Strengthening Customary Structures for Good Land Governance: Dynamics of Customary Land Secretariats

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Structure of Presentation

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- Overview of Land Governance in Ghana
- Nature of Land and Properties Rights in Ghana
- Forms of Registration
- Institutional Arrangements for Registration of Land Rights in Ghana
- The Customary Land Secretariat Concept, Achievements and Challenges
- Why the CLS concept is Important in enhancing Security of Tenure
- The Way forward
Community Land and Development Foundation (COLANDEF)

Established in 2002

Focus on three thematic areas pertaining to land issues
  - Land Governance and Natural Resource Management;
  - Local Governance and Gender; and
  - Research and Advocacy

Goal is ensure security of tenure is enhanced for all, particularly at customary level and for disadvantaged groups

COLANDEF activities focus on public education, institutional building/organisational strengthening, policy advocacy, sensitization and counselling
Overview of Land Governance in Ghana

- Ghana practices a dual system of land governance
  - Traditional, or Customary; and
  - State, or Statutory
- The two systems operate together, under formal rules
- About 80% of land in Ghana is under customary arrangement.
- Based on the principles of governance, a number of stakeholders need to be part of the land governance system be it at the customary level or the formal level
Types of Land in Ghana

There are different types of land in Ghana based on where the ultimate authority and decision making lies:

- Stool and Skin lands
- Family Lands
- Public Lands
- Vested Lands
- Individual Lands
Nature of Land and Property Rights in Ghana

- **Allodial Interest** - it is a collective interest that confers absolute ownership to the land owning group in perpetuity.

- **Customary Freehold Interest** - it is an interest conferred on members of the land owning group as individual members or as a subgroup. (found mostly in rural/farming communities)

- **Leasehold Interest** - ownership of land for a defined period (more in relation to land for housing and commercial activities)

- **Lesser interests** - sharecropping, renting, annual tenancy etc.
Nature of Customary Land Rights in Ghana

- The nature of traditional leadership, level of authority and control over customary lands differ from one traditional area to the other.

- As a group, traditional leaders are mandated to hold land in trust for the land owning group of their particular area, serving as custodians of allodial interest.

- They also take the lead in land disposition and decision making relating to tenure arrangements.
Clarifying allodial interest boundaries has remained a challenge as most traditional leaders do not have documented records on their boundaries.

While this lack of clarity has resulted in some tensions among traditional leaders themselves, it poses greater threat to the security of tenure granted by such traditional leaders to individual land users.

Obtaining accurate records on allodial interest boundaries is one of the most critical factors in achieving a sound land administration regime in Ghana.
Nature of Customary Land Rights in Ghana (3)

- Natives of a traditional area are entitled to use rights of portions of land that is collectively held under allodial ownership – this is customary freehold interest.

- This interest is held almost in perpetuity.

- Through migration and settlement, many non-native farmers have also acquired a kind of interest in land which has the character of the customary freehold interest known as the stranger usufruct.

- Arrangements for granting and maintaining the customary freehold interest is very much dependent on existing traditional beliefs and practices and usually go without documentation.
Nature of Customary Land Rights in Ghana (4)

- Leasehold interest is a widely known interest that comes with a definite term.

- It is usually acquired by residential purpose users or by commercial farm owners.

- Usually, the leasehold is acquired by paying a negotiated amount of money to the landowner(s) who are the traditional leaders.

- In view of the monetary consideration, some traditional leaders are overturning various customary arrangements to give way for the leaseholds. This is made easier by the absence of documentation.
At the local level, there are numerous arrangements that make it possible for those without limited monetary capital to also have access to land for productive activities.

The details of the arrangement and how they are managed depends largely on the local people.

Well known ones are the ‘abunu and abusa’ which are practiced in different ways depending on the particular traditional area in question.

Many of these are not documented and holders of such rights are the most challenged in terms of tenure security enhancement.
Nature of Land and Property Rights in Ghana (7)

- Though the rights held in trust by the traditional leaders is the most noticeable and highly recognized, all the other interests that emanate from the allodial interest are quite significant to the lives of many individuals.

- Ensuring that such rights are secured is as equally important.

- The fundamental role of the traditional leaders in Ghana in achieving security of tenure cannot be overemphasized and yet they remain limited in capacity and technical understanding in dealing with the complexities of the land market today.
Forms of Registration in Ghana

- In recent times, registration is promoted as an important means of securing rights and interests in land.

- Ghana operates Deeds Registration (Land Registry Act, 1962, ACT 122) and;

- Land Title Registration, under the Land Title Registration Law 1986, PNDL 152.

- Institutional mechanisms in place for both deed and title registration require that whether one acquires land from the traditional system or from the state, registration is done by the state agencies where records are kept.
State Institutions in Land Administration in Ghana

- The Lands Commission;
  - Public and Vested Lands Division
  - Survey and Mapping Division
  - Land Valuation Division
  - Title Registration Division

- Office of Administrator of Stool Lands (OASL)
- Town and Country Planning Department (TCPD)

Over the years, attempts at improving the land administration system in Ghana has focused on the state institutions.

The system operates in such a way that there are no structured linkages between the traditional system and the state operated system.
The Results?

- Government land sector agencies have over the years acted as providers of technical services to be consumed by the ‘society’ in whatever form and shape they are served; influenced by the state led approach in crafting property rights.

- Customary institutions have acted as ‘autonomous’ entities in administering affairs on the land and have often had challenges dealing with state agencies, seeing their interventions as interference.

- Individual become the ultimate victims of the chaos that this situation generates, the worst affected being those in rural areas far away from registration centers as well as those with little means to bear the cost in dealing with the complexities surround the fight for protection of individual land rights.
The Customary Land Secretariat (CLS) is an intervention under the Land Administration Project (LAP) to strengthen the institutional capacity of customary land administration systems in the country.

The CLS operates within the jurisdictional area of traditional leaders where various customary laws are applied in administering the land. Ten pilots were set up, one in each region beginning in 2004. Today, there are 37 CLSs throughout the whole country.
CURRENT THREATS TO THE SUSTAINABILITY OF THE CLS CONCEPT

- So far only 37 secretariats have been established/strengthened.
- Many more need to be done but are not yet done.
- No substantive legal support for the role of CLS yet. The New Land Bill has some provisions on the CLS but is not yet passed.
- So far, the establishment of CLS has depended mainly on donor support.
- Ownership and responsibility for the CLS running and sustainability still a major question.
- Challenge of balancing what might seem government interference with the need to provide technical oversight for the CLS.
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ACHIEVEMENTS OF SELECTED CLS IN GHANA

- Wassa Amenfi CLS has over 15,000 farm lands captured in digital form with spatial and attribute data.
- It has facilitated the registration of over 2000 land rights in the traditional area.
- Successfully resolved over 400 land disputes.
WHY THE CLS CONCEPT IS IMPORTANT IN ENHANCING SECURITY OF TENURE

- It is local, and gives consideration to local customs and practices. Also manned by local people.
- It lends itself to the creation of a legitimate land governance structure acceptable to the land owning community which is fair and equitable to all stakeholders.
- It a means by which existing customary land practices can be formalized and strengthened.
- It brings land services closer to the local people in a timely and judicious manner.
- It is more accessible both financially and geographically.
- It is structured to encourage participatory land use management at the local level.
- Provides structured opportunity for linking state system with customary system.
Challenges of the CLS

- The CLS is fashioned alongside the traditional authority set up which often has limitations in ensuring transparency and accountability to the citizens. This reflects on the CLS, making transparency and accountability major concerns in the running of CLS.

- In the current design, CLSs do recording of land transactions and not registration of any kind. To get registration done for people in the area, the CLS liaises with the relevant land agency. Though this fundamental role is equally important, the absence of registration at that level makes it difficult to make the CLS attractive.

- To fit into the institutional framework for land administration in the country, CLS services are designed to reflect what is done at the formal level. This poses the threat of CLSs focusing on services that meet the demands under the formal land administration arrangements and not so much to address the felt needs of the local people.
Challenges of the CLS (2)

- **Ownership** - after the establishment of the office by LAP, there is no official position on who is responsible for ensuring that the office is functional and keeps running on a daily basis. This has brought about serious difficulties in the day-to-day running of the office.

- **Unclarity about roles and responsibilities towards the functioning of the office** - LAP says the CLS is for the community. But who is the community? It is true that a number of stakeholders could play a role to get the CLS functioning but who does what? And who takes the lead in organizing these stakeholders?

- **Lack of Formal Reporting/Communication** - Whom should the CLS report to? Currently there is no official line of reporting and communication. Whoever needs any information uses contacts with the staff to get their information. However this information is not coordinated to give a proper overview of events.

- **Responsibility towards Staff of the CLS** - No formal appointments for the staff. No standing salary etc. The question of who their employer is needs to be answered.
THE WAYFOWARD

- While the implementation of the CLS concept has come with some challenges, it is so far the only structured and tested intervention in the land sector that seeks to strengthen an important arm of the Land Administration system in Ghana—the customary system.

- The CLS concept need to be made an integral part of Ghana’s land administration system. It needs to be integrated into the country’s Legal, Regulatory and Institutional arrangements for land administration. This will provide the platform for learning and documentation of such learning to inform on-going discussions on the most efficient and effective design of a customary system of land administration that supports socio-economic development.

- Capacity strengthening for Traditional Leaders

- Sustained Public Education for actors at the local level on the need for local level participation and sustainability of the CLS idea
‘We believe that Customary Land Secretariats, which to date have represented an important experiment in strengthening the governance of land administered under various forms of customary tenure, should be made a permanent element in Ghana’s system of land governance.’ (Presentation of Consultancy REPORT ON FRAMEWORK FOR THE GOVERNANCE AND OPERATIONS OF CUSTOMARY LAND SECRETARIATS IN GHANA, Bugri, 2009)
Thank You for Your Attention.