

# LAND TENURE, TRADITIONAL INSTITUTIONS AND SUSTAINABLE DEVELOPMENT IN NORTHERN GHANA WITHIN THE CONTEXT OF THE NATIONAL LAND POLICY<sup>5</sup>

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## **Abstract**

*Tenure issues relating to land have always been a major area of conflict in northern Ghana. The role of Traditional Institutions within this conflict arena is becoming more and more protracted.*

*In this article I discuss policy issues on land within the Ghanaian landscape. From policy issues, I move into discussions on ownership and access to land. In the process, I highlight the role of Traditional Institutions in perpetuating denial and/or restricted ownerships and access.*

*I conclude by restating the role of land as a natural resource that is critical in supporting rural livelihoods. Hence, the need to creatively manage land, which is dwindling while population is on the ascendancy. This requires strong policy support.*

## **1. Introduction**

Development efforts in Ghana, particularly in northern Ghana, have not been very successful for many reasons. Some people have attributed some of the reasons to problems of land tenure and land use problems. Indeed, most conflicts in many parts of the world, including Ghana, have been as a result of land ownership and use problems. The remote causes of many conflicts in both rural and urban Ghana, in the recent past, can be largely traced to unresolved problems of land use, administration and control. This is because land, in its widest sense, seems to be the most important socio-cultural and economic resource in most parts of Ghana, especially rural Ghana, and indeed rural Africa. In northern Ghana, where over 90% of the people depend on

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<sup>5</sup> The paper is an adaptation of a keynote address delivered at a LandNet (Ghana) workshop in Bolgatanga, Ghana (13<sup>th</sup> March, 2002). Compliments to IIED (Great Britain) and GRET (France) for financial support for research.

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the land in one way or another for their livelihood and pressure on the land continues to increase because of rapid population growth, land assumes an even more important role. A good land policy and its adequate application are therefore very necessary for meaningful and sustainable development.

Sustainable development in Ghana, an agrarian country, can take place only in an environment of a land tenure regime which is stable, equitable and which allows for the best productive use of land. The best productive use of land implies ability to invest in land on a long term basis and that in turn implies adequate security of tenure for land users. The traditional land tenure arrangements, as discussed in this paper, do not seem to guarantee adequate degree of security of tenure. There have thus been calls for land policies and legislations that will ensure that sustainable agricultural and industrial development will take place.

Sound management and utilization of the country's land and water resources is the goal of Ghana's current land policy. The policy, to a large degree, takes into consideration the various land tenure practices in the country. Land tenure practices are however so different from one area to another in the country that application of the policy could cause considerable problems if there is wide scale generalization. Local level land tenure practices and the institutions responsible for the various practices need to be carefully considered in the application of the policy.

In northern Ghana, several traditional institutions are involved in land administration, management and utilization and they differ depending on the kind of 'land tenure system in practice as discussed below.

## **2. Land Tenure in Northern Ghana**

While land in the colonial times in southern Ghana was vested in stools, that is, chiefs to be held in trust for the people of the various stools, land in northern Ghana was vested in the government. Prior to 1992, official land law for northern Ghana was state "ownership". Despite that law, the land law that had been in practice has not differed from time immemorial. The people were not even aware that

their lands were vested in the state. Currently, customary land laws hold supreme in almost all parts of Ghana except for lands acquired by government "for the common good" such as forests reserves. As stated by Woodman (1976) the legal root of virtually all rights in land (in Ghana) is the allodial title vested in the traditional communities, especially families, stools and skins. By Ghanaian customary law, every member of the community is entitled to cultivate unoccupied land in which the community holds the allodial title and to acquire thereby a usufruct (or customary freehold) (Woodman, 1976). This customary system became modified in the cocoa areas of the south mainly because of the perennial nature of cocoa and oil palm but also because cocoa in particular was a very important cash crop. The modifications led to the share cropping systems that exist in many parts of southern Ghana. In contrast, northern Ghana neither had a perennial crop nor an important cash crop, so sharecropping, though present in the densely populated areas, is not so prominent.

The customary system, which is what is relevant as far access and use of agricultural land in northern Ghana is concerned, is virtually the same in all parts of northern Ghana. The differences that exist have to do with details and those tend to be different for every case. As observed by Delville (1999), local land holding systems do not consist of rigid rights, they are flexible and evolve in accordance with the logic of customary law whereby rights are negotiated. The general northern Ghana customary system or what Mathieu (1999) prefers to call "socially-determined land-use rules" is aptly summarised by Uchendu and Anthony (1965) as follows:

"The traditional tenure system is simple and follows the pattern which is widespread in northern areas of Ghana that have the *tindaana* complex. Ritual ownership of land is vested in the *tindaanas* (*tindaanama*), the heads of clans or lineages of aboriginal descent. The *tindaana* allocates use of unclaimed land within his *teng* (area of jurisdiction) and is entitled to ritual, not economic, gifts of first fruits. He claims the right of reversion and totally abandoned land reverts to him for reallocation. Farmland, especially of the compound farm is

vested in the head of the compound by right of seniority. However land acquired by a man's own efforts in clearing and cultivating bush land remains his individual property while he lives and is inherited by his sons rather his brothers".

Tonah (1993), in making a similar point with regards to the Kasena/Nankana people of the Upper East Region, said that, "the tindana never owns the land but only holds it in trust or custodianship for the people". He goes on to state that according to Kasena/Nankani custom, land is allocated only to men. Females have no right of usufruct. Whitehead (1999) makes the same point with regards to the Kusasi area, when she says that "in keeping with the strongly patrilineal nature of the kinship system, rights to own land, in the sense of being able to inherit it are vested in men only." Women are however able to obtain access to land to use for farming mainly through their social relations with male members of the community.

Benneh et al. (1995) reports that "religion and the Koran have modified the patrilineal system (in the Wa District) since 1921." Under the old system, a deceased brother inherited and took care of all other family members, but now a deceased's properties all go directly to the children (both boys and girls) and wife or wives. This implies that religion can influence customary practices and since there are so many different religions and beliefs, it is dangerous to make generalizations even within same ethnic areas.

The common northern Ghanaian patrilineal inheritance system also differs generally from others such as that of the Ewes of the Volta Region. While under the northern Ghanaian situation, a female has little or no right of inheritance of a father or mother's property, particularly land, the practice in Anlo, as reported by Kumeckpor (1971) is that "women can own property in their own right (by inheritance) and transfer that to their own children and other relatives." What this means, again, is that it is not correct to generalize with regards to patrilineal or matrilineal systems of inheritance. There can be significant variations.

The general northern Ghanaian tenure system discussed above is largely true in most parts of the area. A major difference is in the fact

that in most parts of the Northern Region, chiefs rather than *tindaanas* (*tindaanama*) hold the land in trust for the people. Thus, it is mainly chiefs in the Northern Region that allocate "empty" lands to both community members and migrants. Another major difference is the highly fragmented family lands in high density population areas of the Upper East and Upper West Regions.

Customary land tenure has been criticized for quite some time as being inefficient and a contributory factor to our underdevelopment. There are however yet to be any land reforms that can replace the customary tenure system in rural communities in Ghana, in spite of the national land policy.

There have been arguments that, as populations increase and the pressure on the land become more and more severe, land markets will naturally emerge. That seems to have happened to some extent in some parts of southern Ghana. It has however not been the case in northern Ghana except in urban areas. One would have thought that in very densely populated areas of the Upper East Region in particular, land markets would have emerged. That has not happened, at least not yet. Nowhere in rural northern Ghana can land be bought or rented.

### **3. Ownership of and Access to Land in Northern Ghana**

Majority of the people of northern Ghana is of the Mole-Dagbani ethnic origins. Ethnic groups that make up this category include the Moshi (of Burkina Faso) Dagomba, Mamprusi, Nanumba, Kokomba, Frafra (Talensi, Nabdam, Gurenshi, Boosi, Nankans), Kusasi, Builsa, Dagaaba, Wala and other smaller ethnic groups. About 80% of all the people of northern Ghana can be said to belong to this broad ethnic group. That means that about 80% of Northern Ghanaians are "brothers and sisters".

The other ethnic groups that do not trace their origin to the Mole-Dagbani ethnic line, namely the Sissala, the Gonja, Kasena, Chokosi (and may be the Bimoba) have been, over the years, integrated closely with the Mole-Dagbani group through marriage and cultural exchanges. This situation has often resulted in a situation where the peoples have been mistaken to comprise a single unified ethnicity. Indeed, except for differences in language, other cultural practices

such as dressing, music, beliefs, traditions and religion seem to be the same or very similar.

This very close ethnic and cultural relationship of all the peoples of northern Ghana has significant implications for access to land for agricultural purposes. Traditionally, one should not deny a "brother" a piece of land to farm. That means within northern Ghana, there is (or was) in a sense, "free movement of people" for farming purposes.

The various lands of northern Ghana are "owned" by families, clans, sub-ethnic groups and chiefs. Family heads, clan heads, "tindaanama" (literal meaning is first settlers) and chiefs hold the land in trust for the people. Thus a "brother" from a different clan or sub-ethnic group within northern Ghana should not be denied land for farming in any part of the area provided that land for farming is available. This posed no problem in the past and conditions for the use of land were very liberal in all parts of northern Ghana. In fact, in most situations the conditions encouraged migrants to settle. Over time, with increasing population and thus pressure on the land and other natural resources, conditionalities for gaining access to land are changing, especially in relatively high densely populated areas. The reality is that in densely populated areas the land is just not enough and in-migration is almost absent. It is curious to note that even under severe population pressures there have not been attempts to market agricultural lands for agricultural purposes. It is however true that lands close to towns and cities that were previously cultivated are being sold or leased for building purposes.

In the Northern Region, the region that has the greatest in-migration among the three northern regions, "ownership" of land in almost all parts of the area is invested in chiefs. Unlike the case of the Upper Regions, chiefs, rather than *tindaanama* are prominent custodians of land.

In the Northern Region, the major sub-ethnic groups include the Mamprusi to the north, the Dagomba at the centre, the Nanumba and Gonja to the south, the Bimoba to the north-east and the Kokomba and Basari to the east of the region. Among the Mamprusi, Dagomba and Gonja, the three largest sub-ethnic groups, chiefs hold land in trust for the people. It is claimed that once upon a time, the chiefs of Dagbon

(Dagomba area) killed as many "tindaanama" as they could. The "tindaanama" as the first settlers, should be the real land owners. The fact, however, is that "tindaanama" thought of the land as belonging to every member of the community since in a sense all members of most communities are from one ancestry.

Even though chiefs are the custodians of the land in most parts of the Northern Region, it is important to point out that once a family (indigene and non-indigene) gains access to a parcel of virgin land to farm, that family continues to cultivate that land as if it owns it. The chief cannot give that land to another family. Family members can pass the land to their children. They can even ask for more uncultivated land, and immediately it is given, it becomes the property of that family unless the family decides they do not want it. The family can even give some of that land to migrants, or any other person, without obtaining permission from the chief. More often than not, however, families do inform the chief when they decide to give some of the land to migrants to *farm*. In areas of the Northern Region, where there is considerable large uncultivated land such as West Mamprusi, Gushiegu/Karaga and West Gonja Districts, chiefs are basically the owning authorities of uncultivated land. Thus migrants will have to gain rights to the use of the land through the chiefs.

There are clearly different roles played by chiefs as well as clan and family heads in the giving out of land to immigrants. If a tenant is requesting for a relatively small piece of land, family and clan heads could afford to give out some of their land. If however large tracts of land are required, the chief with jurisdiction over that entire land area will give the right of use.

Families and clans do give out their lands to whosoever they wish for farming purposes. They can, in addition, give conditionalities with regards the use of their land by non-family or non-clan members but only within the generally accepted conditionalities existing in the area. One such generally accepted conditionality is that there should not be any regular payments in kind or cash by tenant farmers to landowners. In fact, the customary rule is that owners are responsible for the feeding and housing of tenant farmers until after their first harvest. The reasoning is that the tenants came looking for land to

farm because they are landless, and without land they cannot have any property or even food so they should be taken care of until they can take care of themselves. This practice is still prevalent in several areas in Dagbon though with some modifications.

Customary land tenure insists that land should never be sold and no form of payment should be demanded by any landowner. Gifts to members of landowning families from tenants are however allowed. Those gifts are not usually demanded for or even expected.

Most of the "tenants" talked to during a study on "derived land rights" in the Northern and Upper East Regions agreed that landowners do not usually expect gifts from them. They indicated, however, that it is necessary to show gratitude to them for the use of the land and that is expressed in the giving of gifts. It is also usual for tenants to come to the aid of landowners anytime they have financial or other problems. Tenants could for example contribute to the payment of dowry for a landowning family member. The decision to assist the landowner is however completely determined by the tenant. According to the tenants, "there is absolutely no compulsion," but "it is reasonable for tenants to be seen to appreciate the land given to them

In the Upper East and Upper West Regions, lands are under the direct jurisdiction of family heads, clan heads and others. According to opinion leaders in these regions, chieftaincy as an institution is not important as far as land ownership is concerned in these regions. All lands in these areas belong to families and clans and they decide what to do. Family heads, clan heads and "tindaanama" hold the land in trust for the people. Chiefs do have jurisdiction over their own family lands but they have no authority over the land of other families.

The role of *tindaanama* in land matters is however now limited to spiritual functions. *Tindaanama* were not killed off in all parts of the Northern Region. Even in Dagbon (Dagomba land) where many of them were killed, *tindaanama* still exist. It is however surprising that *tindaanama* do not have any significant role to play with regards land ownership. They are now only spiritual custodians of the lands. They come into the picture when somebody wants to do something on the land which the people believe has spiritual implications. Activities



such as burials, funerals, sacrifices at fetish groves and building of new houses are thought to have spiritual significance. One “tindaana” can have spiritual oversight over several communities. The implication is that the “tindaana” should have had physical jurisdiction over those several communities. In recent times, *tindaanama* have been brought in as witnesses when plots of land are to be acquired for building purposes in towns and cities. It is recognized that families own their lands and can sell them but the tindaana should witness to affirm that the land actually belongs to that particular family.

#### **4. Traditional Institutions, National Land Policy and Sustainable Development**

The traditional institutions and how they function in the context of land tenure as discussed above indicate potential problems with regards the section of the land policy that deals with land titles. That section states that “all traditional sources of land tenure as well as those derived from common *law* ... are recognized as legitimate sources of land titles and are to be classified as such.” As discussed above, a number of traditional institutions can lay claim to a piece of land. Traditionally, that may not cause conflict. If however the land has to be registered, whose name will be used? Traditionally “ownership” of skin, clan or family land is not straight-forward and its registration could cause more problems than solving existing problems.

There is need for greater discussions as to what land administration and use arrangements should be put in place to ensure conflict free land title registration in northern Ghana as envisioned in the national land policy. The policy seeks to “promote community participation at all levels in sustainable land management and development practices”. One hopes that what is envisioned is true community participation and not the opinion of a few members.

#### **5. Conclusion**

Land is definitely northern Ghana’s most important natural resource and every step must be taken to avoid conflict in its use. Conflicts, as

we have already seen in the recent past, only result in further underdevelopment and misery for everybody. Nobody will want to assist in development efforts in an area of constant conflict, that is why we must endeavour to avoid conflicts at all cost.

Greater understanding of the land tenure system in northern Ghana and how it affects agricultural production is very important to avoid the situation we now have in parts of the Upper East Region. In that region, land fragmentation has led to the existence of landless people and the land is overused without concerted attempts to invest in it to improve its productivity.

Finally, I wish to appeal to politicians who use every opportunity, including conflict situations, to gain political advantage to desist from it. Politicians, irrespective of party affiliation, should be more conscious of the need for their areas to develop and development can come through concerted efforts by all stakeholders and not through strife and conflict.

Land and its administration, management and utilization in northern Ghana, and indeed the whole country, must be given high priority by all concerned with sustainable development and progress.

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