LAND TENURE IN GHANA: MAKING A CASE FOR INCORPORATION OF CUSTOMARY LAW IN LAND ADMINISTRATION AND AREAS OF INTERVENTION BY THE GROWING FOREST PARTNERSHIP

INTRODUCTION

Generally, it is recognized that forest dwellers in developing countries constitute one of the poorest classes of people in the word. In Ghana, it is estimated that between twelve and fourteen million people live and depend on forests resources for their livelihoods (IUCN, Ghana Country Assessment Report Summary, 2007). The forest provides them with their daily food, shelter, employment and income, health and wellbeing etc. It is also on record that agriculture, forestry and mining sectors which are heavily dependent on land resource constitutes about 70% of Ghana's gross domestic product (Land Administration Programme). However, it has been acknowledged that current efforts, in ensuring sustainability and fair access to forest resources, to make forestry work for these poor and deprived people have not yielded the desired results to positively impact their livelihoods.

To stem the tide of growing poverty, mismanagement and endemic corruption in the administration of forest resources and better access to natural resources, the Ghanaian government has initiated a number of policies, plans, strategies and programmes to improve forest governance and sustainable utilization of natural resources which will ultimately lead to the betterment of the livelihoods of forest dwellers. Some of these initiatives are the Forest and Wildlife Policy 1994, which is the principal document on which forest management legislation, strategies and programmes in Ghana are currently based. The broad aims of this policy center on collaborative resource management (CRM) which seeks to combine involvement, benefits and responsibility for all segments of the population to ensure the conservation and sustainable development of Ghana's wildlife and forest resources(Agbosu et al, ISSER 2007: 104). Other policies which deal with forest management include the Framework for Sustainable Forestry in Ghana, which establishes local landowning and user communities as primary beneficiaries of forest resource management. Documents based on these include the Forestry Master Plan (1996-2020) and the Collaborative Resource Management (CRM) Policy and Strategy (2001). The latter Strategy seeks, among others, to involve and guarantee benefits while imposing responsible forest management on all forest users. Furthermore, the government has drawn up the Government Plantation Development Plan, which aims to create an enabling environment for investment by both the public and private sector.

Consistent with these policies and plans, particularly the collaborative resource management, natural resource management has tucked away in the last decade from resource protection, policing and exploitation role to one where the active involvement of communities are increasingly recognized as being crucial to a successful natural resource management. Agbosu *et al* (2007) have noted that with the focus now "on people and their relationship with natural resources, has come a shift to issues of efficiency, equitable share and management in the benefits of natural resources, consultation and participation of all stakeholders, especially the local communities, whose livelihoods depends on natural resources" (Agbosu et al, ISSER 2007: 104).

At the global level several initiatives have also been established to pay attention and reflect local the needs of forest dwellers while preserving global services forests deliver. One such initiative is the Growing Forest Partnership (GFP) created by the World Bank in 2007 which is intended to link local and global processes and to promote decision making on the international stage which will reflect the views and needs of forest dwellers. The GFP seeks to make forestry truly sustainable and strengthen the new partnerships that reflect local needs and protect global public goods. GFP has been designed to facilitate and respond to bottom-up, multi-stakeholder processes in developing countries that identify national priorities and gaps impacting on the forest sector. The World Bank hopes that this approach would be a lasting way to have forests contribute to economic growth, to the livelihoods of forest-dependent people and poverty reduction as a whole, as well as preserving the global services forests deliver.

However, it has been recognized that all these beautiful initiatives, plans, programmes, strategies can only achieve their intended results in an even balanced land tenure regime in the country. It has been noted that until recently successive governments in Ghana have often neglected or understated the importance of land tenure issues in natural resource conservation and the non-economic values associated with "marginal" lands(Agbosu *et al,* ISSER 2007:103). In recognition of the important role played by land tenure in natural resource management and conservation and its impact on the livelihoods of forest dwellers, the International Union for the Conservation of Nature (IUCN), under the GFP, as part of its peoples' diagnostics of the forest sector in Ghana to help identify priorities and gaps has commissioned this research into the land tenure regime in Ghana and to ascertain how they contribute to the on-going forest governance reform processes.

This paper is divided into five major parts. **Part I provides** a general overview of the land tenure system in Ghana. It notes that the land tenure system of Ghana is one of legal pluralism in which customary and statutory laws co-exist in a complex mix, and range of institutions and regulations having authority over land rights and multiple bodies through which disputes are resolved. To ascertain the evolution of the tenurial regime, this Part traces the historical trajectory of land tenure in Ghana in epochs of pre-colonial era of customary law, colonial times when customary land tenure was interfered with by contact with the European colonialist and post independence era of legal pluralism. This part concludes that the present tenurial regime in Ghana is unsatisfactory and anarchical and there is therefore need to re-think of better ways to fashion out our tenurial regime. Part II therefore advocates for a return to customary law as a possibility. It examines the customary land tenure of the Akans, among whom land tenure relations are largely based on a centralized system of customary political organization and landholding is co-extensive with political allegiance; the Ewes amongst whom land ownership and access are anchored around the family and land tenure is divorced from political allegiance. **Part II further** discusses customary land tenure as it applies among the northern tribes of Ghana. The discussion classifies Northern Ghana into two parts-the Northern Region where land ownership is vested in skins in a centralized political system (with an unpronounced role of the tendana) on one hand and the Upper East and Upper West Regions which operate in a less centralized political system having the earth priest (tendana) playing an elevated role in land ownership, access and disposition.

Part III examines the effect of land tenure on livelihoods of local communities. It argues in essence that the traditional customary land tenure system in times past ensured that each member of the community was guaranteed the right to access land for farming, housing and the enjoyment of other tenurial benefits. It notes that this egalitarian tenurial regime sustained the social security of most Ghanaians in the absence of any insurance benefits, as well as providing them with a sense of community. However, the present tenure arrangement in a plural legal context puts pressure on land which leads to effects that adversely impact the livelihoods of local communities. This Part identifies some of these effects as the decline in agricultural production for domestic food and industrial needs; food insecurity and insecure tenure which manifest in the unequal distribution of land, sub-optimal utilization of land and landlessness. Finally, it identifies the involvement of state institutions and officials as leading to the inequitable distribution of public lands and undermining of the authority of traditional trustees of land thereby placing land in the hands of some few land speculators to the detriment of the local folks and institutions.

In Part IV, we establish the link between community forestry practices and tenure. We note that the connection between community forest practices and the involvement of the community in land administration depends on the tenurial regime recognized and practiced in particular communities. We further observe that since, customarily, forests are vested in communities the protection of the forest is the primary responsibility of the entire traditional society. The community sets rules for gaining access to the forests resources that have their legitimacy in religious taboos, violation of which attracts social and spiritual rather than formal legal sanctions. Although modernization and the advent of Christianity and Islam have tended to undermine the efficacy of these community practices, they have largely survived because the religious undertones have been scientifically explained and there is empirical evidence to show that such customary forest practices are observed even by logging companies granted licenses by the state institution.

In Part V, we recommend areas in which we believe the GFP could intervene on the on-going forest governance initiatives as it relates to land tenure in Ghana. In response to our research finding that there is need for an in-depth research into customary land tenure and management systems and the incorporation of customary law into public administration of land, we recommend that GFP supports the on-going process of ascertainment and codification of customary law rules in particular communities in Ghana, a process currently being undertaken by the African Customary and Codification Law Project (ACLP) which is a joint collaboration between the German Development Cooperation(GTZ), the Law Reform Commission of Ghana and the various Regional Houses of Chiefs.

Secondly, given the weaknesses of the agencies managing land (District Assemblies, Regional Lands Commission, Administrator of stool Lands) in terms of lack of finance, competent personnel, corruption and mismanagement we reckon that it would be unwise to leave all land management functions in the hands of only public administrators. The true owners of the land (the community) should be made to feel as part of land administration in the local communities, particularly under the Collaborative Resource Management (CRM) strategy. In giving true expression to this collaboration between local communities and state institutions, we recommend that the GFP could intervene by assisting in establishing customary land bureaus in the various traditional /customary areas where titles to land and transactions

relating to interest in land would be locally recorded or collaborating with state institutions under the Land Administration Programme (LAP) to establish the proposed Community Land Secretariats.

Finally, we note that poverty amongst forest dwellers is the result of lack of integration and linkages between the exploitation of forest resources, the extractors of these resources and activities that positively impact forest dwellers, we recommend to the GFP an initiative we have dubbed the "Forest Partnership Initiatives and Linkages Programme". Under this initiative, GFP would use its financial strength and influence to acquire or negotiate for land from the requisite authorities and lease or grant licences of same to the forest dwellers to cultivate timber or other commercial trees, or undertake subsistence farming on fairly better terms than what pertains under the *abunu* and *abusa* crop sharing systems. Also, the initiative would have a local businesses development component to diversify the local economy and improve the capacity of local businesses and institutions. This initiative we believe would significantly lead to the improvement of the livelihood of forest dwellers and the reduction of poverty in general.

PART I

OVERVIEW

Ghana's land tenure system is usually characterized as one of legal pluralism in which customary and statutory laws co-exist in a complex mix, and range of institutions and regulations having authority over land rights and multiple bodies through which disputes are resolved (Lavingne-Delville, 1998).

Customary and statutory land tenure may be described in terms of characteristics and forms of management which distinguish them (Bentsi- Enchil, 1964, Woodman, 1996; Agbosu, et al, ISSER 2007: 30). The former is characterized by its largely unwritten nature, based on local practices and norms that are said to be flexible, negotiable and location-specific (Agbosu, et al, ISSER: 30). Customary land tenure is usually managed by a traditional ruler, earth priest, council of elders, family or lineage heads. Its principles stem from rights established through first clearance of land, conquest or settlement (Agbosu et al, ISSER 2007: 30).

The State tenurial land system, on the other hand, is usually codified, written statutes and regulations, based on laws having their roots in the colonial power, which outlines what is acceptable and provides consequences for non-compliance. Management of such codified systems is usually in the hands of government administrators and bodies having delegated authority. The principles under girding this system derive from citizenship, nation building, and constitutional rights. Land rights are allocated and confirmed through the issue of titles or other forms of registration of ownership (Agbosu, et al, ISSER 2007: 30). It is instructive to note that despite the fundamental differences underlying the principles and systems for managing land under the customary and statutory forms, in practice this neat distinction is not obvious (Agbosu, et al, ISSER 2007:30), perhaps due to certain commonalities and overlaps in both systems. These two systems, which form the foundation of Ghana's land tenure system, have undergone several years and stages of interaction which is worthy to recount in epochs of history: pre-colonial, colonial and post- independence eras.

Pre-Colonial

In the pre-colonial era, natural resources such as land were held by communities under local rules and practices commonly called customary law which was pervasive throughout the then Gold Coast. The customary tenure varied from place to place and community to community (Agbosu et al, ISSER 2007: 30). Three kinds of customary law rights in land were recognized, namely, the allodial title, held by the customary law community; a secondary law right consisting of "customary law freehold" or 'usufruct", which can be held by an individual or group of people who are part of the community holding the allodial title; and various types of tenancies (Bentsi Enchill, 1964; Woodman, 1996). The position of every allodial title holder of land in Ghana is said to be titular, holding the land in trust for the whole community (Kotey, 1999; Kasanga and Kotey 2001)

At customary law, the absolute title to land was vested in the traditional authorities symbolized by the stools, skins, families and earth priests. The allodial title was never vested in individuals. Individual subjects of the stools and members of the family were said to have beneficial interest in these lands. Under customary law, the subject's right was and continues to be that of beneficial use, a right to benefit from community resources, the land. Such benefit depended on user entailing individual effort in the exploitation of landed resources. (Rayner CJ"s Report on the Land Tenure among Native Communities of West Africa)[1]

Colonial era

The land tenure system of the Gold Coast begun to change with the advent of colonization during the early part of 20th Century. Contact with the colonizing European countries tended to interfere with the customary land tenure of the Gold Coast. In colonial times, through legislative and judicial processes, the colonial state established a system of land tenure which retained some pre-colonial land interests while creating new interests based on English land law, with a significant role for the state in land administration and adjudication of disputes (Agbosu, et al, ISSER 2007: 31). The colonial administration sought to exert state control and management over lands in the country. Enactments were passed providing sweeping state control on natural resources (including timber and precious minerals), land use, enhanced powers of expropriation and the assumption of the managerial and powers of customary land owners without the consultation of the latter (Land Administration Programme).

These interferences were fueled by the European perception that the traditional schemes of interest in land, falling short of absolute individual titles, were incapable of supporting the kind of economic development which was taking place in the country at the beginning of the 20th Century (Agbosu, 1981-82). Although erroneous, it was also thought that rights in land under customary law were indefinite and thus resulted in insecurity of title (Agbosu, 1981-82:48; Asante S.K. B. 1975:46). Furthermore, it was argued that the customary tenure system was inconvenient and could prevent any part owner from effective exploitation of the land (Agbosu, 1981-82:48). Armed with some of these erroneous opinions, the colonial powers sought to introduce new dimensions to the form of land ownership, title and land management, as well as to the rights and responsibilities relating to land and natural resources.

It is instructive to note that during this period, the colonial government pursued two distinct land policy regimes which created a sharp contrast in the land tenure system and land administration between southern and northern Ghana. In the south, the policy was largely *laisez faire* while in the northern territories, the policy led to nationalization of all lands (Kasanga 2002; Agbosu, et al, ISSER 2007).

In the south, although in most cases, existing forms of customary land tenure were either ignored or overridden for the convenience of the colonizing power and handed back to

[1] This Report was quoted with approval in the seminal case of Amodu Tijani v The Secretary, Southern Nigeria, the Privy Council per Lord Haldane West Africa [1921] 2AC 399 at 404 where it is stated that "…..it is important to bear in mind in order to understand native land law is that the notion of individual ownership is quite foreign to native ideas. Land belongs to the community, the village or the family, never to the individual."

indigenous populations in forms that created new and artificial class and ethnic divisions the attempt to nationalize all lands in the colony was fiercely opposed. It is on record that between 1894 and 1897 Sir William Brandford Griffith and Sir William Maxwell who were respectively Governors of the Gold Coast made several attempts to vest the administration of all lands in the Colony in the Crown (Agbosu, 1981-82:35). These measures were vehemently opposed by traditional chiefs, the native middle class and elite and the Chamber of Commerce of London, Manchester and Liverpool. The Public Lands Bill which was introduced to put the measure unto effect was, therefore, withdrawn (Agbosu, 1981-82)

The colonialist had a field day in the north. The main pillars of the colonial administration in the north rested on the area's administrative segregation and the system of indirect rule. The north was declared a Protectorate in 1900 and four important pieces of legislation were passed under which all native lands were vested in the Governor[2]. No occupation or use of such lands was lawful without his consent. The practical application of these laws were however limited. Kasim Kasanga (2002) has explained that this is because apart from some few acquisitions for public buildings and infrastructure, no major acquisitions were made nor were any local communities displaced (Kasanga, 2002:30). Interestingly, he notes that given the high incidence of illiteracy in the north the local communities had no knowledge of the laws and, therefore, continued to adhere to their own customary land laws (Kasanga, 2002:31).

These ordinances allowed the colonial and post colonial authorities easy access to land in the northern territories at very low cost, a situation which was recently reversed by the 1979 Constitution and confirmed by the 1992 Constitution of Ghana. Hence, by the end of the colonial period, the patterns of land relations in Ghana today had been firmly established. (Agbosu et al, ISSER 2007:30).

The colonial administration of land also affected certain sectors of the economy like forestry. In 1906 legislation was enacted to control the felling of commercial tree species, followed by the creation of the Forestry Department in 1908. By 1939, the demarcation and reservation of the forest estate had been largely completed and a Forest Policy was adopted in 1948. The policy provided, among others, for the creation of a permanent forest reserves for the welfare of the people, protection of water supplies, maintenance of favorable conditions for agricultural crops, as well as public education and research. However, it mainly emphasized the sustained supply of timber for the wood industry and promoted the exploitation and eventual demise of unreserved forests (Forward to the National Land Policy, 1999). Under these colonial laws, 282 forest reserves and 15 wildlife protected areas were established which occupy more than 38,000 km or about 16 % of the country's land area. It is estimated that outside the gazetted areas, about 4000 km of forests still exist, from which the bulk of timber was extracted(Forward to the National Land Policy 1999).

Post-Independence era

The post independence land policy continued within the framework of colonial land tenure paradigm. The state passed laws that vested large parcels of land which were under the

[2] The Administration (Northern Territories) Ordinance (Cap III), 1902; The Land and Native Rights Ordinance No. 1, of 1927, the Land and Native Rights Ordinance, 21 November 1931(Cap 147), 1951; and the Minerals Ordinance 1936(Cap 155) revised in 1951.

jurisdiction of customary authorities in the nation state of Ghana For example, the State Lands Act, 1962(Act 125) and the Administration of Lands Act of 1962(Act 123)(enacted under the Nkrumah regime) nationalized lands, disregarding customary land ownership. The State Lands Act, 1962(Act 125) recognizes the state's eminent domain by conferring on the state the power to compulsorily acquire land when it considers it in the public interests so to do. The Administration of Lands Act, 1962(Act 123) on the other hand, gives the state power to take over the management and control of any stool or family land. Historically, lands in Ghana have been vested in the state on behalf of particular communities for reasons which can be classified as political (e.g. Kumasi Town lands –Part 1 Lands); chieftaincy and land disputes (e.g. Sunyani in the Brong Ahafo Region and Nkwakaw in the Eastern Region); proper and orderly town and county planning (New Juabeng lands vested in Brong Ahafo); and protracted litigation (e.g. between the Effutus and Gomoa) (Agbosu et al ISSER 2007: 79). The State also passed the Concessions Act, 1962(Act 124) (now repealed) which vested all timber trees in central government in trust for the stool on whose land they stand. It has been noted that the passage and implementation of these laws often led to a dual, unequal and hierarchical system of land tenure, in which freehold and leasehold land rights are treated as superior to customary land rights, that incoming governments inherited (Kasanga and Kotey:2001).

It was not until 1979 that the Constitution re-vested land administration in local authorities, while the 1992 Constitution upholds the authority of chiefs and divides land into public (vested in the President in trust for the people of Ghana and managed by the Lands Commission) and customary tenures under chiefs. In fairly recent years, several measures including land title registration regimes have been introduced to enhance the security of tenure and promote investment in agriculture, thus leading to increased growth and development. For example, the Land Registration Law, 1985 was promulgated to register various titles and interests in land. The purpose of the compulsory land title registration is first to give certainty and facilitate proof of title and secondly, render dealings in land safe, simple and cheap and to prevent frauds relating to purchases and mortgages.

Practically, the objectives of the titling programme have not been achieved, leading to further uncertainty in land tenure coupled with its attendant undesirable social and economic impacts. Apart from logistical problems plaguing the operation of the land title registration which has led to delays and other inefficiencies[3], the current model based on issuance of individual title certificates is not necessarily the best starting point for the title registration system considering the nature of customary landholding in Ghana. Given the realities of the customary landholding patterns, the registration exercise should have started at the level of the allodial landholdings, and then moved down to the village and individual levels. This process would have been helpful in identifying the real landholders (Kasanga, 2002:33).

Moreover, the title registration system was started in a sort of vacuum, as if nothing had happened in Ghana prior to the passage of the law (Kasanga, 2002:33). Private and customary land transactions had previously been governed by the Deeds Registry system, which was acceptable throughout the country. According to Kasanga (2002) the Deeds

[3] After 15 years of operation, there have been less than 12,000 titles registered with a commensurately small number of derivative transactions. There are about 37,000 applications awaiting registration(Source: Land Administration Project website).

Registry should have formed the nucleus of the new compulsory Land Title Registry. Consequently, as it currently stands the land title programme has failed to develop the smallholder agriculture sector as the expectation was that financial resources would be mobilized for investment on the land have not been met and also tends to favour speculators, the well informed, the educated, the land administrators, their cronies and members of government (Kasanga, 2002:34).

Presently, the Land Administration Programme represents the country's last hope to bring sanity into the land administration in Ghana. The Land Administration Programme (LAP) is a government initiative to implement the policy actions recommended in the National Land Policy document launched in June 1999. The key issues identified in the policy document include inadequate policy and regulatory framework, weak land administrative regime both public and customary, indeterminate boundaries of customary lands, multiplicity of land dispute which has clogged the court system, and general indiscipline in land use development and disposition. Ghana's National Land Policy of 1999 also recognizes the principle of optimum usage and the need to facilitate equitable access to land and tenure security. It also recognizes the private sector as the engine of growth, the need to encourage responsible land-use and the importance of land taxes that reflect economic market values as well as promoting community participation in land management. Furthermore, the National Land Policy seeks to initiate a process of registering land. These objectives would be achieved through the Land Administration Programme, which is focused on harmonizing legislation, supporting decentralized land administration systems, adoption of a series of pilot projects for testing different ways to register land, and strengthening of revenue generation within the land administration services (National Land Policy, 1999; Land Administration Programme).

Under the 1992 Constitution three distinct land tenure systems are recognized. These are the public lands, stool lands and private freehold lands. Public lands are those which the state has specifically acquired compulsorily for public purposes. It is estimated that Public lands constitute about 20% of all of Ghana's lands (IUCN, Ghana Country Assessment Report, 2007). Stool (or skin) lands are those held communally by traditional communities or confederation of communities, including stools, skins, and families. It has been suggested that all forests in Ghana are stool lands within the meaning of the Constitution. (IUCN, Ghana Country Assessment Report, 2007) and an estimated 80 to 90 percent of all undeveloped lands in Ghana are held under the customary law, with varying tenure and management systems (Agbosu et al, ISSER 2007: 31). Finally, the constitution recognizes a category of non-public or non-stool lands which are private freehold interests. However, there is controversy surrounding the nature of this interest under the new constitutional arrangements, particularly as to whether Article 267(5) applies to customary freeholds.

Article 267(5) provides that no interest in or right over any stool land in Ghana shall be created which vests in any person or body of persons a freehold interests, howsoever described". According to da Rocha and Lodoh (1999) "the tenor of this provision is that not even members of a stool or members of a family can, as from 7 January 1993 acquire freehold interests in any land in Ghana in which the stool or family holds the allodial title. The provision is however silent on the transfer of freehold interest in such lands. The deduction is that the transfer of freehold interests in existence prior to 7th January 1993 is not prohibited by the constitutional provision". In the unreported case of the Republic v Regional Lands Officer, Ho, *exparte* Professor AKP Kludze, 1994, the Judge *obiter dictum*

suggested that the constitution prevents any freehold interest being created over stool lands. The *ratio decidendi* of this case was that 'family lands' are not subject to the administrative regulations of the the Lands Commission imposes on 'stool lands', nor are they caught by article 267(2) of the Constitution, 1992. However, it seems to us that the legal position in vogue is that article 267(5) does not prohibit the grant of customary freehold in stool land and family lands, where the grantee or transferee is a subject of the land owning stool (Kwame Gyan, 2005).[4]

From the foregoing discussions, it is obvious that the various state interferences with land tenure administration has not yielded the desired results and have tended to worsen Ghana's the land tenure regime. Far from securing tenure through statutory titling and ensuring certainty in land transactions, land tenure and administration of land in Ghana has been plagued by a myriad of problems, mismanagement and endemic corruption (IUCN Ghana Country Assessment Report, 2007). Part of the problems encountered today include what has been described as a general 'indiscipline' in the land market, where land encroachment is the order of the day; multiple land sales; unapproved maps, leading to conflict and litigation between stools, skins and other groups. Compulsory acquisition by government of large tracts of land which remain under-utilized and for which compensation has been unpaid or delayed has resulted in landlessness and intense disputes between traditional authorities and government. Land tenure has been weakened by frail land administration and outdated legislation. Tenure insecurity due to conflicting interests between and within land owning groups and slow litigation processes; and poor consultation with landowners and chiefs regarding land allocation, acquisition and management, setting in motion disputes between the state, communities and landowners are just a few of such problems bedeviling the system of access and land administration(Kasanga and Kotey, 2001).

Furthermore, land administration in Ghana has weakened the traditional and customary institutions and authorities, stifling their functions, influence, and the basis for social and economic support. According to Kasanga "local authorities have been impoverished by their loss of control over sources of local revenue. Politicians have been allowed to neutralize opponents by acquiring their lands, to prevent local revenues from being channeled into opposition parties or groups deemed likely to challenge the government. Those in government have rewarded their comrades, cronies, top civil servants and the military in order to give them a stake in their gains, and to keep them quiet in the face of gross injustice towards the majority of the population" (Kasanga, 2002:32).

[4] The justifications for this position are (1) that the rationale behind Article 267(5) is to assure some intergenerational equity, through the prohibition of permanent alienation and resultant loss of stool lands in a manner detrimental to the future generations of the stool subjects. The grant or existence of customary freehold is in no way inconsistent with this policy objective. (2) The operative part of Article 267(5) is "shall be created". This does not apply to the subject of the landowning stool, because the subject's entitlement to a customary freehold is inherent and not based on an act of creation. (3) Article 267(5) starts with the words "subject to the provisions of this Constitution" which means the provision must be read and construed in the light of other provisions of the Constitution. The Article should be read and interpreted in light of article 267(1) which provides "All stool lands in Ghana shall vest in the appropriate stool on behalf of and in trust for the subjects of the stool in accordance with customary law and usage". One of the most important customary laws is that a the subject of a stool is entitled as of right to a portion of vacant stool land and upon such occupation the member acquires the customary freehold.

In the face of this anarchical and unsatisfactory state of land tenure in Ghana, it is clear that that present land tenure system and arrangements have woefully failed and it is high time we begun to re-think of a better solution.

PART II

CUSTOMARY LAND TENURE

A famous local Ghanaian proverb embodied in the 'Sankofa' symbol literally says that it is not a taboo to go back and pick a useful thing one has left behind. We contend that it is time we went back our customary law and tenure roots to pick the good things in our communal vestiges where land access, management, control, disposition, dispute resolution and sustainability are vested in the community and its institutions and same are integrated into the land tenure system and land administration of this country. To be able to this, a good working knowledge of the customary laws of the various ethnic groups especially at it relates to land tenure is required. In this paper, we analyse the customary land tenure of the Akans, Ewe and tribes from the Northern, Upper East and Upper West Regions.

This analysis is particularly important because although customary law is one of the recognized sources of law in Ghana, the contents of the rules and practices of any particular community are not invariably clear. In many cases, different versions of the customary law rules compete for supremacy, resulting in great uncertainty. Lack of certainty in the customary law and conflicting accounts of customary law rules contribute significantly to land disputes in the country, particularly with regard to the management of stool lands and chieftaincy disputes. Also, this is to curb a rather unfortunate development where Akan customary laws and practices are generalized and presented as applicable to all communities in Ghana especially.

Customary Land Law among the Akans

The customary Akan, (particularly the Ashanti) conception of land views the soil as separable from things in or on the land whether or not permanently affixed thereto such as crops, trees, and houses(Rattray, 1929:340) In the words of Allott(1966) "the Ashanti conception of land extends only to the soil itself, and things in the land (e.g. minerals) or on the land (planted tress, houses) would not fall within the definition of land *(asase)* and might be separately dealt with in law" (1966:143).

In Akan customary law, (particularly among the Ashanti and Akyem) the paramount or allodial title is vested in the head stool. Ollennu (1962) explains that as the stool is the embodiment of the collective authority of all the members of the community, the stool holds the allodial title to all the lands of the village, town or tribe.

It is generally accepted view among the Akans, notably the Ashanti and Akyem, that the allodial title to all lands is vested in the head chief, of whom the lesser chiefs in turn hold lesser titles in a manner corresponding to their positions in the hierarchy of the political order. In other words, land holding is the product of political allegiance to a higher authority in the hierarchy in the Akan state. Land is exchanged for allegiance. In J. B. Danquah's view (1928), concerning the Akim-Abuakwa, land was held "in virtue of allegiance to the supreme lord of the tribe" (1928:199), and for Casley Hayford (1903:45), "the lands so acquired or settled upon would be apportioned among those worthy of them in order of merit" (1903:45). Therefore, it is apposite to say generally that among the Akan speaking tribes political authority is co-extensive with proprietary interest in land.

However, it is pertinent to point out that there is no unanimity among all the Akan States that customarily all lands are vested in stools. Casley Hayford (1903) writing about landholding among the Fanti said "the King, qua King, does not own all the lands of the state. The limits of his proprietary rights are strictly defined". He identifies three types of landholding among the Fantis and writes: "there are first of all lands which are the ancestral property of the King. These he can deal with as he pleases, but with the sanction of the members of the family". Secondly, there are lands attached to the stool which the King can deal with only with the consent of the councilors" Thirdly, there are the general lands of the state over which the King exercises paramountcy. It is a sort of sovereign oversight which does not carry with it ownership of any particular land. It is not even ownership in a general way in respect of which, per se, the King can have a *locus standi* in a court of law"(1903:44-45). Again, the proposition that all Akan lands are stool lands was rejected in the Asamankese Arbitration Award in Akim Abuakwa.[5] Finally, in the case of United Products v Afari which is a case involving land holding among Akans, Deane C. J. said "the presumption with regard to land in this country is that it is family land"[6]

This clearly shows that at least among the Fanti and some sections of the Akim Abuakwa, it is not the law that all lands belong to the stool, of which the families hold their allocations. Instead, it shows that there are ancestral properties which are inherited by the chief; lands attached to the stool and general lands over which the occupant of the stool exercises only political jurisdiction, and not proprietary rights.

On the vexed question whether the allodial title, which is the most extensive interest known to customary law among the Akan, can be transferred or sold to an individual non-member of the stool or family, the authorities have not spoken with a consistent voice. Mensah Sarbah (1897:87), for example, has maintained that the stool could sell land, but was not explicit on the interest which could be passed. Casley Hayford(1903) who as mentioned earlier maintained that the king (paramount chief) exercised only a paramountcy not connected with title to land seems to suggest that since the allodial title need not necessarily be vested in the community, it is possible to grant the allodial title to an individual stranger. Considering the fact that Sarbah and Casley Hayford wrote concerning the Fanti and did not rule out such a possibility it could be said that among the Fanti it was customarily possible to alienate the allodial title to an individual stranger. On the other hand, Akim Abuakwa and Ashanti Akans hold the view that the allodial title cannot be alienated to an individual. Danquah (1928:214), for example, indicated that a paramount stool had "jurisdiction" over all lands in its area. The Ashanti Confederacy was more emphatic when it noted that outright grants to individuals were impossible, although attempts had been made to make such grants (Woodman, 1996:64).

By Akan customary law, members of the community which hold the allodial title are entitled to occupy and use land, both by taking the natural fruits and developing it with farms or buildings. If a member develops it, that member acquires the customary freehold or the sub-paramount title, an immediate lesser interest than the allodial title. Subject to modern legislative interventions, the stool controls its members in the exercise of their right to take

[5] Asamankese Arbitration Award(1926-29) D. Ct, 220.
[6] United Products v Afari (1929-31) D. C. 11at 12.

the natural fruits of the land, for example, by restricting the hunting or fishing season. The stool or family can grant to strangers rights in such land on any terms it pleases.

With respect to individual land holding, customarily, the principal interests in land were owned by stools and families, and not by individuals. The classic statement of the position is that captured by Rayner in his Report on Land Tenure in West Africa that "…the native land law is that the notion of individual ownership is quite foreign to native ideas. Land belongs to the community, the village or the family, never to the individual…."[7] With particular reference to the Ashanti, Belfield (1912) has noted that individual ownership of land was not recognized in Ashanti[8]. The notion of individual land ownership seems to have been a later development when Akans, particularly the Fantis, came into contact with the Europeans and started imbibing European ideas and notions.[9] The concept of individual land ownership was soon to gradually spread through to other Akan speaking states such as the Akim Abuakwa and Ashanti. It is beyond doubt today, that the principal interests in land may be owned by individuals, subject perhaps to some lingering doubts as to the nature of the interest to be acquired (Woodman, 1996: 173).

Consequently, an individual is able to pass on a personally acquired land on his death to their family through the maternal line of ancestry, although the precise status of the individual's owned interests is in doubt (Woodman, 1996: 177).

Customary Land Law among the Ewe

The Ewe conception of land postulates that land (or *anyigba*) refers to the soil itself, as well as the sub-soil and anything under the soil, such as minerals. However, it does not include things on or attached to the soil such as trees, houses or other permanent fixtures.(Kludze, 1973:103) Ewe law, therefore, clearly distinguishes between interests in the land itself (the earth crust) and interests in things on or attached to the land. The holder of the allodial title or paramount interest in the land is said to be entitled to any minerals or objects discovered under the soil (Kludze, 1973:104). It follows, therefore, that trees growing naturally on the land and as well as those planted by the industry of men are not regarded as part of the land on which they grow. Timber and palm tress naturally belong to the family holding the allodial title in the land on which they grow and can only be validly sold by the head of that family (Kludze 104). M. Manoukian (1952:41) has also observed that in Eweland, oil palms for example, had always belonged to the cultivator.

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[7] Rayner C.J.'s Report on Land Tenure in West Africa in 1898 cited with approval in Tijani v Secretary, Southern Nigeria [1921] 2AC 399(PC)

[8] C. Belfield, Report on Legislation Governing the Alienation of Native Lands in the Gold Coast Colony and Ashanti, Cd. 6278, London, Crown Agents (1912). Rattray has also noted that "there is in Ashanti no such thing as individual ownership of land" at 230. According to J. B. Danquah(1928), individual land ownership existed in Akim Abuakwa as at the time he wrote in 1928 , but indicated that it was comparatively new.

[9] Sarbah while acknowledging that land is essentially communally owned said "with the exception of the coast towns, where there is much contact with European ideas, private property in the strict sense does not exist" Sarbah, Fanti Customary Law at 60-61. See also Parker v Mensah(1871) cited in Sarbah at 204. H. W. Hayes Redwar, Comments on Some Ordinances of the Gold Coast Colony, stated at p 80 that "Absolute and exclusive ownership of land by one individual is still comparatively rare, although individual property will probably increase as time goes on, and European notions get a firmer hold of educated natives.

It is significant to observe that the paramount interest in practically all lands is held by the respective families in Eweland in their own right and not as grants from stools (Kludze, 1973: 107&109, Agbosu et al, ISSER 2007: 32). The Ewe Chiefs, unlike the Akan chiefs, have never assumed such a role in land administration. It is fundamental to understanding Ewe land law to appreciate that although there are Paramount Chiefs (*fiaga*) throughout Eweland they only exercise jurisdictional authority in the political, legislative and judicial senses. The chiefs' authority is neither coterminous with nor does it entail proprietary interests(Kludze;1973: 110-111).Therefore, it is not the pattern among the Northern Ewe, at least, that the Head Chief or the head stool held the paramount interests in all the lands; nor was it the case that "the lands so acquired or settled upon would be apportioned among those worthy of them in order of merit"(Casley Hayford,1903:45); nor did they hold their lands "in virtue of [their] allegiance to the supreme lord of the tribe" as Danquah tells us of the Akan (Danquah, 1928: 199; Kludze, 1973:111).

Kludze(1973:111) has explained that in ancient times, "once the land became available for settlement, families went into direct occupation. Each family automatically acquired the absolute or paramount interest in such portions of the land as it could reduce into its effective occupation. Such family title was absolute and paramount in itself; it was not derivative from the stool and was a proprietary title of the family in its own right. The areas of land farmed by members of a family became family lands".

What then is the nature of an individual member's right in the family land? By Ewe customary law, the individual's interest in the family land is an inherent right of occupation and user (provided that it is not already occupied) for life which rights are transmitted to the deceased's children and other relations within the family on his death (Kludze, 1973: 133) The individual member's interest in the land is said to indeterminable and cannot be determined even by the family (Kludze, 1973: 126). However, some restrictions are imposed on individual members of the family. For example, Ewe customary law precludes him to alienate his interest in family land to a person who is not a member of the family, whether *inter vivos* or by testamentary disposition. He may only transfer his interests *inter vivos* to any other member of the family, and it is transmissible to his heirs upon his death. Furthermore, he cannot transfer his interest in land by testamentary disposition to even members of the family (Kludze, 1973:126). Nevertheless, he can make a testamentary disposition or a transfer, *inter vivos,* of the produce of that land. Therefore, the crops or the house may be transferred *inter vivos* either by gift or sale or by testamentary disposition to any one of his choice or may be attached in execution for his personal liabilities, but certainly not the land. Although difficulties may arise in respect of fixed attachments like buildings and cash crops, no difficulties arose with respect to farm lands because the produce in those days normally consisted of food stuffs, which were mainly annual crops, and the land reverted to the family unencumbered when the crops were harvested. Kludze (1973) has noted that "in such circumstances the legal transaction of merely selling the farm produce without affecting title to the land itself, was easily distinguishable both as a matter of law and practice" (Kludze, 1973:130)

Orthodox Ewe customary law held that individuals could not hold paramount or absolute interest in land. Only the family, as a unit, had the capacity to hold such an interest. Therefore, any land acquired by a member of the family was acquired for the whole family and the family only. For this reason, it is said that no boundary marks or trees were set or

planted as between the holding of two members of the same family, for the totality of their joint acquisitions belonged not to themselves but to their family. The phenomenon of only the family holding the absolute interest in land may also be understood against the background that in many cases the joint endeavours of several or many members of the family were necessary for clearing and penetrating into the thick tropical forests (Kludze, 1973:111). Within the territorial limits of the chiefdom a family could continue extending its lands until it met another family. This became the boundary between different families within the same chiefdom and was identified with suitable boundary marks. It is said that hunters were very good at grabbing lands by identifying the areas roamed by them with stones, trees, mounds with grass planted on them, and natural physical features. Families with enterprising hunters, therefore, had more lands and consequently hunters were highly esteemed (Westermann, 1942:259-260; Kludze, 1973:111)

However, changes have taken place and today the paramount title to lands can customarily be purchased as individual private property like any other commodity; but is still true that the roots of title to each of these lands must be traced to a family or a stool (Kludze, 1973: 126).

The family as a unit had a bundle of rights which were incidents of the paramount title. These rights included occupation, user and control. At customary law, the Ewe family unit has the right to occupy any part of its own land and for whatever purpose such as the cultivation of a family farm or building of a family house. However, this is subject to the qualification that that portion of land is not already occupied by a member of the family, since it is an accepted customary law principle that a member of the family occupying family land by inherent right of occupation cannot be disposed by the family (Kludze, 1973: 119). Furthermore, any naturally growing trees, like timber and palm trees belong to the family, and only the family, acting through the head of family, may sell timber(Kludze, *ibid*). Similarly, only the head of family may, on behalf of the family, fell or sell palm trees growing naturally on the family land or permit such felling or selling. Minerals and treasure trove discovered in or on the family land, as well as the soil and sub-soil and any stones, pebbles or objects in or on the soil belong beneficially to the family, and only the family may sell or otherwise dispose of any interests in them or consent to their exploitation (Kludze, 1973: 120).

The paramount title of the family in its land also implies the power of control. This control is exercised both over members of the family and non-members. As regards non-members of the family, the power of control includes the family's right to exclude from the land all those who are not its members, while also reserving the right to permit any such strangers the use of its lands on such terms as it may determine. The family control over its members is in the sphere of the power of alienation. It is trite customary principle that only the family can alienate title to land. This important because in Ewe law the sale or outright gift of land has the effect of conveying the paramount title and an individual in occupation of family land cannot alienate his own inherent interest to a stranger nor alienate his family's paramount title(Kludze, 1973:120).

With respect to individual land holding **t**he acquisition or holding of the paramount or absolute interest in land by an individual was unknown to the Ewe. The paramount or absolute interest in land could be vested only in the families under the political authority of

the chiefs (Kludze, 1973:114). According to B. E. Ward (1949) individual ownership was at the beginning of the 20th Century commoner among the Ewe on the coast than among those further inland(1949:90-91; Nukunya, 1969:165). The explanation for this might be that the Coastal towns like Keta came into contact with the Europeans on the coast and begun to imbibe European notions just as the Fanti among the Akans.

Overtime, an individual who acquired the paramount title to land from a stool or a family acquires all the concomitant rights of benefit and control. He may exclude everybody else from the land. Unlike an artificial person such as a stool or family, an individual person holding the paramount title to the land may go into personal occupation and use the property for any purpose permitted by law. At customary law, an individual title holder is entitled to all the trees, minerals, stones, pebbles and any other object in or under the soil as well as the soil and sub-soil. He also has the right and power of alienation (Kludze, 1973: 121).

The foregoing discussions obviously point to certain implications in Ewe customary land holding. Fundamentally, it is clear that the concept of land holding is divorced from the notion of political allegiance to a stool which seems to be the basis of the doctrine of tenures as understood in the English classical sense as well as among the Akan speaking people generally. With the sharp distinction between political allegiance and proprietary interest among the Ewe, it has been argued that it is even difficult, if not a misnomer (in our view), to talk about "tenures" typically among the Ewes (Kludze, Ewe Law of Property117). This is because the stratification of linear allegiance to a higher political authority, which is the crux of the doctrine of tenures, is absent in Ewe landholding. Among the Ewe there is no question of tenure because the family (or the individual who acquires the paramount title) does not hold its land in tenure from the holder of any superior title. The family's (or individual's) title is absolute in its own right. Perhaps, one may talk of interests in land.

Secondly, the clear distinction drawn between the land and objects permanently attached to it means that several interests and rights are capable of existing on the same piece of land simultaneously. This is because it is possible that although forest resources like timber growing on a land being cultivated by a member of the family cannot be harvested by that member, except with the permission of the family owning the land. Nevertheless, an individual member of the family or a non-member is entitled to the fruit of his/her labour in the sense that he/she is entitled to harvest timber or such other trees which had been planted by his/her personal effort. For indeed, Ewe customary law abhors unjust gains and would not permit the family to reap where another has sowed.

Thirdly, it is clear that due to separation between political sovereignty and proprietary interest in Eweland, the interest of the individual member of the family in land is indeterminable by virtue of his membership of the family and not even the family can determine his/her rights in the land. Whereas in other communities such as the Akan speaking areas landholding is co-extensive with proprietary interest and therefore, disloyalty to the stool for example, can lead to loss of land such a consequence is remote, if not totally absent in Eweland because of the clear separation between political allegiance and interest in land.

Land Tenure in Northern Ghana

Northern Ghana occupies the northern two–fifths of the country with a total land area of about 37,000 square miles. It lies in the Guinea or Sudan savanna ecological zone and agriculture is the main economic activity (Kotey, 1995:105). The people of these regions speak related languages and share the same basic culture. The social organization is generally patrilineal.

Land tenure in the north like all other parts of Ghana is based on customary law and practice, which governs the acquisition of rights to and transmission and disposition of interest in land. Although there are some differences of detail among the various ethnic groups, there is enough that is common amongst them to enable categorization and characterization into two very broad groups.

The first category involves those communities that have centralized political systems with a developed hierarchical order (primarily in the Northern Region). Generally, these state-societies have a king or paramount chief at the top and various levels of chiefs and other political office holders under him. Examples of such communities include the Gonja, Dagbon, Mamprugu and Nanum. Land tenure among this category of communities recognizes that the allodial title to land is vested in the various skins (Kotey, 1995:109; Agbosu et.al, ISSER 2007:32; Kasanga, 2002). The allodial title in theory is vested in the indigenous communities as represented by the paramount skins like the Ya Na (the king of the Dagbon) or the Nayiri (the paramount Chief of Mamprusi). However, practical management of the lands is done by the various sub-skins. For example, the Diare and the Savelugu, which are Dagomba towns, lands are managed by the Diare Na or Savelugu Na respectively and not the Ya Na himself. Likewise, Gambaga, Walewale and Langbisi lands are managed by the respective Naba (Chiefs) (Kotey, 1995:109). Although these politically more centralized ethnic groups have tindemba (earth priests) they do not manage the land on behalf of their communities. Their role is limited to the performance of rituals to ensure the productivity of the land (Kotey, 1995). Kotey (1995:109) has instructively observed that although the chiefs maintain that they hold land on behalf of their communities, evidence on closer examination revealed that a lot of the lands are attached to families and households. Consequently, for most practical purposes the chiefs had little control or power over such lands.

The second category of communities in northern Ghana are the non-state or segmentary societies (mostly located in the Upper East and Upper West Regions) which were organized on the basis of relatively small clan, kinship and family groups and were not knitted into larger political groupings. Chieftaincy was relatively unknown and political and legal authority centred around the Earth Priest and the village clan and lineage heads (Kotey, 1995:106). Examples of such communities include the Tallensi, the Lobi–Dagarti, the Builsa, the Sisala, the Kusasi and the Frafra. The allodial title to land in these communities is vested in the various indigenous communities as represented by the various earth priests (*tindemba*)[10](Kotey, 1995:112-3), who give land out to groups, and the group leaders then control access to the land (Agbosu et. al ISSER 2007: 33).

[10] This finding is contrary to the view of Ollennu that the allodial title to land in the Upper East and West Regions is held by the Skins(See Azantilow, Sandemba v Nayeri, Mamprusisna & 3ors).

Therefore, in the Upper East and Upper West Regions the *tindemba* lineage and family headmen are the key players in land matters. Generally, the *tindemba* appears to have control over the land, particularly vacant communal land. Most agricultural and town lands are, however, in the effective control of lineage and family headmen. Individual rights in appropriated land are quite pronounced and are inheritable and secure. Disputes over farm boundaries, rights in land and trespass on another's land are said to be rare. Land is hardly sold and cannot be sold to a migrant by an individual without informing his head of family and, in some cases, the chief (Kotey, 1995: 115).

With the exception of some parts of the Upper East Region, land is generally not scarce in northern Ghana. Under the customary law, both in the Northern Region and the Upper East and West Regions, each member of a land holding unit is permitted to occupy and exploit any portion of this land. Access to land for indigenes is generally not difficult (Kotey, 1995: 124). Migrants, on the other hand, have no inherent rights to use land but can acquire land with the permission of the landowner. The tenure systems allow migrants to farm on terms agreed on with the owners. In most communities, it is not permissible for migrants to plant trees since it is considered that this may result in their claiming ownership of the land. They can only plant trees with the consent of the person who gave them the land on such terms as may be agreed. Opportunities for leasing land for tree planting also exist (Kotey, 1995: 116). Land owners are willing to grant leases of land for woodlots and plantations on the payment of a mutually acceptable consideration (Kotey, 1995: 116-7). Otherwise, where a stranger plants trees without the requisite consent or permission the trees are said to belong to the landowner (Kotey, 1995:124).

Trees growing naturally in the bush are owned by the land owner-chief, tindemba or families as the case may be (Pogucki, 1952:27). Planted trees are owned by the planter. Such a person can sell, give away and use such trees. It is striking to note that each tree can be inherited in the same way as land (Kotey, 1995:123). Apart from *Dawadawa* (*parkia clappertoniana*) which may be governed by different rules, all other trees and their fruits such as sheanut trees growing in the bush may be collected, used and enjoyed by all members of the land owning group(Kotey, 1995: 124). *Dawadawa* trees are, however, said to belong to the chief or *tindana* (Kotey, 1995:123). Trees growing naturally on farms, with the exception of dawadawa, are in most instances owned by the farmer. The farmer may use, cut down, harvest the produce, pick the fruits of, collect as firewood and in other ways use such trees on his farm (Kotey, 1995: 124).

This regime of land tenure in northern Ghana overlapped with other tenurial incidents, including communal grazing rights (Agbosu, et al 33). Under customary law, a member of a landowning community has the right to graze his cattle or ruminants on any portion of the community's lands, provided that this right is exercisable in unenclosed areas and the animals do not damage farms and cultivated plants (Kotey, 1995:125). Also, members of the community exercised their rights to fuel wood, fruit trees and other edibles, medicinal plants, wood for local crafts and water rights. Use of common land resources was closely regulated through communal rules and practices, with key responsibility of enacting and enforcing rules through sanctions vested in clan leaders, the *tendanas* and the chiefs. (Songsore, 2001). The village was the territorial unit that determined access to these resources and membership in it was critical in determining rights to these resources (Agbosu, et al, ISSER 2007:33).

Recent developments in the north seem to be undermining the authority and significance of the *Tendana*. In the Northern Region, although the traditional rights of the *tendanas* over the land have largely remained, their ritual ownership of land has been modified in parts of the north in recent times. Kotey and Kasanga (2001) found that among the Dagomba and Nanumba, paramount chiefs have delegated control of the land to their sub-cheifs who no longer consult the local *tendana*. Consequently, the *tendanas* have lost their authority in land matters in much of the Northern Region. In the Upper East, as result of changing economic value of land, some chiefs now assert landholding rights and management functions when they do not have such rights (Agbosu et al ISSER 2007:34). For instance, it is on record that the Sandemanb, the head chief of the Builsa has asserted allodial ownership as opposed to sovereignty (in a jurisdictional non proprietary sense) of all Builsa land, although this is not supported by the indigenous law (Kotey, 1995: 115).

With respect to women, the customary law rules and practices regulating access to, use of and rights in land seem to be discriminatory against women (Kotey, 1995:118). In the Northern, Upper East and Upper West Regions, women usually receive land for farming from their husbands. Unmarried women may receive land from their fathers or families. For purposes of access to and use of land, married women are treated as belonging to their husbands' family rather than their father's family (Kotey, 1995: 118). Even where women gain access to land in their own families and clans, their rights tend to lapse once they marry and move to join their husbands. Generally, a wife who is given land by his husband has no right to permanently appropriate the land.

Also, the customary law rules of succession in the various communities in Northern Ghana tend to discriminate against women. Landed property is generally inherited by men, either the patrilineal junior brother or the children. Under the patrilineal system of inheritance practiced by most of the societies, a wife is not a member of a deceased husbands' family and has no right to inherit his property, though she may have a right to maintenance. Wives and daughters do not inherit landed properties. Generally, it has been observed that women inherit when a woman dies, but the rules and practices relating to access to and use of land and other social and economic factors ensure that, generally, men have more property than women. The net effect of the rules and practices relating to access to and use of land and rights therein and succession is that although women have access to land in the northern regions, these rights are generally less permanent in nature.

Conclusion

The review of the customary land tenure amongst the Akans, Ewes and the three northern regions clearly shows that customary land tenure is to a large extent influenced by their respective conceptions of land and political organization and the socio-economic developments of the areas concerned. It is also apparent from the review that although there are a number of customary practices common to the various areas reviewed such as individuals belonging to the community holding the allodial title have an inherent right to occupy and use the land and exploit natural resources; with the exception of some specific trees in the north, trees naturally growing on the land belong to the landowning community and those cultivated by the conscious industry of individuals belong to those who planted same, there are so many differences in the customary laws of these communities that it would be fundamentally flawed and unacceptable to generalize customary law as being applicable among all areas of the country.

PART III

EFFECT OF TENURE ON LIVELIHOODS

The land tenure system has significant effect on the livelihoods of people, both in the rural, peri-urban and urban sectors. It is estimated that the livelihoods of over 70% of the population in Africa are mainly linked to land and natural resources exploitation (Economic Commission for Africa, 2004). A major effect of tenure on livelihoods is the decline in agricultural production for domestic food and industrial needs. Under the traditional customary land tenure system, each member of the community was guaranteed the right to access land for farming, housing and the enjoyment of other tenurial rights because usually there was sufficient supply of land and access to it did not pose a problem, especially in one's home village (Kasanga, 2002: 28). Therefore, this egalitarian tenurial system sustained the social security of most Ghanaians in the absence of any insurance benefits, as well as providing them with a sense of community. Rural people found solace in the land, which is also the last resort for redundant urban workers. Furthermore, the Ghanaian tenurial system encouraged the free movement of people and thus may be seen as a progressive vehicle for national unity (Kasanga, 2002:29).

However, developments in Ghana's land tenure system in colonial and post independence era has resulted in food insecurity and insecure tenure which manifest in the unequal distribution of land, sub-optimal utilization of land and landlessness. With respect to food security for example, emerging trends in the peri-urban sectors where stool farm lands are converted into residential lands leased to strangers has led to the total disappearance of farm lands (Ubink: 27). A good example is the situation reported in villages close to Kumasi, in the Ashanti Region. It is on record that the conversion of stool farm lands to residential land leased to strangers in Kumasi has led to near total disappearance of farm land, creating increasing income insecurity for the community members. Members of the community are no longer able to grow their own food and generate some income by selling the surplus at the market (Ubink: 27). Most of the mainly low educated farmers become jobless or resort to petty trading. The price of food in these communities rises, leading to increased costs of living. Additionally, local folks are not in the position to compete with richer outsiders for a plot of land, making it very difficult for them to find land for agricultural purposes in their own villages. In their desperation by virtue of they been deprived of their communal land, most local and forest dwellers migrate to the city centres in search of non-existent jobs.

The State's power to compulsorily acquire lands in the public interest by virtue of its power of eminent domain under the Constitution and the State Land Act 1962(Act 125) and the Administration of Lands Act, 1962(Act 123)have adversely affected the livelihoods of many communities. In the 'public interest' the State has acquired plantations, woodlots or farms with trees thereon in order to build schools, hospitals, roads, dams, reservoirs etc. By holding the land in trust, the state vests in itself the power of alienation and the right to receive revenue accruing from the land. Furthermore, all major attributes of ownership (including the right to sell, lease, manage, receive income) exercised by customary landowners over their land are thereby transferred to the state. However, for all practical purposes they remain stool, skin, and family land as the original owners retain the right to enjoy the benefits from the land (Agbosu et al, ISSER 2007: 78-9). It has further been noted that in some cases, after vesting, the Lands Commission (acting on behalf of government) proceeds to give out leases while the chiefs also continue to lease out lands and the usufruct

holders still hold on to their land. Disputes, inevitably, over ownership therefore arise between stool subjects and persons to whom such land has been leased by the Lands Commission (Kotey and Kasanga, 2002; Agbosu et al, ISSER, 2007:79). To compound matters, it has been noted that in some cases, large tracts of land acquired by the state are never used for the purposes intended or are never used at all. In some cases, the state has gone to the extreme of leasing or selling portions of lands intended for 'public purpose' to private persons for development to the total detriment of the original land owners (Kotey, 2002).It has been observed that in some cases large tracts of land are acquired for these 'public purposes' without the payment of compensation (Kasanga, 2002:29) and divested smallholders are employed to work on the state farms as compensation (Kasanga, 2002:32).

The consequence of the state's power to compulsorily acquire and vest in itself land belonging to communities has led to the emergence of landlessness and the sub-optimal utilization of the lands, which has in turn has resulted in the creation of a landless class who face serious social and economic insecurity, particularly given the absence of alternative employment opportunities outside agriculture in these rural areas (Kasanga 2002: 29).

Another impact of land tenure on the livelihoods is in the area of residential land where the involvement of state institutions and officials have clearly led to the inequitable distribution of public lands and undermining of the authority of traditional trustees of land. The consequence of this is the placing of land in the hands of some few land speculators to the detriment of the local folks and institutions. The case of Kumasi Town Lands illustrates the point. Under the 1962 Administration of Lands Act (Act 123), the President is empowered to grant any person owing allegiance to the Asantehene a lease, at a nominal rent of one shilling per annum, over any vacant plot of land for residential purposes only, in any area within the boundaries of the Kumasi township. The lessee may, with the consent of the Minister, assign his of land plot 'to any other person owing such allegiance'. According to Ashanti custom, all the inhabitants of the Kumasi metropolis owe allegiance to the Asantehene (Kasanga 2002: 32-33). Thus, the practical effect of this provision is to make it possible for those in government to grant leases to their comrades, cronies, top civil servants in order keep them quiet in the face of gross injustice towards the majority of the population (Kasanga, 2002, 32). In the final analysis, the rural people, the urban poor, the aged, the unemployed and the disabled and "unconnected" etc are priced out of the public land market (Kasanga, 2002:33).

The Constitutional and statutory arrangement for the collection and disbursement of revenue from stool lands by the state has significant implications for land tenure in Ghana. Article 267(2) of the 1992 Constitution, which establishes the regime for the management of stool land revenues by the state provides that all revenues due to the stools in the form of rents, compensation payments and so on are first of all paid to the Office of the Administrator of Stool Lands, which then disburses the revenue according to a pre-determined constitutional formula[11].

[11] Under the Constitutional formula, 10% of the revenue is to be retained by the Office of the Administrator of Stool Lands as administrative charges. Of the remaining revenue, 55% is paid to the District Assembly within the area of authority in which the stool lands are situated, 25% is paid to the stool through the traditional authority for the maintenance of the stool in keeping with its status, and 20% to the traditional authority.

The Office of the Administrator of Stool Lands Act 1994(Act 481), which establishes the Office of the Administrator of Stool Lands (OASL) gives it the responsibility to collect and disburse all rents, dues, royalties and other payments whether in the nature of income or capital, accruing from stool lands. In practice, the objectives of article 267 are far from being achieved and the OASL is currently able to collect only a fraction of the actual revenue received by stools for the disposition of stool lands (Agbosu *et al,* ISSER 2007:82). Agbosu *et al* have further noted that in accordance with the constitutional formula, only 22.5% of the revenue is paid to land owners, while as much as 59.5% of the revenue is retained by the state. The remaining 18% is paid to the traditional council of the area where the land is situated. The percentage of the income which accrues to the stool in trust for the community is radically reduced upon disbursement by the state and consequently an even smaller percentage, if any, is actually expended on development projects for the improvement of the lives of the community. Furthermore, the absence of an institutionalized mechanism for monitoring the use of such revenues, have deprived communities of the benefit of the revenue accruing from the land (Agbosu *et al,* ISSER 2007:83).

With respect to the management of vested lands, it has been observed that revenues accruing from vested lands are also not being channeled to the land owners as envisaged by the legislation, resulting in tension between chiefs who hold the title and the state agencies. Also, there is no effective mechanism for ensuring that stool land revenues allocated to District Assemblies are in fact used to improve the welfare of the communities that own the land(Kotey and Kasanga, 2002; Agbosu *et al,* ISSER 2007:79).

It is therefore obvious from the foregoing discussion that the present land tenure system has a telling effect on the livelihoods of people and there is need for a paradigm shift from the present statu-customary imbalance to a regime in which local people and their communities are empowered to secure for themselves blessings of their natural resources.

PART IV

LINK BETWEEN COMMUNITY FORESTRY PRACTICES AND TENURE

Generally, the connection between community forest practices and involvement of the community is linked to the tenurial regime recognized and practised in those communities. Customarily, community resources such as forest are vested in the community represented by the stools, skins, families and communities and their personifications such as chiefs and traditional functionaries such as traditional and land priests. Therefore, the protection of the natural resources and the environment including the forest and rivers is the responsibility of the entire community in traditional societies. This protection is deemed as a duty to the ancestors and those yet unborn to maintain its integrity (the thrust of the concept that environmental lawyers refer to as intergenerational equity). The end result is that where communities reckon that the forest and its resources are vested in them they are proactive in fashioning out practices to the conserve and protect it. On the other hand, where the community is deprived of controlling or accessing these resources they have tended to be apathetic or actively involved in the plundering of the forest resources.

With respect to forestry, community practices which are underpinned by customary law play a significant role in conserving the forest and its resources, particularly in the off-reserve forests. In the forest communities, customary law sets rules for gaining access to the forests resources, enforcing these rules and punishing infractions thereof. The authority or legitimacy of these rules is normally founded in religious terms. These religious terms are expressed in the form of taboos, violation of which attracts social and spiritual rather than formal legal sanctions. These forest practices can be classified into various groups, namely, rest days and rest period taboos, restricted area taboos and yield restriction taboos (IUCN, Ghana Country Assessment Report, 2007).

With respect to rest days and period, almost all forest communities observe at least a day in the week when entry into and farming in the forest are strictly prohibited. These practices serve to restrict the exploitation of forest resources by community members and logging companies. Furthermore, forest communities also observe periods of closed season during which hunting and fishing are prohibited. Scientifically, this is the period when animals are nurturing their young ones and timber seedlings may be taking root, and proscription of entry into, farming and/or hunting protects the destruction of species.

With respect to restricted areas, most forest communities set aside some areas as restricted areas. These sites are often associated with the habitation of shrines of the locality. Yield restrictions tend to limit the number of non-timber forest products that individuals can take out of the forest (IUCN Ghana Country Assessment Report Summary, 2007). It is also forbidden to farm along river banks which are considered to be the resting abode of the river gods and their children. The objective fact behind this practice is to prevent the pollution of such water bodies. Where two or more communities are located close to each other, the communities normally agree on a spot where they may go to collect water for domestic use. Further, each user may collect as much water as may be required, provided he or she leaves enough for other users and also leaves the waters in a clean state. The use of implements for fetching water is regulated by rules determined by the competent local authority, usually fetish priests and priestesses. Earthenware and calabashes and lately buckets are usually the prescribed or acceptable vessels for fetching water. The drinking part

of the river is often located upstream from the swimming or bathing part or the part reserved for watering animals (FAO Legal Papers, 2008; Sarpong, 2008).

Although the efficacy of the customary norms based on traditional religious practices seemed to have been weakened with the advent of Christianity and Islam (Sarpong, 2008; Kasanga, 2002), these norms have survived because beneath the religious undertones, are indeed of some obvious scientific and conservatory facts which make them still relevant and acceptable. Research conducted on behalf of the IUCN revealed that logging companies comply with such local customs (IUCN Ghana Country Assessment Report, 2007:8).

On the other hand, where access to and management of forest resources are the preserve of the state and its institutions, legislation has tended to restrict communities' direct involvement in the management of the forest resources. In such conditions, the communities are forced to watch on helplessly or apathetically as the corporate sector engages in illegal forests practices (such as illegal chain saw operations and illegal farming) and plunder forest resources. In such cases, individual farmers and communities are not motivated to support the formal forest regime. It is indeed on record that in such cases, the conditions for the individual survival tends to override the interests of the entire community to conserve the forest. Evidence suggests that in such cases, individual farmers find that they must condone or even actively participate in illegal chain saw operations and illegal farming because that is the only way they can participate directly in forest rents albeit only in the short term before "they come for all the trees"(IUCN Ghana Country Assessment Report, 2007).

It is obvious therefore that increased community participation in decision making (under girded by customary law) and benefit sharing is the direction to go. This way not only are the communities able to secure benefits for the communities such as better conservation practices, financial income to fuel the local economy to improve their livelihoods, but they are able to protect the formal regime by acting as watch dogs and the voice or the statutory law and institutions. It is important to infuse traditional practices (customs) in the forest system. This recognition of customary law would lead to better enforcement of reserve rules because of better community support.

PART V

RECOMMENDATION

The definition of customary law in the 1992 Constitution as "those rules of law which by custom are applicable to particular communities in Ghana"[12] suggests some degree of empiricism in the ascertainment of the content and application of the customary law. In other words, the Constitution expects the application of customary law as it exists in particular communities in Ghana, not what it ought to be. Furthermore, the Constitution expects customary law to be progressive, dynamic and relevant to society. According to S.K.B. Asante (1999), "the very nature of customary law makes reference to contemporary practice and usage in society an integral part of the legal process" (1999:67).

However, it is trite learning in this country that there is often a wide gap between customary law as pronounced in the courts' judicial customary law and actual local practices(Ubink:65).This gap can be attributed to at least two factors, namely, the difficulty of knowing what the applicable rule of customary law actually is, and secondly by the nature of the state legal system, especially through its application of the doctrine of judicial precedent, which inevitably transforms local customary norms (Ubink, ibid).

With respect to the difficulty of ascertaining the applicable customary law, the challenge is that each locality has its own customary laws, and within one locality there are always variations within and misunderstandings about what the local customary law is. If the suggestion that "customary norms should not be regarded as the expression of values of the whole group, but rather as representations of the interest of parts of groups, which are focused into normative statements to give legitimacy to these partial interests" (Ubink, ibid; see also Boni, 2005: 12) is anything to go by, then that introduces a further complication for the courts in ascertaining the appropriate customary law. In that case, it is important to determine who is to be regarded as authoritative experts of customary law. As Allot (1975) has pointed out this determination is itself fraught with difficulties. He maintains that not only would the so called experts have their personal or group interests, but experts may also give misrepresentation of local customary law because of a tendency to idealize the law, to present what it ought to be instead of what it is; and because of the connected failure to appreciate that the ancient traditional law has been modified by subsequent practice (1975:78).

Another challenge for the courts and others in the distillation of the customary is the fact that in traditional customary dispute resolutions are more flexible and to some extent unpredictable in the sense that other factors apart from customary law play an important part in settlement of disputes, such as political bargaining and issues of power relations (Boni, 2005, 12). This invariably makes it extremely difficult for judges, for example, on their own to deduce the rules of customary law as it applies in land struggles from customary practices(Ubink, 66-67).

[12] 1992 Constitution, Article 11.

The nature of the Ghanaian legal system inevitably changes local customary law. Despite the fact that we have stated that the Constitution enjoins an empirical reference to the contents of the customary law, once custom has been settled by judicial decision, its binding force depends on the doctrine of judicial precedent. Currently, in the vast majority of land cases the courts do not look for local norms and usages as they apply in those communities, but to precedent for the rules and principles of customary law. Therefore, the occurrence of some disparity between judicial and local customary law is certainly bound to exist. Although precedent does not establish a fixed rule in perpetuity, the legal system does not provide the same amount of flexibility that characterizes local customary law, with its ability to respond to changes in social reality (Ubink, 68). It has been noted that the system of judicial precedent has the tendency to somewhat 'freeze' the law at one stage of its development and further complicate change (Ubink 68-69). The imposition of a state court, with the power to impose rules and to enforce decisions in disputes transforms the fluid nature of customary law to a firm body of crystallized rules. Allott (1975) has noted that whereas in local dispute settlements customary rules set the 'parameters of the dispute' and the guidelines for decisions,' in the state courts these rules will be strictly applied and imposed (1975:73).

The issue of ascertainment of customary law is further compounded by the fact that judges and some academics either due to ignorance or by a deliberate policy and action, have pursued an agenda to gradually integrate customary law over the years, leading to the evolution of a body of principles which they claim to be of universal application in the country (Ubink: 69-70)[13].

This state of affairs therefore clearly calls for in-depth research into customary land tenure and management systems of the various ethnic groups in Ghana for purposes of incorporation into the mechanisms for the public administration of land. Not only does it makes sense to incorporate into development planning a process of understanding and using local knowledge systems, but it is important to include and integrate members of the community into the governance structure to strengthen the system of land administration and governance in this country.

Perhaps, the starting point is the ascertainment and codification of customary law rules, a process currently being undertaken by the African Customary and Codification Law Project (ACLP) which is a joint collaboration between the German NGO, German Development Cooperation (GTZ), the Law Reform Commission of Ghana and the various Regional Houses of Chiefs. It is anticipated that significant benefits would accrue to the country in terms of the reduction of protracted and costly chieftaincy and land disputes. We recommend that this exercise is a highly beneficial enterprise for the GFP to support financial, logistical and /or technically, through its local representatives or in collaboration with other actors in the process. The GFP may commission the ascertainment and codification of selected customary areas particularly in areas which coincide with its interest in forest areas across the country. Not only should the GFP attempt to ascertain the customary law but also investigate other external factors such as power relations and political

[13] Other state institutions also seem to be fallen for the myth of uniformity of customary law throughout Ghana. For example, it is on record that the Lands Commission has been directing land buyers in the Upper West Region to the local chief, whereas in that area land ownership is separated from chieftaincy and lies with the tendamba, the earth priest (Ubink:70)

bargaining that are paramount factors that influence land tenure in the hands of traditional actors. Considering that the principal tenets of customary land law are progressive it would be important that this exercise (even if not on a grand scale) must be an on-going process to ascertain the customary law currently been practised on the ground as opposed to those steeped in judicial precedents and ancient practices.

Secondly, given the weaknesses of the statutory agencies managing land (District Assemblies, Regional Lands Commission, Administrator of stool Lands) in terms of lack of finance, competent personnel, endemic corruption and mismanagement, it would be unwise to leave all land management functions in the hands of only public administrators. The true owners of the land should be made to feel and be part of land administration in the local communities. Thus, we expect that the collaborative resource management (CRM) strategy envisaged under the National Land Policy (1999), which seeks to combine involvement, benefits and responsibility for all segments of the population to ensure the conservation and sustainable development of Ghana's forest resources should be vigorously pursued. We believe that this will go a long way to relieve the public land agencies of most of their burden in land administration and to make the community the watch–dog of the national interest.

To give practical expression to this collaboration we recommend that the GFP may assist financially and logistically in the establishment of customary land bureaus in the various customary areas where titles to land as well as land transactions would be vetted and locally recorded. The Customary Land Bureau (CLB) will investigate title to all parcels of land in the locality based on the customary law. The registration process should begin with a notification and objection procedure under which the CLB shall notify the local community of the application by family or individual to register his title or interest in land and anyone having an objection to the registration must do so within the period limited. In our proposed scheme of things, the allodial title would be the first interest to be registered by the respective stool, skins, families and individuals as the case may be. Where there are disputes as to title to the allodial title this should be settled by arbitration (customary /statutory under the Arbitration Act, 1962(Act 38). The settlement could be conducted either by the Judicial Committees of the various Regional Houses of Chiefs or by a retired judge or respected legal practitioner having good knowledge of the customary laws of the traditional area and whose findings and decisions shall be final on matters of facts. After the determination of the case or the period of objection is over the allodial title is registered. This should be accompanied by site plans prepared by competent surveyors, cartographers and technical persons attached to or employed by the CLB.

After the registration of the allodial title, holders of the customary freehold (the usufruct holders) should be invited to register their interests with the CLB. Their application should go through the same notification and objection procedure outlined above. Disputes should be referred to customary /statutory arbitration or the Regional Houses of Chiefs or a Judge or a respected lawyer having the benefit of local customary knowledge to settle. The attraction in referring these matters to customary arbitration or a retired Judge or respected lawyer is to avoid congestion of the Regional Houses of Chiefs and the Courts which are already overburdened with case load. Cases already commenced in court may be discontinued with the mutual agreement of all parties involved to submit to alternative dispute resolution for speedy settlement.

In the case of compulsory acquisition it is suggested that subject to the constitutional provisions, compulsory acquisition shall only take place subject to consultation with the members of customary area to be affected by the acquisition. The community's right to be consulted may either be enshrined in the Constitution(if amended) or statutory provision or it may develop as a convention that no acquisition may be carried out without consultation with the members of the community to be affected. This can take the form of an Impact Assessment on the area in terms of the environment, social and economic well being of the community. In order to minimize the effect of landlessness on those communities the area to be acquired should be proved to be the land area required for the purpose and local folks and the community should be integrated into whatever project is to be undertaken. The GFP may intervene by facilitating the sensitization the communities by creating a platform for communities to express themselves before any compulsory acquisition takes place and educating them about their rights. The GFP may also lobby for the return of lands compulsorily acquired which are not being used for the intended purposes for which they were acquired.

Alternatively, the GFP may consider partnering the Land Administration Programme specifically on the establishment of the proposed Community Land Secretariats. Currently, the Land Administration Proramme is being supported by development partners including the International Development Association, Nordic Development Fund (NDF), Canadian International Development Agency (CIDA) and the UK Department for International Development (DFID) and the German Bank for Reconstruction (KFW). The goals of this project include laying the foundation for a clearer and more cohesive development in the customary land administration and for its further consolidation and evolution in subsequent land administration projects; working directly with customary land authorities to help them improve and develop customary land administration. In these and related tasks, the project will assist the customary authorities to work with formal land administration agencies to the develop procedures that are simple and cheap for land holders and customary administrators but also interface with more formal survey and registration procedures. The project would also assist customary land authorities to work together for mutual problem solving and to use traditional councils or other fora to inform policy making at district, regional and national levels. Implementation of this component will proceed through piloting in selected areas in all ten regions. These would sample rural, urban and peri-urban cases and areas where different levels of complexity and conflict in customary land relations exist. Over the five years, it will be expected that up to fifty (50) customary land areas would receive direct facilitation and support. Replication and expansion, if appropriate, to upwards of 500 other customary land areas (villages or larger units) would be undertaken through development and dissemination of best practice models, formulation of guidelines, participation in workshops, and opportunities for more structured training(Land Administration Programme).

Finally, we note that poverty amongst forest dwellers in Ghana is the result of lack of integration and linkages between the exploitation of forest resources, the extractors of these resources and activities that positively impact forest dwellers. The missing link seems to be the absence of policies and activities that would connect commercial forestry activities to the local economy. These linkages could be direct and indirect. With respect to direct linkages, the impacts arise almost spontaneously as a consequence of a large injection of capital or a

new project being established in a forest area. Indirect linkages, on the other hand, are the subsequent levels of impacts that may occur or be triggered as a consequence of these first level impacts. Indirect linkage effects are often much greater than those arising directly which can extend over different geographical boundaries and within and across sectors.

One area in which we believe that GFP could be involved to improve the livelihoods of forest dwellers in Ghana is the creation of what we call Forest Partnership Initiatives and Linkages Programme (FPIALP). Within this concept, it is proposed that the GFP would use its financial strength and influence to acquire or negotiate access to land from the requisite authorities-stools, families, earth priest or individuals. These lands would be leased or licences granted to individual or co-operative forest dwellers by the GFP to plant timber or other commercial trees or engage in subsistence farming on fairly better terms than what pertains under the *abunu* and *abusa* crop sharing systems[14]. These trees will be harvested and exported and the benefits accrue to the local farmers. Alternatively, the GFP after acquiring the land from the local authorities may establish timber plantations and employ local forest dwellers as hands on these plantations. The timber or other commercial trees harvested would be largely exported and partly sold on the local market in processed or value-added form.

Apart from the direct benefits that would accrue from forest related activities, the "Forest Partnership Initiatives and Linkages Programme" (FPIALP) will have a component that would develop local businesses and diversify the local economy. The broad objects of this component would be to support the development of local businesses and potential suppliers and providers of goods and services to the forest companies and communities; to improve the competitiveness of local non-forestry related businesses to help develop a diversified local economy outside of the forest sector; and to develop and improve the capacity of local business associations and institutions that can provide long-term support, training and other services to the local business community.

The benefits to the forest dwellers and the nation at large from the FPIALP would be enormous. These benefits include employment to local forest dwellers, which would fuel the local economy and lead to the improvement of the lives of the local forest folks; generation of foreign exchange revenues; corporate taxes and dividends. Additionally, the FPIALP would typically give rise to further types of direct and indirect linkages into sectors of the local economy, the development of skills, diversification of the local economy and improvement in general infrastructure of the forest areas.

The feasibility and viability of such a project is undoubted, and if the experience from the linkages in the mining industry is any thing to go by then its potential cannot be overemphasized. For example, it is on record that Ahafo Linkages Programme (ALP), which has similar characteristics, has chalked significant success that can be replicated in the forest areas. The Ahafo Mine has provided jobs for up to 3,500 people of which 32% were local hires after December 2008. The project also stimulated improvements in local infrastructure, for example, mobile telephony coverage, roads and transport access, electricity supply and micro-enterprise development. In 2007, Newmont in co-operation with the International Finance Corporation (IFC) established a comprehensive intervention

[14] PROVIDE SUMMARY

in order to maximize local content from its operations at the Ahafo mine combining access to business opportunities with training and mentoring local entrepreneurs. As of April 2009, a total of 101 local SMMEs have shown improvement in formal business practices (48 for local supplier development and 53 for local economic development) and the majority have been awarded contracts with Newmont Ghana Gold. SMMEs and women in particular were prioritised for support (Brakoh, 2009; WBCSD, 2009).

Conclusion

Ghana's land tenure system which can presently be aptly described as a cauldron of melting tensions between customary and state interests and institutions, a struggle of communal and individual rights, opposing political forces and a divergent economic interests stuck in colonial paradigm in search of a future identity, plays a significant role in the livelihoods of many, particularly those in the forest belt. It is admitted that the pluralistic legal system of land tenure has come to stay and it would take a revolution to undo it. However, customary must be given a significant role to play than it currently does and a conscious effort must be made by policy makers and implementers to incorporate customary law into land administration in Ghana. The long-term interest of communities is best served by the conservation of biodiversity within the pluralistic participatory framework. Therefore, no effort should be spared to strengthen the role of communities in local resource governance and to democratize governance processes at the local level. The challenges for incorporation of customary law into national land administration are the ascertainment of the applicable customary rules as they pertain in various local communities and employment of political forces needed to effect the land tenure changes. The ascertainment of customary law and practices being dynamic and changing must be an on-going process to be in step and in tune with current national and international developments. This way, we believe, the various initiatives by government and other development partners would provide a satisfactory forest governance regime, fertile enough to secure for forest dwellers, their posterity as well as local communities an improved livelihood. Politically, a holistic approach that takes into consideration the various political and economic relations that under gird our land tenure regime and one that addresses the various distortions in the land tenure including dichotomies of statutory and customary law and institutions, gender etc is required to secure a clear and realistic chance of securing a fair and satisfactory land tenure system.

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LAND TENURE IN GHANA: MAKING A CASE FOR INCORPORATION OF CUSTOMARY LAW IN LAND ADMINISTRATION AND AREAS OF INTERVENTION BY THE GROWING FOREST PARTNERSHIP

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