

FOCUS ON LAND IN AFRICA BRIEF

JANUARY 2011

Ghana



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Lesson 1:

Rising Demand for Land and Tenure Insecurity in Ghana

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INTRODUCTION

Secure land rights are critical to the achievement of sustainable livelihoods and poverty reduction. In Ghana, customary authorities – namely chiefs and earth priests (tendamba) in the north and family heads in the south – are responsible for protecting and administering rights to land for the benefit of the communities that they govern. However, increasing opportunities to transact in land have enticed some authorities to sell off community land with little or no consultation with the rightholders. This conduct has led to the dispossession of small scale farmers and is the source of widespread indignation among the Ghanaian citizenry. Here, we discuss how statutory law and customary law frame the rights of customary authorities to transact in the land that they govern, and compare this to what is happening in practice.

STATUTORY LAW

In Ghana, land is governed by a pluralistic tenure system of statutory and customary laws and authorities. The extent of customary authorities' rights to unilaterally transact in lands under their jurisdiction – referred to as “communal lands” – is not explicit in statutory law.

Under the Constitution of 1992, customary lands vest in chieftaincy structures known as “stools” or “skins” for the benefit of and in trust for their communities. Communities hold land through an allodial title, which supersedes the interest of all rightholders falling within the boundaries of this title (GOG 1992; Sarpong 2006; Adarkwah 2006; Hammer 1998; Berry 2001). The allodial title is not mentioned in the Constitution, but rather is derived from textbooks and case law (Ubink 2010).

But while the Constitution states that communal lands vest in the appropriate customary authority in accordance with customary law and usage, the law does not make clear the rights of these authorities. On the one hand, the Constitution states that communal land may be disposed of or developed provided it is done with the approval of the Regional Lands Commission. The Chieftaincy Act of 2008 corroborates this and further requires that alienation of stool property be subject to approval of the appropriate Traditional Council. Yet, the Constitution also prohibits the creation of freehold interest out of communal land, specifically stating that, “no interest in, or right over, any stool land in Ghana shall be created which vests in any person or body of persons a freehold interest, howsoever described.” This clause appears to contradict the others, assuming that the right of disposal refers to the right to sell or otherwise alienate the land, which is a key aspect of freehold interest (GOG 1992; Sarpong 2006). Moreover, the Constitution deems “the appropriate stools” as trustees of the land and obligates them to manage the land for the benefit of their subjects and the people of Ghana (GOG 1992; Sarpong 2006). This would seemingly preclude transactions that result primarily in personal gain.

CUSTOMARY LAW

Under most customary tenure systems, people have overlapping and nested rights to land and natural resources that include permanent use rights, temporary use rights, common property rights and governance rights. Unlike most statutory systems, customary tenure systems frequently support separable and overlapping rights. For example, a person with an exclusive right to cultivate a piece of land may have to share rights to trees or a well on that land with others. Eighty percent of land in Ghana is administered and otherwise governed by customary rules and authorities, the majority of which falls under a particular stool or skin, the symbol of chiefly territorial control. Most of this land has not been titled or registered by the state.

Traditionally, chiefs have been charged with holding the land that they govern in trust for the benefit of their people, who share a common ancestry and historical relationship with the land. Land holds the heritage of the community and is presumed to belong to one large extended family that includes not only the living, but also one's ancestors and unborn children. However, chiefs' right to administer communal land has been subject to significant reinterpretation in response to rising population pressures, growing demand from commercial investors, and consequent increases in land values.

In recent years, Ghanaian newspapers have been riddled with accounts of chiefs alienating land under their jurisdiction to accommodate urban expansion, granting long-term leases to investors and other outsiders, and approving the conversion of farms into building plots. Meanwhile, chiefs are accused of appropriating the economic benefit of such land transactions, prompting the dislocation of smallholders from their land and fragmenting community structures.

At the intersection of statutory and customary law, chiefs act on behalf of the community that holds allodial title to the land (Ubink 2010). All other lesser titles to, interests in or rights over land derive from the allodial title. These include “customary freehold” and abunu and abusa. Customary freehold refers to permanent, private use rights to land that are typically assigned to members of a common lineage. Abunu and abusa are sharecropping arrangements between permanent use right holders and tenants.



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With increasing land scarcity, these tenancy arrangements are gaining in importance among community outsiders as a means of accessing land (Sarpong 2006).

Under customary law, the holder of the allodial title cannot reassign land that is already claimed by another party, though most parcel holders lack any written agreement confirming their interest. However, specification in customary law on the rights of customary authorities over land are highly varied and often fluid in their interpretation. Chiefs' rights to sell or lease land and the extent to which they need to consult with the affected communities and individuals before doing so are unclear (Adarkwah 2006; Ayee et al. 2008). It is also unclear whether or not chiefs must allocate cash from land sales to community development or compensate families that have lost their land with cash or other plots of land (Ibid).

The combination of convoluted statutory law and fluid customary law has been exploited by some chiefs to allocate land to elite outside interests at the expense of their lineage subjects. This tendency is fueled by the rising political influence of customary authorities when it comes to land governance (Sarpong 2006; Berry 2001) and by growing economic value attached to land that heighten incentives for chiefs to sell or lease land to outsiders.

CHIEFS BEHAVING BADLY

Population pressures and ever-growing interest in commercial investment have increased demand for land in Ghana, particularly in peri-urban and fertile rural areas (Ryan 2006; Berry 2001). Peri-urban areas have become attractive as bedroom communities for professionals from nearby urban centers and have increasingly been subject to government acquisition to convert them to residential neighborhoods (Yankson et al. 2009; Berry 2001). Concurrently, the rising demands for biofuels and volatility in food prices have prompted foreign governments and commercial investors to acquire large tracts of arable land in sub-Saharan Africa, with Ghana being a prime target.

As land increases in value, the power that chiefs have over land becomes complicated by economic interests. While some chiefs continue to act as custodians of communal lands, others have recognized the potential economic benefits of engaging in land transactions

with outsiders and positioned themselves as de facto owner of communal lands. Customarily, the benefit of land use was reserved for members of the lineage and alienation of communal land to a stranger required the consent of stool elders (Agbosu 2003). However, some chiefs maintain that land sales and leases to outsiders are within their rights as trustees of the land. This has enabled some chiefs to acquire vast sums of money from land transactions (Ayee et al. 2008).

Such issues have long been prevalent in Ghana. For example, in 1974 three chiefs in the Afram Plains conspired to receive a large government payment for the appropriation of their respective communal lands. Land in the Afram Plains had become more valuable following the creation of a national park and wildlife reserve and after a nearby region was flooded by the development of a dam. The three chiefs initially filed claims for compensation as "freehold owners," and received 4.5 million cedis. They gave a smaller payout to traditional elders, but most of the community members received no benefit from the transaction and were dislocated from their land. The chiefs later denied that they had deliberately disenfranchised the community. (Berry 2001)

More recently, a businesswoman from Accra leased land from a local chief. However, several years later, the chief's family leased the land to someone else, claiming that the original transaction was invalid. The woman paid 9 million cedis to remedy the situation, but when the family demanded more money, the woman called the police. The chief's family eventually relented (BBC 2006). In another case, a foreign-owned biofuel company, Biofuel Africa Ltd., acquired 38,000 hectares of land from a local chief in northern Ghana (Nyari 2008).

Rising demand for land has also influenced how chiefs allocate land to community members and 'stranger' farmers. Often they are no longer content with "drinks money," a small, one-time tribute traditionally paid to the authority granting land. Today, some chiefs demand recurrent "drinks money," gifts and even sizable cash payments, which are used for personal gain rather than to benefit the community (Ryan 2006). This poses a particular challenge to the poorest members of the community, including women.

Research in peri-urban Kumasi has shown that chiefs are allocating farmland currently in use by community members

to strangers. Community members are forced off their land and lose their source of livelihood, while chiefs appropriate the financial benefits of these transactions (Ubink 2010; Ubink and Quan 2008). As more chiefs adopt these behaviors, rural communities are losing faith in customary authorities and their role as land custodians (Hammer 1998) and conflicts between customary authorities and their subjects frequently arise.

To protect the rights of smallholders, statutory law must clearly limit the rights of chiefs to unilaterally sell or lease communal land to outside interests, while still protecting chiefs' roles as land custodians. Government must also commit itself to enforcing those rights, even when doing so may run counter to their immediate interests (e.g. in readily acquiring land for urban expansion). Currently, the Government of Ghana is implementing the Land Administration Project (LAP) the objective of which is to "improve land tenure security for existing land users and to facilitate expanding access to land for higher value agriculture in MiDA implementation districts" (MCC Working Draft). However, according to Ubink and Quan (2008), LAP administrators have so far adopted a "policy of non-interference" in customary land administration practices and the project has actually worked to strengthen the position of chiefs at the expense of smallholders. Without harmonized customary and statutory land policies and a fair and transparent land titling system, chiefs will be able to continue selling or leasing out land from under users.



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