Scientific Research Publishing

Open Journal of Social Sciences, 2023, 11, 432-451
https://www.scirp.org/journal/jss
ISSN Online: 2327-5960
ISSN Print: 2327-5952

History of Land Acquisition Structures and Processes in Ghana

Osmanu Karimu Azumah, Sendawula Noah

Nkumba University, Entebbe, Uganda
Email: azumaha@yahoo.co.uk, sendawulanoah@gmail.com

How to cite this paper: Azumah, O. K., & Noah, S. (2023). History of Land Acquisition Structures and Processes in Ghana. *Open Journal of Social Sciences, 11,* 432-451.
https://doi.org/10.4236/jss.2023.116028

Received: March 4, 2023
Accepted: June 26, 2023
Published: June 29, 2023

Copyright © 2023 by author(s) and Scientific Research Publishing Inc.
This work is licensed under the Creative Commons Attribution International License (CC BY 4.0).
http://creativecommons.org/licenses/by/4.0/

Open Access

Abstract

This article is related to a study on the history of land acquisition processes in Ghana; with emphasis to the livelihoods of smallholder farmers in the Bawku East District (BED) of Ghana. Almost everyone's history or family root is always a saga of attachment to or alienation from land. There is no land without a titleholder. Naturally land belongs to three groups of people, namely, the dead, the living, and the unborn. At any point in time, the living is just a custodian of the land. The owner of a land is thus any person or group of people that have the reserved right; legally or customary to use, convey, lease, or assign a parcel of land. Land is a gift of nature, and it encompasses components like soil, rocks, and natural vegetation. It is observed as a public property that defined a community's geographical range, its economic asset and socio-cultural heritage. Land covers all minerals and holds all immovable properties and buildings. Land is not just considered imperative to the agricultural villages but then in contemporary times it is viewed as the key pillar for evaluating economic growth with respect to capital and wealth. The study findings generally revealed very unsuitable aspects of land acquisition structures and processes that act as an obstacle to achieving the required livelihoods that accrue from the utilization of land among the farmers in the Bawku East District (BED) of Ghana. Findings further revealed that, escalating and ongoing land disputes continue to inhibit the productivity of smallholder farmers mainly due to reduced cultivation, decreased investment, and loss of economic assets. This study recommended that, the Government of Ghana should modify the current land acquisition structures and processes by empowering and funding the Administrator of Stool lands to survey and register all skin, clan and family lands within all the Kusaug Traditional Area; encourage smallholder farmers to adopt and implement any of the 165 marketable technologies developed and successfully profiled in June 2015 by the CSIR Institutes. Furthermore, the Land Act, 2020 (Act 1036) be revised, harmonised and consolidated to ensure sustainable land administration and

management.

Keywords

Historical Perspective, Land Acquisition Processes and Structures, Ghana

1. Introduction

Inscriptions and papyrus writings found on tombstones indicate that large public estates existed under the Old Kingdom of Egypt during the 3rd BC; and where several villagers were forced to provide unpaid labour to the state. Royal estates encompassing community lands possibly existed even before the unification of Egypt and the establishment of the First Pharaonic Dynasty. An analysis below is made of four historical instances of large-scale land dispossession to single out their shared economic and social features. These were the "…latifundia of the Roman Republic and Empire, as an experience of ancient colonisation that existed well before the development of capitalism; the enclosures in Britain, as an endogenous dynamic linked to the dissolution of the feudal regime and the emergence of capitalism; the large Spanish and Portuguese colonial estates in the Americas as a product of colonisation by external powers, which itself was linked to the expansion of mercantile capitalism; and collectivisation in the Union of Soviet Socialist Republics (USSR), as an endogenous dynamic linked to the wish to establish a sort of state capitalism within a managed economy".

In most of sub-Saharan Africa, access to land is determined by indigenous systems of land tenure that have evolved over time under local and colonial influences Lund (2011). Empirical evidence suggests that in the 19th and early 20th century African farmers were actively engaged in expanding agricultural output in response to new local and international markets. Studies of the origins of cocoa farming in Ghana in the first two decades of the 20th century, showed quite clearly the rapid evolution of land markets. This trend resulted in the formation of alliances by most migrant Ghanaian cocoa farmers to purchase from chiefs' tracts of forest which they then cleared for cocoa farms. To determine the extent to which the current trend is similar to or different from past instances of large-scale land acquisitions; an analysis is made on the current trend of land acquisitions and dispossessions in the light of the common features identified from past experiences, which sheds light on a number of public policy and research issues that are currently being examined. In Ghana, Land acquisition is organized along two main lines; that is, customary and statutory or public.

Ghana has a total land size of 238,539 square kilometres, rich in natural resources and land (Ghana Statistical Service, 2021). The nation's political and material asset and sustainable development are thus built on these assets. According to the Ghana statistical service (2021), the total population of the nation is estimated to be 30.1 million as per the year 2021 population and housing cen-

sus. From that similar census report, about 60% of the working population was employed in the agricultural sector while 35% of household income is made from agricultural activities. It is furthermore projected that there are 5.5 million family units in Ghana (Ghana Statistical Service, 2008). By approximation, 51% of the total population will be living in urban regions by the year 2030. The few statistics provided above show that there is a high demand rate for land for both housing and agriculture. The 1992 Constitution of the Republic of Ghana, for instance, provides the general legal framework for land governance/administration in the country. Weakening of the fundamental principles of customary land law and breakdown of the trusteeship ethos have resulted in landlessness, homelessness, endemic poverty and general insecurity for women and men alike in peri-urban neighbourhoods.

2. Historical Perspective of Land Acquisition Processes and Structures in Ghana

Empirical evidence therefore shows that land deals often lack transparency and are frequently mismanaged by governments (Boamah, 2011; Alhassan et al., 2018). An extensive May 2009 report from the International Institute for Environment and Development (IIED) states that many countries do not have enough mechanisms to protect local rights or take account of local farmers interests, livelihoods, and welfare of smallholder farmers (Cotula et al., 2009). Prior to independence, Ghana practiced deeds registration under the registration ordinance of 1883, land registry Ordinance of 1895; and land registry Act 1962, Act 122 post-independence. A system of deeds registration had operated since colonial times which provided for the registration of land with existing written titles; but excluded the registration of oral transactions and titles to land common under customary law. Unfortunately, the Deed registration did not provide accurate maps, resulting in incidences of double registration of the same parcel/piece or land. Land ownership in Ghana at the time was therefore characterized by indeterminate boundaries of land-owning groups leading to conflicts and litigations.

These land litigations and conflicts necessitated the introduction of title registration in 1986 to help resolve the problems and improve security of tenure. The promulgation of the land title Registration law 1986 (PNDCL. 152) and the land title regulation, 1986 LI. 1241 in Ghana provided a machinery for the registration of title to land and interests in land. The practical implementation of Section 43 of PNDCL 42 simply resulted in the division of resources of the Lands Commission: between two related but separate authorities. Title registration had two-fold purposes; firstly, to give certainty and facilitate proof of title and secondly, to render dealings in land safe, simple and cheap as well as prevent fraud on purchasers and mortgagees. The land administration system which comprised poor maps and poor records made conversion from deeds to title almost impossible at the time. More problems were created due to the uncooperative at-

titude of multiple agencies involved in land administration, poor public education, lack of professional and technical skills and the sporadic way of implementation of land policies. The ministry responsible for land administration introduced some administrative measures to improve working relations among the institutions with respect to their legal mandates. Though the review of their working processes to reduce duplications and cumbersome procedures greatly improved land title registration, there still remains room for improvement. The Ministry of Lands, Forestry and Mines implemented a land administration Program in 5-year phases over 15 - 20 years to improve the whole land administration System in Ghana in 1997. The project which provided for legislative and judicial review, reformation of traditional and government institutions involvement in land administration; was to be computerised and a land information system developed to improve valuation and land title registration. The project was to enhance capacity building as an alternate dispute resolution mechanism for all stakeholders. The interventions under the land administration project improved land title registration and improved security of tenure. Lessons learnt from piloting systematic land registration in government acquired areas and customary land areas served as guidelines for up scaling title registration throughout the country. The development of Land Information System was among other transformed land related agencies to make information sharing, information retrieval faster; create certainty and improve security of land tenure making Ghana an investor friendly country.

2.1. Historical Perspective of Statutory Land Tenure and Management Systems in Ghana

The Constitution of Ghana recognises the concept of trusteeship in landholding and therefore expects that those with responsibility for managing land must act in the wider interests of their communities. Article 36(8) of the 1992 Constitution states: "the state shall recognise that ownership and possession of land, carry a social obligation to serve the larger community and, in particular, the state shall recognise that the managers of public, stool, skin and family lands as fiduciaries charged with the obligation to discharge their functions for the benefit respectively of the people of Ghana, of the stool, skin or family concerned, and are accountable as fiduciaries in this regard." Article 257(6) of the Constitution further provides: "every mineral in its natural state in, under or upon any land in Ghana, rivers, streams, water, courses throughout Ghana, the exclusive economic zone and any area covered by the territorial sea or continental shelf is the property of the Republic of Ghana and shall be vested in the President on behalf of, and in trust for the people of Ghana." A plurality of land tenure and management systems (i.e., state/public and customary) prevail in the country. These systems are poorly articulated and appear to be on collision course. Public lands' in Ghana fall into two main categories: land which has been compulsorily acquired for a public purpose or in the public interest under the State Lands Act,

1962 (Act 125) or other relevant statute; and land which has been vested in the President, in trust for a landholding community under the Administration of Lands Act, 1962 (Act 123). With land that has been compulsorily acquired, all previous interests are extinguished.

The legal and beneficial titles of all lands are vested in the President, and lump sum compensation should, under the law, be paid to the victims of expropriation. In the case of "vested land", the instruments create dual ownership where the legal title is transferred to the state, whilst the beneficial interests rest with the community; but under the vesting order, the government does not pay any compensation. However, any income accrued is paid into the respective stool or skin land account and is disbursed according to the Constitutional sharing formula.

Currently, all vested and public lands are administered by the Lands Commission at the national level along with the 10 regional Lands Commissions and their Secretariats, as provided in the 1992 Constitution: in the Lands Commission Act 1994 (Act 483) and the Lands Act 2020, (Act 1036). The justification and objectives underpinning government intervention in land administration have been examined elsewhere: the satisfaction of "public" interests, "public" good or "national" interest; the correction of anomalies and problems in the customary sector, such as litigation; land disputes, unfavourable agricultural tenancies, etc.; the introduction of written records, through deeds and land title registration, to confer security and promote investment in landed property, through the use of registered documents for collateral purposes and the acceleration of development by easing land acquisition and documentation procedures. These are noble objectives, worthy of support, however, the implementation of specific legislative instruments shall lead to other unintended objectives, notably to: weaken traditional and customary institutions and authorities; stifle traditional and customary land management functions, their influence, and basis for economic and financial support; impoverish local authorities, economically and financially, by controlling local revenue sources; neutralise political opponents by acquiring and/or vesting their lands, so that local revenues are not available to opposition parties or groups likely to destabilise the ruling government; reward political allies, top civil servants, the military and security forces to give them a stake in the sharing of state assets and to keep them quiet in the face of gross injustice and misappropriation of public funds to the silent majority and exercise absolute and corrupt power over lands, people and the country's resources.

To understand the historical perspective of the state land administration, since the colonial land administration was limited in the country generally, the post-independence era provides a convenient starting point. After independence on 6 March 1957, Sections 1 and 2 of the State Property and Contracts Act, 1960, (CA6) transferred all state properties vested in the Governor General to the President. Section 3 of (CA6) empowered the President to be the sole authority

capable of acquiring land compulsorily in the country. The State Lands Act, 1962, (Act 125) which governed all compulsory acquisition and compensation processes repealed Sections 4 to 18 of (CA6). In the North of Ghana, the Administration of Lands Act, 1962 (Act 123) with Consequential Executive Instruments 87 and 109 of 11 July 1963, merely vested all Northern lands in the President. In the South, following two commissions of inquiry which confirmed that local revenue from two paramount stools was being used to support the National Liberation Movement (a rival political party) the President vested the lands under the two stools—The Ashanti Stool Land Act 1958 and the Akim Abuakwa (Stool Revenue) Act No. 78 of 1958. By this arrangement, the legal interest in the land went to the government whilst the beneficiary interest went to the community.

In practice, however, the government had become the absolute landlord and controlled all the management powers, including the collection and distribution of revenue to the exclusion of all others. The vesting powers were subsequently extended to cover the rest of the country by the Stool Lands (Validation of Legislation) Act No.30 of 1959, Stool Lands Act, 1960 (Act 27) and the Administration of Lands Act 1962, (Act 123). The government's land machinery—the erstwhile Lands Department—the fore runner of the Lands Commission administered all public and vested lands country-wide which became state property. All deeds and instruments in respect of land, minerals and timber concessions were processed and executed by the Lands Department on behalf of Government as "Large tracts of land were acquired for state farms and factories without compensation paid to farmers who were cultivating in the respective areas. Although farmers protested to the District Commissioner, political pressure was used to let farmers abandon the fight to regain their land. In several instances, they were employed to work on the state farms as compensation". After the overthrow of the First Republic on 24 February 1966; the Akuffo Addo Constitutional Review Commissions report (1969) stated that, the excessive abuse of state power in respect of land administration, necessitated the creation of the Lands Commission.

The Lands Commission first came into existence following the 1969 Constitution, under the Lands Commission Act 1971 (Act 362). Article 163 (5) of the 1969 Constitution stipulated: "The Lands Commission shall hold and manage to the exclusion of any other person or authority any land or minerals vested in the President by this Constitution or any other law or vested in the Commission by any law or acquired by the Government and shall have such other functions in relation thereto, as may be prescribed by or under an Act of Parliament." The Lands Commission was put directly under the Ministry of Lands and Natural Resources, while the former Lands Department became the secretariat of the Lands Commission and carried out all day-to-day land administration functions till January 1972 when the government was overthrown, and the constitution suspended.

Though the 1979 Constitution restated the function of the Lands Commission

as contained in 1969 Constitution, the Lands Commission was put directly under the President. The Constitution also sought to give the Commission greater autonomy and insulate it from party political influences and considerations. Article 189 (7) of the 1979 Constitution stipulated: "In the performance of any of its functions under this Constitution or any other law the Lands Commission shall be subject only to this Constitution and shall not be subject to the direction or control of any other person or authority." Section 3(1) of the Lands Commission Act, 1980 (Act 401) continued the practice begun in 1962 by the Administration of Lands Act, 1962 (Act 123) by requiring the consent of the state to alienation of land by providing that: "An assurance of stool land to any person shall not operate to pass any interest in, or right over any stool land unless the same shall have been executed with the consent and concurrence of the Commission."

Any stool land which is sold, or exchanged for money, to non-members of the stool without the consent and concurrence of the Lands Commission is therefore considered invalid. Under Act 401, an office of the Administrator of Stool Lands was created within the Lands Commission, to act as trustee for the stools, and charged with the following functions: establishment of a stool land account for each stool, in which shall be paid all rents, dues, royalties, revenues or other payments, whether in the nature of income or capital from the stool lands; Collection of all such rents, dues, royalties, revenues or other payments, whether in the nature of income or capital, and to account for them to the beneficiaries; Disbursement of such revenues according to regulations made under the Act; and The Lands Commission had overall supervision of the Office of the Administrator of Stool Lands.

The overthrow of the 1979 Constitution and the establishment of a new military dictatorship in December 1981 soon resulted in changes to the functions of the Lands Commission. Section 36 of the Provisional National Defence Council (Establishment and Consequential Matters Amendment) Law, 1982 (PNDCL 42) provided for the establishment of a Lands Commission, consisting of such members as the Council shall appoint. The former Lands Department remained as the secretariat of the Lands Commission. In the mid-1980s however, the Lands Department was officially turned into the Lands Commission Secretariat. The Executive Secretary of the Commission was appointed by the Council. The Lands Commission during this period was charged with the following responsibilities: Grants of public lands, except land over which a stool exercised the power of disposition, or land over which mining, prospecting or exploration activities were being undertaken; Formulating recommendations for national policy on land use and capability; Monitoring the Council's policy in relation to land matters and reporting to the Council as it deemed fit; and Maintaining up-to-date and accurate records relating to public lands. All grants of public land made by the Commission were to be notified to the Council as well as the Secretary responsible for Lands and Natural Resources. The Council reserved the right to turn down a grant of public land made by the Commission by notifying

the commission and the grantee of the disallowance, within one month of the grant. Any person aggrieved by such a refusal could, under the law, apply for a review to the Tribunal established under the State Lands Act, 1962 (Act 125). The Law provided for the establishment of Regional sub-Committees of the Commission. All applications for public lands in the regions were to be submitted to the Regional sub-Committee for consideration and appropriate recommendations forwarded to the Commission.

Section 48 of PNDCL 42 established an Administrator of Stool Lands in the Secretariat of the Lands Commission with the following responsibilities: Establishment of a land account for each stool into which all revenues are paid; Management of all existing funds held on account of stools by the Government; Collection of rents, dues, royalties, revenues or other payments to Stools and to account for them to the following beneficiaries: the relevant stool through the Traditional Council for its maintenance in keeping with its status; traditional councils and houses of chiefs; and Local government councils within whose area of authority the stool lands concerned were situated). Monies could be paid in such proportions as the Secretary for Lands and Natural Resources might determine with the approval of the Government. Before the promulgation of the 1992 Constitution, stool land revenue was distributed as follows: Stool—10%, Traditional Council—20%, Local Government Council—60% and Government—10% (for administrative expenses). Under this formula a landholding stool enjoyed only 10 percent of the proceeds from their land, while the traditional councils and houses gained 20 percent with the disproportionate share (70 percent) went to local councils and Government. The Administrator of Stool Lands was authorized to withhold payment of any amount due to a stool if there was a dispute regarding the occupancy of the stool or ownership of the Stool lands, or if he had reason to believe the monies would be frivolously dissipated.

The practical implementation of Section 43 of PNDCL 42 simply resulted in the division of resources of the Lands Commission: between two related but separate authorities. Section 43 of PNDCL 42 1986 which created the Land Valuation Board led to a split in the original functions of the Lands Commission. The Board, whose executive secretary was appointed by the Government, was charged with the functions of Government valuer, including: determining all matters of compensation for land acquired by the government, any organ of government or public corporation; preparing valuation lists for property rating purposes; valuation of interests in land for the administration of death duties; determining values of government rented premises and advising the Lands Commission and the Forestry Commission on royalty payments on forestry holdings and products. The Board's main constraints included: severe shortage of qualified staff; some regions have just one valuer and an assistant; lack of logistic support and vehicles; low staff morale, poor remuneration and incentive packages; dependence on Lands Commission and Site Advisory Committees for discharge of its functions; obsolete laws and legislative instruments; government delays in payment of compensation and services to District and Metropolitan

assemblies and other State organisations must be provided at no charge. The problem of insecurity in land titles and uncertainty in land transactions having persisted, a land title registration scheme was introduced in 1986 with the enactment of the Land Title Registration Law, 1986 (PNDCL 152). Law 152 was designed to introduce a scheme to register all interests in land, but the process of registration was selective and only applied to the urban centres of Accra, Tema and parts of Kumasi.

The Law provided for the registration of all interests in land—customary law and common law. It also provided that interests held by stools, skins, quarters and families should be registered in the name of the corporate group. Where there were conflicting claims, the Land Registrar or a person not satisfied with his decision could refer the matter to the Land Title Adjudication Committee. Any person aggrieved by the decision of the Adjudication Committee may appeal to the High Court with further appeals to the Court of Appeal and the Supreme Court, Registration was conclusive evidence of the interest of the registered proprietor. The interest of the proprietor was therefore guaranteed by the state; and the Law made provision for rectification of the register. Following first registration, dealings in a registered land could only be affected through approved forms provided by the Land Title Registry and new entries in the land register. Title registration was introduced in order to deal with problems of uncertainty and insecurity in land titles and transactions and thereby improve land management.

However, more than a decade after its introduction, its impact had been negligible. The system suffered from several design and implementation defects; as the system of title registration introduced by Law 152 was not intended to reform the land tenure system, but to improve land management. It was rather designed to reflect the existing system of landholding and land relations. The law which merely provided for land registration did little to reform land interests and institutions; as Customary law tenancies and pledges were simply registered without reform of their nature and incidents; neither was the problem of access to land, nor the purchase price or rent payable addressed. Substantive defects in the system of landholding and land use existed, as a commentator called the system introduced by Law 152 as "Land Title Registration without Prejudice". The ultimate title to land, and therefore the root of all interests in land in Ghana, was the allodial title, which was generally held by a stool, skin, quarter or family of which Law 152 provided for the registration of such interests in the name of the group. The Law, however, did not require the registration of the membership of the body of persons competent to deal with such lands on behalf of the group referred to as the "management committee". While a search of the register would therefore disclose the name of the stool or family that held a particular interest, it would not reveal the composition and membership of its management committee. Law 152 retained that, under customary law, an alienation that was made by the chief or head of family acting without the consent of his elders or principal members was invalid. The absence in the register of the composition

and membership of management committees increased the possibility of fraud and hence uncertainty and insecurity. The Law provided that after first registration, subsequent transfers of interests in land could only be affected through entries in the register. An unregistered disposal was supposed to be ineffective. However, since customary land law, the common law of contract and rules of equity had not been jettisoned, enforceable rights in land still existed outside the register, which affected the reliability of the register.

It was expected that, an effective system of title registration would have dealt with some of the problems relating to uncertainty surrounding land titles and land transactions; conferred greater security, reduced land disputes and litigation and made dealings in land easier, cheaper and safer. The achievement of these objectives depended firstly on efficient and effective management of the scheme. High calibre, well trained, skilled administrators, lawyers, surveyors and other supporting staff and equipment were required to ensure accurate and fast surveying, production of maps and plans, and storage of information. However, the scheme which had been inadequately funded, under resourced; suffered from personnel and logistical problems. Secondly, implementation of the system had been affected negatively by administrative compartmentalization as the title and instruments registration systems operated as distinct and parallel systems. Specifically, the former Land Title Registry operated from Victoriaborg in Osu, while the Lands Commission Secretariat was from Cantonments in Burma Camp with no conscious effort at coordination. The title registration system had failed to build on the existing instruments registration system. With the two systems entirely separated; the scale of site plans and the identification and numbering of parcels of land were both been different; with departmental jealousy, bickering and lack of cooperation which characterised relations between the two institutions.

Additionally, sporadic and uncoordinated registration denied the system of its potential to achieve greater certainty and security resulting in several problems. One such was that no attempt had been made to sort out and register the allodial titles of stools, quarters and families before the registration of lesser, derivative interests of other persons. The result had been that interests were being registered even when the root of the title was in doubt or under litigation. It would have been more efficient systematically to investigate, adjudicate, determine and register all allodial titles within a district. The subsequent registration of lesser, derivative interests would then be smoother. Another aspect of this problem was that sporadic and unsystematic registration had increased the incidence of mistake and fraud. Interests were being registered, on the quiet, without the knowledge of other claimants. The only opportunity for gaining knowledge of an application for registration was when it was advertised in a newspaper. This was done once in a weekly newspaper, and even an avid reader of that weekly was unlikely to notice such an application.

The particulars that were provided of a parcel of land were so scanty or meaningless that even a professional surveyor would fail to be alerted. An indepen-

dent office of the Administrator of Stool Lands was established in 1994 (under Act 481) with three main functions: first, establishment of a stool land account for each stool into which shall be paid all rents, dues, royalties, revenues or other payments whether in the nature of income or capital from the stool lands; second, collection of all such rents, dues, royalties, revenues or other payments whether in the nature of income or capital and to account for them to the beneficiaries; third, disbursement of such revenues as may be determined in accordance with the provision of the constitution; and that ten percent of the revenue accruing from stool lands is to be paid to the office of the Administrator of Stool Lands to cover administrative expenses. The remaining revenue is disbursed in the following manner: 25% to the landholding stool through the traditional authority for the maintenance of the stool in keeping with its status; 20% percent to the traditional authority; and 25% to the District Assembly, within the area of authority in which the stool lands is situated.

As argued elsewhere Kasanga (1988), the decentralised regional Lands Commissions are charged with the management of public and the limited vested lands. Except for portions of Kumasi Town Lands, Brong Ahafo, Eastern and Greater Accra regions, all lands in Ghana are family, clan, "Tendanas" or stool lands. Since public and vested lands are managed by the Regional Lands Commissions, and in practice hold all the lands records; the Administrator of Stool Lands was jobless or ineffective without the support of the Regional Lands Commission officials. The creation of the Office of the Administrator of Stool Lands centralised in Accra with regional offices whose officers were recruited from the Lands Commission and the Land Valuation Board meant a splitting and/or duplication of functions. The good will and co-operation of the Lands Commission and the Land Title Registry staff enabled the Office of the Administrator of Stool Lands to function in practice. The newly created body denied the Lands Commission of its administrative levy on stool lands of 10%; and apart from the friction with the Lands Commission, there was some public disquiet towards the office of the Administrator of Stool Lands in the country. Some traditional authorities in peri-urban Kumasi questioned the rationale behind the creation of the office of the Administrator of Stool Lands, since they were perfectly capable of managing their lands based on their long-standing customary land laws and procedures.

The Lands Commission operated under the Lands Commission Act 1994 (Act 483) with the advent of the 1992 Constitution. The Constitution provided for the establishment of a national Lands Commission, along with ten regional Lands Commissions supported by a Lands Commission Secretariat. Article 258 (1) of the 1992 Constitution spelt out the functions of the national and regional Lands Commissions as follows: To manage public lands and any lands vested in the president or the Commission on behalf of the government; to advise the government, local and traditional authorities on the policy framework for the development of particular areas to ensure that the development of individual pieces of land is coordinated with the relevant development plan for the area con-

cerned; to formulate and submit to government recommendations on national policy with respect to land use and capability; to advise on, and assist in, the execution of a comprehensive programme for the registration of title to land throughout Ghana. The activities of all the Regional Lands Commissions shall be coordinated by the Lands Commission. While appointments to the Lands Commission were made by the President, members of the Regional Lands Commission were appointed by the Minister responsible for Lands and Forestry. Article 267 (3) of the 1992 Constitution stipulated, that there shall be no disposition or development of any stool land unless the Regional Lands Commission of the Region in which the land was situated had certified that the disposition or development was consistent with the development plan drawn up or approved by the planning authority for the area concerned. The logical effect of article 267 (3) of the Constitution as well as the Office of the Administrator of Stool Lands 1994 (Act 481) was to tie the hands of stool landholders in respect of their legitimately held lands. State control and top-down decision making in respect of the administration of stool lands appeared complete. Informal discussions with top officials in the Lands Commission portrayed their main constraints as: dearth of top management policy meetings and direction; weak internal management; shortage of trained and motivated staff. Each of the three regions in the Northern Sector had only one qualified lands officer and one assistant; dependency on other agencies such as the Site Advisory Committee and the Land Valuation Board for basic land data; frequent political interference; lack of basic logistics and support services; poor remuneration and incentive packages and low morale were other constraints.

The Lands Commission was obliged to work within the relevant provisions of the State Lands Regulations, 1962 (LI 230) as well as the Administration of Lands Regulations, 1962 (LI 232) in the discharge of its functions; while in all cases of compulsory land acquisition, a permanent site advisory committee advised the Commission as to the suitability of the site. The Minister was responsible for the allocation of land to Ministries, Departments or other organs of the Republic, including any statutory corporation, of any land acquired under the Act. Evidence of any such allocation was by a written instrument, known as a Certificate of Allocation, issued by or on behalf of the Minister. Individuals who applied for leases/licenses were governed by Form 5 (under LI 230) regulation 9 which demanded a banker's reference of £1000.00 (i.e., one-thousand-pound sterling) before an applicant was allocated government land. Regulation 9 therefore, had priced out the low-income groups and the silent majority more generally from the public land market. The 1975/76 to 1979/80 Development Plan further stipulated that the allocation of State land for residential purposes to the middle- and upper-income groups was to continue while steps were taken to acquire lands for the lower income groups. Section 5 of the Administration of Lands Act 1962 (Act 123) in the case of Kumasi Town Lands further illustrated the point that; The President may, grant to any person owing allegiance to the Asantehene one lease, at a nominal rent of one shilling per annum, of one vacant plot of land

for residential purposes only, in any area within the boundaries of the Kumasi town lands described in the Schedule of this act, and comprising land held in trust for the Golden Stool and the Kumasi Traditional Area. Any such plot, including a plot granted under an enactment repealed by this act, is called a "free plot". "The lessee may, with previous consent in writing of the Minister, assign his free plot to any person owing such allegiance but shall not, except as provided in subsection (3) of this section assign it to any other person." All the inhabitants of the Kumasi Metropolis owe some allegiance to the Asantehene under the cosmopolitan neighbourhoods in Kumasi arrangements and as per custom, which implies that free government plots were freely assignable for valuable consideration to anybody. The management of statutory lands included the fixing and collection of rents, rent reviews and lease renewals, maintenance and the securing of properties from encroachment. Instances were in East Legon (Accra), which is the provision of infrastructural services for housing estates.

The Lands Commission provided invaluable inputs into the formulation of a new National Land Policy which helped to improve land administration generally in the country. District and Metropolitan Assemblies were created since 1986; and the Local Government Act 1993 (Act 462) provided the institutional and legal framework for District and Metropolitan Assemblies, giving them executive and deliberative powers, to plan for the overall development of District. District Assemblies have legislative powers to make by-laws in respect of buildings, sanitation and the environment. Their functions include preparation and approval of layouts (i.e., planning schemes), the granting of planning permission and development permits and the enforcement of regulations and sanctions for non-compliance. The assemblies are active in various areas, such as infrastructure, schools and markets. Baseline studies have been carried out in some districts to identify resource endowment, possible investment areas and constraints. Thanks to donor support and the District Assembly Common Fund 1993 (Act 454) for the financial, technical, professional and related resources support, political decentralisation is real; though, the decentralisation and implementation machinery appear over ambitious. It has politically balkanised the country into 110 districts effectively controlled by the President in Accra, who appoints the District Chief Executives, whose primary allegiance is to the President and answerable to nobody in the district or region.

The evidence suggests that the assemblies who are accountable only to the President, are currently breaking all the rules of natural justice, including being "judges in their own cause" Kasanga, (1988). Other constraints included: lack of adequate skilled manpower; inadequate funding; inadequate logistics; weak management capacity; mistrust between Assemblies and traditional authorities; friction between Assemblies and some parliamentarians and opposition parties; the Unit Committees which form the lowest unit of local government have also been established including the Assemblymen; with emergent friction between some unit committees and traditional authorities. These constraints are real and have a telling effect on the effectiveness of District and Metropolitan Assemblies. The

Town and Country Planning Department, which is one of the decentralised departments under the Metropolitan and District Assemblies, responsible for the preparation of planning schemes; is faced with the following constraints: severe shortage of vehicles for field work; shortage of qualified middle level technical staff; shortage of office accommodation; conflicting organisation of structure; lack of adequate base maps for planning; poor remuneration packages and low moral; and dearth of support services and job satisfaction.

Although the National Development Planning Commission (NDPC) which was established in 1989 and reported directly to the President had no enactment to back it. The Commission merely played a coordinating role, though the Act clearly stated its functions as being directly involved in the overall planning of both spatial and economic planning of the entire country. Perhaps, the only new commendable planning concept introduced by the Act was "the public hearing", to allow people who would be affected by large-scale and other nuisance developments to object if they so desired. The main functions of the Commission were to: initiate and prepare District development plans and settlement structure plans in the manner prescribed by the Commission and ensure that the plans are prepared with full participation of the local community; carry out studies of economic, social, spatial, environmental, sectoral and human settlement issues and policies, and mobilise human and physical resources for development in the district; initiate and co-ordinate the processes of planning, programming, budgeting and implementation of District development plans, programmes and projects; integrate and ensure that sector and spatial policies, plans, programmes and projects of the district were compatible with each other and with national development objectives issued by the Commission; synthesise the policy proposals on development planning in the district into a comprehensive framework for the economic, social and spatial development of the district, including human settlement and ensure that the policy proposals and projects are in conformity with the principles of sound environmental management; and monitor and evaluate the development policies, programmes and projects in the district. Given the numerous functions of the Commission, the need for qualified staff with expertise in all disciplines seems to be crucial, but the present indications are not encouraging as most of the professional staff deployed to some District Assemblies have either resigned or refused to be transferred. Persistent advertisement to recruit staff had apparently not been successful in attracting the right calibre of applicants. The result was that, after almost three years of the coming into force of the Act nothing had been achieved… In spite of the Government's decentralisation policy, all the indications of this enactment pointed to a centralised body in Accra to oversee the planning functions of the District Planning Units and Regional Co-ordinating Councils. The perception that the Commission is a dumping ground for retired senior officials, compounds its constraints, notably lack of capacity to implement its plans, and inadequate logistical and support services.

The Survey Department which is crucial to sustainable land management, has

its problems and constraints which are symptomatic of the entire land management sector. The department was established in 1901 as part of the Mines Department—a part of the colonial civil service. Its early location within the Mines Department demonstrated the motive for its establishment and its main preoccupation—surveying prior to the granting of mining concessions. After becoming a fully-fledged department in 1907; its core functions concentrated on surveying for mining concessions, forest reserves, infrastructure, particularly railways and roads, and development planning schemes. The department therefore plays a crucial role in the land title registration scheme introduced in Accra in 1988; as it produces the sectional maps and plans on which title registration is based. It has however played a less important role in the operation of the deeds registration system; even though it prepares the base maps on which the plotting of parceled land is done, the site plans which accompany all instruments are prepared by licensed surveyors; which have been notoriously inaccurate and unreliable and have been the cause of many land disputes. The department's persistent problems and constraints of inadequate funding, shortage of trained staff and equipment have militated against sustainable land management in the country resulting in the slow preparation of base maps. Land sales and development projects have taken place in areas where base maps were not prepared, resulting in multiple sales, haphazard development and land disputes. In parts of Accra, land title registration was therefore delayed because of the absence of base maps and the inability of the department to produce these maps at a fast enough pace.

The Environmental Protection Agency (EPA) grew out of the Environmental Protection Council, which had been established in 1974 under the Environmental Protection Council Decree, 1974 (NRCD 239) as an advisory, research and coordinating council on environmental issues. It did not have any executive, policing, enforcement or sanctioning functions and powers. The EPA was established under the Environmental Protection Agency Act, 1994 (Act 490), with regulatory and enforcement powers. Its land management functions included: the issue of environmental permits and pollution abatement notices for controlling the volume, types, constituents and effects of waste discharges, omissions, deposits or other sources of pollutants and of substances which are hazardous or potentially dangerous to the quality of the environment; the issue of notice in the form of directives, procedures or warnings to such bodies, as it may determine, for the purpose of controlling the volume, intensity and quality of noise in the environment; prescription standards and guidelines relating to the pollution of air, water, land and other forms of environmental pollution including the discharge of wastes and the control of toxic substances; ensuring compliance with any laid down environmental impact assessment procedures in the planning and execution of development projects, including compliance in respect of existing projects; and the imposition and collection of environmental protection levies or regulations made under this Act; to coordinate with such internal agencies as the agency considers necessary for the purposes of this Act. The Agency, however, suffers from constraints and problems, including weak mechanisms for en-

forcement, shortage of qualified staff, and inadequate coordination with other agencies.

The courts are one of the significant institutions in land management, and play a vital role in the determination of land disputes of all kinds—boundary disputes, land titles, etc. Their role in ensuring certainty regarding land transactions and titles is therefore crucial. Regrettably the court system in Ghana suffers from several problems which have made it impossible for it to perform its role in land adjudication. These include congestion in the courts resulting from poor case management, shortage of judicial and other staff, an antiquated system of trial and procedure (involving the writing down of the entire evidence by the judge in long hand), corruption and administration. The result is that many land cases take several years to find their way through the court system. There is therefore a long backlog of land cases yet to be heard, resulting in uncertainty, insecurity and countless unresolved land disputes.

The Stool Lands Boundaries Settlement Commission was abolished, and its functions transferred to the regular courts. It had exclusive jurisdiction to determine disputes relating to stool land boundaries. Appeals resulting from the decision of the Commissioner were taken to the Stool Land Boundaries Appeal Tribunal and then to the Supreme Court. The adjudication of disputes regarding the boundaries of stool lands was slow and cumbersome under this system, since whenever a boundary issue arose, it had to be referred to the Commission. The inadequate number of Deputy Commissioners, due to the relatively poor conditions of service and its perception as an administrative rather than judicial body, led to further delays. From the above discussions, there are many state institutions and agencies performing functions relating to land and land management. Performance, efficiency, and service delivery have been slow and cumbersome in this state-dominated, formal, land management sector.

2.2. Historical Perspective of Customary Land Tenure and Management Systems in Ghana

Customary land comprises 80 to 90 percent of all the undeveloped land in Ghana with different tenure and management systems. The land holders include individual and families; communities, represented by stools, skins and families. Chiefs represent stools and skins which symbolise the community in certain areas; "Tendanas" (i.e., the first settlers) or clans. There are significant differences in customary tenure and management systems between the North and South of Ghana. In a substantial number of cases, the allodial title beyond which there is no superior interest in land is vested in communities—represented by stools and sub-stools in the Akan and some Ga communities, and by skins in the Northern Ghana. Chiefs who represent stools and skins execute judicial, governance and land management functions. In the Upper West and Upper East regions, the allodial titleholders are the Tendanas (first settlers) whilst in some of the Adangme (Greater Accra region), the Anlo (Volta region) and Adjumaku (Central region), the allodial titleholders are families, clans or village communi-

ties. The position of every allodial titleholder of land in Ghana is that of a titular holder, holding the land in trust for the whole community. The principle of "customary freehold" denoting the near maximal interest in land is valid for all parts of Ghana, where the allodial title is vested in the wider community. Chiefs and Tendanas belong to families and so have interests in family lands which when acquired are secure, alienable and inheritable. Inheritance and succession to property are generally determined by patrilineal systems in the northern sector, most of the Volta and some Ga communities, and by the matrilineal system in the Akan speaking areas.

These have however been modified by the Intestate Succession Law, 1985 (PNDCL 111) which seeks to introduce a uniform system of intestate succession in Ghana. Research however suggests that customary inheritance practices persist, particularly in rural areas. A stranger is a non-subject of a clan, tribe, skin or stool. Strangers who wish to acquire land must first seek the permission of a Chief to settle in his area. If permission is granted, the stranger may then contact any landholder, or most frequently the family he may be residing with for land on a contractual basis, such as a gift or on share cropping terms. The associate traditional states in Northern Ghana are Talensi, Frafra, Nabdam, Kusaug, Builsa, Bimoba and parts of Konkomba. Though the colonial government introduced chieftaincy to these customary areas and appointed chiefs for these societies and attempted to create larger political units; there has always been a clear distinction between the duties of such a chief and those of the "Tendanas". The traditional rights of the latter over land have, by and large, remained, in spite of the greater prestige which the appointed chiefs enjoy as a result of their role as spokesmen of the people to government. The responsibilities of the Tendanas used to include allocation of vacant land to "strangers"; settlement of land disputes; pouring of libations and sanctifying the land when sacrilege had been committed; introduction of new chiefs to the "earth-god" and acting as an advisor to chiefs; annual sacrifices to ensure peace and prosperity; enforcement of covenants in respect of communal lands; and imposing sanctions against trespassers and for anti-social behaviour.

This ritual ownership of land has been modified in parts of the North. In Dagomba, Nanumba and Mamprusi, paramount chiefs have delegated control of the land to their sub-chiefs who no longer consult the local "Tindana"; and as a result, the Tendanas have lost their ultimate authority in land in much of the northern region. Similarly in the Upper East and Upper West regions some chiefs now assert power over land holding rights and management functions; but these assertions are relatively modern developments and have no basis in indigenous systems and practices. Tenancies, as known in the South, are still largely unknown in the North. In most of the North where land is still plentiful, as in most of the Northern region, strangers (i.e., migrants) currently obtain land virtually free of charge, from most landholders—family heads, "Tendanas" chiefs etc.

Recent informal discussions at Ga, Wa District, with a major landholding

family, who are also the Tendanas. The neighbourhood is a popular destination for Lobi migrants from the Northern region. Migrants first have to register their presence with the traditional authorities and are then shown farmland by the Tendanas. Migrants offer two fowls for sacrifices to the "gods" for accepting them into the area and to assure good harvests. At the end of the year, each migrant is supposed to brew "pito" the local beer, bring a basin full of millet and present 2 fowls for the annual sacrifice. On the chosen day, all migrants meet with the person who has given them land for the sacrifices and feasting. After the sacrifices, the fowls are divided equally into two—one half for the land giver, the other for the migrants. The pito is drank by all participants, whilst the basin of millet goes to the land giver. This process is repeated yearly for all migrants in the area, and migrants appear to live in harmony with the land grantors. The land management situation in the Greater Kumasi City Region is not unique; and evidence from the other 9 regional capitals confirms that the displacement of poor and marginalised families from their lands is a national disease.

However, experience from Gbawe, Greater Accra Region, suggests that it does not have to be so. Gbawe demonstrates the customary tenure system at its best in Ghana. All stakeholders, from family heads, the chief, youth, men and women's groups are all engaged in land management and share in the benefits therefrom. There is no evidence of displacement of families without due compensation, nor is there evidence of landlessness amongst indigenous folk, in spite of rapid urbanisation. The main features of Gbawe's customary landholdings and management systems are: a clear distinction between stool and family land; landholdings have been registered under PNDCL 152, 1986; the chief and elders collaborate with all public land agencies; Gbawe employs its own lawyers and surveyors; there are few reported cases of land conflicts among families within the community, despite conflicts with neighbouring stools; land sales/leasing are an important source of revenue; specific covenants are inserted in leases and enforced by the community; women and men are all involved in land management; the stool pays for most infrastructural development from proceeds of land sales; some land proceeds have been allocated to women's groups for investment purposes, such as poultry farming; in the event of land losses, families and individuals are duly compensated; in a proposed new township, every resident family has been allocated a plot which cannot be sold to outsiders; no evidence of landlessness or homelessness; and a strong sense of direction, law, order and community satisfaction.

The Kumasi Natural Resource Management Project has 3 components; namely the Natural resource allocation and control which indicates that: land is the key natural resource in peri-urban areas, and is under pressure from residential expansion, as land sales are increasing and prices are rising; the chiefs, queenmothers and elders are major driving forces behind the changes in land use; the role of government authorities is relatively passive with regard to land allocation; the distribution of benefits from land transactions is, in many villages, an opaque process; the increase in land development has led to a transfer of resources

from the poor to the rich, and problems of landlessness and homelessness are emerging; and land disputes are common throughout peri urban areas. Secondly, in the peri-urban livelihoods more women are farmers than men in peri-urban villages; they are also more likely to farm on family lands using a low-input bush-fallow system to grow food crops; these farmers are particularly vulnerable to losing their farms to residential development; in general, young people, especially young women; try to move out of farming as it is perceived as an unattractive occupation with low profitability; however, there is a lack of opportunities for those with no capital or training to start their own business; and apart from self-employment, other jobs around Kumasi are limited to casual labour. Thirdly, Agricultural productivity as access to land becomes restricted, land tenure systems for agriculture are changing from traditional family and sharecropping arrangements to cash shorter-term rents paid in cash. This tendency towards less security of tenure discourages long-term investment and encourages shorter-term cropping systems. For example, few tree crops are found in the areas nearest the city, where changes in tenure are most marked.

3. Conclusion

In 1999, the Ministry of Lands and Forestry developed the Ghana Land Policy which identified the problems of land administration. The problems included a number of legislations which were conflicting, outmoded and often overlapping. There were also the problems of insecurity of land tenure, indeterminate boundaries for land owning groups, which often created conflicts and litigation. Other problems identified were multiple sales of the same piece of land, and the weak capacity and fragmentation of existing land agencies. The Government land reforms under the Land Administration Program, which was funded by some Development Partners, was a 15 - 20-year program implemented in 5-year phases with the first phase known as the Land Administration Project (LAP) started in 2003. Some of the reforms in this project included the reform of the legal framework for land administration, and institutional reforms for land sector institutions to remove duplication of roles, and to make the land sector agencies more functional under one umbrella. As part of the reforms, traditional land-owning groups were assisted to improve their land management practices through capacity building and technical support. It included demarcation of boundaries, improving deeds and title registration; and systematic land titling to be piloted within already declared districts to improve the processes for land administration and automate to reduce time. A land information system was to be developed to improve land administration, valuation and land management, which would eventually improve security of tenure, land service delivery, and create an investor friendly environment to propel Ghana's economic development forward.

The Land Act, 2020 (Act 1036) passed by Parliament and assented to by the President on 23 December 2020 revised, harmonised and consolidated the laws on land to ensure sustainable land administration and management, effective

and efficient land tenure and to provide for related matters. The following enactments were therefore repealed: Land Development (Protection of Purchasers) Act, 1960 (Act 2). Farmlands (Protection) Act 1962 (Act 107); Administration of Lands Act, 1962 (Act 123), State Lands Act, 1962 (Act 125), Section 11 of the Survey, 1962 Act (127), Lands (Miscellaneous Provisions) Act, 1963 (Act 161), Public Conveyancing Act, 1965 (Act 302), Rent Stabilisation (Repeal) Decree 1966 (N.L.C.D.49), Rent Stabilisation (Amendment) Act, 1966 (N.L.C.D.103), Conveyancing Act, 1973 (N.R.C.D.175), Public Lands (Protection) Act, 1974 (N.R.C.D 240) and Land Title Registration, 1986 (P.N.D.C.L. 152). Despite the repeal of the enactments listed above, regulations, by-laws, notices, orders, directions, appointments or any other act lawfully made or done under the repealed enactments and in force immediately before the coming into force of this Act was considered to have been made or done under this Act and would continue to have effect until revoked, cancelled or terminated. An instrument or a document made or issued under the repealed enactments would continue to be valid under the Act until otherwise revoked.

Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

References

Alhassan, S.I., Shaibu, M.T., & Kuwornu, J.K.M. (2018). Is Land Grabbing an Opportunity or a Menace to Development in Developing Countries? Evidence from Ghana. *Local Environment, 23*, 1121-1140. https://doi.org/10.1080/13549839.2018.1531839

Boamah, F. (2011). The Relationship between Land Grabbing for Biofuels and Food Security, a Bane or Boon? The Food Security Implications of Jatropha Biodiesel.

Cotula, L., Vermeulen, S., Leonard, R., & Keeley, J. (2009). Land Grab or Development Opportunity? Agriculture Investments and International Land Deals in Africa. Rome: IIED/FAO/IFAD.

Ghana Statistical Service (2008). *Ghana in Figures.* https://www2.statsghana.gov.gh/docfiles/gh_figures_2008.pdf

Ghana Statistical Service (2021). *Ghana 2021 Population and Housing Census.*

Kasanga, K. (1988). *Land Management in Ghana: Building on Tradition and Modernity.* Nottingham: Russell Press.

Lund, C. (2011). Property and Citizenship: Conceptually Connecting Land Rights and Belonging in Africa. *Africa Spectrum, 46*, 71-75. https://doi.org/10.1177/000203971104600304