



Land investments, accountability and the law: Lessons from Ghana

Eric Yeboah and Mark Kakraba-Ampeh



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Contents

Acronyms	ii
Acknowledgements	iii
About the authors	iv
Executive summary	1
1. Introduction	3
2. Land governance: the national context	6
3. Public decision making on land-based investments.....	9
4. Risk and benefit sharing	12
5. Dispute resolution and remedy	15
6. Conclusion.....	16
References	17

Acronyms

CHRAJ	Commission on Human Rights and Administrative Justice
EIA	Environmental impact assessment
ESIA	Environmental and social impact assessment
GCAP	Ghana Commercial Agriculture Project
GIPC	Ghana Investment Promotion Centre
IDRC	International Development Research Centre
IIED	International Institute for Environment and Development
LAP	Ghana Land Administration Project
LRMC	Land Resources Management Centre
OASL	Office of the Administrator of Stool Lands
SADA	Savannah Accelerated Development Authority

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Executive summary

Ghana has considerable arable land reserves, an abundant supply of labour and a favourable tropical climate that supports a wide range of crops. So it is not surprising that the country has been a popular destination in the recent wave of agribusiness investments. Foreign direct investments in the agricultural sector could be critical for the development of the country's predominantly agrarian economy.

Injections of foreign capital can boost local infrastructure development, create jobs and facilitate knowledge and technology transfers – but they also carry well-known risks, particularly in terms of losing the land and resources that many rural communities rely upon for their livelihoods. There are mechanisms for accountability that can influence opportunities to shape the distribution of these costs and benefits among multiple actors.

Customary land ownership is dominant in Ghana, with chiefs and recognised traditional authorities designated as trustees to hold land in their fiduciary capacity. On paper, the fact that communities own the land increases local control over land and resource management, and related decision-making processes. Customs and statutes are equally clear that land should be used in ways that serve the interests of all members of the landowning community.

However, growing evidence indicates that many recently concluded land deals fall short of almost all the parameters of good land governance, as does the distribution of benefits from such transactions. This often has dire consequences for rural communities, including gender-differentiated landlessness, squeezed livelihoods and environmental degradation. There have been reports of tensions and even violent clashes between communities and investors.

This study discusses accountability in land deals in Ghana. It assesses the extent to which the relevant legal frameworks create conditions conducive to accountability, and ultimately to more inclusive and sustainable investments. The study draws on two components: (i) a review of applicable laws in light of international standards such as the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests; and (ii) field research in three areas hosting large land-based investments.

Accountability emerges as a key aspect of good land governance, which should be a central element of investment processes. There are customary and statutory laws and institutions that should ensure accountable land governance, but limited capacity and practical constraints tend to hinder the ability of these institutions to support communities effectively. The safeguards provided by customary tenure cannot always ensure accountability, and trustees of customary lands often have limited capacity to negotiate fair land deals. More worryingly, there are no

guarantees that local communities will receive an equitable share of the benefits generated by land deals.

These considerations indicate that developing grassroots 'legal and social accountability tools' to empower communities and ensure that decision-makers are accountable for land-related decisions could be critical in improving land governance at the local and national levels.

1. Introduction

Ghana is endowed with considerable arable land reserves. And with an abundant supply of labour and a favourable tropical climate that supports a wide range of crops, it is not surprising that the country has become a popular destination in the recent wave of agribusiness investments. Foreign direct investments in the agricultural sector could be a critical factor in the development of the country's predominantly agrarian economy.

Injections of foreign capital can boost local infrastructure development, create jobs and facilitate knowledge and technology transfers (Deininger, 2011), but they also carry well-known risks, particularly in terms of losing the land and resources that many rural communities rely upon for their livelihoods. There are mechanisms for accountability that can influence opportunities to shape the distribution of these costs and benefits among multiple actors.

Customary land ownership is dominant in Ghana, with chiefs and recognised traditional authorities designated as trustees to hold land in their fiduciary capacity (Article 36(8) of the 1992 Constitution). On paper, the fact that communities own the land increases local control over land and resource management, and over decision-making processes. Customs and statutes are equally clear that land should be used in ways that serve the interests of all members of the land-owning community (Ubink and Quan, 2008).

However, growing evidence (German *et al.*, 2010; Schoneveld *et al.*, 2011) indicates that many recently concluded land deals fall short of almost all the parameters of good land governance, as does the distribution of benefits from such transactions. This often has dire consequences for rural communities, including gender-differentiated landlessness, squeezed livelihoods and environmental degradation (Ghana Commercial Agriculture Project, GCAP, 2014). There have been reports of tensions and even violent clashes between communities and investors (Nyari, 2008; Wisborg, 2012).

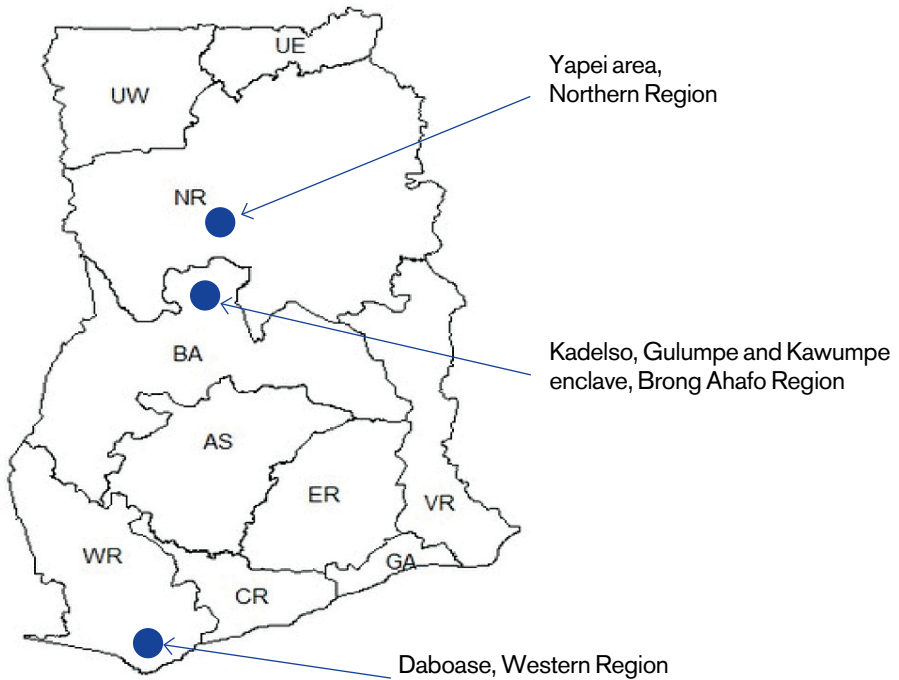
Access to land and its resources is often characterised by competing interests that invariably create few winners and many losers. Therefore, principles of good land governance such as transparency and accountability are important at every level of land administration. Introducing requirements for transparency and accountability in land deals could minimise the risk that many stakeholders may be excluded from decisions about benefit sharing.

Communities need mechanisms and an enabling environment to demand social accountability from leaders who have been entrusted with the stewardship of common resources. But these mechanisms are often weak, and encourage forms of development where the majority of stakeholders are excluded from decision-making processes and enjoy few of the benefits generated by large-scale land allocations.

This makes it hard for investors to secure 'social license' for their operations: that is, acceptance by the broader community to run their business in the area (Yates and Horvath, 2013; Morrison, 2014). Obtaining social license is key in fostering harmonious co-existence between investors and local communities. Where local mechanisms for ensuring accountability are weak, companies are likely to be contested at the community level even if they have complied with national legal requirements (Cotula, 2011).

This study discusses accountability in land deals in Ghana. It assesses the extent to which applicable legal frameworks create conducive conditions for accountability, and ultimately for more inclusive and sustainable investments. The study draws on two components: (i) a review of applicable laws in the light of international standards such as the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests; and (ii) field research in three areas hosting large land-based investments.

The criteria used to select the field sites included the north-south divide in Ghana, a focus on areas experiencing varying levels of pressure on land, and a combination of recent and longstanding investments. The research was conducted in the Yapei and Kusawgu areas in the Northern Region; in the Kawumpe, Kadelso and Gulumpe enclave in the Brong Ahafo Region; and in Daboase in the Western Region. In the first two sites, companies acquired land from customary chiefs, while the third site involved a land deal with the State. The three study areas are indicated on the map below.

Figure 1: Field sites

The field investigations used participatory approaches and interviews and focus group discussions with key stakeholders such as traditional authorities, investors, youth groups, farmer organisations, and men's and women's groups. Researchers also engaged with stakeholders such as the Lands Commission, the Ministry of Food and Agriculture, the Environmental Protection Agency, Gender Departments and the Office of the Administrator of Stool Lands at both regional and national levels.

The rest of this report is composed of four sections, covering issues relating to the land governance context, decision-making processes, benefit- and risk-sharing arrangements, and mechanisms for redress and dispute resolution.

2. Land governance: the national context

Spatial, social and cultural characteristics vary considerably across Ghana. The country is divided into 10 administrative regions, and the three northern regions are relatively poor and underdeveloped (IFAD, 2012). There are over 40 ethnolinguistic groups in Ghana, each with its own customs and culture. Because land tenure is a product of culture and context, there is a very diverse spread of land tenure arrangements across the country.

Broadly speaking, there are three main categories of land ownership in Ghana. These are public (or State land), customary lands (stool, skin and family lands) and vested land, which is a hybrid of customary and public lands. Public lands are collectively owned by all the country's citizens, and are vested in the President as the trustee.

State lands are managed by the Public and Vested Land Division of the Lands Commission. Public land constitutes an estimated 18 per cent of all land in Ghana (World Bank, 2011). Customary lands are usually collectively owned under very diverse tenure arrangements. The management and administration of these lands is often vested in a chief, an elder or a designated leader who is appointed in accordance with custom. Finally, vested lands are customary lands that are managed by the State for the benefit of their customary owners (see Kasanga and Kotey, 2001, and Yeboah and Shaw, 2013, for a detailed discussion of land ownership typologies in Ghana).

Individual land rights may be held under each of the three different types of land ownership. Individual rights to State and vested land often take the form of leases, which may be obtained by applying to the Lands Commission. Under customary tenure arrangements, usufructuary rights may pertain to an individual who has exclusive access to and control over the parcel of land (da Rocha and Lodoh, 1995).

In principle, such rights cannot be curtailed by the allodial title holder without the consent of the usufruct. Usufructuary rights are inheritable, and legal successors may assume ownership when the original rights holder dies. Other forms of rights, such as leases, tenancies and licences, may be obtained by individuals under customary landholding arrangements (Ollennu, 1985).

Customary lands constitute an estimated 80 per cent of all the land in Ghana (Ubink and Quan, 2008). One key principle underpinning their management is the doctrine of trusteeship, according to which land should be used in ways that equitably benefit all members of the landowning group. Land held under these systems is referred to as 'stool lands' in the south, and 'skin lands' in the north. Other forms

of customary land include family lands, clan lands and lands held by fetish priests or Tindana in some areas in the northern parts of the country. These customary systems involve checks and balances to ensure that traditional leaders uphold this doctrine, with 'destoolment' used to sanction the worst offenders.

However, these checks and balances have been greatly eroded in recent times (see Ubink and Quan, 2008). There have been reports of chiefs using the proceeds from land transactions for their own benefit, or behaving like 'super landlords'. Alden Wily and Hammond (2001, pp. 44, 69–73) describe this as the curtailment of communal property rights through a form of "feudalisation of land relations".

Access to land has become increasingly commodified, and the knowledge that local elites can capture the revenue from land allocations to prospective investors has become an incentive for chiefs to lease out common lands. This situation is severely testing the ability of local systems and structures to ensure greater transparency and accountability in land allocations.

As most land in Ghana is customarily owned, the State has less control over land allocation processes than is the case in some other African countries. Nonetheless, a number of public agencies play an important role in the governance of land and investment. The Lands Commission is the principal agency responsible for land management and administration in Ghana. It determines the overall policy direction and provides the institutional machinery for land management and administration, including the divisions responsible for land surveys and mapping, land valuation, land registration and the management of public and vested lands. The Lands Commission is the repository of all public land records and supervises and records land transfers.

Other agencies play various roles in the governance of land and investment, such as the Town and Country Planning Department, the Environmental Protection Agency and the Ministries of Gender and Social Protection, Trade and Industry, and Food and Agriculture. The National Development Planning Commission is tasked with ensuring that land policies are coherent and consistent so that appropriate decisions can be made at the national level.

These institutions have decentralised offices across all 10 regions of Ghana. At the local level, district assemblies and municipal and metropolitan authorities have important responsibilities in promoting the development and judicious use of land and its resources, and can therefore play a role in ensuring that proposed investments are consistent with the local development agenda.

Another key player in large land-based investments is the Ghana Investment Promotion Centre (GIPC). The GIPC derives its powers from the Ghana Investment Promotion Centre Act, 2013 (Act 865), and is tasked with attracting, licensing and regulating the activities of investors.

The Ghana Commercial Agriculture Project (GCAP) and the Savannah Accelerated Development Authority (SADA) were established to create an enabling environment for commercial agriculture in the country. All these investment-related bodies are expected to coordinate closely with the land sector agencies, but there is evidence of gaps in coordination and communication between the two types of body (Bugri, 2012).

Another institution with a critical role to play is the Office of the Administrator of Stool Lands (OASL). This constitutional body is responsible for collecting -rent, royalties and capital payments that accrue to stool and skin lands, and distributing this money according to a legal formula that is supposed to ensure that the entire landowning community benefit from stool/skin land revenue.

Our field research found significant shortcomings in the coordination between customary and statutory institutions, and showed that some land deals have been executed without the knowledge or authorisation of designated State institutions such as the Lands Commission. Many rural people hold very insecure rights to the land they use, particularly when collective rights are at stake. Our data indicate that large-scale land-based investments have taken land used by farmers and curtailed access to pastoral grazing lands and water sources (streams and bodies of water) that serve several communities.

3. Public decision making on land-based investments

The complex land governance framework discussed in the previous section has direct implications for decision making on land-based investments. Customary authorities have the right to make decisions about customary land. Their position as trustees is enshrined in the Article 36(7-8) of the 1992 Constitution:

“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 are 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.”

Any disposition of land by the customary authorities must be made with the consent of the elders and community members, and all land-related decisions should aim to serve the greater good of the entire landowning community (see Section 45 of the Chieftaincy Act, 2008 (Act 759), and the decision in the case of *Amodu Tijani versus Secretary of State of Southern Colony*).

Customary authorities are expected to be guided by the tenets of accountability, and can theoretically be sanctioned for failure to observe them. Options available to community members include appealing to a senior member of the hierarchy to sanction the particular chief involved. In some instances, communities have also resorted to protests to demand social accountability (see Box 1 below).

These are encouraging but relatively isolated examples of demand for social accountability. There are customary and statutory channels for transparency and accountability, but it seems that these two aspects of good land governance are best achieved if citizens are well informed of their rights and the mechanisms for holding fiduciaries accountable and demand greater transparency and accountability (Polack *et al.*, 2013). This requires informed citizens who are capable of engaging with the customary authorities and political elite. Imbalances of power are a major constraint to stakeholders' ability to demand transparency and accountability.

Culturally, community members are considered as subjects of the chief. He has the power to issue commands that others are enjoined to obey (Shively, 2001 cited in Njoh, 2006), and his subjects are expected to show allegiance to the occupant of the stool/skin at all times (da Rocha and Lodoh, 1995). This situation creates winners and losers. Chiefs and other elites often try to gain as much as they can from the system, while people with weaker land rights, such as migrant farmers and women in patriarchal communities may be exposed to renewed threats to their land ownership, access and use rights. Under such circumstances, transparency and accountability can only be achieved through community empowerment. The

Box 1. Demanding social accountability: examples from Ghanaian civil society

People of Nobewam up in arms against chief

“Scores of people at Nobewam in the Ejisu-Juaben Municipality on Tuesday protested against the alleged indiscriminate sale of their lands by their chief and his failure to account for the proceeds. They accused Nana Adu Gyamfi of having sold a number of building plots to developers, including an area earmarked for a market and the community teak plantation. Additionally, they alleged that the chief has leased land to a mining company and pocketed the money from the transaction.”

Concerned citizens of Kwamo petition Asantehene

“Some concerned citizens of Kwamo in the Ejisu-Juaben District of Ashanti have petitioned the Asantehene, Otumfuo Osei Tutu II, to destool the chief of Kwamo Nana Osei Amoako-Mensah II for ... embezzlement of stool land funds ... “Nana Amoako-Mensah has also sold to private developers, a piece of land allocated and reserved for “Obrempong Tano, Asanie Kyere and Akonodi Shrines, whilst the land reserved alongside streams at Kwamo, have been sold. The petition said ... funds accruing from the sale of these lands were yet to be committed into development projects.”

Source: Modern Ghana, www.modernghana.com

development of community-based strategies for checks and balances on the powers of customary authorities is also critical.

Different laws aim to provide opportunities for public participation in decision-making processes. For example, customary laws and the Chieftaincy Act require the customary authorities to decide on land allocations with the community elders; while the Environmental Protection Act of 1994 (Act 490) states that any proposed change of land use where the land in question is 40 acres or more and affecting 20 or more households must be accompanied by an environmental and social impact assessment (ESIA). Under the Environmental Assessment Regulations of 1999 (LI 1652), the ESIA process should include a public hearing, and the public authorities should consider all submissions made to them as part of this process. Finally, Section 3(1) of the National Development Planning (Systems) Act of 1994 (Act 480) makes it mandatory for authorities to conduct public consultations during the development process.

These safeguards should ensure that land deals follow transparent procedures and that all parties are accountable for their actions. But implementation remains a challenge, and such legislation has yet to deliver the anticipated impacts of promoting transparent and accountable land deals that yield fair and equitable outcomes for all stakeholders.

The Lands Commission has developed draft guidelines for considering large-scale land transactions for agricultural and other purposes in Ghana. This was partly prompted by the need to address a number of challenges that are increasingly associated with large-scale land deals. These guidelines seek to ensure that international texts such as the Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests within the Context of National Food Security and the Principles for Responsible Investment in Agriculture and Food Systems are put into effect.

Implementation of the Land Commission guidelines will open up new spaces for community consultations whose outcomes will feed into decision-making processes. These Guidelines could provide significant leverage for greater transparency and accountability in this domain, as the Lands Commission has the power to approve, reject or alter proposed land transactions.

Such efforts to 'domesticate' international guidance are commendable, but shortcomings in the Land Commission's current set of draft guidelines raise doubts about their ability to achieve their intended outcomes if and when they are enforced. For example, they exclude key institutions such as OASL and the Ghana Investment Promotion Centre (GIPC) from decision-making processes, even though the GIPC is the main State agency mandated to attract, register and regulate investor activities in Ghana. As such, it plays a central role in land-based investments, and should be tasked with developing systems to screen prospective investors to help ensure that those who acquire large amounts of land will use it productively within the agreed time frame, and have sufficient funds and appropriate investment strategies to do so. The draft guidelines are also silent on gender issues, despite well-documented differences in men's and women's access to land and participation in land-based investment processes (Vorley, *et al.*, 2012; FAO, 2013).

These draft guidelines state that decisions about land deals covering less than 1,000 acres should be made at the regional level, while acquisitions of over 1,000 acres should be approved at the national level by the Lands Commission (which can approve, reject or alter proposed land transactions).

In practice, these checks and balances are hardly ever enforced, and it is proving difficult to implement the draft guidelines for a number of reasons. First, land deals between customary authorities and investors are largely seen as private arrangements, and since the parties concerned rarely report them voluntarily, many transactions are not subject to the requirements of the guidelines.

The second issue is lack of awareness about the draft guidelines, even among Lands Commission staff. Increased awareness could improve enforcement, but logistical constraints and political manipulation of the process also need to be addressed, so that the Lands Commission can be an effective gatekeeper and ensure that such land deals reflect local aspirations and comply with the relevant legal requirements.

4. Risk and benefit sharing

Land is the primary source of many Ghanaians' livelihoods. Therefore, it is important that communities receive commensurate benefits if they decide to allocate their land to an investor. Investors also have an interest in ensuring that local communities receive a share of the benefits created by the project, as host communities may react negatively to deals they regard as unfair. So another important aspect of assessing legal frameworks is determining the extent to which they provide an environment conducive to equitable benefit sharing.

Benefits may be monetary or non-monetary. The two main traditional forms of payment for leased land in Ghana are upfront lump-sum payments of rent, and fees for long-term leases (which are periodically reviewed). The OASL is mandated to collect all of these land revenues and disburse them according to a formula set by the Constitution. Article 267(6) of the Constitution states that 10 per cent of the revenue from stool lands should be used to cover the OASL's administrative expenses, and the remainder distributed as follows: i) 25 per cent to "the stool through the traditional authority for the maintenance of the stool in keeping with its status"; ii) 20 per cent to the traditional authority; and iii) 55 per cent to the District Assembly in the area of authority where the stool lands are situated.

The logic behind this arrangement is clear. It seeks to balance recognition of the esteemed position that chiefs hold in society with guarantees that the wider community will receive a share of the benefits from land transactions. District Assemblies are elected local government bodies mandated to drive development at the local level. Giving these agencies a significant share of land revenues is expected to boost local development and benefit the broader community.

In practice, however, the revenue from leasing communal lands to investors (upfront lump-sum payments and long-term rental fees) is often paid directly to the chiefs. This may help investors establish a direct relationship with and gain support from community leaders, and in some cases the community, but also has potential disadvantages for both the investors and the communities concerned.

For example, there is a risk that payments may be misappropriated by local leaders. This would not only deprive the community of their share of the benefits of the transaction, but also undermine local support for the investor's operations. In addition to this, simple direct transactions with the customary authorities often take no account of expected increases in land values over time. This can be a significant consideration, especially with long-term leases that may last for 50 years or more (GCAP, 2014).

The rents for some long-term leases are periodically reviewed, with fees set in advance and generally paid in one- to five-year increments. This can help create a sense of fairness as successive community leaders come and go. In one case

in Yapei and Kusawgu, future increments will be linked to the prevailing Bank of Ghana base rate at the time of the rent review, which will provide a more objective basis for the revised fees.

Despite its constitutional mandate, the OASL has had little or no involvement in any of the transactions covered by the study. This means that there is no functioning State-backed mechanism to collect the upfront lump sums or periodic payments and distribute them according to the constitutional formula, and that customary authorities tend to be the primary recipients of the financial benefits derived from allocating long-term leases to investors.

It seems that investors are beginning to diversify their land payment arrangements, and may combine several different payment models. Some have risk- and benefit-sharing arrangements with host communities to encourage local support for their projects. For example, one company with plantations in Bredi, Abease, Yeji and Dinkra negotiated profit-sharing arrangements whereby landowning communities are entitled to 25 per cent of the profits. Another company operating in Sogakope came to a similar arrangement, although in this case the local community is entitled to 2.5 per cent of the gross revenue from operations for the first five years, and 5 per cent of gross revenue after that. The lower starting rate was justified by the initial capital that the investor had put into the operation.

Every payment model has its advantages and disadvantages. Even in revenue-sharing models an upfront payment may be required to establish the investor's 'social license to operate' in the eyes of the local community. Others have done this through preferential hiring arrangements that favour local communities, or by providing social infrastructures and services, and in some cases by establishing outgrower schemes.

The general principle in contract law is that when parties with the capacity to agree to a contract do so within the current laws and without duress, fraud, undue influence or misrepresentation, such a contract should ordinarily be binding (Peel, 2011). This position is largely reflected in Ghana's Contracts Act, 1960 (Act 25), so the parties negotiating contracts for leasehold agreements need to proceed cautiously to ensure that they secure a fair deal.

The law in Ghana does not prescribe specific benefits that must be paid or received under a lease arrangement, although the State reserves the right to intervene in unconscionable contracts. According to Section 18 of the Conveyancing Decree, 1973 (NRCD 175):

"The court shall have power to set aside or modify an agreement to convey or a conveyance of an interest in land on the ground of unconscionability where it is satisfied after considering all the circumstances, including the bargaining conduct of the parties, their relative bargaining positions, the value to each party of the agreement reached, and evidence as to the commercial setting, purpose and effect of their agreement, that the transaction is unconscionable."

Although the intention of this provision is clear, its implementation is fraught with practical difficulties, not least the fact that there is no objective definition of what is “unconscionable”. This means that it is determined by the subjective judgment of the court. Furthermore, if the provision is inconsistent with international treaties, its enforcement could undermine government attempts to attract investors.

Building community capacities and ensuring that civil society organisations and State agencies provide the support local people need to negotiate more effectively with investors is crucial in ensuring that communities receive an equitable share of the benefits generated through long-term leases for large tracts of land.

Under the Constitution the Lands Commission is required to vet and approve the disposition of all customary lands. This should enable it to scrutinise the proposed terms of leases to ensure that they are equitable and comply with the existing legislative framework. The Lands Commission also has the power to withhold concurrence until all relevant changes have been made to the lease, thereby providing an important mechanism to ensure that communities receive a fairer returns from leasing out their land.

This is particularly crucial in the current land rush, as members of local communities may not have the capacity to negotiate better deals. However, several land deals have been brokered between communities and investors without recourse to the Lands Commission, making it very difficult for the Commission to ensure that local communities obtain a fair deal.

5. Dispute resolution and remedy

The ability to access mechanisms to resolve disputes and obtain reparation is widely recognised as important for community relations, as local people may feel that they have been wronged – either by their own leaders or by government agencies or private companies.

There are multiple recourse systems in Ghana. At the most formal level, the court system includes the hierarchically connected Magistrate Court, Circuit Court, High Court, Appeal Court and Supreme Court. However, resolving disputes through the formal court system can be an expensive and time-consuming process that is beyond the means of many communities (Crooks, 2004).

Informal and quasi-judicial bodies play an important role in supporting communities and helping them assert their rights in contested cases. Several development projects have established community-based mechanisms to resolve land disputes, which build on existing customary institutions and therefore often involve chiefs and other representatives of the traditional authorities. Implemented by non-governmental organisations (Kakraba-Ampeh *et al.*, 2014) and by the government-led Ghana Land Administration Project (LAP, 2014), these projects can support local communities as the first point of call in resolving land disputes.

This kind of approach is gaining increasing traction, especially with the passage of the Alternative Dispute Resolution Act, 2010 (Act 798). Building local capacity to engage in community-based dispute resolution mechanisms will be crucial in empowering actors to deal effectively with the complexities of agribusiness investments.

Quasi-judicial bodies such as the Commission on Human Rights and Administrative Justice (CHRAJ), which has the powers of a high court, could also be relevant in dealing with disputes. In societies where land is the primary source of livelihoods and means of socio-economic survival, the issue of land rights is increasingly equated with human rights (United Nations, 2013).

The Commission for Human Rights and Administrative Justice has been assigned a range of functions under the Commission of Human Rights and Administrative Justice Act, 1993 (Act 456). These include the mandate to investigate complaints about practices, actions and alleged violations of fundamental rights by persons, private enterprises and other institutions (section 7(1, iii)). When petitioned, CHRAJ has the power to scrutinise existing land deals to ensure greater transparency and accountability.

6. Conclusion

Accountability is a key aspect of good land governance, and should be a central element of investment processes. There are customary and statutory laws and institutions that are supposed to ensure accountable land governance. Bodies such as the Office of the Administrator of Stool Lands and the Lands Commission, and national guidelines such as the current draft guidelines on large-scale land acquisitions should provide a sufficiently enabling environment to help communities demand accountability. However, lack of capacity and practical constraints often hinder the ability of these institutions to effectively support communities, and their respective impacts have not been significantly felt in this regard.

Customary land tenure is flexible and can evolve in response to changing dynamics. But customary safeguards provide limited accountability in the current context of market liberalisation and escalation of large-scale land acquisitions. The trustees of customary lands often have little capacity to negotiate better land deals or, more worryingly, to ensure that their community will receive an equitable share of the benefits generated by these deals.

This adds to the importance of the draft guidelines for large-scale land acquisitions produced by the Lands Commission, so it is unfortunate that they are defective in several respects. They do not involve institutions such as the OASL and the GIPC, even though the latter is the first point of call for every investor in Ghana. They make no reference to gender equity, despite the fact that gender-blind interventions are unlikely to yield gender neutral outcomes, especially in the quest to ensure improved accountability. And they provide no pointers that could help communities negotiate more transparent and equitable deals.

As a result, it may be difficult for communities to achieve accountable land governance even if the national guidelines are properly applied. Developing grassroots 'legal and social accountability tools' to empower communities and ensure that decision-makers are accountable for land-related decisions could therefore be critical in improving land governance at the local and national levels.

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Land investments, accountability and the law: Lessons from Ghana

The recent wave of land deals for agribusiness investments has highlighted the widespread demand for greater accountability in the governance of land and investment. Legal frameworks influence opportunities for accountability, and recourse to law has featured prominently in grassroots responses to the land deals.

This report discusses accountability in land deals in Ghana. It scrutinises the country's legal framework governing land investments, and explores the opportunities the framework provides and how communities can seize them in practice. It finds that there is a need for informed and inclusive national-level debate on tenure and, ultimately, on desirable development models, and suggests some ways forward.

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