Illustrating Duality in the Images of Land: The Limitations of Ghana's Land Administration Policy

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Abstract: *This write-up is an attempt to come to terms with the Land Administration Policy (LAP) by underlining some weakness in the assumption underpinning our understanding of Land. The paper draws attention to the lob sightedness of LAP and hence how parochial we are in dealing with the sustainability and hence the competing claims to land in rural settings. Adopting a narrative approach, the overall methodology adopted both throughout the fieldwork and the actual analysis of the findings is that of a qualitative case-based research that saw the substantial use of secondary literature, desk studies, and to a rather limited extent a range of different participatory approaches such as Focus Group/ Stratified Group Discussions, Informal Interaction which evolve around long stays at a particular location, and limited Case Analysis. Findings led to the conclusion that LAP was largely dealing with urban lands understanding of which has been generalise to cover rural lands which are the majority. And that the traditional notions underpinning land have been ignored in so doing. Hence it is recommended not to view land as a homogenous concept but to consciously sort for and deal with the various images of land and, in so doing, fashion out various land administration policies providing a basket of choices rather than a blue-print.*

Keywords: *Duality; Land Administration Policy; Parochialism; Competing Claims; Land Tenure.*

1. INTRODUCTION

As a general rule, the indigenous/customary/traditional tenure systems in Ghana prevents any individual from owning land. Indeed, when the British colonial administration tried to clarify the issues of land ownership in Ghana (with the intent of placing unclaimed land under the custody of the crown) they received the following answer: 'Land belongs to a vast family, of which many are dead, few are living and countless numbers are yet unborn' (West African Lands Committee, 1916b 31-32 in Berry 1993: 107).

On any given parcel of arable land in Ghana the rights to the produce is often divided between several different parties. The produce of the crops cultivated in the rainy season may be owned by one party, the crops produced in the dry season by a second party, the produce from the economic trees to a third party, and the trees themselves to a fourth party. The arrangements for minerals and water bodies are even more widespread. If any of these parties wish to transfer their stakes in the parcel they may have to involve several other parties whose stakes in the parcel only become relevant in case of transfers (a party can at any time be one or several people or even entire communities or villages). Some ownerships even transverse boundaries of nation states Ghana/ Burkina, Ghana/ Togo, and Ghana/ Cote d'Ivoire (Bening, 1973).

That being said there is no uniform way in which land is being held and used that applies to all of Ghana. Speaking in very general terms land in the southern part of Ghana is all vested in the office of the chief - so called stool or skin land. All the people belonging under the particular chief are therefore in principle tenants. However, the leaseholds given by the chief are subject to inheritance, which is matrilineal among the Asante and patrilineal among most other ethnic groups. In many cases the individual leaseholder has de facto ownership of the land and is frequently subletting the land to other parties. These arrangements are quite common and often take shape as share cropping arrangements, where the land user will compensate a part of the harvest to the landholder, who then in turn may or may not pay some kind of tribute to the chief (the *abunu* and *abusa* system).

According to Bening (1986), in the northern part of Ghana, the situation is somehow different. The first is like in southern Ghana where lands are owned by Chiefs and are inherited patrilinealy. Most parts of northern Ghana however have no traditionally strong chieftaincy structures, the chieftaincy was superimposed on this region by the colonial administration who needed chiefs to work through as a part of the administration practice of indirect rule. Instead the Tindaana who is a descendant of the tribe or family, which originally settled in the area, holds the spiritual ownership of the land whiles the administrative ownership still belonged to individuals, families, clans, and communities.

The Tindaanas hold of the land is significantly weaker than that of the southern chiefs, and in many cases the Tindaanas are primarily functioning as religious and spiritual leaders performing the major sacrifices or libations on the land to ensure the continued link with the forefathers and the gods. The term Tindaana is indeed biased, since it at the same time refers to the entire family or clan of the original settlers, the particular person who is the elder of that clan and is a religious term meaning earth-priest. In northern Ghana land is de facto held by individuals and/orfamilies.

The main problem arising from the indigenous tenure arrangements is when somebody tries to buy or sell land. The continued sustainability of the indigenous tenure systems is based on the fact that there is always vacant arable land to allocate. In many parts of Ghana this is no longer the case, and the only way to acquire land is through either inheritance or sales. In most parts of northern Ghana selling of land is considered something of a taboo, which does not prevent it from happening though, but given the dubious nature of the arrangements there is practically no land where there are not several people who can claim one or the other sort of ownership, and since it is largely done in a largely illiterate environment where oral agreements are the rule rather than the exception, it is extremely difficult for a potential buyer to be sure that the person he paid for the land has a more legitimate right to the land than any of the others.

For that reason, a person may have to buy the same piece of land from several different people or even worse the same piece of land may in fact be sold to several different people. Further there is absolutely no guarantee that the new 'owner' of the land will be able to hang on to it for more than his owner or the seller's lifetime. Given these circumstances it is hardly surprising that at present there are more than 60,000 land cases pending in the Ghanaian courts, and in any case it goes to show that the current tenure systems – be they dubbed indigenous or formal are not in themselves neither stable nor sustainable (Daanaa, 1996).

It is possible to acquire an official title to land, but the process of acquiring it involves a bureaucracy of no less than 6 government agencies, and is reputed to take no less than a year and as much as 5 years to carry out. As a result, only few farmers indulge in this slow bureaucratic procedure, not only because it is slow and costly but also because the procedure is likely to bring about even more unwanted conflicts over the control of the land.

2. METHODOLOGY

A case study approach was adopted for this exercise (Yin, 2003; Creswell, 2007; and Creswell, 2009). However, to make the cases fairly representative, the spread cover the Upper East Region as widely as possible. From the far east of the Region, Kanjaga and Chobsa were the communities interviewed in the Builsa District, and Pungu of Navrongo in the Kassena-Nankani District. In the Bolgatanga area, Kalbeo, and Nangodi were chosen. From Bawku West Bugri were visited.

A combination of methods used included:

- Stratified Group Discussions. This meant separating the men and women and interviewing the groups separately. In some cases they were brought together and made to confront one another and in others the findings remained separated..
- Focus Group Discussions. These were mixed groups of elderly men and women with land rights or potential rights to land.
- Key Informant Interview. A one-on-one interview with traditional institutions (men, women, and youth), elders, and some functionaries (also Government like teachers and extension staff from the area) living in the community.
- Phased Assertion, Confrontational Dialogue and Critical Arena Analysis had to be adopted to break initial barriers and mind-sets.

In whichever case, the findings were later processed in discussions by a larger group.

3. FINDINGS

3.1. Image One of Land

Cullinan (2003) states that another name for Land is Earth. Though debatable, has a deep meaning for what images we have of Land. His position enables the land to have a physical form given to it by its minerals and plants rooted in it, minds and senses of beauty, from a relation to its contours, colours, textures, tastes, and smells; and where we ultimately go into when life on earth is over. As in the African philosophy, Cullinan's (2003) position of the land/ earth having a life force or vital energy that animates us, flows through, and is concentrated in the soil, rocks and plants is shared with other philosophers. Hence, we share a subjective presence, soul, consciousness and unconsciousness with our lands. Warmth and cold, sorrow and joy, love and hate, tenderness and rough all being the attributes of land. Hence land is part of a physical body of a living being not an inanimate entity.

The Daggaba, Gruni and most of the ethnic communities of northern Ghana believe that people belong to and are shaped by their lands. Land, among these people has a power over their minds and hearts. They have cultural expressions of such: songs of exile lamenting their being uprooted from the soils of their youth, names, performances, dances to signify the earth, when far from home look at the landscape and recall memories of the past with nostalgia, effigies that remind them of homelands. Land is therefore sacred and must be treated as such to avoid punishment and rather obtain blessings from the Allfather ("*Te zaa saa*") (Kasanga, 1994).

3.2. Image Two of Land

Another image of land posits by Cullinan (2003) is that land is perceived by a dominant discourse as a commodity. The so called dominant cultures understand land as a property that may be exploited, bought, sold, exchanged, or traded off, abused or misused in one form or another devoid of any personal attachments or sacredness. In fact, the owner may never even see the land let alone have any personal relationship with it. The owner might not even have the capacities of loving the land (as in lands owned by institutions or companies). Hence land can be surveyed, demarcated to separate it from surrounding lands, crating parcels and plots, and maps made of them to be sold or exchanged as part of general goods in a market 'per square meter or hectare'. The extent and location of each demarcated portion of earth/ land and the details of its owner are then recorded in a registry of titled deeds. Thereafter, that land can be treated as deemed fit by that owner so identified – this includes altering the physical, chemical, biological, and aesthetic qualities of that land. The current owner is given virtually absolute power over that land, including the power to transform or transfer, in part or in whole, to another temporary or permanent user. The free to use or abuse gets passed on in this process and the cycle continues.

3.3. The Land Administration Policy (LAP)

The Ghana Land Administration Program (LAP) is a project that seeks to enable and possibly reform the Government of Ghana's National Land Policy. This policy was passed through parliament in 1999 and later adopted by the New Patriotic Party (NPP) Government in 2002. The government's Land policy aims at clarifying, and reforming the way land is held and administered. It has a time frame of 15-25 years and is heavily supported by the World Bank, DFID, FAO and others. The LAP can be said to mark the launch of this overall policy and the LAP aims at reforming and streamlining the different government land agencies, and bring clarity and transparency into these.

The LAP itself is thus more an administrative reform than it is an actual land reform. First and foremost, it seeks to bring the six different public sector land agencies under one roof, making the official titling procedure smoother, secondly it aims to resolve the more than 60.000 land cases pending in the Ghanaian courts. Thirdly it wishes to pilot community based land administration, setting up local customary land secretariats, that can set off a titling procedure and resolve local land conflicts outside of the formal juridical system in cooperation with the district assemblies, area councils and unit committees.

In terms of the brief outline of the theoretical strands of literature, the LAP is more or less based on the rationales that are found within the evolutionary theory of land rights, but with quite a few reminiscences of the neo-classical rationales. It basically states that sorting out the unclear and illogical bureaucratic administration of land registration and developing a clear procedure for titling of land with clear boundary demarcation etc. will 'solve' the land question in Ghana and lead to economic growth (Lunds, 2003).

"The land titles would assure security of tenure to land and peaceful possession, facilitating investments in housing, industry, agriculture and services sectors of the economy that will generateemployment and economic growth". (World Bank 2003 p3)

The LAP does not explicitly link itself to other reforms of the agricultural sector, and does not in any persuasive way address the situation for the poor land users, who can claim no legitimate right to land resembling that of ownership. It does however recognize the need for developing the title and registration program within a local socio-cultural context, thereby in some ways building on indigenous tenure systems. It does seek to institutionalise and formalise these indigenous systems but is unclear on whether this includes an institutionalisation of all aspects of the indigenous systems. Part of the explanation for this nebulousness is to be found in the fact, which the LAP recognises, *that the complexity of the different indigenous arrangements are still largely unknown, and further research on these systems is needed.* It seems hard to believe that the LAP will effectively recognise systems that do prevent actual transfers of land, and the future possibility of using land holdings as collateral for loans or commodities to be traded off in the land markets. The goal appears to be an individualised and transferable land tenure based on land so registered (Wardell, 2003).

3.4. Land Tenure Discourse

The purpose of this part is to briefly outline some of the major theoretical strands of literature regarding land tenure in Sub-Saharan Africa in general and Ghana in particular. Land tenure refers to the terms and conditions under which land is held and used. According to Lunds (2003:8),'Land tenure denotes the system of landholding, which has evolved from the peculiar political and economic circumstances, cultural norms and religious practices of a people regarding land as a natural resource, its use and development. It includes rules, regulations and institutional structures both customary and enacted legislations, which influence the holding and appropriation of land and its resources for socio-economic reasons'. It is important to note that tenure is not a matter of man's relation to land, but is a social system of arrangements between people regarding land, and closely linked to all other social arrangements between people (Ninsen, 1989; Nyari, 1995).

The wordings indigenous, traditional and customary in relation to tenure are used in practical and theoretical literature regarding land tenure to describe the local and non-formalised social practices regarding land holdings as organised by communities. These adjectives bring with them the hints that there is something original or even primordial about these arrangements. It is important to stress that this is not the case. Indigenous tenure evolves as a dynamic social process over time, and any attempt to characterise tenure as a fixed bundle of rules and regulations is likely to ignore one of its most important characteristics, - that of adaptation and change (Birgegaard, 1993).

Further to this debate, Birgegaard (1993:3) states that land tenure has always been of major importance to the development of countries in Sub-Saharan Africa, but this has been highlighted by recent debates by development trends in this region. Such debates include the growing emphasis on a liberalised market economics as the drive for economic development and the growing concern for the degradation of natural resources as a result of over-exploitation. The liberalisation school of thought gave rise to an individualised titling and ownership programme as a primary step to be taken in order to develop a land market which will, by the magic of the market forces, lead to a more efficient commoditisation of the agricultural production, and by enabling people to take up loans with land as collateral will boost the economy of the developing countries. The argument being that the realisation of this objective will set the third world free from dependence on development aid.

According to Lunds (2003), this argument seems to go hand in hand with the other recent trend that expresses concern about the degradation of the natural resource base. In this line of thinking the perceived insecure nature of indigenous tenure arrangements (the absence of exclusive individual ownership) restrains farmers from making long term investments in improvements of their farmland which inevitably leads to degradation of the soil quality, erosion, dependence of chemical fertilizers and the like. The ensnaring and persuasive strength of these arguments have led many countries including Ghana to start the process of a land reform, which has as its end goal an individualisation of land rights, and the LAP does in many ways follow this line of thinking.

However, there are several problems and flaws embedded in this. Firstly, the practical problems in implementing a grand scale land registration and titling scheme are immense. Secondly an individualisation of land rights is a massive alteration of the existing arrangements, which can best be

described as a revolution and very likely to cause violent conflicts, and thirdly the empirical evidence from countries that have pursued individual titling and ownership schemes are far from conclusive in recommending this as a beneficial route of development. The advocates for this line of critique highlight the importance of many other structural reforms of the agricultural sector and that reforms focusing solely on tenure will not do. These other reforms include improving the market access, the rural infrastructure, technological packages, and extension service (Havnevik, 2002). This is not to say that land titling and land reforms are necessarily bad and should be avoided, but rather that they cannot stand alone.

Another branch of theoretical literature argued that land registration and titling imposed as a government reform should not be considered for a long time to come. 'Formal titling should not be considered for decades to come in Sub-Saharan Africa other than for special situations such as peri-urban areas, irrigation schemes and possibly settlement schemes' (Birgegaard 1993: 5). The argument is that an intensification of the agricultural production alongside a growing population pressure by itself will lead towards an individualisation of land rights, which will be largely based on the cultural practices of the people themselves. The state should await the situation until the development has reached a stage where government titling is becoming a demand from the population, which will happen in its own time (Ninsen, 1989).

The evolutionary theory of land rights further points out that indigenous tenure systems are dynamic and vibrant, and that these systems will somehow manage to automatically adapt themselves to the changing conditions of the society. This is on an assumption that the technological development will keep pace with the growing population resulting in an equilibrium of food security and sustainable use of the natural resource base (Platteau 1996: 36). Empirical evidence shows that this is far from the case in most of Sub Saharan Africa, and there is a growing consensus that interference in the customary arrangements is somehow warranted. *A possible way to overcome the problems, ranging from a top-down approach which does not work, or work in the opposite way of what was intended; and not doing anything, which is likely to result in further degradation of the environment and even lesser food security, is to take the indigenous arrangements as a starting point for a gradual reform process that does not have individualised ownership as a pre-given goal.*

Take the rural communities and the indigenous systems as the starting point for this formalisation and reform process. Emphasizing a crucial role for village communities is not falling into the snare of romanticism, but is a rather pragmatic attitude. The top-down approach has miserably failed for most interventions all over Sub Saharan Africa, and these communities form living systems which have at their disposal many effective means to pre-empt or subvert any change ushered in from without (that are not endogenous), which they do not like. Turning them around or opposing them in land matters is all the more difficult as tenure rights are embedded in socio-cultural systems that are not easily bypassed (Nyari, 1995).

4. CONCLUSION

We start this sub-section with the quotation that within the traditional Ghanaian notion of land, *'land belongs to a vast family, of which many are dead, few are living and countless numbers are yet unborn'.* This notion has implication on the duality in the images of land: Land/ earth having a life force or vital energy that animates us, flows through, and is concentrated in the soil, rocks and plants is shared with other philosophers. And that we share a subjective presence, soul, consciousness and unconsciousness with our lands. Warmth and cold, sorrow and joy, love and hate, tenderness and rough all being the attributes of land (the Dagaaba, Gruni images of land); as againstland as a commodity; the understandings of the so called dominant cultures that land is a property that may be exploited, bought, sold, exchanged, or traded off, abused or misused in one form or another devoid of any personal attachments or sacredness (Rancoli, 1994).

With respect to LAP the parochialism gives rise to problems associated with using the concept of community as a fixed entity. This is especially relevant in light of the LAP's intention of establishing customary land secretariats and pilot community based demarcation and registration of land tenure arrangements.

- The social processes regulating the people's access to land in the communities are far from straight-forward and there is a significant lack of authoritative knowledge of these processes by LAP. The situation for the marginalized groups (women, migrants, young men) within the communities has also to be considered serious in order to avoid further marginalisation that will occur from registration of land titles.

- It seems very doubtful whether the conceptualisations of the physical space (the land areas) that is held by the government authorities, or other agencies involved in the implementation of demarcation and registration plans, can be translated or work alongside the conceptualisations of the physical space that is held by the people living in the communities. The case study revealed that the community members are not keen and are in a way honest with information about lands and their boundaries for such demarcations and mapping exercises to avoid conflicts. Claims, counter claims, and competing claims would perpetuate themselves and make the LAP exercise fruitless for rural communities of northern Ghana. Any attempt to map out or register land holdings have to be very wary of using this type of visualisation as a starting point. Community mapping is a very useful tool for participatory research, precisely because it brings out many of the peoples own experiences with the lived reality in the communities, but it is not a tool that can be used in producing authoritative maps of the physical space. If the eventual outcome of the pilot programmes on demarcation and registrations is to be a map or a bundle of maps, then one has to come to terms with 'dynamic mapping' for such documents will require daily alterations.

- There are the problems relating to defining where the community ends and begins. All people living in the rural areas of northern Ghana define themselves as belonging to a community, but placing a physical boundary around these communities is extremely difficult. Overlaps (including cross-boundary – cross-countries do exist and genuinely so). Mapping boundaries between the respective communities will invariably end in a physical fight between the members. This might also rake up past/ latent conflicts with historical dimensions.

- There are problems in how to deal with the people who are farming on land that is located in another community than the one they live in. These people will often be the poorest and most marginalised of all in the community, and they especially include a large part of the women. Another related problem is that the women, according to northern Ghanaian tradition and almost invariably, are expected to marry someone from outside the community, and settle at the husband's place which means that the women have significantly weaker links, relations and connections in the communities.

- There is a problem in dealing with the people who are not currently living in the community, but still define themselves as belonging to it. This especially includes those who have ventured south. In many cases, they are landholders in the community, and sometimes even family or compound heads, or will at least demand that status when they return, and most do return when they have reached an age they find suitable for retirement.

5. RECOMMENDATIONS

From what is stated in the LAP, and from what is said by people who are responsible for the regional implementation of the LAP, it is quite obvious that the policy makers and implementers are still in the phase of working out how the customary land secretariats and the community based pilot registration programmes are to be organised. This presents a unique opportunity for further influence of the actual implementation and practical design of the LAP, and to bring to the forefront the situation for the poorest of the land users.

A possible way of overcoming the problems associated with LAP in rural northern Ghana and in so minimise the parochialism is to adopt an ***Endogenous Development Approach (Millar, 2014)***: take the indigenous arrangements as a starting point for a gradual reform process that does not have individualised ownership as a pre-given goal. In adopting such an approach the rural communities and the indigenous systems are taking as the starting point for this formalisation and reform process. The top-down/ blue-print/ one-cap-fits-all approach has miserably failed for most interventions. These northern Ghana communities form living systems which have at their disposal many effective means to pre-empt or subvert any change ushered in from without (that are not endogenous), which they do not like.

It is very important that working towards land security does not translate into working towards individualised ownership. This will undoubtedly worsen the situation for the already marginalised

groups. Instead there is a need to make it a win-win situation, where the people in powerful or 'ownership' positions see the potential for giving their tenants a more secure tenure. One way where this is possible is to integrate tenure security with extension services. Those in very insecure tenure arrangements are unlikely to make long term investments in improving their current leasehold – if they improve the quality of the land too much; the landlord is likely to claim it for them the following year. A scenario is possible where the insecure tenants and their landlord is approached where the delivery of extension service is tied to the tenant being able to hold on to the land for a number of years, thereby making it beneficial for both parties to invest in long term sustainable improvements, and at least giving the tenant a few years of tenure security. A way of making sure that long term leaseholds last is to involve the traditional authorities, especially the Tendanas and the village chiefs in the process, as some kind of authoritative witnesses.

It is an uphill task to change the indigenous institutions into something where women have access to land on same and equal terms as the men. All improvements on the women's situation has to somehow go through the men. Here too a win-win situation needs to be created to ensure women 'ownerships' are guaranteed. It could be asserted that an improvement of the men's tenure security would trickle down to an improvement of the women's situation but LAP will need to go beyond this to direct women land improvements.

Considering the complexities of land issues in northern Ghana, it is recommended to LAP that any such land resisters arrived at should be regularly (annually) opened for review and updates – more like the voters register. It is the position of this paper that a one-shot exercise is not conclusive and it will take quite a while for any documentation to stabilise sufficient to reduce the various competing claims and the role of quack and charlatans.

It is not recommendable to try and work on land tenure issues without involving the traditional authorities – they are key stakeholders in the matter, and are absolutely essential in determining a successful outcome of any development programme. However, the traditional authorities are also the ones who have the opportunity to benefit massively from a registration scheme, so extreme caution has to be taken in order not to have those with plenty of land and power secure themselves even more of both.

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