated that we had no objection to that statement or recommendation, same was therefore recommended to the House for approval. Proceeding from this point of view, we observed that the Final Draft Report consisted of four parts as follows:

EXECUTIVE SUMMARY, CURRENT POLICY OBJECTIVES, LEGISLATIVE AND JUDICIAL COMPONENT OF LAP-1, THIS WAS ATTACHED TO THE REPORT AS APPENNDIX A, DRAFT, MEMORADUM FOR ENACTMENT OF HARMONIZED LAND ADMINISTRATION CODE.

Components Of The Memorandum For Enactment Of Harmonised Land Administration Code

PART ONE OF THE CODE-LAND TENURE consisted of Legislative Provisions regulating:

- a. Security of Tenure
- b. Ownership rights including the substantive laws governing land holdings in different categories and
- c. Provision dealing with the recording and registration of deeds titles and interests in land.

PART TWO OF THE CODE-LAND MANAGEMENT also consisted of Legislative provisions which deals with:

- a. Compulsory acquisition of land
- b. Vesting
- c. Institutional arrangements for land administration
- d. Management of public lands

PART THREE OF THE CODE-LAND USE PLANNING consisted of Legislative provision regulating lands use planning :

- a. Provisions on formulation of planning schemes and layouts
- b. The granting of planning permissions, development permits and
- c. Provisions regulating the physical development and use of land

The above provided the basis for looking at both the Final Draft Report and the Attached Memorandum.

The Stool / Skin Lands Committee after critically discussing the Executive Summary made the following comments and recommendations.

- a. That consideration needed to be given the different land tenure systems in Ghana when the code is enacted.
- b. That special Land courts and Alternative Disputes Resolution (ADR) method with the full participation of chiefs should be instituted to deal with land matters. This could improve the resolution of land disputes.

- c. That any attempt to criminalize any kind of sale of land will lead to more delays in the resolution of land disputes and will put hardship on purchases.
- d. That land disputes coming from traditional areas must first be heard at the Customary Lands Secretariat before any attempt is made to take it further.
- e. That the Courts / ADR must demand the evidence to that effect before any further dealings with the case is attempted.

11. LAND ADMINISTRATION PROJECT

The Committee endorsed the long-term programme objective with the following comments :

12. RESEARCH METHODOLOGY USED IN COLLECTING DATA

The Committee observed that the method used in collecting the data for the code (interview method) was not representative enough, as views collected from only four Regions out of the ten Regions in Ghana, could not be taken as the views of representative land stakeholders in Ghana, because the Ghanaian society is not a homogenous one.

The establishment of customary land secretariat was welcome. It was therefore suggested that the Customary Lands Secretariat being piloted by GTZ should be extended to cover more areas. The meeting recommended that the country be grouped into linguistics zones for the purpose of the exercise.

The meeting further proposed that the areas for the pilot scheme, based on the linguistic zones that would be created, should be selected in consultation with the Regional House of Chiefs.

12.1 Financing Customary Lands Secretariat

On the Customary Lands Secretariats the Committee agreed that consideration should be given to the percentage of stool land revenue that would be paid to the Customary Land Secretariats so as to make them financially viable and self-financing. Revenue accruing to the Customary Lands Secretariats should be high enough to make them self-financing. It is therefore suggested that the formula for sharing stool lands revenue as stated in the Constitution needs to be amended. It is proposed that the ten percent share of the stool land revenue currently paid to the Office of the Administrator of Stool Lands be given to the Customary Lands Secretariats to enable them to manage their organisation efficiently when the code is enacted and come into force. The committee suggested that the “sales” of lands in any part of the country should be open and transparent and the prices should be comparable anywhere in the country.

The Committee observed that the fifty-five percent share of stool land revenue currently paid to the District Assemblies has not been used for the development projects it was intended for. If it were so, the pressure on Nananom to provide infrastructure and other amenities would have been reduced. The Committee therefore called for a Legislative Instrument to be passed to regulate the use of the fifty-five percent stool lands revenue paid to the District Assemblies.

The Committee accepted the proposal that the hierarchy of customary land holdings, and capacity to dispose of land, would lead to formal recognition of rights of all categories of land holders and facilitation of recording of these rights in an enhance decentralised Land Administration System.

The Committee agreed that leases of land with dates of commencement and expiration should be registered. However, the Traditional Authorities would be confronted with problems, if an attempt was made to register the traditional lease system. The committee therefore advises against the registration of traditional leases. It was also agreed that lands acquired by father could be transferred to the son without the son re-acquiring it. The Committee observed that no one method of customary land administration could apply in all the Traditional Areas in Ghana, because of the peculiarities in the land tenure systems that exist in some areas. It is therefore suggested that in preparing the code, there should be an omnibus clause to take care of these peculiarities.

13. SECURITY OF TENURE AND PROTECTION OF LANDS RIGHTS

13.1 Identification and Statutory Recognition of all Traditional and Customary Sources of Land Tenure and Rights

In the former Native States “(Ashanti and Dagbon)” it is noted that Adikrofo and Divisional Chiefs hold “Customary Freehold”, while the indigenes hold usufruct. The Paramount Chief holds the Allodial Right of the land. Thus three categories of customary land holding in Ghana are identified as follows :

- Usufruct – held by indigenes
- Customary Freehold – held by Adikrofo and Abremponfo (Sub-Chiefs and Divisional Chiefs).
- Allodial Rights – Held by Paramount Chiefs

The Paramount Chief (the allodial owner of the land) holds the land in trust for the ancestors, the present generation and the generations yet unborn.

The Committee proposed that where “Customary Freehold” appears in the memorandum, it should be substituted with usufruct. The Committee therefore rejected the proposal that customary freehold be registered but accepted the registration of usufruct. What would go into the Code should be consistent with the various norms practices and customs as they apply in the various traditional areas in Ghana.

In Ghana, there are many linguistic zones with different tenurial systems. So the entire range of varied interest that exists in the country under the various customary land tenure systems should be identified and their scope, nature and incidents determined and procedures developed for their documentation. So that what would go into the code would be consistent with various norms, practices and custom as they apply in the various traditional areas of Ghana.

The committee rejected the assertion by the consultants that women in Ghana do not hold right to land and therefore called for that statement to be struck out from the documents. The committee contended that there was no differential treatment between men and women in the

acquisition of land in any traditional area in Ghana. The committee suggested that in view of the many connotations associated with the land laws in Ghana and the subsequent confusion arising out of their interpretations, the word “interest” be used instead of “ownership” in the code.

14. DEMARCATION AND SURVEYING OF CUSTOMARY HELD LAND

The Committee in discussing security of tenure under the above heading held that since natural features that can disappear leading to indeterminate boundaries usually mark customary land boundaries, it is necessary to survey and demarcate all allodial land boundaries. The cost of such survey will be beyond the means of Traditional Authorities to pay. It is therefore recommended that the cost of demarcation and survey of all allodial lands boundaries, and payments of compensation, in respect of properties to be affected during the surveying and demarcation exercise be borne by the state for the following reasons:

- (i) All mineral rights in the lands are vested in the state
- (ii) The Government is yet to pay the accumulated compensation of compulsory acquired lands, since the colonial days, to the landowners.
- (iii) The Government is obliged to develop every part of Ghana and the surveying and demarcation of allodial boundaries forms part and parcel of the country’s development.
- (iv) The Government is responsible for the surveying and demarcation of District and Regional boundaries and therefore has to do same to allodial lands.
- (v) The surveying and demarcation of allodial land boundaries should be part of the surveying and mapping exercise undertaken by the state.
- (vi) The portion of the stool lands revenue paid to the Stools is not enough to enable the stools meet the cost of the surveying and demarcation of allodial lands which include activities like pillaring, payment of valuation compensation and preparation of cadastral maps etc.

15. REGULATION OF LAND AND PROPERTY TRANSACTIONS

Recording and registration of interests and transactions in land will require sustained and heavy financial involvement. So it is recommended that the Government and donor agencies should support the land title registration process so as to make the land title registration viable and self-financing. The registration should be such that where no land title registration is declared, deeds registration should operate. The two types should run until all areas of Ghana are declared Land Title Registration areas.

16. LAND ADMINISTRATION AGENCIES

It was the conviction of the Committee that the coming into operation of LAP was an opportunity to correct the inefficiency associated with the existing Land Administration Agencies. The conviction of the Committee was based on the new administrative proposal that there would be one agency to be headed by a Director – General, with all the existing land agencies working under him / her (perhaps under one roof). The new structure would curtail the time clients spent to have their documents registered as well as reduce the expenditure involved.

The double / multiple registration of lands also arose where applicants for the same land registered it, one at the deed registry and the other at the title registry. In other cases there were two deeds on the same land. The issue of double registration also arose from faulty site plans.

17. AERIAL SURVEY

It was proposed that the Government should embark on a comprehensive aerial survey and mapping to cover the entire country. Without proper survey and base maps covering the whole country the title registration exercise would be a mirage. Availability of accurate maps and plans would facilitate planning and make the work of the LAPU attainable.

18. CONVEYANCING DECREE

The Committee welcomed the proposal that the amendment of the Land Registry Act should contain provisions for adjudication and settlement of title, and added that the amendment should insist on the production of site plans approved or certified by the Director of Surveys or his authorised agents in order to ensure their reliability and to relate its usefulness to the Survey Act, 1962.

19. DETERMINATION AND REGISTRATION OF ALLODIAL TITLES AND ALIENATION AUTHORITIES

The Committee also endorsed the proposal that alienations of land made by Chiefs or heads of family be generally deemed to be invalid unless they were made with the consent of his elders or principal members, and proposed that the principal members / elders should be at least two and they needed not to be registered as proposed by the Consultant.

20. ADMINISTRATION OF LANDS

20.1 Vesting of Customary Lands

- (i) That Section 7 of Act 123 which vested Stool Lands in the President did not conform to Article 267(1) of the 1992 Constitution and therefore recommended that the section be repealed.
- (ii) That resources management in the country be decentralised
- (iii) That there should be a law that would make it difficult for the state to vest lands and other resources in the President. It is further recommended that there should be restrictive clauses in any law that would vest lands in the President, as it applied to the compulsory acquisition law. The compulsory acquisition law requires the Government to pay compensation to the landowners before any land compulsory acquired is taken over.
- (iv) That there should be collaboration between Nananom and the various Government Land Sector Agencies. Every action of the Government, through its Agencies, in respect of land in any Traditional Area should be taken with the consent and approval of the

Paramount Chief of the area, and this should be stated clearly in any contract agreement to be signed.

- (v) Nananom called for transparency in the operations of the land sector agencies.

21. STATE LANDS ADMINISTRATION

The Consultants comments were endorsed as well as their recommendations together with these decisions.

- (i) Nananom recommended the establishment of the permanent Site Advisory Boards for the District and Municipal Assemblies.
- (ii) That Nananom as owners of the lands need to have representations on the permanent Site Advisory Boards.
- (iii) The meeting detested the compulsory acquisition of lands by the government for the following reasons :
 - (a) That the Government sometimes acquires land unnecessarily without consulting the landowners
 - (b) That the Government sometimes acquires lands in excess of what it needs.
 - (c) That lands acquired for public interest and for public purpose are never used.
 - (d) That there are varied interpretations of the law on the reversion of unused compulsorily acquired lands to their original owners. There is need for explicit interpretation on this law to avoid misunderstanding between Landowners and Government.
 - (e) It was suggested that there should be restriction on how the Government could acquire land compulsorily. Among the suggestions made include :
 - (i) The necessity for the Government to pay fair and adequate compensation to the landowners.
 - (ii) No entry onto the land until compensation has been paid.
 - (iii) Adequate notice must be given to the landowners of the government intention to acquire the land, by direct contact.

The Committee suggested that as an alternative to compensation payment for pieces of land acquired for investment, the land should be used as the equity share of the landowners in the investment.

22. LIMITING THE ROLE OF THE STATE TO REGULATION - TERMINATION OF THE ROLE OF THE OFFICE OF THE ADMINISTRATOR OF STOOL LANDS

The committee accepted the recommendation that the aim of the direct role of the State in the management of Stool Land Revenue could be better achieved if the state limits its role to regulation of the functions of customary landowners rather than direct involvement in the management of the stool lands.

The committee however, rejected the second part of the recommendation which proposed that stools should be considered as bodies corporate and subject to the general taxation laws of the country and made to pay tax on the incomes and revenues from stool lands. It was the contention of the committee that no tax was paid on the incomes and revenues from stool land

when the Office of the Administrator of Stool Lands was doing the collection and therefore saw no justification for the payment of tax on the incomes and revenue from the stool lands now that the Customary Lands Secretariats would do the collection. The Committee asked for the second part of the recommendation to be struck out.

23. CUSTOMARY LANDS SECRETARIAT AND THE REQUIREMENTS OF CONCURRENCE AND APPROVAL FROM LANDS COMMISSION

The Committee accepted the proposal that continued requirements for Lands Commission concurrence is incompatible with the radical strengthening of Customary Lands Secretariats favoured by the LAP, and Traditional Authorities. The Committee therefore recommended that the requirement of certification of stool land grants as required under Article 267(2) of the Constitution and the requirement of consent and concurrence for stool land grants should first of all not be applicable to dispositions made by the land owning authority to indigenous person.

24. LAND USE PLANNING – PROBLEMS AND CONSTRAINTS

The Committee observed that when the Lands Sectors Agencies are merged they would be better placed to deal with some of the problems identified by the consultants. The suggestion by the officials of the Town and Country Planning Department that Landowners should engage the services of private profession planners to prepare the planning schemes (layout) indicated the seriousness of the problems. There is shortage of staff at the Town and Country Planning Department and the Head cannot engage new manpower unless approval has been given, and this was subject to the budget estimates approved for the Department. The Committee also attributed the shortage of professional planners partly to the stringent entry requirement into the Universities.

The Committee therefore agreed with the Consultant that the Customary Land Secretariats when fully established and financially viable should engage the services of private planners (consultants) to plan the layouts for the approval of the District Assemblies. In the view of the Committee this had been the existing practice and it should be encouraged. The engagement of private professionals should therefore, be part of the output of the recommendations to be made under this topic.

The Committee agreed with the consultant when he said “currently the development on the state and vested lands appear to proceed in accordance with planning schemes. The reason is that the Lands Committee uses statutory approved scheme for allocating developing plots to developers. In customary and private land areas, many developments occur in areas where the schemes are pending before planning committee as a result of the conflicts between landowners and planning authorities layouts”.

25. OVERVIEW OF LEGISLATIVE REGIME ON LAND PLANNING

The Committee pointed out that the legal framework – Town and Country Planning Ordinance (Cap 84) – required landowners to comply with the physical planning of their areas, though landowners are not represented on the planning committee appointed to approve

plans. Under the Ordinance the Minister responsible for Lands would make a declaration that a particular area is a statutory planning area. A planning committee is appointed for the area on which Traditional Authorities have no representation. The Committee therefore recommended that Landowners be fully represented on the planning committee.

The Committee observed that, in advanced countries, planning precedes development whereas the opposite is in Ghana. Nananom attributed this state of affairs to the inadequate staff, lack of materials and equipment and suggested that Government takes steps to solve these problems so that developers would plan before developing their lands. The meeting reiterated its suggestion that the engagement of the private sector to support the Town and Country Planning Department to prepare plans and layouts would help in no small measure in the solution of some of the problems identified.

The Committee also suggested that in order to utilize the staff that would have to be laid off with the merging of the Land Sector Agencies, such staff should be distributed to the Customary Land Secretariats and the new agencies encouraged to use the private consultants.

The Committee agreed with a recommendation by the Consultants that in planning Government land into plots, the State should bear the cost while the Stool bears the cost of planning Stool Lands into plots. In the case of Stool Land, any assistance offered by the District Assemblies would be welcomed. The Committee suggested that the Stools should depend on the District Planning Authorities to identify qualified planners for them, and to verify and certify the work of the planners as well.

26. DISTRICT PLANNING AUTHORITIES

The Committee observed that the District Assemblies have not got the manpower to prepare planning schemes, and inspect buildings being constructed. The preparation of planning schemes and inspection of buildings are the duties of the Town and Country Planning Department, under the Local Government Act, Act 462. The result of this handicap is the haphazard manner of buildings being constructed, because there is delay in the supervision by the District Assembly. The Committee called for the strengthening of the building inspection directorate of the District Assemblies.

The Committee accepted the proposal that the one-stop-shop concept should develop strong interface with the District Assemblies and Town and Country Planning Department and the levels of co-operation should be worked out through the committee system.

The Committee pointed out that at the core of the work of the Town and Country Planning Department is the availability of maps, because mapping is the basis of planning. Mapping forms the base of all achievable activities under planning. The efficiency of the new system will depend on correct and up-to-date maps. The mapping of this country should therefore be put on the highest priority in the LAP.

27. OTHER POLICY RECOMMENDATION – NATIONAL LAND POLICY

The Committee also accepted the following recommendations made by the Consultant:

- (a) That the Ministry of Lands, Forestry and Mines in conjunction with other relevant MDAs shall develop and implement a comprehensive District, Regional and National Land Use Plan and Atlas which zones sections of the country into broad land uses according to criteria agreed among various public and private land stakeholders.
- (b) That the Survey Department should be adequately supported to prepare maps to cover local and regional land uses.
- (c) That it must be ensured that all lands for settlement, industrial and commercial development are planned and serviced where applicable, before disposal of any kind. The Committee made a suggestion that the cost of the service to be provided should be included in the price of the plot / land to be borne by the developer.
- (d) That the new law must establish simplified models and processes of land use planning and development controls with clear definitions of roles and responsibilities at the district, region and national levels in partnership with and participation of the customary landholders.
- (e) That the new law must establish simplified and operational procedures of inter-linkage tenure clarification, land registration and land use management at the local level.
- (f) That the new law must clarify complementary roles of Land Sector Agencies, District Assemblies, Customary Authorities and the Private Sector in land use planning and management.

28. CONCLUSION

In the past, the State chose to usher in a number of stifling laws and regulations to direct the management of customary lands and to vest such management in the President or State institutions. This situation led to serious concerns and reservations being expressed by (Nananom) Traditional Rulers since independence. These concerns included among others the following :

- (a) The failure in the past, of Government of Ghana to consult with Traditional Rulers and to seriously consider the views of Traditional Rulers in formulating policies in the lands and natural resource sector.
- (b) State control over the powers of landowners to make grants
- (c) State control over the collection and disbursement of revenue from stool lands.
- (d) The arbitrary imposition of an administrative formula for sharing revenue from forest resources especially timber from off-reserve areas.
- (e) The lack of transparency in many of the procedures of public land sector agencies.
- (f) The arrogance and insensitivity of some public land sector agency officials regarding their relationship with Traditional Rulers.

Happily the current Government has realised that the problems of Land Tenure, Land Management and Land Use Planning particularly in respect of customary lands cannot be solved by either the Government acting alone using draconian control or the Customary Authorities acting alone using customary authority only. The true path to the solution lies through consultations, collaboration and a genuine partnership in a fully participatory

interface. This is what will achieve the goal of Good Governance in Customary Lands Administration in particular and Land Administration in Ghana in general, hence the introduction of the Land Administration Project. The Traditional Authorities welcome this change of approach by Government as a ray of hope for genuine partnership in Good Governance. That reciprocates the ever readiness of Traditional Authorities to support Government to use land for development to eliminate poverty and sickness from the society. This new approach is a healthy State-Traditional Rulers interface in Customary Lands Administration.

REFERENCES

1. CONSTITUTION OF THE REPUBLIC OF GHANA 1992.
2. DRAFT COMMENT OF THE STOOL / SKIN LANDS COMMITTEE of the National House of Chiefs on the Draft Final Report of the Ghana Land Administration Project on Legislative and Judicial Review AND The Memorandum for the Enactment of a Harmonised Land Administration Code.
3. Managing Traditional Conflict – by Kwesi Jonah
4. Strengthening the Constitutional Role of the Houses of Chiefs in the Republic of Ghana – A document by the National House of Chiefs – 2001 Sept.
5. Codification of Customary Laws and Lines of succession for Good Governance – Naa Prof. John S. Nabila – Wulugu Naba.
6. Kumbungu (Dagbon) Customary Rules.

BIOGRAPHICAL NOTES

Kumbun-Naa Yiri II

Naa Alhaji Iddirisu Abu, Bsc., PGDIP, FGhIS, PPGhIS

Paramount Chief of Kumbungu Traditional Area

Member of the National House of Chiefs and Chairman of the Stoll/Skin Lands Committee of the National House of Chiefs