

# **Strengthening Customary Land Administration: A DFID/World Bank Sponsored Project in Ghana**

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**Key words:** Customary land secretariats, Stools/skins, moral hazard, small land rights holders, customary land rights.

## **SUMMARY**

Land administration in Ghana is going through an intensive reform process backed by a consortium of donors. An aspect of this reform is the establishment and strengthening of Customary Land Secretariats (CLS). This paper discusses the project aims, expected benefits and potential sources that could blunt project outcomes. It goes on to detail the strategy adopted to implement the project and share some of the experiences to date. It concludes with an open question regarding the ability of the implementing agency.

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## **1 INTRODUCTION**

Land administration is currently the subject of an intensive reform programme in Ghana. Dubbed the Land Administration Project (LAP) the reform programme is being supported by the World Bank and a host of other donor agencies, among them the British Department for International Development (DFID). The LAP seeks to achieve its goals by addressing four main areas or components of land administration. These are: (1) harmonizing land policy and regulatory framework for sustainable land administration; (2) institutional reform and development; (3) improving land titling registration, valuation and information systems and; (4) project management, monitoring and evaluation.

This paper discusses emerging outcomes from implementation of an aspect of the institutional reform and development component (Component 2) that focuses on streamlining customary land administration by establishing and/or strengthening customary land secretariats (CLS)<sup>1</sup>. The paper is organised into five main sections. The section immediately following, details the stated aims of the project as it relates to customary land administration. This is followed by a discussion of the political economy of customary land administration in Ghana. A brief outline of the strategy adopted to implement the component is provided to include some findings and experiences. The last section of the paper presents concluding remarks.

Data for empirical part of the paper is drawn from results from field studies and activities currently being undertaken by the author and a team of facilitators engaged by the Ministry of Lands, Forestry and Mines of Ghana as consultants to facilitate the execution of this aspect of the LAP. The paper is written for the 5<sup>th</sup> FIG conference held at La-Palm Beach Hotel, Accra (5<sup>th</sup> – 8<sup>th</sup> March 2006) is intended to contribute towards the quest for solutions to problems emanating from inefficient land management, administration and cadastre in Ghana and West Africa.

## **2 THE PROJECT'S STATED AIMS**

Various studies on land rights in Ghana (see Antwi and Adams 2003 a & b and references therein) indicate that something in the order of 80% of lands are held by customary authorities who supply land for residential and other economic activities. However the link between administration of interests in land so created and formal titles to landed property is tenuous at best. To the extent that links exist at all they appear to be in the form of attempts by government bureaucracies to render perfect what is otherwise considered imperfect titles

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<sup>1</sup> Views expressed in this paper are those of the author and not necessarily the official view of LAP.

and interests. Obviously this has huge direct implications for security of title to land and indirectly impacts on investment in landed property and economic development in Ghana. The goal of LAP in this regard is therefore to eventually create an accountable, harmonious and transparent customary land administration system from bottom up which will then form the bedrock for an enhanced formal land administration in Ghana. Funding for this subcomponent is provided by DFID.

DFID's Project Manual for this component (Toulmin, *et al* 2004) states the purpose in the following terms:

“..... to support the development of customary land secretariats (CLS) in Ghana, as effective, accountable local structures for administration of land. This forms one sub-component within the broader framework of the GoG Land Administration Programme (LAP). Particular attention will be paid to strengthening the capacity of CLS to address the needs of diverse populations within their communities, and recognise the great range of customary tenure systems in different regions of Ghana.” (Toulmin, *et al* 2004)

Principal outputs sought are listed in the Project Manual (Toulmin, *et al* 2004) as:

- CLS established and/or strengthened in pilot areas, in partnership with government land sector agencies;
- Improved quality of records and accessibility of information at CLS level on land use and holdings, land transactions and availability, and associated financial and cadastral records;
- Improved CLS accountability, in line with the Constitutional provisions, in a way that protects the rights of all land holders within their communities, recognises the community interest in land management, and provides an effective interface with democratic local and national government.
- Policy development better informed. The implementation of the Land Policy by way of the LAP will involve further policy development in order to realise its key goals. The information that this component generates, in relation to CLSs, will be actively managed in order to ensure that the process can be developed in the light of the best possible knowledge.

When these are achieved the project (as per the Project Manual) envisages beneficiaries “to be the majority of people for whom the current land administration system is effectively inoperable, due to high costs of registering land claims, the slow and complex bureaucracy involved, lack of transparency in the land allocation process and uncertain tenure held by many stool indigenes and secondary rights holders”.

It is obvious from the above that DFID's main reason for supporting this aspect of the LAP is pivoted on equity grounds: indirectly alleviating poverty by ensuring that entry barriers to securing title to land claims by small land owners are assured. This is a strong moral reason why customary land administration should be strengthened. But, even though the Project Manual did not make them explicit, there are also strong and convincing economic reasons

too to supplement the moral justification for the need to strengthen customary land administration in Ghana. Some of these are discussed in the next section.

### **3 POLITICAL ECONOMY OF CUSTOMARY LAND ADMINISTRATION**

Customary land secretariats operate in traditional political regimes which interact with the formal sector of the economy. Forces that impinge on the economics of agents and organisations in the broader economy are therefore going to interact with the traditional regime and determine the success or otherwise of CLS operations. Brief discussions of expectations of how these may play out follows.

#### **3.1 CLS as a Market Opportunity for Small Holders**

The economics of property rights informs that an owner of property is best placed to employ it in most efficient ways (see, for example, Alchian, 1965, De Alessi, 1980, De Alessi and Staaf, 1984). In this regard, if one considers the traditional authority as a land owning unit/agent, it is better placed than any agency of government to evolve a cost-effective and relevant land administration system for managing customary lands. When CLSs are established and functional they are likely to evolve simple and cost-effective title documentation practices that are suitably attuned to the interests held by subjects. This would obviate the excessively high cost and complex system of title documentation processes which the DFID Project manual (Toulmin, *et al* 2004) views as currently serving to place entry barriers and prevent many customary land rights holders from obtaining documented title rights.

A concern often raised by many development scholars in relation to the encouragement of land markets in less developed countries (LDCs) is the potential danger that it might lead to landlessness among the poor. The poor, it is argued, would be simply exploited out of their land holdings. This situation does not necessarily have to eventuate when land markets are rendered operative in small land holding rights. The situation may only occur when the poor's land rights are not well assigned so that security of titles to their rights is unclear. Under the current regime of land tenure in traditional authorities in Ghana, representatives of the community (occupiers of Stools/Skins) are meant to be custodians of land rights held by their subjects (Ollennu, 1962). However the evidence, mostly anecdotal but sometimes based on systematic analysis (e.g., Firmin-Sellers, 1996; Brobby, 1991), suggests that stool occupiers, occasionally with the overt support of government agencies, operate to dispossess land rights of their subjects in market-based transactions. To the extent that the establishment of CLS is to render transparent and accountable the rights-assignment regime in a traditional area, it is expected to eventually minimize, if not eliminate, the incidence of this practice. Thus in the event of evolution of operational and pervasive land markets, small holders under CLS regime stand a chance of benefiting from commercially transacting land rights. In circumstances of improved records and knowledge of rights assignments, rights are rendered secured, transaction costs are minimized, and owners would possess superior information to take decisions that are expected to improve their lots from trading their lands. To be sure, in the best of circumstances, some of these expectations may not materialise. But the evidence

around the world demonstrates that when property rights are well assigned, participants of markets, on average, gain through trade. For more on this see the literature on the economics of property rights (e.g. Alchian, 1965; De Alessi, 1980; De Alessi and Staaf, 1984; Ensminger, 1997).

### **3.2 CLS as an Exploitative Tool**

A word of caution is in order here. Economic benefits to small land rights holders as postulated above assume that the regime under a strengthened CLS assigns full property rights for employment of land resources to the small holders. Empirical evidence of the evolving trend in established pilot CLS under the LAP gives cause for concern. Though customary law makes it clear that heads of traditional communities (occupiers of stools and skins) hold the community's lands in trust for the entire community (Ollennu, 1962) there are inherent perverse incentives created by the coalition of interest groups of stool/skin occupiers and their elders to interpret customary land law in ways that seek to transfer subjects' rights to themselves (see Firmin-Sellers, 1996). The risks to the CLS concept are that occupiers of stools/skins may use enhanced and equipped CLS to further tendencies of dispossessing their subjects of lands. Some of these concerns are real and have the potential of capturing the good intentions of the CLS and turn them into exploitative ones.

### **3.3 A Moral Hazard Problem**

There is also the potential problem of (what economists describe as) *moral hazard*. The kind of moral hazard problem envisaged here is the possibility that traditional authorities, after being supported with equipment and necessary training for efficient operation of CLS, employ the supplied resources with less care, diligence and efficiency than they would have done if they had spent their own monies to acquire the resources. Add to this an expectation the initial supply of support creates -- that government/donor agencies would replenish inefficiently utilised resources -- and one faces a perverse incentive not to utilise the resources efficiently. This problem, in the end, could create a vicious cycle where equipments and resources are so inefficiently employed so much so that CLSs never grow beyond their embryonic stage and continuously need funding from the Ghana government and/or donors.

All these could be exacerbated by implicit pressures from both the Ghana government and the donor agencies to seek for speedy disbursement of project funds. Faced with limited operational capacity of the LAP implementing ministry -- Ministry of Lands, Forestry and Mines -- pressures to speedily disburse funds could lead to the grossing over of important details that are needed to be managed and nurtured cautiously to prevent the potential perverse outcomes discussed above.

To ensure that debilitating circumstances as described do not blunt impacts, LAP has adopted a cautious 'learning-by-doing' approach to establishing CLS. The LAP's implementing strategy is discussed below.

## **4 LAP'S STRATEGY AND EXPERIENCE**

Before discussing the strategy adopted by LAP to implement the CLS concept, it is important to provide a cursory picture of the state of affairs of customary land administration in the Country at the commencement of the Project.

### **4.1 The State of Affairs of Customary Land Administration**

As will be explained in detail below, pilot sites have been identified for the implementation of the CLS concept. These sites have been visited and interactions and workshops for key stakeholders undertaken. Some benchmark indicators of the state of affairs are as follows:

- Some land rights owners (particularly farmers) indicate that certain legislative requirements viz the prohibition of freehold transfer of stool lands, are not observed in their land relations. These provide a window into critical legislative changes that are needed and should be recommended by LAP to enable the eventual linkage of CLS into formal land administration in Ghana.
- Some of the CLSs that existed prior to project intervention existed just in name. They had no links to allocation of land for residential development and hence no data on residential land holding rights. For rural land dealings there may be only patchy information on farm rights and who owns them.
- Adjudication of land disputes take place but are not supported in any meaningful way by CLS.
- Governance and/or organisational structure are very weak. This is evidenced by poor record keeping and opaque procedures. These are at their most extreme in aspects relating to pecuniary dealings. CLS may not even have a bank account. They appear to be insensitive or not responsive to demands of land rights owners.

To improve the performance and operations of CLSs beyond their present state LAP has adopted an implementation strategy which is detailed in the next sections.

### **4.2 The Strategy**

LAP has adopted a learning-by-doing approach to implementing the CLS concept. In this regard pilot CLSs are being established across the Country to serve as laboratories for implementing the concept. The pilots divide into two categories: (1) pilots in traditional areas where CLS already existed before the intervention of the project and; (2) pilots in traditional areas where CLS did not exist. In the cases where CLS existed the Project's intervention is in the form of helping to build their capacity through the supply of relevant equipment and training. Where there were no CLSs to begin with, the Project helps the traditional authority to establish one and build their capacity. A team of facilitators are engaged to think through and design appropriate activities necessary to develop the capacity of CLS. At a very early stage of implementation, it was identified that the development and/or building of capacity of CLS to operate and achieve the Project aims as listed at page 2, demand attention around the following themes: (a) Urban customary land ownership and transactions; (b) information

capturing and dissemination; (c) rural customary land ownership and transactions; (d) economics and general estate management of CLS; (e) legal environment and CLS and; (f) land rights dispute resolution. Consequently facilitators have been employed along those themes. To date three existing CLSs are serving as pilots to understand and learn the appropriate approach to be adopted in strengthening existing CLSs. These pilots are:

- Okyehene's Customary Land Secretariat – Kyebi (Eastern Regions)
- Asantehene's Customary Land Secretariat – Kumasi (Ashanti Region)
- Gbawe Kwartey Customary Land Secretariat – Accra (Greater Accra Region)

In addition three other pilots have been set up in areas where there were no existing CLS. These are:

- Wassa Amenfi Customary Land Secretariat – Wassa Akropong Western Region
- Tabiasi Customary Land Secretariat – Tabiasi Upper West Region
- Tamale Customary Land Secretariat – Northern Region.

All pilots have been supplied with basic equipments. Depending on their particular needs, these may include a desk top computer, photo copier, fax machine, office furniture, steel cabinets and some stationary. Beyond this, LAP is at a stage of planning activities aimed at developing transparent and responsive governance structures, particularly in those pilot CLSs that pre-dated the Project. In the pilots where the project had to initiate the establishment of CLS, emphasis is being placed initially on building up a database of land rights to be used in developing appropriate governance structures. In all cases the intention is to develop an establishment that will be at the centre of land relations in the traditional area. Though implementation is at an early stage, it is possible to share some findings from initial stages of database creation in one of the pilots.

### **4.3 Some Empirical Findings**

A fact that is emerging concerning data on customary land relations is that even though no one source can currently claim to possess relevant data at levels that may be useful, pieces of customary land rights data exist disparately in government agencies. One function of the facilitating team is to identify and collate these data and amalgamate them into the CLS database. Such an exercise has been commenced in the Wassa Amenfi pilot where data on a total of five thousand two hundred and five (5205) farmers that is kept in the form of site plans and handwritten notes by the district branch of Office of Administrator of Stool Lands has been converted into electronic versions. . This figure excludes records on those sites plans which had been badly mutilated and consequently had vital information torn off and those which had faded beyond recognition. For the first time in Wassa Amenfi, the CLS can begin to understand who is behind farming operations in the traditional area.

Basic analyses of the data converted show that majority (98.1%) of tenant farmers in the Wasa Amenfi area are Ghanaians. It is also possible to identify the region of Ghana from where tenant farmers come to Wassa as shown in Table 1.

**Table 1: Farmer Distribution by Region of Origin**

<i>Region</i>	<i>Number</i>	<i>Percent</i>
Ashanti (AS)	2148	41.27%
Eastern (ER)	853	16.39%
Central (CR)	578	11.10%
Brong Ahafo (BA)	406	7.80%
Volta (VR)	334	6.42%
Western (WR)	75	1.44%
Greater Accra (GA)	65	1.25%
Upper East (UE)	53	1.02%
Northern (NR)	22	0.42%
Upper West (UW)	2	0.04%
Foreigners (FN)	99	1.90%
Others Not Indicated (NI)	570	10.95%
<b>Total</b>	<b>5205</b>	<b>100.00%</b>

As the Table shows tenant farmers from Ashanti Region dominate with some 47.4% of total number of farmers recorded, followed by Eastern Region (18.8%), Central (12.7%) in that order. The Upper West region recorded the lowest number of tenant farmers (0.04%). Thus for the first time, Wassa Amenfi CLS possesses data on tenant farmers that has the potential to enable it manage their existing farmers and take decisions tailored towards farmers from particular regions of Ghana. As stated earlier, it is early days yet so much shouldn't be read into this data. The purpose is to demonstrate the wealth of information that could be garnered for CLS with a little effort.

## 5 CONCLUDING REMARKS

This paper has attempted to provide some insights into the implementation strategy of a project to revamp customary land administration in Ghana. The stated aims of the project as detailed in the paper sums up to the creation of transparent and accountable customary land administration. The discussion surmised over the potential benefits to small land holders and potential market opportunities presented if the project proves a success. The paper also sounds a word of caution relating to the danger of project failure that might emanate from the possibility of interest groups scheming to transfer project benefits to themselves rather than the project's intended beneficiaries of small (poor) land rights owners. The potential inefficient behaviour towards the employment of resources that comes from the expectation that another agency would always replace those resources – the moral hazard problem – has also been cited as another source of worry for the project. With a strategy of learning-by-doing and proceeding cautiously, the probability of successful outcomes appears high. This, in any event, is predicated on a responsive, reliable, and capable implementing agency. Whether or not the idea of implementing the project via a government ministry – the idea of mainstreaming – is the most effective way of implementing the project is a subject that is

currently subject to a great deal of debate. That, however, could form the subject of a whole new paper.

Thanks.

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## BIOGRAPHICAL NOTES

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