Land Administration Reform in a Plural Environment – The Case of Ghana

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SUMMARY

The development of formal structures, systems and framework for socioeconomic development in many West African countries occurs within plural setups. The pluralism ranges from the very nature of communities and entities within which the systems are to operate, to legal frameworks, customs and traditions, institutional structures, etc. Established institutions and communities tend to cling to and protect the specificities and uniqueness of their identity, customs and traditions rather than to be subsumed within wider entities. However, these specificities are often the subject of reforms. Introduction of concepts, structures and principles that often generalise, which sometimes is necessary for reforms, find difficulty in gaining acceptability and the implementation of innovative ideas, principles and changes associated with reforms become critical challenges to the existing systems, raising issues of politics, power relations, associations, etc. Land reforms in developing countries in particular are prone to these challenges as they often directly affect the source of livelihoods. It is within such a plural environment that the Ghana Land Administration Program (LAP) has been designed.

The Ghana Land Administration Program aims at re-engineering the land administration system and to develop a system that is fair, efficient, transparent and cost effective. It is a long-term comprehensive reform programme that affects the entire continuum of land administration – policy and legal regimes, the administration of justice as it relates to land, rights and interests in land, institutional reforms (public and customary), customary land administration, land titling and registration, community based land use planning, surveying and mapping, valuation, land information systems, human resource development, etc. The implementation of such a big and complex program with several stakeholders within a plural environment poses serious challenges.

The paper explores the issue of pluralism and the challenges it poses to the implementation of the land administration reform in Ghana. It discusses pluralism in the context of communities, traditions and culture, legal framework, and institutions as well as power relations among implementers and stakeholders within a civil service mainstream structure. It concludes that a better understanding and appreciation of existing complexities should inform the design and implementation of land reforms.

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1. INTRODUCTION

Ghana, like many countries in sub- Saharan Africa, is made of several 'independent' traditional states, each of which is uniquely distinct and special in its own right. There are over one hundred linguistic and cultural groups, clans and states in the country each with its own identity. In many of these communities land ownership patterns are closely linked with the nature of the traditional systems. Overarching these states is the desire to create the modern state of Ghana that defines its own identity and which responds to social, economic and political parameters that may be different form the indigenous states. The commodification and commercialization of land rights are still in the primary stages, evolving from customary and indigenous systems. This is usually the first stage in the development of complex land and property markets that can lead to the realization of the full economic benefits from land and its resources. Land reforms thus tend to concentrate on the appropriate management of the evolution, the clearer definition of rights and interests in land, improving security of tenure and the development of appropriate institutions, among others. The primary goals of policy reforms are efficiency and promotion of economic development, equality and social justice, environmental preservation and a sustainable pattern of land use.

The land administration system in Ghana over the years has operated within a plural environment, with statutes and customary laws, public and indigenous institutions, traditional values and corporate norms all operating side by side. This has been compounded by the importation of British tenurial systems, concepts and principles such as freeholds and leaseholds. Concepts and terminologies have therefore not meant the same thing in different localities. The juxtaposition of statutes with traditional systems has operated in the country for more than a hundred years and has not been without problems. Issues of accountability, efficient and effective systems have been raised. The response in Ghana is the design of a Land Administration Program which aims at reforming the land administration system and to develop a system that is fair, efficient, transparent and cost effective. This paper explores the issues of pluralism and the challenges it poses to the reform processes. It discusses pluralism in the context of indigenous societies, customary as well as statutory practices and institutions. It also deals with rights and interests in land, power relations, participation, etc. to create the right environment for the implementation of the program.

2. THE PLURAL ENVIRONMENT

Discussions on the nature of plural communities in Ghana have often centred on the nature of indigenous political systems. Folson (1964) for example classified indigenous political systems into Akan, Ga, Ewe and the Northern System. Larbi (1994) on the other hand classifies indigenous systems into (a) centralized political authority exercised through a

hierarchy of leaders and (b) those which lack a centralised political authority (see also Manoukian 1964). The societies with a centralized system can further be subdivided, on the basis of historical evolution into:

a) Those whose nuclear units voluntarily came together to form larger political or military units e.g. Asante. These states operated on a system of allegiances and responsibilities linked hierarchically, political relationships that are literally between structural equals being expressed ideally in terms of affiliation to a common overlord. Since the political structure was for military convenience, ownership of land in the larger political unit is vested in the original land owning groups.
b) Those formed as a result of conquest e.g. Gonja. Here the conquering people imposed their political organisation on those they had subdued. The allodial rights to the land transferred to the leader of the conquerors.
c) Those formed as a result of small splinter groups from a ruling house of powerful traditional states migrating to new areas to found their own states, or where members of a ruling group were sent to establish settlements or native states to protect a vital trade route or to serve as a military outpost for the parent state. These were more or less associate states of the parent state. Even though the new rulers (who were always in the minority) maintained links with and recognised the primacy of the parent state, ownership of land in these states still vested in the original custodians.
d) Where part of a whole of native state is absorbed by a more powerful state with the consent of the former. The rights of the annexed people would normally be vested in the head of the powerful state eg. Asante-Akyem.

With the decentralised states (or acephalous communities) no central authority is discernible. Land ownership and tenurial arrangements revolve around the spiritual leader of the group (the earth priest or *tendana*) in some places, or a head of family in other places. Where such people later come together to form states, the state never exercised proprietary rights over land even though the jurisdictional control was exercised by the chief who is the political head of the state. Some communities also came to own land through gift or purchase.

The overall impact of these arrangements is a hierarchy of complex rights and interests associated with the ownership, control and use of land. The basic tenet however, is that the land tenure arrangements in these communities are purely customary. That is to say that the right to own, deal with and use land rest neither on the exercise of brute force, nor on the evidence of rights guaranteed by government statutes, but on the fact that they are recognised as legitimate by the community – rules governing the acquisition and transmission of these rights are usually explicit and generally known, although not necessarily recorded (Bower, 1993). These have been further compounded by the state's land administration regime through a myriad of statutes and other forms of intervention and controls. About 80 percent of the lands in Ghana fall within these arrangements. The remaining 20 percent is state land, compulsorily acquired or occupied over the years in pursuit of the State's development objectives.

3. MIGRATION

The introduction of cocoa into the country in the 19th Century and its wide acceptability because of its economic benefit, resulted in movement of people from their own communities to other areas in search of fertile lands suitable for cocoa. The kind of tenurial arrangements developed by the land owners and the farmers under customary practices led to further complexities in land tenure arrangements – share cropping (which in some localities has metamorphosed into sharing of the land rather than the produce) or outright sale. The movement of people also introduced monetary considerations into land tenure arrangements which largely changed the pristine traditional customary arrangements. Recently the trend has been exacerbated by the introduction of more cash tree crops such as oil palm, citrus, rubber etc. People from the same communities who migrated to new locations tended to congregate together in the new settlements so that they could preserve and practice their culture. Thus within a generally accepted culture and traditional practices of a dominant ethnic group could be found other local cultures and traditional practices resulting in the plurality of cultures. Mining activities and large government projects such as the Volta River Project which involved the resettlement of a number of people in different geographic locations also introduced further dimensions in land tenure arrangements.

4. LEGAL PLURALISM

The legal environment for the management of land in Ghana is essentially pluralistic, based on the co-existence of different regulatory systems – customary, Islamic, statutory and constitutional (Dowuona Hammond, 2003). The Constitution of the Republic of Ghana (1992) lists the following as the sources of law in the country:

- The Constitution
- Acts of Parliament
- Orders, rules and regulations made by any person or authority under powers conferred by the Constitution
- Common law
- Customary law, defined as the rules of law which by custom are applicable to particular communities in Ghana
- Judicial decisions of the Superior Court of Judicature.

Currently there are over one hundred statutes on land ownership, tenure, planning and use, added to the different customary laws as they pertain to specific localities.

The net effect of the pluralism of cultures and traditions, ethnic groupings and their formation, different sources of the acquisition of land as well as the legal pluralism is the evolution of a complex series of rights and interests in land which can be divided into two broad categories: Customary and Common law. The Customary rights may be listed as:

- Allodial interest: customary interest that is not subject to any restrictions on rights of user or obligations other than restrictions or obligations which is imposed by statute.
- Customary law freehold: the rights to land subject only to such restrictions or obligations as may be imposed upon a subject of a stool or a member of a family, who has taken possession of land of which the stool or family is the allodial owner either without

consideration or upon payment of a nominal consideration in the exercise of a right under customary law to the free use of that land.
- Share cropping where the proceeds of a farm are divided according to pre-determined arrangements
- Share cropping where the cultivated land rather than the proceeds are divided according to pre-determined arrangements.
- Alienation holdings – land acquired outright by a non-member of the land owning community for agricultural purposes.
- Other customary tenancy arrangements.
- Community's common property rights
- A range of derived/secondary rights.

The Common law rights may include:
- Freehold acquired under common law
- Leasehold
- Licenses, easements

These rights (customary and common law) often co-exist in the same piece of land and often in a hierarchical order with the allodial right at the apex within the customary set up. Indeed the collective, societal or individual rights and interest in land permeate the entire economic, social cultural and political organisation of indigenous societies in Ghana. The commodification and commercialisation of rights in land which may emanate from any of the above primary rights depend among other things on the quantum of rights or value that can be imputed to any of the above rights, the security associated with the right as well as the institutional arrangement for the management of the right.

5. MULTIPLE INSTITUTIONAL STRUCTURES

Appropriate institutional innovations are needed to administer effectively such complex rights and interests in land to create an enabling environment for moving property rights, land and property markets towards more complex forms that will create successively greater investment in land, economic growth, and increased welfare, improve living conditions, provide equitable access to land, shelter and basic services. Failure of land administration institutions to respond to the demands can lead to land grabbing, conflict and resource dissipation that in extreme circumstances can undermine societies' productive and economic potential (Deininger, 2003).

The main institutions responsible for land administration in Ghana include customary authorities (comprising a chief or head of family and his principal elders), and public sector institutions such as the Lands Commission, Land Valuation Board, Land Title Registry, Office of the Administrator of Stool Lands, Survey Department, Town and Country Planning Department and the District Assemblies. Each of these agencies operates under its own legal mandate, some having been set up by the Constitution. Whilst the customary institutions operate mainly under customary law, the other agencies, being public sector agencies, operate mainly under statute. These agencies are of different sizes in terms of staff, budget,

geographic location, etc. Instruments of coordination, if they exist, are weak. This multiplicity of agencies poses severe challenges in evolving strategic directions for land administration. In addition the political dynamics which sometimes interferes with institutional leadership adds to the challenges of achieving institutional strategic objectives.

The opportunities for cooperation, coordination and collaboration are further weakened by the absence of networks and data/record sharing policy A manual land information infrastructure exist for land records management. Storing and retrieval of information manually creates a frustrating environment for working, slows down service delivery, increases the potential for multiple entries which can give rise to litigation and causes faster wear and tear of the paper based records.

The interplay of the customary systems and institutions for land tenure, the legal plural environment and the multiplicity of institutions for land administration in the country has been a challenging environment characterised by the following:

- Absence of well defined, demarcated and surveyed boundaries between indigenous land owning groups, leading to numerous land litigation;
- Hierarchy of rights and interests in land some of which are not properly defined and recorded;
- Difficulty in ascertaining the owners of land in terms of dealings;
- A weak land administration system that is not service delivery oriented and client focussed;
- A legal plural environment that combines customary law, statute law and judicial decisions.

These and many more are captured in the National Land Policy of Ghana (1999). The net effect is a high degree of insecurity of tenure associated with land transactions both for urban and rural land uses. The desire to improve Ghana's attraction as an investment destination, increase investment in land development by both individuals and corporate entities, respond to the Millennium Development Goals as they relate to land, reduce land related conflicts, increase certainty of ownership and land rights are some of the imperatives that are driving the country towards the resolution of some of these challenges and hence the Land Administration Program. It is recognised that the appropriate shaping of land tenure systems have a crucial influence on socioeconomic development of many developing countries, and provide impetus for individual and group development, shape and mould the degree and direction of economic development, policy making, power structures within society, transformation processes and the way people relate to their natural environment.

6. THE LAND ADMINISTRATION PROGRAM

The Land Administration Program is a long term ambitious program of the Government of Ghana to enhance economic and social growth by improving the security of tenure, simplifying prudent land management by establishing an efficient system of land administration both state and customary, based on clear coherent and consistent policies and

laws supported by appropriate institutional structures. It is to be implemented in five-year phases over 15 to 25 years (Project Appraisal Document (PAD), 2003).

The first phase (2004 – 2008) has the primary objective of developing a sustainable land administration system that is fair, efficient, decentralised, cost effective and capable of enhancing land tenure security (see PAD, 2003). It has four main components:
Component 1: Harmonizing land policy and Regulatory Framework for sustainable land administration. This deals with:

a) Revision of policies, laws and regulations for an effective and efficient land administration;
b) Strengthening of civil courts to expedite resolution of land cases and developing alternative land dispute resolution mechanisms;
c) Inventory of all acquired state lands and determination of outstanding compensation;
d) Policy studies on land tenure registration to formulate government policy on what rights will be registered on land titles; divestiture of vested lands; finance and fees structure of land administration system to formulate government policies on fees and taxes for registration of land transactions; gender study and analysis; and assessment of current land administration services provided by customary land authorities.
e) Land Policy development process.

Component 2: Institutional reform and development. This deals with the following issues:

a) Restructuring of public sector land agencies;
b) Decentralizing and strengthening land administration services;
c) Strengthening customary land administration;
d) Strengthening private land sector institutions; and
e) Strengthening land administration and management training and research institutions.

Component 3: Improving land titling, registration, valuation and information systems. This handles the following:

a) Developing the cadastre and land information systems;
b) Cadastral mapping;
c) Establishing model land titling and registrations offices;
d) Improving deed and title registration;
e) Land use planning and management;
f) Establishing land valuation data base;
g) Piloting demarcation and registration of allodial land boundaries; and
h) Piloting systematic land titling and registration.

Component 4: Project Management, Monitoring and Evaluation deal with project coordination and management; human resources development; communication strategy; and monitoring and evaluation and impact assessment.

The overall expected outcomes of the intervention are:

a. Enhanced economic and social growth and poverty reduction through improved access to land and enhanced security of tenure.

b. Expanded role of civil society and private sector in land administration.
c. Improved governance.

This brief description indicates how big and complex the first phase of this long-term project is. The implementation of such a complex project within a mainstream civil service structure, the sequencing of activities, the coordination and harmonisation of operations of a large number of stakeholders, and the management of expectations present considerable challenges for the Ministry of Lands, Forestry and Mines the lead implementing Ministry. These challenges are now discussed below.

7. THE CHALLENGES

7.1 Harmonisation in a plural environment

One of the critical challenges of implementing the project is the harmonisation of customary law with statute in a plural environment. Customary law by definition means 'the rules of law which by custom are applicable to particular communities in Ghana' (1992 Constitution). There are therefore as many customary laws as there are of communities in the country. Such autochthonous practices translate into the tenurial arrangements of particular communities and therefore have greater effect on access to land. The critical question then is whether it is possible to harmonise in the first instance the numerous customary laws before attempting to harmonise those laws with statute. In the attempt to harmonise customary laws it is possible that some particular customs and practices may be streamlined. Communities that think they are going to lose their identity are likely to resist. Which custom will be used as the basic tenet for harmonisation? Could harmonisation mean a re-writing of the customs of the particular community and therefore come against the provisions of the Constitution? How can we ensure that the customs of minorities are still preserved in the effort to harmonise? At what point can we say that harmonisation has been achieved?

7.2 Power Play

A second challenge is that the implementing agencies are themselves subjects of institutional reform, both customary institutions and public sector land agencies. The institutions have therefore become an arena of power play. There are big traditional institutions that believe that they are capable of managing their own affairs and therefore see the intervention as purely a state-managed process. The state must therefore bear the entire cost of the reforms and provide all resources needed. Some public institutions believe they play central role in land administration and therefore must necessarily spearhead the entire reform process. This power play need to be managed well as the continuous support of such dominant groups is needed to make progress. Some of the technical aspects of the project such as customary boundary demarcation would involve a lot of power play and would require tact and innovative ways to deal with. There is also the fear that minority rights and interests could be extinguished in the process of improving titling and registration of land rights.

7.3 Land Administration Reform as against Land Tenure Reform

The Land Administration Program is primarily a land administration reform program, aimed at institutions, legislation, judicial decisions, records management, titling, community-based land use planning, monitoring and evaluation, human resource development, etc. It is not a direct intervention in land tenure in terms of re-arranging and re-shaping land relationships and rights and interests in land, even though a lot of the interventions have far reaching implications for land tenure. It is not clear how in the long term, interventions such as the systematic land titling registration, the support to customary land administration, community based land use planning and customary boundary demarcation would affect rights and interests in land including secondary and derived rights. The project implementation unit must therefore look out for the tenurial consequences of the intervention and take appropriate measures to absorb the positive effects while at the same time measures are put in place to contain the negative effects.

7.4 Participation

The project is being implemented through participatory approaches, as it has been recognised that public participation is essential to satisfactory land policy reforms. Participation improves ownership of the project, increases the knowledge base of the project and keeps stakeholders well informed. This in turn enhances implementation. It tackles social legitimacy, commitment and leads to community based solutions to often very complex problems. It is however a major challenge when dealing with large numbers of stakeholders in a plural environment. Representation even becomes an issue, against a backdrop of implementing activities to meet dead lines. Given the number of stakeholders and interest groups it becomes challenging in identifying when participation is complete and at what levels.

8. CONCLUSION

The Ghana Land Administration Program represents a bold initiative at tackling the myriad of problems associated with land administration in the country. Perhaps it is the sheer magnitude of the land problems facing the country and which frustrated land users, investor and developers, as encapsulated in the National Land Policy (1999) that was the main reason for designing the project with such complexity and magnitude. The processes and objectives of the land administration reform have been appropriately set within the broader context of promoting economic growth and measures to alleviate poverty. Its implementation nevertheless calls for a lot of innovation and drive as well as flexibility, which sometimes mainstream civil service procedures do not allow.

Useful lessons have been learnt in the first two years of the program implementation:

i. Assumptions of widespread acceptability of land administration reforms must be well tested. Even though there is widespread dislike for the existing system, implementation of reforms must be strategically planned and executed.
ii. Champions for reforms among key stakeholders must be sought for before implementation.

iii. Smaller and easy to handle projects might be better option than holding the bull by the horn all at once. 'The surest way to eat an elephant is "a little bit at a time"'
iv. Communication and managing expectations of are absolutely essential.
v. The implementation of complex projects as civil service mainstream activity, as against projects, must be carefully weighed. Whereas mainstream activities rely on compliance with procedures and processes 'projects' are mainly output oriented. However, whereas mainstream activities build capacity of ministries, departments and agencies and therefore provides institutional memory and sustainability the end of 'projects' usually creates sustainability problems.

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BIOGRAPHICAL NOTES

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