

## 1 Introduction

Article 36 (8) of the 1992 Constitution of Ghana states:

The state shall recognise that ownership and possession of land carry a social obligation to serve the larger community and, in particular, the state shall recognise that the managers of public, stool, skin and family lands are fiduciaries charged with the obligation to discharge their functions for the benefit respectively of the people of Ghana of the stool, skin or family concerned, and are accountable as fiduciaries in this regard.

In Ghana, 'stools' and 'skins' are the royal or chiefly families of Ghana's pre-colonial states who, during the period of British colonial rule, acquired a legal status within those areas somewhat akin to that of the Crown in English law. They are public corporate authorities who hold what is called the 'allodial' title of all unoccupied (i.e not actively farmed) lands in their traditional areas. That is, they are trustees of this land for all the members of the indigenous community. In customary law, every member of a defined political community has the right to be allocated land by these 'public trustees'. Families, including the royal families in their 'private' capacity, hold lands on the same basis in trust for future generations. The majority of peasant farmland in Ghana is still held under this kind of title, whereas most urban lands are vested in the state, as are other public lands and lands acquired by the state for developmental purposes.

Article 257 (6) of the Constitution nevertheless provides that:

Every mineral in its natural state in, under or upon any land in Ghana, rivers, streams, water courses throughout Ghana, the exclusive economic zone and any area covered by the territorial sea or continental shelf is the property of the Republic of Ghana and shall be vested in the President on behalf of, and in trust for the people of Ghana.

This article briefly examines public land administration reforms, before outlining the structure and functions of the existing Lands

# Land Administration Reforms and Social Differentiation

## *A Case Study of Ghana's Lands Commission*

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Commission. This leads on to an appraisal of some of the achievements, missed opportunities and failures of the Lands Commission.

Finally, policy implications and appropriate recommendations are offered towards strengthening the Lands Commission, and ensuring that the benefits of its operations are extended to all stakeholders in the country.

## **2 The Reform of Land Administration, 1962–1994: From Lands Department to Lands Commission**

The Lands Commission first came into existence on the strength of the consequential enactments of the 1969 Constitution under the Lands Commission Act 1971 (Act 362). Article 163 (5) of the 1969 Constitution stipulated:

The Lands Commission shall hold and manage to the exclusion of any other person or authority any land or minerals vested in the President by this Constitution or any other law or vested in the Commission by any law or acquired by the Government and shall have such other functions in relation thereto, as may be prescribed by or under an Act of Parliament.

The Lands Commission was initially put directly under the Ministry of Lands and Natural Resources. The erstwhile Lands Department became the Secretariat of the Lands Commission and carried out all the day-to-day land administration functions. However, as governments have frequently changed hands, so has the Lands Commission.

### **2.1 The Lands Commission versus the Land Valuation Board**

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

- determining all matters of compensation for land acquired by the government, any organ of

- government or public corporation
- preparing valuation lists for property rating purposes
- valuation of interests in land for the administration of death duties
- determining values of government rented premises
- advising the Lands Commission and the Forestry Commission on royalty payments on forestry holdings and products
- advising all organs of government on all matters of valuation of interests in immovable property

To date, the Land Valuation Board has no enabling Act. However, the practical implementation of PNDCL 42 (section 43) simply resulted in the division of the resources of the Lands Commission: offices, staff, personnel, equipment, vehicles, files etc. between two related but separate authorities.

### **2.2 The Lands Commission structure and functions**

The 1992 Constitution provided for the establishment of a national Lands Commission, along with ten regional Lands Commissions supported by Lands Commission Secretariats, and these provisions were embodied in the Lands Commission Act 1994 (Act 483)

Article 258 (1) of the 1992 Constitution spells out the functions of the national and regional Lands Commissions, which are:

- (a) on behalf of the government, to manage public lands and any lands vested in the President by this Constitution or by any other law or any lands vested in the Commission;
- (b) to advise the Government, local authorities and traditional authorities on the policy framework for the development of particular areas of Ghana to ensure that the development of individual pieces of land is coordinated with the relevant development plan for the area concerned;
- (c) to formulate and submit to government recommendations on national policy with respect to land use and capability;
- (d) to advise on, and assist in the execution of, a comprehensive programme for the registration of title to land throughout Ghana; and

(e) to perform such other functions as the minister responsible for lands and forestry may assign to the Commission.

The activities of all the Regional Lands Commissions are coordinated by the Lands Commission. However, whilst all appointments to the Lands Commission are made by the President, members of the Regional Lands Commission are appointed by the minister responsible for lands and forestry.

The 1992 Constitution and the 1994 Act also brought in measures which have had great significance for the majority of customary land holders and for the operation of the chiefs' custodial role. Article 267 (3) of the Constitution stipulates:

There shall be no disposition or development of any stool land unless the Regional Lands Commission of the Region in which the land is situated has certified that the disposition or development is consistent with the development plan drawn up or approved by the planning authority for the area concerned.

In addition, the 1994 Act set up a central Administrator of Stool Lands in Accra, whose functions include collecting rents and royalties from stool lands, paying them into separate accounts and disbursing them amongst the stool (royal family), the traditional council and the local government authority (District Assembly) in the proportions, respectively, of 25: 20: 55. The traditional authorities can justifiably regard the new system as an attempt to centralise control over a function that they were performing quite adequately at local level in cooperation with the regional Lands offices.

### **2.3 The Lands Commission and land administration regulations**

The Lands Commission is obliged to work within the relevant provisions of the State Lands Regulations, 1962 (L.I.230) as well as the Administration of Lands Regulations, 1962 (LI 232) in the discharge of its functions. In all compulsory acquisition cases a permanent site advisory committee advises the Commission as to the suitability of the site.

The minister is responsible for the allocation to ministries, departments or other organs of the

Republic, including any statutory corporation, of any land acquired under the Act. Every such allocation shall be evidenced by a written instrument, to be known as a Certificate of Allocation, issued by or on behalf of the minister. Individual applications for leases/licenses are governed by Form 5 (under LI 230), regulation 9 of which demands a banker's reference of £G1000<sup>1</sup> (i.e. one thousand pounds sterling) before an applicant is allocated a government land. Clearly, regulation 9, which is still in force, has priced the low income, middle income and the silent majority generally out of the public land market, especially in the urban areas.

Section 5 of the Administration of Lands Act 1962 (Act 123) relating to the Kumasi Town Lands further illustrates the point:

The President may grant to any person owing allegiance to the Asantehene one lease, at a nominal rent of one shilling per annum, of one vacant plot of land for residential purposes only, in any area within the boundaries of the Kumasi town lands described in the Schedule of this act, and comprising land held in trust for the Golden Stool and the Kumasi Traditional Area. Any such plot, including a plot granted under an enactment repealed by this act, is called a 'free plot'. The lessee may, with previous consent in writing of the minister, assign his free plot to any person owing such allegiance but shall not, except as provided in subsection (3) of this section, assign it to any other person.

Within the current metropolitan neighbourhoods of Kumasi and according to custom, all the inhabitants of the Kumasi Metropolis owe some allegiance to the Asantehene. The implication is that government plots are freely assignable for a valuable consideration, to any resident of the city. In practice, allocations follow networks of 'insider' privilege.

The management functions of the Land Commission also include the fixing and collection of rents, rent reviews and lease renewals, maintenance and the securing of properties from encroachment and, in some instances, as in East Legon (Accra), the provision of infrastructural services for housing estates.

At the national level, the Lands Commission recently provided invaluable inputs into the formulation of a new national land policy (National Land Policy, 1999), which, if effectively implemented, could improve land administration generally in the country.

## **2.4 The Lands Commission, power structures and marginality**

Under the 1969 Constitution, the Lands Commission was placed under the Ministry of Lands and Natural Resources. Hence land administration was directly run from the ministry. Selected regional representatives grossly abused their power by simply allocating plots to themselves, relatives, friends and politicians. To correct the anomaly, the 1979 Constitution placed the Lands Commission under the President so that the Commission could be insulated from ministerial control. However, Section 258(2) of the 1992 Constitution stipulates: 'The Minister responsible for lands and natural resources may, with the approval of the President, give general directions in writing to the Lands Commission on matters of policy in respect of the functions of the Commission and the Commission shall comply with the directions'.

Section 2 (2) of the Lands Commission Act, 1994 (Act 483) states: 'The Minister may, with the approval of the President, give general directions in writing to the Commission on matters of policy in respect of the management of public lands.' The independence of the Lands Commission has, therefore, been seriously compromised. In June 1994 when the then Executive Secretary to the Lands Commission was summarily dismissed, the reasons given by the former minister included:

- poor functional relationship between the Lands Commission and the Ministry;
- delays in responding to the Ministry's requests for advice or information;
- refusal to act on ministerial directives;
- inability to delegate, leading to the creation of personality cult; and
- overconcentration on issues relating to leases and concurrences to the neglect of, or lack of attention to, issues on policy.

His deputy who took over was also removed in 1998 by the government (Adjei 1994). These cases show that the Lands Commission has been marginalised by the power structures. Where then is the job security for the staff generally?

## **3 Land Administration and Social Differentiation: The Winners and the Losers**

### **3.1 Access to public and vested lands**

In theory, access to public land is open to all Ghanaians, on a 'first come first served' basis. To qualify for a plot, however, a person must have a favourable banker's reference indicating that the applicant is capable of carrying out the proposed development according to the specifications of the Commission.

Research studies suggest that the beneficiaries of land allocations by the Lands Commission are mainly senior civil servants, politicians, top army and police officers, contractors, business executives and the land administrators. Since it is precisely the above categories of people (the privileged minority) who have the means, contacts and power to acquire land on the open market, it is questionable whether the principle of the free allocation of public lands has not outlived its usefulness. It would appear that the principle restricts the supply of land to the urban land market and could trigger higher land values in the private land market (Kasanga 1991, 1996, 1997). 'Performance in management of public land is constrained by outdated statutory regulations (State Lands Regulations 1962 LI 230) ... The fact of the above has led to inequitable distribution of public land to the disadvantage of the low/middle income groups' (Broby 1992:30).

### **3.2 Compulsory acquisition and compensation bottlenecks**

Kotey (1996:254) rightly observes: 'The pre-1993 position made little or no provision for any meaningful consultation with the owner(s) of the land or the persons whose interests will be affected by the acquisition. They are also not involved in the process of site selection even after the decision to compulsorily acquire has been taken. The site selection advisory committees established by the

Lands Commission are made up solely of technocrats representing organisations like Water, Electricity, Town and Country Planning, Survey Department, Post and Telecommunications, etc. Neither the community in which the land is situated nor the wider public is in any way consulted or offered an opportunity to express a position on the necessity or desirability of a proposed acquisition or on site selection. Indeed, usually the first time the owner of a land, or a person who has an interest in the land, becomes aware that his land has been compulsorily acquired is when he becomes aware of the publication of an executive instrument or when he sees some workmen enter onto the land pursuant to an executive instrument'.

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

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

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

Evidence from the Land Valuation Board indicates that outstanding compensation claims owed by government nationwide as at December 1999 were estimated at 800 billion cedis (approximately £107 million). Some of the claims date back to the 1970s. However under current law the awards attract no interest, however far into the future the claims might be paid, if ever. The sociocultural and economic insecurity unleashed by the public land administration machinery is real and warrants urgent attention.

### **3.3 Injustice in the administration of vested land**

According to the 1998 annual report of the Lands Commission:

The Commission faced several law suits in the courts during the year. In the Greater Accra region alone there were a tantalising 77 suits that were instituted against the Commission and another 52 subpoenas were served on the Commission. Suits were also instituted against the Commission in the Ashanti and Eastern Regions. The main contention in the suits centered around land compulsorily acquired by the government but for which no compensation had been paid. The allodial owners were therefore demanding the payment of compensation or the return of their lands. There is also a rising agitation from traditional rulers, family heads and individuals for the release of government-acquired lands and for the divesting of some of the vested lands. Notable ones include a petition by the Obomeng and New Juaben stools for the divesting of Nkwakaw and Koforidua lands respectively.

Adam (2000:85) could not have stated the position better:

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

### 3.4 Land administration: some achievements and constraints

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

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

Brobbey (1997:80) comments, however, that the performance record of the Lands Commission borders on a 'total failure to respond adequately to current demands with no prospect in sight that it can meet the demands of the future'.

### 4 Policy Implications: A Story of Missed Opportunities

The opportunities to settle Ghana's land question, to promote efficient land markets and to secure invaluable economic and financial returns from state/public and vested lands have all, so far, been missed.

- The Lands Commission is currently too weak in personnel, funding, equipment, vehicles, support services, etc. to effectively and efficiently execute its national and regional functions.
- Without an independent Lands Commission, devoid of political and ministerial control, land administration will continue to be dictated by the government of the day, rightly or wrongly.
- The inequities in the state land regulations and the administration of land regulations are clear. Without their removal or amendment, progressive land management, based on professional standards, financial, economic and market

considerations, appears remote, if not impossible.

- The benefits of the public land machinery, so far, have gone to a small minority class. To that extent, public land administration policies appear negative rather than positive. Resources are being legally transferred from the poor to the rich, the powerful and the educated to the detriment of the overwhelming majority.
- Such a retrogressive land administration regime is not sustainable. In the long run, it is an invitation to instability and revolution if the disadvantaged majority decides to challenge the system.
- It should be recognised that the customary land tenure and land administration systems have a place in the modernisation and development processes.

## 5 Recommendations

### 5.1 Revamp the Lands Commission

The Lands Commission should be revamped into an independent Lands Commission as envisaged under the 1979 Constitution. 'In the performance of any of its functions under this Constitution or any other law the Lands Commission shall be subject only to this Constitution and shall not be subject to the direction or control of any other person or authority.' Article 189 (7).

The Office of the Administrator of Stool Lands ought to go back to the Lands Commission to help manage only public/state lands. However, in order to facilitate land administration and to promote customer interests, the Land Valuation Board and the Compulsory Land Title Registry, all of which deliver property services, should come under one roof.

### 5.2 Promote a self-financing Lands Commission

Businesslike and professional property management principles based on sound economic, financial and active land market considerations should guide the operations of the Lands Commission and all other service delivery agencies. For instance, all services rendered to local authorities, statutory corporations, private firms, traditional authorities, and individuals should attract marketplace professional

fees/charges, based on the scale as given by the Ghana Institute of Surveyors or the Ghana Association of Consultants.

Any income generated should be paid into a Land Development Fund controlled by the Commission and not into the Government's Consolidated Fund. The funds so generated could be used to improve the work conditions of all the staff, the payment of outstanding compensation claims, investments in infrastructure, offices, equipments, vehicles, training and environmental protection.<sup>2</sup>

### **5.3 Expunge unjust and obsolete state land regulations**

The state land regulations and land administration regulations have outlived their usefulness and need urgent amendment. So has the Administration of Lands Act 1962 (Act 123). It would be helpful to review the government's objectives in land administration as well as the state property portfolio.

Any land administration reforms should be guided by the progressive principles of equity, efficiency, social justice, accountability and transparency. This would mean, for instance, that all public land disposals or allocations ought to attract open market capital and rental values.

### **5.4 Adhere to relevant 1992 Constitutional provisions**

This would restore confidence and faith in government and the Lands Commission. Some of the relevant provisions include:

20 (2) Compulsory acquisition of property by the state shall be made under a law which makes provision for:

- (a) the prompt payment of fair and adequate compensation;
- (b) a right of access to the High Court by any person who has an interest in or right over the property, whether direct or on appeal from any other authority for the determination of his interest or right and the amount of compensation to which he is entitled.

20 (3) Where a compulsory acquisition or possession of land effected by the State in accordance with clause (1) of this article involves displacement of any inhabitants, the State shall resettle the displaced inhabitants on suitable alternative land with due regard for their economic wellbeing and social and cultural values.

20 (5) Any property compulsorily taken possession of or acquired in the public interest or for a public purpose shall be used only in the public interest or for the public purpose for which it was acquired.

20 (6) Where the property is not used in the public interest or for the purpose for which it was acquired, the owner of the property immediately before the compulsory acquisition shall be given the first option for acquiring the property and shall, on such reacquisition, refund the whole or part of the compensation paid to him as provided for by law or such other amount as is commensurate with the value of the property at the time of the reacquisition.

In line with the constitutional provisions, all litigation-free vested lands as well as surplus compulsorily acquired lands (i.e. state lands) should be returned to their rightful owners – stools, families, clans, individuals etc.

### **5.5 Constitutional amendments and the role of customary land administration institutions**

Articles 36 (8) and 267 of the 1992 Constitution, which recognise stool lands as well as the Office of the Administrator of Stool Lands respectively, are contradictory. The Constitution would have to be amended to enable stools to play their legitimate role in land administration without any legal or political hindrance. In spite of their weaknesses, the customary tenurial systems and institutions are better placed to ensure accountability to the local communities and villagers than the public land administration machinery. Community land secretariats, backed by their own hired professionals, would promote positive land management and community participation. Any income accruing from stool lands should be retained by stools, community land secretariats and families, and should only be taxable by government in accordance with the Income Tax law. The

contention here is that there are better checks and balances at the community level for ensuring that the right thing is done, than is currently the case with public land administration.

## 5.6 The challenges

Two challenges are pertinent here:

- How can those who have the most power, influence and vested interests in society be persuaded to amend and/or to discard obsolete, unjust and unworkable state laws and regulations in the interest of all stakeholders?

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- How can government and delegated authorities lead by example – the demonstration effect of good governance within the rule of law?

## Notes

1. Current exchange rate as at 15 May 2000 £1 = €7500.
2. Under the old British Lands Commission Act 1967, all sums of money accruing to the Commission as a result of the acquisition and management of land were paid into the Land Acquisition and Management Fund (Heap 1967:118). The sums of money were not paid to the British Government of the day, as is currently the case in Ghana.

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