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Land Management in Ghana: Building on Tradition and Modernity

**Kasim Kasanga
& Nii Ashie Kotey**

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By Kasim Kasanga and Nii Ashie Kotey
February 2001

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- enhance the research capacity of West African researchers and their institutions;
- foster collaboration between anglophone and francophone countries of West Africa;
- further the level of knowledge on land tenure and resource access issues in West Africa and their implications for policy and practice contributing to sustainable development;
- make such information accessible at all levels through publications, workshops and policy documents, thereby nourishing debate within the West African region regarding the options and implications of different tenure policies for equity, productivity, sustainable livelihoods and social justice.

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CONTENTS

ACKNOWLEDGEMENTS	i
TABLE OF CONTENTS	ii
EXECUTIVE SUMMARY	iii
1 INTRODUCTION	1
1.1 Statutory Tenure and State Land Management	1
1.2 State Land Tenure and Management: A Historical Perspective	1
1.3 Land Management Reforms: 1957 to 1968	2
1.4 Lands Commission	2
1.5 The Administrator of Stool Lands: 1982 – 1994	4
1.6 The Land Valuation Board	4
1.7 Land Title Registration	5
1.8 The Administrator of Stool Lands since 1994	7
1.9 The Lands Commission	8
1.10 Land Administration Regulations	8
1.11 Decentralisation and State Land Management	9
1.12 Survey Department	11
1.13 Environmental Protection Agency	11
1.14 The Courts	12
1.15 Stool Lands Boundaries Settlement Commission	12
1.16 Conclusions	12
2 CUSTOMARY LAND TENURE AND MANAGEMENT SYSTEMS	13
2.1 Allodial Title	13
2.2 Family Interest and Allodial Title	13
2.3 Land and the Position of Strangers	13
2.4 Customary Land Tenure and Management in Northern Ghana	13
2.5 Changing Tenure and Conflict in the North	14
2.6 Changing Tenure in the Western Region	15
2.7 Changing Tenure in the Brong Ahafo Region	15
2.8 Changing Tenure in the Ashanti Region	16
2.9 Conclusions	18
3 THE INTERFACE BETWEEN STATUTORY AND CUSTOMARY LAND TENURE AND MANAGEMENT	20
3.1 State and Indigenous Land Management in Northern Ghana	20
3.2 The Effect of Vesting Orders under the President	20
3.3 Deeds Registration in Practice	20
3.4 Modern Customary Tenancies and Change	21
3.5 Land Tenure and Management in Greater Accra	22
3.6 State Land Tenure and Management: Winners and Losers	23
3.7 Land Management: Some Achievements and Constraints	25
3.8 Indigenous Land Management	26
4 CONCLUSIONS, CHALLENGES AND WAYS FORWARD	27
4.1 Conclusions	27
4.2 Challenges	27
4.3 Ways Forward	28
REFERENCES	33

EXECUTIVE SUMMARY

This report examines the articulation between different structures by which access to land and other resources in Ghana are regulated and, in particular, the interaction and areas of overlap between customary systems and government structures. The data for the report was obtained mainly from existing literature both published and unpublished. Some primary data was secured through open ended and informal interviews with some key informants: researchers, traditional authorities, public land administrators and NGOs. An analysis and synthesis of the researchers' experience played a complementary role.

Major findings

A plurality of land tenure and management systems (i.e. state and customary) prevail in the country. These systems are poorly articulated and increasingly cause problems of contradiction and conflict.

State land administration

State management of land has generally worked against the interests of poorer groups while benefiting the government bureaucracy and those able to wield the levers of power in the modern state sector.

- A significant amount of land has been compulsorily acquired or vested in the state. Such lands are directly managed by delegated public institutions, in particular the Lands Commission.
- Apart from the management of public and vested lands, public institutions like the Lands Commission, the Metropolitan and District Assemblies and the Office of the Administrator of Stool Lands also exercise extensive land administration functions in the customary sector.
- In spite of some positive achievements – including the introduction of maps, deeds and registry systems, and the release of land for public infrastructure purposes like schools, hospitals and roads – the practical benefits of the Lands Commission and other delegated authorities to the silent majority (i.e. the rural, peri-urban and urban poor, the disabled, the unemployed, the low and middle-income earners, etc.) are not evident.
- The evidence suggests that interventions by the Lands Commission, such as compulsory acquisition of land and non-payment of compensation, have resulted in social unrest, displacement of villagers, and landlessness in affected communities.

Weaknesses of state land management

- The state land machinery is inequitable, unjust, inefficient and unsustainable.
- While the legal regime and institutional arrangements appear absolute, they are also, paradoxically, very weak. Staffing constraints, lack of support services, low morale and pervasive corruption are endemic and occur at all levels and agencies.
- The division of tasks between the Land Valuation Board, the Lands Commission, Office of the Administrator of Stool Lands, the Deeds Registry and the Land Title Registry has resulted in the fragmentation of responsibility and lack of coordination.
- The opportunities to settle Ghana's land question, promote efficient land markets and secure economic and financial returns from public and vested lands have all, so far, been missed.

Resilience of customary land tenure and management systems

- Customary land tenure systems and management mechanisms remain strong, dynamic and evolutionary.

- In spite of the state law and despite their inherent weaknesses, customary tenure systems and traditional land administration practices still reign supreme in the North, and remain very strong in the South.
- Customary systems are undergoing rapid change and evolution, especially in the South. Here, tenancy and share cropping are widespread.
- Though able to adapt to new circumstances, customary systems are under extreme pressure, particularly in areas of high population growth and rapid urbanisation, such as in peri-urban areas.

Emergent informal land markets

- In the North, formal and informal land markets are either non-existent or dormant except in peri-urban areas. By contrast, there are flourishing agricultural, housing and related land markets in the South, underpinned by rapid urbanisation and high levels of demand.
- These emergent land markets present many opportunities for able and willing investors, whether individuals, private companies, families or government.

Weaknesses of customary tenure systems

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. Land conflicts, protracted litigation and adjudication failures, documentation bottlenecks and uncertainty are widespread problems with informal land markets.

Land sales and other dealings in land have increased in all areas. Settlements are being uprooted or livelihoods dislocated in the face of this onslaught. Yet there is no equity, transparency or accountability in the management of this process, neither as it concerns the 'disposal' of land nor in the distribution of benefits. The displacement of helpless families and individuals from their legitimately owned land without due recompense raises legal and moral issues.

Recommendations

- A dynamic and comprehensive land policy is needed, based on fundamental principles of social and natural justice, the rule of law, equity and efficiency. The Government's recent National Land Policy report forms a good basis for such a new land policy.
- The Lands Commission, as well as other service delivery agencies, should be revamped into independent self-financing agencies.
- All obsolete and unjust land laws and state land regulations need urgent amendment.
- The progressive principles of the 1992 constitutional provisions in respect of land tenure and administration should be adhered to.
- Constitutional amendments are needed to enable stools to manage their lands, including the collection and the utilisation of the revenue, subject to the general income tax laws of the country.
- Donor and Government support are crucial if land administration reforms are to benefit the poor and help to alleviate poverty.

1 INTRODUCTION

1.1 Statutory Tenure and State Land Management

The Constitution of Ghana recognises the concept of trusteeship in landholding by emphasising 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 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, 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 (Kasanga, forthcoming). ‘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. Both the legal and beneficial titles 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. Under the vesting order, the government does not pay any compensation. However, any income accruing is paid into the respective stool land account and is dispersed according to the Constitutional sharing formula (see section 1.8).

1.2 State Land Tenure and Management: A Historical Perspective

Currently all vested and public lands are administered by the Lands Commission at the national level along with 10 regional Lands Commissions and their secretariats, as provided in the 1992 Constitution and in the Lands Commission Act 1994 (Act 483). However, it is instructive to approach state land administration from a historical perspective. Since the colonial land administration was limited in the country generally, the post independence era provides a convenient starting point.

The justification and objectives underpinning government intervention in land administration have been examined elsewhere (Kasanga, 1996: 93):

- 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.
- 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 suggests 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 to the silent majority.
- Exercise absolute and corrupt power over lands, people and the country's resources.

1.3 Land Management Reforms: 1957 to 1968

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 now governs all compulsory acquisition and compensation processes repealed Sections 4 to 18 of (CA6).

In the North, 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).

Public and vested lands country-wide became state property, subject to administration by the government's land machinery – the erstwhile Lands Department – the fore runner of the Lands Commission. The Lands Department also processed and executed deeds and instruments in respect of land, minerals and timber concessions on behalf of Government,

“Large tracts of land were acquired for state farms and factories without compensation paid to farmers who were cultivating in the respective areas. Although protests were often made by farmers to the District Commissioner, political pressure was used to let farmers abandon the fight to regain their land. In a number of instances they were employed to work on the state farms as compensation” (Ofori, 1973).

On 24 February 1966 the First Republic was overthrown. According to the Akuffo Addo Constitutional Review Commissions report (1969) the excessive abuse of state power in respect of land administration, necessitated the creation of the Lands Commission.

1.4 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 initially put directly under the Ministry of Lands and Natural Resources. The former Lands Department became the secretariat of the Lands Commission and carried out all the day to day land administration functions.

While 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.

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.
- 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.

1.5 The Administrator of Stool Lands: 1982-1994

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:
 - i. The relevant stool through the Traditional Council for its maintenance in keeping with its status;¹
 - ii. Traditional councils and houses of chiefs;²
 - iii. Local government councils within whose area of authority the stool lands concerned are situated.

Monies could be paid in such proportions as the Secretary for Lands and Natural Resources may determine with the approval of the Government. Before the promulgation of the 1992 Constitution, stool land revenue was distributed as follows:

- i. Stool - 10%
- ii. Traditional Council - 20%
- iii. Local Government Council - 60%
- iv. Government - 10% (for administrative expenses)

It must be noted that 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. The disproportionate share (70 percent) went to local councils and Government. The Administrator of Stool Lands could also 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.

1.6 The Land Valuation Board*

The original functions of the Lands Commission were split by Section 43 of PNDCL 42 1986 which created the Land Valuation Board. The Board, whose executive secretary was appointed by the Council, was charged with the functions of Government valuer, including:

¹ A traditional council is a council of chiefs made up of the paramount chief of the traditional area and his senior or divisional chiefs. It is a creation of statute and did not always coincide with or reflect an indigenous constitutional and political entity.

² A Regional House of chiefs is a statutory creation representing all paramount chiefs in a Region.

* One of the author's, Kasim Kasanga is the current Chairman of the Land Valuation Board.

- 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
- Advising the Lands Commission and the Forestry Commission on royalty payments on forestry holdings and products.

The Board's main constraints have 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
- Services to District and Metropolitan assemblies and other State organisations must be provided at no charge.

To date, the Land Valuation Board has no enabling legislation. 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.

1.7 Land Title Registration

A system of deeds registration has operated since colonial times. This has provided for the registration of land with existing written titles. It therefore excluded the registration of oral transactions and titles to land common under customary law. 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 is designed to introduce a scheme to register all interests in land. The process of registration is selective and, at the moment, only applies to the urban centres of Accra, Tema and parts of Kumasi.⁴ The Law provides for the registration of all interests in land - customary law and common law⁵. It also provides that interests held by stools, skins, quarters and families should be registered in the name of the corporate group.⁶

Where there are conflicting claims, the Land Registrar or a person not satisfied with his decision may refer the matter to the Land Title Adjudication Committee.⁷ 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.⁸ Registration is conclusive evidence of the interest of the registered proprietor.⁹ The interest of the proprietor is therefore guaranteed by the state. The Law, however, makes provision for rectification of the register.^{10/11} Following first registration, dealings in a registered land can only be effected through approved forms provided by the Land Title Registry and new entries in the land register.¹²

Review of the Registration System

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 has been negligible. The system suffers from a number of design and implementation defects.

⁴ Section 5 of Law 152 and the Legislative Instruments made there under.

⁵ Section 19.

⁶ Section 110.

⁷ Law 152, sections 13(2), 20, 21, 22 & 23.

⁸ Section 131. Woodman is therefore mistaken in asserting in "Land Title Registration without Prejudice", p.132, that determinations of a Land Title Adjudication Committee are "final and binding".

⁹ Section 43(1).

¹⁰ Sections 121 and 122(7).

¹¹ Section 123(1)(b).

¹² Sections 58(1) and 79.

Design Defects

The system of title registration introduced by Law 152 is not intended to reform the land tenure system, but to improve land management. It is designed to reflect the existing system of landholding and land relations. It does not attempt to reform land interests and institutions, but merely provides for their registration. Customary law tenancies and pledges, for instance, would therefore simply be registered without reform of their nature and incidents. The scheme is also not designed to address the problem of access to land, nor the purchase price or rent payable. Substantive defects in the system of landholding and land use, except in so far as they relate to deficiencies in proof of title or insecurity in transactions, have, therefore, not been affected by registration. In this connection, a commentator has called the system introduced by Law 152 as "Land Title Registration without Prejudice"¹³.

But, even in its bid to assure security, there are defects in the Law. As has been indicated, the ultimate title, and therefore the root of all interests in land in Ghana, is the allodial title, which is generally held by a stool, skin, quarter or family. Law 152 provides for the registration of such interests in the name of the group. But, the Law does not require the registration of the membership of the body of persons competent to deal with such lands on behalf of the group – what Bentsi-Enchill refers to as the "management committee"¹⁴. While a search of the register would therefore disclose the name of the stool or family that holds a particular interest, it would not reveal the composition and membership of its management committee. But, under customary law, an alienation that is made by the chief or head of family acting without the consent of his elders or principal members is invalid. This is retained under Law 152. The absence in the register of the composition and membership of management committees increases the possibility of fraud and hence uncertainty and insecurity.

Furthermore, the Law, as has been noted, provides that after first registration subsequent transfers of interests in land can only be effected through entries in the register. An unregistered disposal is supposed to be ineffective. However, since customary land law, the common law of contract and rules of equity have not been jettisoned, enforceable rights in land may still exist outside the register.¹⁵ This affects the reliability of the register.

Implementation Defects

An effective system of title registration would have dealt with some of the problems relating to uncertainty surrounding in land titles and land transactions. Registration would have conferred greater security, reduced land disputes and litigation and made dealings in land easier, cheaper and safer. The achievement of these objectives depends firstly on efficient and effective management of the scheme. This requires high-calibre, trained and skilled administrators, lawyers, surveyors and other supporting staff. It also requires equipment, particularly for accurate and fast surveying, production of maps and plans, and storage of information. Other logistical support is also crucial. Unfortunately, the scheme has been inadequately funded and resourced, and has suffered from personnel and logistical problems.

Secondly, implementation has suffered as a result of administrative compartmentalisation. The title and instruments registration systems have operated as distinct and parallel systems – the former by the Land Title Registry from Victoriaborg, the latter by the Lands Commission Secretariat from Cantonments – with no conscious effort at coordination. The title registration system has failed to build on the existing instruments registration system. The two systems have been entirely separate; the scale of site plans and the identification and numbering of parcels of land have both been different. Indeed, departmental jealousy, bickering and lack of cooperation have characterised relations between the two institutions. It is hoped that recent changes in management of the institutions will lead to greater cooperation and coordination.

Thirdly, sporadic and uncoordinated registration has robbed the system of its potential to achieve greater certainty and security. There are several dimensions to this problem. One aspect is that no attempt has been

¹³ Woodman, G.R. 1988. "Land Title Registration Without Prejudice: The Ghana Land Title Registration Law, 1986", (1988) 31 JAL 119.

¹⁴ Bentsi-Enchill, K. 1964. *Ghana Land Law*, op.cit., pp.44 and 57-59.

¹⁵ See Woodman, G.R. 1988. "Land Title Registration Without Prejudice", op.cit.

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 has been that interests are being registered even when the root of title may be in doubt, or is under litigation. It would be 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 is that sporadic and unsystematic registration has increased the incidence of mistake and fraud. Interests are being registered, on the quiet, without the knowledge of other claimants. Currently, the only opportunity for gaining knowledge of an application for registration is when it is advertised in a newspaper. This is done once in a weekly newspaper, and even an avid reader of that weekly is unlikely to notice such an application. The particulars that are provided of a parcel of land are so scanty or meaningless that even a professional surveyor may fail to be alerted.

1.8 The Administrator of Stool Lands since 1994

An independent office of the Administrator of Stool Lands was established in 1994 (under Act 481) with three main functions, namely:

- 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;
- 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 as may be determined in accordance with the provision of the constitution; 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 shall be disbursed in the following manner:
 - i. twenty-five percent to the landholding stool through the traditional authority for the maintenance of the stool in keeping with its status;
 - ii. twenty percent to the traditional authority; and
 - iii. fifty-five percent to the District Assembly, within the area of authority in which the stool lands are situated.

As argued elsewhere (Kasanga, 1997: 31):

"The decentralised regional lands commissions are charged with the management of public and vested lands. The Commissions have wide representation and appear to be doing a good job, under difficult conditions. Currently, Government vested lands are limited in the country. With the exception of portions of Kumasi Town Lands, Brong Ahafo, Eastern and Greater Accra regions, all lands in Ghana are family clan, 'Tendamba' or stool lands. In effect, if public and vested lands are managed by the Regional Lands Commissions, which indeed and in practice hold all the records, the Administrator of Stool Lands has no real job to do. In any case, the job cannot be effectively done without the support of the Regional Lands Commission officials. It therefore appears an anachronism to create the Office of the Administrator of Stool Lands, centralised in Accra. Even if regional offices are created, the officers would be recruited from the Lands Commission – which amounts to a splitting and/or duplication of functions".

Currently, the Administrator of Stool Lands has offices in 6 out of the 10 regions in the country. Almost all the professional staff were recruited from the Lands Commission and the Land Valuation Board. Without the good will and co-operation of the Lands Commission and the Land Title Registry, the Office of the Administrator of Stool Lands cannot function in practice. The Lands Commission however appears to have lost its administrative levy on stool lands of 10% to the newly created body. Apart from the friction with the Lands Commission there is some public disquiet towards the office of the Administrator of Stool Lands in the country. Some traditional authorities in peri-urban Kumasi have questioned the rationale behind the creation of the office of the Administrator of Stool Lands, since they are perfectly capable of managing their lands based on their long standing customary land laws and procedures.

1.9 The Lands Commission 1994 to date

The Lands Commission currently operates under the Lands Commission Act 1994 (Act 483) with the advent of the 1992 Constitution. The Constitution provides 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 spells 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 co-ordinated with the relevant development plan for the area concerned.
- 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 co-ordinated by the Lands Commission. While appointments to the Lands Commission are made by the President, members of the Regional Lands Commission are appointed by the Minister responsible for Lands and Forestry.

Article 267 (3) of the 1992 Constitution stipulates:

There shall be no disposition or development of any stool land unless the Regional Lands Commission of the Region in which the land is situated has certified that the disposition or development is 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) is 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 appear complete.

Informal discussions with top officials in the Lands Commission portray their main constraints as:

- dearth of top management policy meetings and direction,
- weak internal management,
- shortage of trained and motivated staff. The three regions in the Northern Sector each has 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.

1.10 Land Administration Regulations

The Lands Commission is 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. In all compulsory acquisition cases a permanent site advisory committee advises the Commission as to the suitability of the site.

The Minister is 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. Every such allocation shall be evidenced by a written instrument, to be known as a Certificate of Allocation, issued by or on behalf of the minister. Individual applications for leases/licenses are governed by Form 5 (under LI 230) regulation 9 which demands a banker's reference of £1000¹⁶ (i.e. one thousand pound sterling) before an applicant is allocated government land. Clearly, regulation 9, which is still in force, has 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 will continue whilst steps are 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 illustrates the point.

"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."

Under current cosmopolitan neighbourhoods in Kumasi and under custom, all the inhabitants of the Kumasi Metropolis owe some allegiance to the Asantehene. The implication is that free government plots are freely assignable for valuable consideration – to anybody.

The management functions also include the fixing and collection of rents, rent reviews and lease renewals, maintenance and the securing of properties from encroachment and, in some instances, as in East Legon (Accra), the provision of infrastructural services for housing estates. At the national level, the Lands Commission recently provided invaluable inputs into the formulation of a new National Land Policy (Ministry of Lands and Forestry, 1999) which, if effectively implemented, could improve land administration generally in the country.

1.11 Decentralisation and State Land Management

District and Metropolitan Assemblies

District and Metropolitan Assemblies have been created since 1986. The Local Government Act 1993 (Act 462) provides the institutional and legal framework for District and Metropolitan Assemblies, giving them executive and deliberative powers, to plan for the overall development of districts. In land administration, Assemblies have legislative powers to make by-laws in respect of buildings, sanitation and the environment. The 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 all rest with the Assemblies.

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.

Nonetheless, the decentralisation and implementation machinery appears over ambitious. It has politically balkanised the country into 110 districts effectively controlled by the President in Accra. The economic viability and considerations underlying decentralisation are not apparent. The District Chief Executives, who are appointed by the President, are answerable to nobody in the districts or regions. Their primary allegiance is to the centre. Since the Assemblies are accountable only to the President, the evidence suggests that they are currently breaking all the rules of natural justice, including being "judges in their own cause" (Kasanga, 1996: 99).

¹⁶ Current exchange rate as at January 2001 £1 = c10,000

Other constraints include:

- 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
- about one third of Unit Committees – which form the lowest unit of local government - have yet to be established
- emergent friction between some established unit committees and traditional authorities.

These constraints are real and have a telling effect on the effectiveness of District and Metropolitan Assemblies. The same is true for the Town and Country Planning Department.

Town and Country Planning Department

The Town and Country Planning Department, which is currently one of the decentralised departments under the Metropolitan and District Assemblies, is charged with the preparation of planning schemes. The Department 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,
- dearth of support services and job satisfaction.

The National Development Planning Commission (NDPC)

According to Brobby (1997: 68) "although the NDPC was established in 1989, there was no enactment to back it". The Commission created by the present Act appears on paper to play a co-ordinating role yet it is clear from its functions that the Commission will be directly involved in the overall planning of both spatial and economic planning of the entire country. The Commission is directly under the President. Perhaps, the only new commendable planning concept introduced by the Act is "the public hearing", to allow people who will be affected by large-scale and other nuisance developments to object if they so desire.

The main functions of the Commission are 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 are 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;

- Monitor and evaluate the development policies, programmes and projects in the district.

Brobbly (1997: 69) notes:

“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 has apparently not been successful in attracting the right calibre of applicants. The result is that, after almost three years of the coming into force of the Act nothing has been achieved. . .

In spite of the Government’s decentralisation policy, all the indications of this enactment point to a centralised body in Accra to oversee the planning functions of the District Planning Units and Regional Co-ordinating Councils”.

The Commission faces other constraints, notably the perception that it is a dumping ground for retired senior officials, that it lacks capacity to implement its plans, and suffers from inadequate logistical and support services.

1.12 Survey Department

This institution is crucial to sustainable land management. Its problems and constraints are therefore symptomatic of the entire land management sector. The Department was established in 1901¹⁷ as part of the Mines Department – a part of the colonial civil service. Its early location within the Mines Department demonstrates the motive for its establishment and its main preoccupation – surveying prior to the granting of mining concessions. It became a fully fledged department in 1907 and concentrated on surveying for mining concessions, forest reserves, infrastructure, particularly railways and roads, and development planning schemes.

The Department plays a crucial role in the land title registration scheme introduced in Accra in 1988. It produces the sectional maps and plans on which title registration is based. The Department has played a less important role in the operation of the deeds registration system. Though it prepares the base maps on which the plotting of parcels is done, the site plans which accompany all instruments are prepared by licensed surveyors. These site plans have been notoriously inaccurate and unreliable and have been the cause of many a land dispute.

The Department has, over the years, experienced a number of problems and constraints, which have militated against sustainable land management in the country. Inadequate funding and shortage of trained staff and equipment have persistently plagued the Department. One consequence of these constraints has been the slow preparation of base maps. In some cases, land sales and development have occurred in areas where base maps have not yet been prepared. This has resulted in multiple sales, haphazard development and land disputes. Thus, land title registration in parts of Accra has been delayed because of the absence of base maps and the inability of the Department to produce these maps at a fast enough pace.

1.13 Environmental Protection Agency

The Environmental Protection Agency 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 Environmental Protection Agency is established under the Environmental Protection Agency Act, 1994 (Act 490), with regulatory and enforcement powers. Its land management functions include:

- 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;

¹⁷Officers of the Royal Field Engineers Regiment established it. One of the pioneer officers was a Captain Gordon Guggisberg who was later elected as Governor. Sir Gordon Guggisberg contributed immensely to the infrastructural development of the then Gold Coast.

- 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;
- The imposition and collection of environmental protection levies or regulations made under this Act; to co-ordinate 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 enforcement, shortage of qualified staff, and inadequate coordination with other agencies.

1.14 The Courts

The courts are one of the most important institutions in land management, and play a crucial 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 a number of 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 meander their way through the court system. There is therefore a long backlog of land cases waiting to be heard, resulting in uncertainty, insecurity and countless unresolved land disputes.

1.15 Stool Lands Boundaries Settlement Commission

This Commission has just been 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 thence 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.

1.16 Conclusions

It is clear that there are a large number of 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 CUSTOMARY LAND TENURE AND MANAGEMENT SYSTEMS

The customary sector holds 80 to 90 percent of all the undeveloped land in Ghana with varying tenure and management systems. The landholders include:

- Individual and families;
- Communities, represented by stools¹⁸, skins and families. Chiefs represent stools and skins which symbolise the community in certain areas;
- '*Tendamba*' (i.e. the first settlers) or clans

There are significant differences in customary tenure and management systems between the North and South of Ghana.

2.1 Allodial Title

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 Region. Chiefs who represent stools and skins execute judicial, governance and land management functions. In the Upper West and Upper East regions, the allodial title holders are the *tendamba* (first settlers) whilst in some of the Adangme (Greater Accra region), the Anlo (Volta region) and Adjumaku (Central region), the allodial title holders are families, clans or village communities. 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.

2.2 Family Interest and Allodial Title

Individuals and families from the landholding group hold the 'customary freehold' – denoting the near maximal interest in land (Bentsi-Enchill, 1964). This principle is valid for all parts of Ghana, where the allodial title is vested in the wider community. Chiefs and *tendamba* belong to families and so have interests in family lands. The interests acquired are secure, alienable and inheritable. Generally, inheritance and succession to property are 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.

2.3 Land and the Position of Strangers

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.

2.4 Customary Land Tenure and Management in Northern Ghana

As rightly put by Benneh (1975:61) the associate states in Northern Ghana are Tallensi, Frafra, Nabdam, Kusasi, Builsa, Bimoba and parts of Konkomba. Chieftaincy was introduced to these areas by the colonial government. Although the British administration appointed chiefs for these societies and attempted to create larger political

¹⁸ A stool means the seat of a chief of an indigenous state (sometimes of a head of family) which represents the source of authority of the chief (or head of family). It is a symbol of unity and its responsibilities devolve upon its living representatives, the chief and his councillors. Land owned by such a state is referred to as stool land. (National Land Policy, Ministry of Lands, Accra 1999).

Note: A skin in Northern Ghana is the equivalent of a stool in Southern Ghana

units, there has always been a clear distinction between the duties of such a chief and those of the *tendamba*¹⁹. 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 functions and duties of the *tendamba* used to include:

- allocation of vacant land to "strangers";
- settlement of land disputes;
- pouring of libations and sanctifying the land when sacrilege has 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;
- imposing sanctions against trespassers and for anti-social behaviour.

This ritual ownership of land has been modified in parts of the North. In Dagomba and Nanumba, paramount chiefs have delegated control of the land to their sub-chiefs who no longer consult the local "tindana". As a result, the *tendamba* have lost their ultimate authority in land in much of the northern region. In the Upper East and Upper West regions some chiefs now assert land holding rights and management functions. These assertions of power over land by chiefs, however, are relatively modern developments and have no basis in indigenous systems and practices (Kotey, 1995).

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, 'tendamba' chiefs etc. Recent informal discussions at Ga, Wa District, with a major landholding family, who are also the *Tendamba* (Iddrisu, 1999) illustrate the point. 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 *Tendamba*. 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 drunk 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.

2.5 Changing Tenure and Conflict in the North

In the past, land was in abundance and those seeking land had free access. With subsistence agriculture, no economic value was put on land, which had an opportunity cost of virtually zero. However, the lack of written records and basic data concerning transactions, the dearth of permanent boundary indicators and the demand for "drink money" by some unscrupulous land owners have led to land disputes, litigation and related problems in some parts of the North. Furthermore, current land administration and acquisition practices, emanating mainly from legislative interventions, the introduction of commercial agriculture, population growth and pressure in some localities, urbanisation, etc. have radically affected customary land tenure systems.

Some chiefs in the Upper East and Upper West regions, contrary to customary land law, are claiming that they are the allodial title holders to land, rather than the *tendambas*. Most of the reported cases are from the Upper East region. As put by one informant (1990) "the gods are annoyed: if the *tendamba* had power there would have been war to settle this subtle usurption of their traditional and well established functions by chiefs". Nafu (1999) a former Regional Valuation Officer of the Upper East region, however, intimates that the chiefs are currently losing the battle while the *tendambas* are boldly re-asserting their rights over land and have dragged some chiefs to court and won.

¹⁹ *Tendamba* are the descendants of the pioneer settlers of their respective villages and towns and are representatives of the "earth god" and caretakers of the land.

Land and chieftaincy disputes have erupted in the Northern region too. In 1994/95, communal conflict amongst the major tribes in the Northern region including the Dagombas, Conjas and the Kokombas resulted in the displacement of people, and the massive destruction of life and property. In the midst of land abundance, it is ironic that people are still fighting over territorial control in the Northern region.

2.6 Changing Tenure in the Western Region

Otsuka et al (1998) sum up the current trends in South-western Ghana. Under increasing population pressure, bush fallowing becomes unsustainable since gradual decreases in the fallow period reduce soil fertility. Consequently, more labour-intensive and land-saving farming systems must be established.

Customary land tenure institutions have evolved towards individualised ownership and investment in tree planting and management. When virgin land was abundant, this was appropriated primarily by young males for production of food crops. Relatively strong land rights were granted in return for the substantial labour input required to clear forests. Traditionally, in the Akan matrilineal system, this type of land was either bequeathed to nephews or allocated to other male members of the extended family, in accordance with the decision of the family head. Wives and children were left with no rights to a man's property if he were to die intestate. Uncultivated fallow land, if not put into use, or under permanent tree plantations, would revert back to the family.

Recently, village land is increasingly being inherited directly by wives and children and even family land is often transferred to them with the consent of other family members. Such inter-vivos transfers are termed "gifts" in the study areas and individual rights to such land are firmly established. Land rights are most clearly individualised among migrants, who either have nuclear families or practice patrilineal inheritance in which a relatively small number of sons within a single family are qualified to inherit their father's land.

The process of individualisation among the Akan matrilineal communities has been strengthened by the passing of the Intestate Succession Law (PNDCL 111) 1985. According to Otsuka et.al (1998) instead of the stipulations of the law, however, the local people prefer a formula based on giving one-third of the property each to spouse, children and maternal family.

The evidence also indicates that increasing scarcity of land has led to the development of land transactions through markets. Migrants, who by customary law would be regarded as "strangers", have acquired land through purchase and share tenancy arrangements called *abunu* and *abusa*²⁰. The effort required in clearing virgin forests was reflected in sharing arrangements. Virgin forest is acknowledged as village land and, therefore, a common resource. It was only the chief, who had been entrusted with such land, who could give it to migrants on *abusa*. Individuals and families were restricted to allocating fallow land for share tenancies under the *abunu* arrangement, because they had already expended efforts in clearing forest from this land. In all these arrangements, tenants are requested to plant the whole area with cocoa trees, at which time the farm rather than output, is usually divided between the tenant and landowner. The tenant then assumes ownership over his share of land. Because cocoa tree planting is a long-term investment, lasting more than 70 years, there were no cases found where ownership of share-cropped land had already reverted back to the original owner. Rights appeared to remain in perpetuity, as borne out by the fact that the tenant turned owner had the right to sell his share of the cocoa farm. This suggests that land ownership rights have been strongly individualised so as to allow permanent alienation of land which formerly could be transferred only to other family members.

2.7 Changing Tenure in Brong Ahafo Region

"One of the assets of the Techiman district is its low population compared to its resources. The district has an area of 933 km² (360 square miles) but, despite much in-migration, there is no danger or sign of over-population or stresses on rural resources. Despite the rural problems there is no discernible migration into Techiman town from the immediate rural areas" (Kasanga and Avis, 1988: 79/80).

²⁰ Under *abunu*, the landowner and tenant share the harvest 50:50, while under *abusa* the shares are 1:2.

This observation remains largely true for the Brong Ahafo region generally, which portrays the most balanced spatial development amongst all district capitals in the country.

Apart from vested and state lands in the region, the trends in customary tenure largely reflect changes in access and land rights for migrants. A recent informal interview with a renowned researcher and a prince of a sub-stool in the Nkronza district (Nsiah Gyabaah, 2000) states the position for the region generally.

Prior to 1970, most migrant farmers in the region gained access to farmland virtually free of charge. It was common practice for landlords to accommodate migrants and even feed them until they were settled enough to take care of themselves. Migrants were also given land virtually free of charge and in return, migrants were supposed to provide labour services on the farms of their landlords once every week. The benefits from these arrangements were said to be mutual. Labour scarcity was minimised, and poor landlords could gain access to more labour to augment their farming efforts and production. On the other hand, landless migrants had access to farmland and even housing. These informal arrangements however largely disappeared in the mid 1970s, with the passing of the Aliens Compliance Order of 1970 in the Second Republic when all unregistered aliens were ordered to leave the country.

“The Ghanaian Order has brought into true perspective the extent to which the cocoa farmer has depended on the work of the aliens, with regard to annual and casual labourers on whose efforts most Ghanaian cocoa farmers depend for establishing new farms. The position looks very grim. The fact that many Ghanaian farm workers are not prepared to serve in these capacities is likely to lead to a further increase in the cost of establishing farms” (Adomako-Sarfo, 1974).

According to Nsiah Gyabaah, *abunu* and *abusa* tenancies were limited to cocoa and other cash crops prior to 1970. After the 1970 Aliens Compliance Order, food crops became generally commercialised in the region. Hence *abunu* and *abusa* tenancies were extended to food crops as well, especially with the advent of Operation Feed Yourself and Operation Feed the Nation in 1972. In this instance, however, the landlords collected their share of the produce from tenants for sale, whilst their own produce was kept for subsistence.

Currently, however, short term hiring, renting and leasing of land are now on the increase in the region. These arrangements are based largely on verbal, unwritten agreements, with family members acting as witnesses with the usual customary pouring of libations and related customary land granting procedures. The potential land conflicts emanating from unwritten arrangements between powerful landlords and unsuspecting migrants are said to be rising rapidly.

2.8 Changing Tenure in Ashanti Region

The best evidence for the changing patterns of land tenure is based on current research. The first research project has focused on rapid urbanisation, land markets and gender insecurity in the peri-urban areas of Ghana. Based on field surveys in 8 villages in peri-urban Kumasi, the study critically evaluates the impact of rapid urbanisation on men and women's access to land under matrilineal property rights systems. The total sample size of 480 respondents allowed for statistically valid conclusions to be drawn from the data in respect of the communities studied (Kasanga 1998). The second project is on-going research funded by the Department for International Development (DFID), UK, being executed by the Natural Resources Institute (NRI), UK together with local collaborators based at the University of Science and Technology (UST) Kumasi. The overall purpose is to achieve improvements in the productivity of natural resources in the Kumasi city-region. Extensive work has been done to understand the nature of peri-urban land markets as part of this exercise (Blake et al 1997).

Land markets, tenure changes and land conflicts

Subsistence agricultural land has acquired real value with rising land prices and high opportunity costs. Demand appears brisk and landholders (chiefs, queen mothers, family heads, individuals) have responded accordingly, sometimes in direct contravention of the statutory requirements and regulations. Physical development has overtaken the formal planning process, with the emergence of flourishing agricultural and housing land markets in almost all the study villages.

A standard building plot measuring 100 feet by 100 feet, which was worth only 10 Cedis in 1960 at Asaago, could fetch C1.5m Cedis on the open market in February 1997. Similarly, a standard building plot which sold for 200 Cedis at Akokoamong in 1970 was worth C2m Cedis in 1997. Standard building plots at Emena and Atasamanso varied between C3.5m to C10m per plot in 1997. The comparatively higher land values reflect more favourable locations in terms of accessibility, availability of infrastructural services, water, electricity, telephone, markets, etc. In 1997, monthly rental values for single rooms measuring 12 feet by 12 feet in the study villages varied between C1,000 and C5,000. Similarly, 2-yearly annual rental values for agricultural land measuring between 0.5 acre and 1 acre varied between C10,000 and C50,000.

The evidence suggests that land tenure is gradually moving away from family and share cropping arrangements to short term rental and hiring – thus introducing increased insecurity and reduced investment incentives.

Evidence from the research suggests that flourishing peri-urban land markets are demand driven, backed largely by monetary considerations. Complementary objectives of promoting the maintenance of stools, chiefs, queen-mothers and their elders and the need for cash to fight litigation in the courts in order to protect community lands from rivals induce many land holders to convert or sell off agricultural land for urban uses.

Atasamanso for instance, the most urbanised of the peri-urban villages, had 10 court cases pending in the courts during the survey; 9 of them were in the High Court whilst 1 was at the Traditional Council. Even rural Behenease had a 10-year litigation with another village pending in the High Court for determination of the real title holders to the land. Behenease's pending litigation has probably been a blessing since all land disposals have been temporarily frozen, pending the outcome of the case. The same is true for Asaago, which had a 7-year old land dispute between its chief and a rival. Hence there are currently no land disposals at Asaago. There was hardly any village not engaged in litigation either with a rival village or within the community, where local people are battling with the customary custodians of land for accountability in respect of land disposals. At Akokoamong, the queen-mother was facing the risk of de-stoolment. The stakes are high and the struggle to control and hold land fierce.

Changing tenure, land use and gender insecurity

The preparation and approval of a planning scheme mark the end of agricultural landholdings for women and men alike. From the community survey, it was only at two villages, Esereso and Emena, that public forums were held to brief community members on the impending conversion of their farm lands to housing and urban related uses. As and when planning schemes are prepared and approved, most lack the ability to keep control of their agricultural lands. The survey found that 58 per cent of single women, 68 per cent of married women, 61 per cent of divorcees and 64 per cent of widows had lost land. Similarly 56 per cent of single men, and 68 per cent of married men, had lost land.

Housing remains the predominant land use in the land conversion process. Between 50 and 73 per cent of all the respondents, female and male alike, affirmed that their lands had been converted to housing. Mixed land uses were, however, substantial. Residential and commercial land allocations are supposed to be backed by leases ranging from 50 to 99 years. Overall, the following conclusions may be drawn:

- i. Communal lands are fast changing to individual ownership.
- ii. Community lands are changing hands from indigenous people to migrants.
- iii. Customary freehold interests are being extinguished in favour of limited leasehold interests for migrants and indigenous folk alike.
- iv. Consequently, indigenous people are moving from absolute security of tenure, to insecurity of land rights for agriculture as well as housing.

From the evidence of compensation claims, it was clear that amongst female respondents, only 4 single women, 8 married women and 3 widows received some compensation. No divorcee was compensated for the loss of her agricultural land. The position for the men was not very different: only 2 single men and 5 married men received some compensation.

The displacement of indigenous people, without compensation has resulted in some disquiet, misunderstanding, and sometimes open hostility between displaced families on the one hand, and traditional land custodians and new developers on the other. At Atsamanso, a developer had to pay compensation to a displaced family prior to the commencement of building operations on a plot he had legitimately leased from the chief. The uncertain and precarious nature of the compensation claims do not augur well for cordial long term relationships between the new developers who are largely migrants and the displaced indigenous people.

The extent of landlessness and homelessness suggests that these are now grave problems in peri-urban neighbourhoods. Amongst women, 41 per cent of single, 52 per cent of married, 57 per cent of divorcees and 57 per cent of widows were landless – without any agricultural land of their own they could fall back on. This definition excludes all migrants who hitherto had no original birthright to agricultural land in the peri-urban villages. Amongst men, 40 per cent of those who were single, 48 per cent of the married ones and 4 out of the 6 divorced men were landless. Landlessness clearly appears more pronounced amongst women than men. Almost all the lands in the villages surveyed are covered by planning schemes (except for Behenase) and a few pockets of Esereso. This means that within the next 1 to 5 years, as and when urban development is finally completed, all people in the affected villages will become completely landless.

Homelessness, defined to include those who did not have a room of their own, and have to beg and sleep with others for long periods, was real amongst males and females alike: 16 per cent of single women, 15 per cent of married women and 14 per cent of widows reported homelessness. The homeless class amongst men varied from 16 per cent for married and 17 per cent for divorced and single men. Homelessness as defined above excludes those who are currently sleeping rough on other people's verandahs, kiosks, schools, pavements, etc. The community surveys suggest that 'rough sleepers' are on the increase in all the villages, except for Behenease. They are predominantly male and are said to number about 100 at Atsamanso, 60 to 90 at Okyerekrom and 40 to 60 at Emena.

The greatest housing problem of respondents was overcrowding. At Emena the figure was put at between 5 and 10 persons per room; at Akokoamong it was put at between 6 to 12 persons per room and at Okyerekrom between 6 and 12 people per room. What is more, the phenomenon of sleeping in shifts (i.e. sleeping for only specific hours and vacating the sleeping place for others) which used to be unique to Accra, the capital city, has caught up with peri-urban Kumasi. At Okyerekrom and Atsamanso the shift system is said to be rising and may affect 1% to 3% of the adult population, men and women alike.

The changing house styles from a multi-family compound and to the modern single storey 3-4 bedroom house with big garage are partly to blame for the current spate of homelessness. Asked whether they had the ability to acquire additional housing land, an overwhelming majority answered in the negative, the main constraint being lack of finance.

Evidence from the Kumasi Natural Resource Management Project is shown in the box overleaf.

2.9 Conclusions

The findings from the Greater Kumasi City Region are not unique. Evidence from the other 9 regional capitals confirms that the displacement of poor and marginalised families from their lands is a national disease. But experience from Gbawe, Greater Accra Region, suggests that it does not have to be so (Kasanga et. al 1996: 27-30). 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. See the box below for the main features of Gbawe's customary landholdings and management systems.

Principal Findings of the Kumasi Natural Resource Management Project

Natural resource allocation and control

- Land is the key natural resource in peri-urban areas. Under pressure from residential expansion, land sales are increasing and prices are rising.
- The chiefs, queen-mothers 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. Land disputes are common throughout peri-urban areas.

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. Apart from self-employment, other jobs around Kumasi are limited to casual labour.

Agricultural productivity

- As access to land becomes restricted, land tenure systems for agriculture are tending to move away from traditional family and sharecropping arrangements towards 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.

Gbawe – Customary land tenure at its best

Main features

- Clear distinction between stool and family land
- Land holdings have been registered under PNDCL 152, 1986
- The chief and elders collaborate with all public land agencies
- Gbawe employs its own lawyers and surveyors
- 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
- A strong sense of direction, law, order and community satisfaction.

3 THE INTERFACE BETWEEN STATUTORY AND CUSTOMARY LAND MANAGEMENT

From the analysis so far, it can be concluded that dual tenure and land management systems currently prevail in the country. The two systems run parallel to each other, with the customary system being the more robust in practice. However, as and when the state land machinery is applied and enforced, the customary system is weakened and extinguished for all practical purposes.

3.1 State and Indigenous Land Management in Northern Ghana

Beyond enabling the government to acquire land cheaply, the impact of the state land machinery on the customary private sector has been damaging (Kasanga, 1995). This is evidenced by:

- the lack of public awareness of the role of the Lands Commission and other agencies;
- the indiscriminate and haphazard siting of building projects in disregard of obsolete statutory planning schemes, some of which date back to the 1960s without any revision; underpinned by an outdated planning law – the Town and Country Planning Ordinance 1945 (Cap 84 as amended);
- Uncoordinated and indifferent attitude of sectoral agencies (including the Lands Commission, Department of Town and Country Planning, the District/Metropolitan assemblies, Utility Services, etc.) which has resulted in poor basic services within residential neighbourhoods;
- acute environmental, sanitation and waste management problems leading to slums;
- severe encroachment on public lands including the Wa air strip, and the “sterilisation” of buildable land through incomplete compulsory acquisition procedures;
- administrative lapses and corruption, which inflate documentation costs and potential investment outlays.

Informal discussions with Mr. Alhassan (2000) the Regional Lands Officer of the Upper West region suggest that only 10 percent of all land acquirers in the North ever approach the Lands Commission for formal documentation. Even a substantial number of those who initially approach the officials for leases, never complete the lease documentation processes. According to the Regional Lands Officer, no applicant has ever approached his office for an agricultural lease. Such arrangements are carried out entirely within the customary tenure systems and traditional land administration practices which reign supreme in the North.

3.2 The Effect of Vesting Orders under the President

In theory when customary lands are vested, the beneficial interests rest with the community whilst the legal estate is transferred to the President. In practice, both the beneficial interest and the legal estate are transferred to the President, who then passes the management functions to delegated authorities, including the Lands Commission and its Secretariats. The Ashanti Stool Lands Act 1958 (i.e. the Kumasi Town Lands or Part I Lands) and the Akim Abuakwa (Stool Revenue) Act No.78 of 1958 provide classic examples. In such instances, the customary landholders are completely deprived of their legitimate land management functions at the local level.

3.3 Deeds Registration in Practice

Table 1 denotes title deeds registered at the Lands Commission in the Ashanti Region between 1988 and 1998.

Table 1: Instruments Registered in the Ashanti Region from 1988 – 1998

Year	Public	%	Stool	%	Total	%
1988	283	27	755	73	1038	100
1989	230	27	620	73	850	100
1990	225	44	435	56	760	100
1991	195	25	585	75	780	100
1992	269	27	712	73	981	100
1993	248	30	664	70	948	100
1994	292	31	659	69	951	100
1995	352	33	728	67	1080	100
1996	260	30	677	70	967	100
1997	277	28	713	72	990	100
1998	272	32	567	68	839	100

Source: Regional Lands Commission, Kumasi, Ashanti Region, November 1999

In comparison with the rapid urban sprawl and residential developments (see section 2.8), the number of title deeds registered is quite low. The numerous constraints to registration notwithstanding, this suggests that almost all transactions remain unregistered.

Though the instruments registered over the years are in favour of stool lands as against public lands by a factor of 2:1, no copies of the registered documents are normally returned to the stools. The practice is to send one copy to the applicant (i.e. lessee), retain one copy at the Regional Lands Commission and send the last copy to the central records in the Accra office of the Lands Commission. In effect, the stools are not given copies of registered leases for their property records. This makes it difficult, if not impossible for them to secure their reversional leases upon maturity. In theory, such stools could become landless since they do not have any documentation to be able to initiate action on expired leases.

3.4 Modern Customary Tenancies and Change

Modern customary land law tenancies vary widely from seasonal hiring and renting of land, to the sharing of farm produce and even farmland itself (Kludze, 1973; Adinkra, 1974; Woodman, 1996). In the case of the partition of farmland, it affords hitherto landless migrants a means to gain access to land by becoming landowners themselves. Some concern has, however, been expressed about the fairness of some of these tenancy arrangements. These have focused principally on issues of security of tenure, the amount of rent payable and uncertainty about the terms of the contract. These concerns have been echoed in a recent report by a Committee on tenant/settler farmers chaired by the administrator of stool lands.

It recommended that "customary tenurial systems like "Abusa" and "Abunu" should be phased out and the same replaced with a more progressive system capable of protecting the interest of tenant/settler farmers and landowners. This can be achieved by encouraging the documentation of the relationship between landlords and tenant/settler farmers and also by cash tenancy system based on acreage" (Fiadzibey et al, 1999:1).

This has been tried before in the 1960s under the Rent Restriction Acts and the regulations made under them, which subsequently failed and were abandoned. It is not clear that the Committee's proposal is superior to indigenous practice. The indigenous system has the advantage of flexibility and in some cases results in ownership of land by people who may not have the means to buy land directly. Even the much despised sharecropping arrangements have benefits in an essentially rain fed system of agriculture where the risk of crop failure is real. This is an area where legal rent restriction, and the fixing of a money rent in a period of inflation, should be avoided since it is unlikely to be effective (Kotey, 1990).

3.5 Land Tenure and Management in Greater Accra

Accra represents a classic example where the interface between the private, traditional land sector and state land management institutions has failed to deliver secure land holdings at reasonable speed and price for the many requirements of a capital city – residential, industrial, commercial and environmental.

Land in many areas of Accra – Ga, Mashi, Osu, La, Teshie, Nungua and Tema - was held by communities and managed on their behalf by authorised representatives, such as the chief and his elders, or a head of family and the principal members. The system worked perfectly well in traditional times. Colonialism and the dynamics that it unleashed and the designation of Accra as the capital of the then Gold Coast, however, put the indigenous system under strain. Rapid urbanisation, population pressure and the governmental, shelter, infrastructural, industrial and commercial needs of a fast growing city have stretched the land delivery system in Accra to breaking point. In order to satisfy the needs of the state for infrastructure and services, about 40% of land in Greater Accra Metropolitan Area has been compulsorily acquired ostensibly for “public purposes” or in the “public interest”. In reality the compulsory acquisition power has been abused or misapplied and is now a source of considerable friction between the state and the indigenous land holding authorities (Kotey, 1998). Land for many non-state purposes continues to be accessed through the private traditional sector. But the system is malfunctioning and has virtually collapsed under the sheer pressure that the demand for land in Accra has imposed.

Urbanisation and Population Pressure

The twin pressures of urbanisation and a fast growing population have wreaked havoc on land relations and land management in Accra. The population of Accra has risen from 517,415 in 1970 to 956,157 in 1984. It is now estimated at between 2,500,000 and 4,000,000 (2000). This has imposed a heavy burden on the land delivery system, bringing land disputes, multiple sales, uncertainty in land transactions, insecurity in land titles and a sprawling unplanned city.

Ineffectiveness of the Indigenous Management Institutions

Demand pressures and the superimposition of state land management institutions on the traditional sector have stunted the development of traditional institutions and disabled them from effectively managing their lands. This has meant that traditional institutions have not been able to evolve to cope with the speed, volume, diversity and complexity of land management issues in a modern Accra.

Dilution of the Fiduciary Principle: From Trusteeship to Private Interest

Land in all parts of the Greater Accra Metropolitan Area (GAMA) is ultimately held under customary authority. Even land that has been compulsorily acquired remains vested in a traditional authority. These lands are supposed to be managed on behalf of and for the benefit of members of the group. But a combination of forces has led to rapid change. First of these dynamics was colonialism and the social and economic forces that it unleashed. The second has been the move from subsistence to cash crop agriculture. Third is the monetisation of the economy. Fourth is the breakdown of indigenous social structures and the loss of traditional religion. These coupled with more recent factors (like urbanisation, population increase, formal education, Christianity and a consequent waning of the belief in the ancestors to influence life on earth, decentralised political systems and interference with the indigenous land management institutions) have resulted in the dilution of the fiduciary position of land management authorities. In many places in the GAMA area, indigenous land management institutions now deal with land as if it were their personal property, with little or no regard for the members of their broader group, who are the real owners.

Conclusions

The land management system is not working in Accra, and needs to be streamlined. Traditional institutions have not been encouraged to evolve and develop new structures to meet the demands and challenges that confront them. The state superstructure – Lands Commission, Land Valuation Board and Office of the Administrator of

Stool Lands - have malfunctioned. The challenge is to find a means to develop and equip the traditional management institutions with staff, equipment and new procedures to ensure accountability. State land management should be rolled back and limited to registration of interests in land.

3.6 State Land Tenure and Management: Winners and Losers

Injustice in the administration of public lands

With the exception of one isolated case, where available public lands in the Accra Metropolis were advertised in the newspapers for competitive bidding in 1999, public and vested lands are not usually put on the open market for disposal purposes. In theory, access to public land is open to all Ghanaians, on a 'first come first served' basis. To qualify for a plot, however, a person must have a favourable banker's reference indicating that the applicant is capable of carrying out the proposed development, according to the specifications of the Commission.

To acquire public land, a prospective developer applies to the Secretary of the Lands Commission (regional or national) for a piece of land. The applicant will be required to complete a form (Form 5), which is normally supplied by the Commission. The completed form is submitted to the Executive Secretary. If a plot is available, the Executive Secretary grants one to the applicant and forwards the application to the Lands Commission for approval, identifying the plot that has been allocated, and how much the grantee is expected to pay towards infrastructural development. On the payment of the development charge, five copies of the site plan are filed by the Commission and an Offer Letter is given to the grantee stating the terms upon which the Commission is offering the plot. Form A attached to the offer letter must be detached and forwarded to the Commission indicating whether the grantee accepts the offer of the plot, within a fortnight. Where the grantee accepts the offer, a right of entry is given to him/her to enter the land and, at this stage, the grantee can enter the land to begin his building operations, which should normally commence within 12 months of the grant and be completed within 36 months. A leasehold agreement is prepared and the grantee executes his part. It is then forwarded to the Chairman of the Lands Commission for execution on behalf of the Government. A seal of the Commission is embossed on the document at this stage. Finally, the lessee pays a processing fee and administrative charge, which include the cost of surveying and demarcating the plot. The lease document is then released to him/her to begin the processes of Stamping and Registration. The process of Government land lease preparation can take 14 stages, and from 6 months to 10 years or more to complete.

Research studies suggest that the beneficiaries of land allocations by the Lands Commission are mainly senior civil servants, politicians, top army and police officers, contractors, business executives and the land administrators. It is precisely the above categories of people, a privileged minority, who have the means, contacts and power to acquire land on the open market.

"Performance in management of public land is constrained by outdated statutory regulations (State Lands Regulations 1962 LI 230) ... The fact of the above has led to inequitable distribution of public land to the disadvantage of the low/middle income groups" (Brobbey 1992: 30).

Substantial lands countrywide have indeed been vested in the Government and managed by the Lands Commission. In the case of vested lands, no lump sum compensation is paid under the law; instead, portions of annual income from imputed rents are supposed to go to stools. From the example of peri-urban Kumasi, out of 12 cases investigated, no compensation or annual rental payments have ever been made to the stools or communities affected. The gross injustice in the administration of vested lands is a national disease. Every region has its own story to tell.

Compulsory acquisition and compensation bottlenecks

Kotey (1996: 254) observes:

"The pre-1993 law made little or no provision for any meaningful consultation with the owner(s) of the land or the persons whose interests will be affected by the acquisition. They are also not involved in the process of

site selection even after the decision to compulsorily acquire has been taken. The site selection advisory committees established by the Lands Commission are solely made up of technocrats representing organisations like water, electricity, town and country planning, Survey Department, Post and Telecommunications, etc. Neither the community in which the land is situated nor the wider public is in any way consulted or offered an opportunity to express a position on the necessity or desirability of a proposed acquisition or on site selection. Indeed, usually the first time the owner of a land, or a person who has an interest in the land, becomes aware that his land has been compulsorily acquired is when he becomes aware of the publication of an executive instrument or when he sees some workmen enter onto the land pursuant to an executive instrument”.

On one tragic chapter in the history of land acquisition in the country, Kotey (1996: 249) concludes:

“by this acquisition the indigenous people of Tema were virtually rendered landless, rootless and without an identity: a glaring and hideous conclusion is that far too much land was taken. The stool indicated its willingness to accept compulsory acquisition of the 850 acres for the harbour and other installations but prayed for the rest of the land to be held by government in trust for the stool. This was rejected by government. To this day substantial portions of the acquired land lie unused.”

The Tema example is not unique, the arbitrary resort to the powers of compulsory acquisition by the state via the Lands Commission is threatening the very existence of some communities.

By Executive Instrument (EI) 82, 1978, on the strength of the State Lands Act, 1962 (Act 125), the government compulsorily acquired most of the Ofankor lands (suburb of Accra) in the public interest. Based on estimates of the Chief and elders, about 85 per cent of all Ofankor lands have been expropriated. Adding insult to injury, local leaders came to know of the expropriation only when they saw prisoners and others cutting boundary lines in the late 1980s.

In 1990, when the affected families first contacted the Lands Commission to state their case, the layout for “Ofankor sector one residential area” had already been completed and all the land sold to outsiders. Compensation assessed to be ₵17,200,000 in 1980 and not less than ₵2 billion as of February 1994 has yet to be paid. The ultimate effect of the Executive Instrument on the Ofankor community has been summarised by Kasanga et al (1996: 32 & 33):

- Shortage of lands for all land uses, including residential, agricultural, and commercial.
- Population pressure on limited lands and landlessness amongst indigenes.
- Out-migration by young men and women to central Accra and the suburbs
- Changing occupations with many villagers becoming labourers, artisans, and clerical officers. A few are in business and general trading.
- Sand winning along with stone/gravel quarrying (with disastrous environmental consequences) now form a major source of employment for men and women alike.

Evidence from the Land Valuation Board indicates that outstanding compensation claims owed by Government nationwide as at December 1999 was estimated at 800,000,000,000 cedis (US\$110m at current rates of exchange). Some of the claims date back to the 1970’s. However under current law the awards attract no interest, however distant into the future the claims might be paid. The socio-cultural and economic insecurity unleashed by the public land administration machinery are real, and warrant urgent attention.

According to the 1998 annual report of the Lands Commission:

“The Commission faced several law suits in the courts during the year. In the Greater Accra region alone there were a tantalising 77 suits that were instituted against the Commission and another 52 subpoenas were served on the Commission. Suits were also instituted against the Commission in the Ashanti and Eastern Regions. The main contention in the suits centered around land compulsorily acquired by the government but for which no compensation had been paid. The allodial owners were therefore demanding the payment of compensation or a return of their lands to them. There is also a rising agitation from traditional rulers, family heads and

individuals for the release of lands acquired by the state and for the de-vesting of some of the vested lands. Notable ones include a petition by the Obomeng and New Juaben stools for the de-vesting of Nkwakaw and Koforidua lands respectively”.

Adam (2000: 85) stated the position as follows:

“Currently the chiefs are major driving forces behind changes in land use; government authorities are relatively passive and have no clear role in promoting sustainable land use. The chiefs need to be involved in long-term decisions over land use. The State’s position with regard to land sales is anomalous. By not recognising the realities of land sales, and having a land rent system that allocates 55% of revenues to the Districts, it appears that the state is trying to wrest the management of land away from the traditional owners. This is not working in practice and serves only to exacerbate the situation. It would be preferable for the State to recognise the legitimate rights of the traditional landowners to sell land and to work with them in planning more sustainable land use.”

3.7 Land Management: Some Achievements and Constraints

The 1998 annual report of the Lands Commission gives an indication of its performance in services delivered in respect of state and vested lands, stool and private lands and revenue mobilisation.

“Highlights of the indicators are the high number of stool land documents granted concurrence, search reports provided and also the high number of development applications processed. However, disturbing is the equally high number of lessees of state lands which are in rent arrears, low number of rent revisions carried out and the virtual absence of re-entries. The reason lies partly in the lack of adequate qualified staff and partly due to inadequate logistics . . . the Commission requires 80 professionals, 194 sub-professionals and 200 support staff to effectively discharge its duties” (Lands Commission, 1998).

The Lands Commission Act, 1994 (Act 483) denotes three main sources of funding for the Lands Commission: Government subventions, charges for services rendered and funds received from any source approved by the Ministry of Finance. However, the bulk of the income generated from public land is paid into the consolidated fund, controlled by the Government. The only direct sources of income to the Lands Commission are as below.

Table 2: Sources of Income to the Lands Commission

Service	Fee
1. On presentation for registration for each instrument	¢10,000
2. For registration of instrument at Deeds Registry	¢10,000
3. For every official search in respect of residential plot (one acre or part of an acre)	¢10,000
4. For every official search in respect of residential plot (every additional acre of any part of an additional acre)	¢2,000
5. For every official search in respect of industrial or commercial plot (one acre or part of an acre)	¢20,000
6. For every official search in respect of industrial or commercial plot (an additional acre or any part of an additional acre)	¢5,000
7. For every official search in respect of agricultural purposes (10 acres or more)	¢10,000
8. Provision of a certified copy of an extract from any deposited or registered instrument at Deeds Registry	¢12,000

Note: The current exchange rate (January 2001) values 10,000 cedis at £1

Source:

1) Land Registry (Amendment) Regulation 1999, L.I. 1656

2) Lands (Miscellaneous) Fees Instrument, 1999, L.I. 1657

The low service charges puts pressure on the already weak revenue base of the Lands Commission, which is reflected in the salaries of professionals at the Lands Commission. These salaries are much lower than for comparable jobs in other branches of the public service and much less than in the private sector. The meagre salaries and generally poor conditions of service have had an adverse effect on morale and job satisfaction and engendered corruption.

“The performance record of the Lands Commission has been less satisfactory, bordering on a total failure to respond adequately to current demands with no prospect in sight that it can meet the demands of the future” (Brobbly, 1997: 80).

3.8 Indigenous Land Management

The indigenous land tenure and management system continues to operate and provide land for many people and purposes. It has wider coverage than the state system and dominates particularly in rural areas and for agricultural purposes.

The Asantehene (King of the Asante nation) Osei Tutu II in 1999 authorised all land disputes in the Kumasi Traditional Council area to be withdrawn from the regular courts for traditional court settlement. Within a month this order was obeyed and several protracted land disputes, which had been pending for over ten years, were all settled. The same is true for some outstanding chieftaincy disputes. Confidence in the traditional court appears to have been restored under Otumfuo Osei Tutu II.

In the urban and peri-urban areas, however, the indigenous system has come under considerable strain. Though it exists side by side with the state sector and is affected by it, the indigenous system is operating less satisfactorily than it does in the rural areas. We have listed the pressures that the indigenous system operates under in urban and peri-urban areas. And yet it is the only viable option. Many people in urban and peri-urban areas still operate outside the state system, because it is expensive, tortuous, and corrupt. Greater state involvement in land management would also confront legitimacy, ownership and accountability obstacles. However, the indigenous system cannot sustain itself in urban and peri-urban areas without drastic overhaul. Such revitalisation must address key issues of efficiency and equity, transparency and accountability.

4 CONCLUSIONS, CHALLENGES AND WAYS FORWARD

4.1 Conclusions

- The opportunities to settle Ghana's land question, promote efficient land markets and secure invaluable economic and financial returns from state/public and vested lands have all, so far, been missed.
- All public land management agencies are currently too weak in personnel, funding, equipment, vehicles and other support services to execute their national and regional functions effectively and efficiently.
- Without independent property services agencies, devoid of political and ministerial control, land management will continue to be dominated by the Government of the day.
- There are inequities in state land regulation and its administration. These must be removed or amended to allow for progressive land management based on standard professionalism, financial, economic and market considerations.
- The benefits of the public land machinery have gone to benefit a small minority class. Resources are being transferred, in legal fashion, from the poor to the rich, the powerful, the influential, the well connected and the educated at the expense of the poor majority.
- Such a retrogressive land administration regime is not sustainable. In the long run, it is an invitation to instability and revolution if the disadvantaged majority decide to challenge the system.
- Indigenous land tenure and management systems have a place in the modernisation and development process.
- Though progressive, the customary tenurial systems are currently proving inadequate in dealing with the challenges of the time. Some chiefs and indigenous custodians of land are breaking all the basic tenets underlying customary landholding. Families and individuals are still supposed to be absolutely secure in their landholdings, both for agriculture and housing. The current urban and peri-urban land market is a rat race, in which most indigenous families, particularly the most vulnerable groups are generally excluded.
- The uncertain and precarious nature of compensation claims do not augur well for long term relationships between new land developers, who are largely migrants, and displaced indigenous people.
- The current rates of rapid urbanisation and the indiscriminate conversion of agricultural lands are a recipe for disaster, and will not promote sustainable development at village, district, regional or national levels.

4.2 Challenges

At the dawn of a new millennium, Ghana still follows a pluralistic land tenure system. Policy has allowed the indigenous tenure and management systems to evolve and to respond to economic, social and political dynamics. The indigenous system has also been modified by the courts and moulded by legislation establishing a huge state bureaucracy. But legislative and state management measures have been adopted piecemeal, designed to deal with specific problems as and when they become impossible to ignore. Comprehensive reform of land tenure and management is urgent but has not been attempted.

The indigenous system has not served the country too badly. It has shown remarkable powers of responsiveness to change and new demands. The development of customary freehold and tenancies bear ample proof to its capacity for change. The remarkable growth of cocoa production in the country took place under this system. Ghana was the world's largest producer of cocoa for many decades and is now only second to its neighbour Côte d'Ivoire. Food production has also risen a lot. The growth of major urban areas like Accra, Kumasi, Tema and Tamale demonstrate the capacity of the system to deliver land for the "modern sector" of the country. But, the

system is under severe strain. It would be simplistic to attribute the problems of the agricultural sector solely to land tenure and management defects. Indeed, there may be no direct correlation between agricultural productivity and land tenure.²¹ It has been suggested that other factors like low education, poor health, weak infrastructure, unavailability of credit, inadequate farming techniques and inadequate extension facilities may be more important than tenure in accounting for low productivity.²² It is however, clear that social and political status is still a dominant factor in the indigenous tenure system and that this constrains the most efficient and productive use of land. In the urban areas, the delivery of land for residential, industrial and commercial purposes has been slow and inefficient. It is characterised by high prices, multiple sales, title disputes and endless litigation.

Significant problems do exist. One such problem is access to land. While there may not be a shortage or scarcity of land, it is difficult for migrants to acquire land for farming purposes in some localities. In urban areas, it is difficult to acquire land for building. In both cases, the purchase price or rent demanded is normally beyond the reach of a sizeable section of the population. A related problem concerns the terms on which migrant farmers hold land, with the operation of customary law tenancies sometimes resulting in unjust exploitation of tenant farmers.

A third problem is that of insecurity regarding land titles and transactions. This is a many-sided problem. It has persisted because of unclear boundaries, oral transactions, multiple interests in the same piece of land, and difficulty in identifying the right authority to deal with disputes.

A fourth challenge relates to accountability, probity and transparency of customary managers of land in a rapidly changing environment. The result of economic and social change has been a breakdown in the "trusteeship principle". Many customary law managers no longer act as if they are holding a fiduciary position and, in fact, behave as if they own community land on a personal basis. Many of the values, processes and institutions that promoted good practice have lost their vitality, prompting the urgent need for new approaches.

4.3 Ways Forward

Endorsing pluralism

The Ghanaian land tenure and management system is pluralistic, based in part on indigenous law, which has experienced substantial changes in response to economic, social and political developments. Customary law has also been modified and regulated by statute, with common law and equitable principles grafted onto it. At various times in her history there have been voices arguing for a more radical transformation of the system, generally in a socialist direction. They have advocated outright nationalisation of all land or, short of that, administration and management of all land by the state. However, the power and influence of chiefs and traditional authorities has ensured that, the pluralistic system has been maintained. The 1999 National Land Policy further confirms this approach.

This pluralistic path is the most appropriate. Completely overturning the indigenous system is impractical and unworkable, and would create new problems. Land tenure, management and policy is a complex business, since it is both a reflection and determinant of economic, social and political relations in society. Land plays many different roles in a society, whether economic, social, political, religious or cultural, one or more dimensions may be dominant at any moment. In Ghana today, these different aspects and dimensions of land are all still very important. Land is important for social, ethnic and political reasons and is also a valuable economic resource.

It is doubtful whether a system that enhances the role of the state would be more effective in assuring land is used to best advantage. The state is still quite weak, and corruption remains a major problem. Past experience with state management of land offer no basis for thinking that it would do a better job than the present mixed system.

²¹ See Migot-Adholla, S.E. 1990. G. Benneh et.al., *Land Use Rights and Agricultural Productivity of Ghanaian Farmers*, Report of a Research Project. Washington, D.C., The World Bank.

²² Ibid.

This is not to deny the legitimate interests of the state in the land question. Essential national interests include promoting efficiency and equity in the allocation and use of an increasingly scarce resource. Other legitimate interests are the promotion of security in land transactions, safeguarding the national patrimony against environmental degradation and promoting national development by addressing differences in resource endowment between different parts of the country. In these circumstances pluralism holds greatest promise.

Ensuring access to land

It was noted earlier that under the indigenous tenure system, access to land is based, primarily, on membership of a landholding community. It has also become possible to gain access through purchase, lease or tenancy under customary arrangements, although gaining access to land can sometimes be impeded by title or boundary disputes.

Improving access to land would be the litmus test of the land tenure system. Some of the measures that we have recommended to promote security, enhance the transparency and accountability of indigenous management institutions and make the land delivery system more effective would, in time, also improve access. A streamlined private market and well-targeted state intervention still offer the best prospects. In the urban sector, a less hazardous private market should be able to supply land for commercial and industrial purposes, but land for housing is likely to be more problematic. Growth and a rapidly urbanising population pose a big problem. While the private market may provide land for the upper end of the housing sector, poorer people may be unable to access land at an affordable price, so that some measure of state intervention may be desirable.

So far as agriculture is concerned, the current system has its strengths. It is ideal for ensuring that every household has a small parcel of land, but the inexorable move towards more intensive agriculture on bigger holdings to feed the urban population is exposing inadequacies in the status-bound system. Here too, an efficient, secure, largely private system, but with the state having power to intervene when necessary, would seem to be the best way forward. Such state intervention should be through the State Lands Act (Act 125) 1962, subject to the payment of compensation.

Finally, and more generally, it is recommended that powers of compulsory acquisition should be used sparingly and deployed only when land is required for a public purpose – schools, health facilities, infrastructure, defence, government offices and planning. Where land is required in the “public interest” – residences, industry, agriculture and commerce, the acquirers should be directed towards the private/customary land market. This would ensure accountability and a fair price to the landholders.

Providing certainty and security

A system of deeds registration has operated in Ghana for over a century, but it has failed to assure certainty and security. A number of factors account for this, which include the non-registration of oral customary law transactions and the fact that registrars do not have the power to investigate and reject instruments of doubtful validity. The effectiveness of the system has also been affected by bad maps and site plans, personnel problems and corruption.

The present policy is to speed up title registration, but the system that has been operating since 1986 suffers from substantial defects, which must be rectified if the scheme is to enhance certainty and security. Registration has been too sporadic, unsystematic and uncoordinated. The process should start with the adjudication, determination and registration of all allodial interests in a district, with lesser interests registered only after this. The scheme must also register and regularly update a list of members of the “management committees” of community-held lands. Measures should be taken to ensure that applications for registration, particularly of unoccupied land, are well publicised and brought to the attention of all interested persons. This should include posting a notice on the land in question, and notifying traditional authorities near the land (village chiefs, family heads) and local government (assemblymen and unit committees). The staffing and resource situation of the Land Registry also needs to be improved.

Implementing the National Land Policy

Viewed as the cornerstone of national development policy, the recently published National Land Policy has a vital role to play in promoting democracy, decentralisation and a market economy. Apart from targeting the poor, the policy ought to be based on the guiding principles of social and natural justice and the rule of law, equity and security for all stakeholders, value for money and making best use of available land, within the constraints of environmental, financial and human capital resources.

Prior to the 1999 National Land Policy, Ghana had never had a formal land policy. Land management has been an ad hoc and reactive process. The absence of an agreed policy had, in the opinion of the Ministry of Lands and Forestry, made it difficult to justify decisions on competing policy choices, made long-term planning and coordination difficult, engendered departmental and sectoral jealousies, slowed down the land delivery process and hampered development.²³ The Policy is not law and has, therefore, not been considered by parliament. The processes for the preparation and adoption of the Policy involved many stakeholders, but not the political opposition.²⁴ It is therefore not clear whether and to what extent it is a "national" policy. In any event, not being law, the Policy has, as yet, no binding legal effect.

The policy endorses the pluralistic land tenure system that has evolved since colonial times. In a case such as Ghana, where the traditional and modern, urban and rural, national and ethnic group, and the economic and social dimensions of land are still equally juxtaposed, a policy that recognises these different dimensions and dynamics of the land question is the best possible way forward.²⁵ However, this should not preclude substantive reform.

Aims and Objectives of the National Land Policy

The aim of the Policy is "the judicious use of the nation's land and all its natural resources by all sections of the Ghanaian society in support of various socio-economic activities undertaken in accordance with sustainable resource management and in maintaining viable ecosystems".

The objectives of the Policy include:

- Facilitation of equitable access to and security of tenure of land on the basis of registered interests.
- Protection of title-holders and their descendants from becoming landless or tenants on their own land.
- Payment of prompt, fair and adequate compensation for land compulsorily acquired by government.²⁶
- Instilling order and discipline into the land market, and eliminating or minimising the sources of protracted land boundary disputes, conflicts and litigation.²⁷

"Guiding Principles" include:

- Land is a common national or communal property resource held in trust for the people and which must be used in the long-term interest of the people of Ghana.
- Promoting optimum usage of land, including human settlements, industry, commerce, agriculture, forestry, mining and the environment.
- Government must facilitate equitable and reasonable access to land.
- There must be security of tenure.

There is little to disagree with, since the policy is no more than pious declarations of broad principles, guidelines and objectives. But a cursory acquaintance with the history of Ghana shows that while policy is one thing, implementation can be quite another. The Policy is, perhaps understandably, short on the really important and

²³ See Kotey, N.A. et al. 1998. *Falling Into Place. Policy that Works for Forests and People Series No.4* International Institute For Environment and Development, London, P.58.

²⁴ For a description of the process of development and adoption of the policy, see Kotey, N.A. et al. 1998. *Falling Into Place. Policy That Works for Forests and People Series No.4.* International Institute for Environment and Development, London, pp.58-59.

²⁵ See McAuslan, p. 1988. "Land Policy; A Framework for Analysis and Action", (1988) 31 J.A.L. 185.

²⁶ The policy actually avoids the use of the constitutional formula "prompt, fair and adequate". Throughout, the document states that payment must be made "within a reasonable time". To the extent that this is intended to depart or differ from the constitutional position, it is unconstitutional and of no effect.

²⁷ Par. 3.3.

crucial issues: when, how, what, where, and who. In the final analysis, therefore, the National Land Policy will be judged not by its content, but by the manner and timing of its implementation. The crucial phase will be the development of Action Plans and Implementation Strategies with targets, activities, time frames, outputs, funding, and implementation.

The primacy of indigenous land management institutions

Indigenous land management institutions will have to be recognised and enabled to play their legitimate role in land administration without legal or political hindrance. This may require legislative, and even constitutional, amendments. In spite of their weaknesses, customary tenure systems and institutions are more able to ensure accountability to local communities and villagers than the state land management machinery. Community land secretariats backed by their own hired professionals are better placed to promote positive land management and community participation. Income from community lands should be retained by stools, community land secretariats and families and only be taxed by Government in accordance with the tax laws. The contention here is that there are more effective checks and balances at community level towards ensuring that the right thing is done, than is currently the case with state institutions.

Transparency and accountability of indigenous management institutions

The allodial title to land is supposed to be held by indigenous communities. However, in many places, particularly in urban and peri-urban areas, this has become no more than a romanticised fiction bereft of any practical significance. Indigenous land management institutions have become less and less accountable to their communities, and in many places, management has ceased to be for the benefit or in the interest of communities. The Head of Family Accountability Law was one attempt at making indigenous land management institutions more responsible but it has limited scope.

If a pluralistic system of tenure and management is to be retained, more robust processes must be fashioned to facilitate efficiency, transparency and accountability of indigenous land managers. There are a number of ideas in the National Land Policy, including the development of secretariats and improved record keeping by traditional authorities which, if implemented, would enhance the efficiency of indigenous management institutions. More importantly, a bottom-up approach should be adopted. Steps should be taken to develop, adapt and strengthen local institutions to ensure that they can monitor and hold indigenous land managers to account. In many communities, town or village development, or land allocation committees exist that can be revitalised and their membership broadened. Systematic steps should be taken to train, and equip them to work hand in hand with indigenous management institutions to facilitate transparency and ensure that community-held land is managed in the interest of the community. Ultimately, this is a matter of political economy and is inextricably linked with the democratisation of all facets of the country's life. But, if the pluralistic land tenure and management system is to retain its legitimacy and continue to have the support of the majority of Ghana's people, management for and on behalf of communities is a critical issue to be solved.

Restructuring the Lands Commission

The Lands Commission should be revamped into an independent Lands Commission as envisaged under the 1979 Constitution.

"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" Article 189 (7).

It should also be restructured and refocused. Structurally, all the state land management institutions - the present Lands Commission and its Secretariat, the Land Valuation Board, the Office of the Administrator of Stool Land and the Land Title Registry - should be brought together under a reconstituted Lands Commission. These would then form departments within the reconstituted Lands Commission. This should facilitate policy cohesion and would reduce the duplication, departmental jealousies and divisions that have been a hallmark of this sector. It should also enhance the speed and delivery of services.

Such a rationalisation process has a precedent in the forestry sector. There, after years of division between different government structures and agencies, a reconstituted Forestry Commission was established in 1999. This brought together the previously autonomous Forestry Department, Wildlife Department, Forest Products Inspection Bureau and Timber Export Development Board. Although it is too early to come to definitive conclusions, the early indications are that this is a step in the right direction.

Refocusing the reconstituted Lands Commission as a property services agency

A reconstituted Lands Commission should directly manage public land and facilitate private and traditional land management by providing stamping, plotting and registration services. The Lands Commission should withdraw from direct management of private and stool lands, however, as well as involvement in collection and disbursement of stool land revenue.

All services rendered to local authorities, statutory corporations, private firms, traditional authorities, and individuals should attract market-based professional fees and charges. Any income generated ought to be paid into a Land Development Fund controlled by the various service agencies rather than the general, centralised government chest. The funds so generated could be used to improve staff conditions, pay outstanding compensation claims, and invest in infrastructure, office and equipment, vehicles, training and environmental protection.

Repeal unjust and obsolete state land regulations

The Government's objectives in land administration and the state property portfolio both need clear-sighted and radical review. The state land regulations have outlived their usefulness and need urgent amendment, as has The Administration of Lands Act 1962 (Act 123). All disposals of public land should be done on the open market.

A new regime of compulsory acquisition

It is also essential that the state adheres to the provisions of the 1992 Constitution in relation to the compulsory acquisition of land. All litigation-free vested lands as well as surplus compulsorily acquired lands (i.e. state lands) should be returned to their rightful owners – stools, families, clans and individuals. This would help restore confidence in government and the Lands Commission.

The 1992 Constitution and Compulsory Acquisition of Land

- The right to private property is guaranteed.
- Land shall not be compulsorily acquired by the state unless it is in the interest of defence, public safety, public order, public health or town and country planning.
- Land shall not be compulsorily acquired by the state unless the necessity for the acquisition is clearly stated and provides reasonable justification for any hardship caused to an interest holder.
- Land shall only be compulsorily acquired in return for the payment of prompt, adequate and fair compensation.
- Land acquired in the public interest, or for a public purpose, shall only be used in the public interest or for the purpose for which it was acquired.
- Where such land is not used in the public interest, or for the purpose for which it was acquired, the owner immediately before the acquisition shall have a right of pre-emption, to take the land back, upon refunding any compensation he may have received.
- Compulsory acquisition shall only take place under law that provides for access to the High Court, where the rights or interests affected and compensation payable shall be determined.
- The state shall resettle all persons displaced by an act of compulsory acquisition on suitable, alternative land with due regard for their economic well-being and their social and cultural values.

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Land Management in Ghana: Building on Tradition and Modernity examines the different institutions by which access to land and other resources are regulated and, in particular, the interaction and areas of overlap between customary and state land management systems. The inefficiencies, inequities and weaknesses of the government land management machinery are exposed, while customary systems are shown to be resilient and responsive to change. However, Kasanga and Kotey show that the mechanisms for customary management are under increasing pressure, particularly in areas of high population growth and rapid urbanisation. This leads to a weakening of their fundamental principles of trusteeship. The report stresses the negative consequences of present policies for the rural poor and the landless who often lose out in the emerging land market. The need to implement new and more equitable land access arrangements, as provided for within the framework of the new National Land Policy, is an urgent challenge.

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