



# Land Governance in an Interconnected World

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY  
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## **RE-THINKING RESPONSIBLE CUSTOMARY LAND GOVERNANCE AND FIDUCIARY RELATIONS**

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## **Abstract**

*As customary land becomes more commoditized, the political economy threads of customary land trusteeship have crossed with the symbolic ones, but these have seldom been tied in contemporary customary land governance reform literature. This paper is an exploratory attempt to examine traditional fiduciary culture and customary land use management as an important area of research not well explored. An intellectual itch never really scratched. The overall goal is to suggest a framework of analysis for policy, legal and institutional reforms. The paper raises three questions: What is the trusteeship idea under customary land law? What are the land governance issues of relevance to the commoditization of customary land? What policy interventions can reverse the abuse of traditional rights of citizens by their trustees?*

**Key Words:** *Customary tenure, land governance, fiduciary culture, land rights management.*



# Land Governance in an Interconnected World

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY  
WASHINGTON DC, MARCH 19-23, 2018



## Introduction

Customary land governance and access to land-based resources have a significant impact on the welfare of millions of people as the land under customary tenure account for over 70-85% of all natural resource assets in most African countries. There is also ample evidence that the tenure systems vary locally but display remarkable similarity regarding the basic organizing principles (Cousin, 2008). The tenure systems define access right to land through membership-based social groups although cultural mechanisms exist for non-members or “strangers” to become members of the landowning group. (Colson 1971:194; Bruce and Migot Adholla 1994:5). Individual families, headed by a family head usually enjoy autonomous control over their land allocations by customary norms and practices, and most customary land tenure systems allow lending leasing and other forms of tenancy, both for subsistence and commercial uses (Lavigne Delville, 2000). However, with the general acceptance of neo-liberal market-led economic systems in Africa, land commoditization and outright selling of customary land are becoming more common although such alienations are still restricted and often challenged as a threat to the long-term survival of social groups (Amanor, 2010).

The similarities in the structure of customary tenure systems also extend to concerns about shortcomings in customary land governance, especially the unfettered authority of customary land trustees. Existing customary land governance analysis focusing on the decision-making processes provides useful insight for making rational decisions and places limits on political exigency (Palmer, et al.). Others in the field of political science focus on power, politics and issues around pluralism, asymmetrical power relations, and informal elites. Economist tends to focus on individual behavior as explained by self-interest, failure of regulatory instruments, rent-seeking behavior and market-based decisions. Issues surrounding customary land governance reforms remain at the forefront of policy reforms in many countries because both statutory and customary mechanisms for accessing land and administering tenure remain ineffective. Some of the issues at the center of the land governance concern are discriminatory allocations of land rights, ownership conflicts and disputes over land boundaries that hinder development, unregulated land



development, informal land transactions, corruption and elite capture and illegal land occupations (Arko Adjei, 2009)

Although Chiefs and family head plays a central role in how the rules of land tenure are applied and made operational, not many analytical studies to date have focused directly on the culture of trusteeship to explain the fiduciary responsibilities associated with the management of community land as a valuable sustaining asset.

As the allocation of customary land rights becomes more commoditized, the political and economic threads of the role of land trustees have crossed with the symbolic ones. But these have seldom been tied completely in contemporary customary land governance reform literature. This paper is an exploratory attempt to examine traditional fiduciary culture and land governance from a land management perspective. An intellectual itch to suggest a framework of analysis for policy, legal and institutional reforms. The paper will attempt to answer three questions: What is the trusteeship idea under the customary land law? What are the land governance issues of relevance to the commoditization of customary land? What policy interventions can reverse the abuse of traditional rights of citizens by their trustees?

## **Customary Land Governance and Land Management**

The accepted definition of Land governance is the process by which decisions regarding access to and use of land are made, the manner in which those decisions are implemented and the mechanisms through which conflicting interests in land are reconciled (UN-Habitat, GLTN). Key elements of the definition draw the reader to focus on decision-making, implementation and conflict resolution. It also directs attention to the need to rely on antecedent experiences to understand the decision making process and outcomes. It recognizes the role of statutory as well as customary informal/extra-legal institutions (rules) and organizations (entities), and to analyze the role of stakeholders, interest groups, as well as the role, motivation, incentives and constraints faced by customary land trustees.



# Land Governance in an Interconnected World

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY  
WASHINGTON DC, MARCH 19-23, 2018



Equally relevant to effective governance is the fact that land, the basic natural resource of most communities in Africa, is considered both as material and abstract good that includes rights of ownership, physical attributes regarding adaptability to various functions, specific characteristics, allocation and way of use. To properly manage the land and real estate asset of a community, every parcel of land's attribute should be identified, evaluated and taken into consideration. Land resources management should result in the most rational use of a community's land resources qualified by the land tenure and ownership structure.

In addition to securing customary land as a livelihood sustaining asset for communities, access distribution and use management decisions by customary land trustees should aim at selecting the best land-based investment activities (Fenske, J., 2011). Others, including Kasanga, (1997) have asserted that customary tenurial systems in some part of Ghana remain egalitarian enough to guarantee security for indigenes as well as strangers. Contemporary evidence as demonstrated by Yaro, (2012, p. 350) indicate changing interpretations of tradition makes this romanticization of customary land access distribution, tenure security and fiduciary obligations of the trustee of customary land a false reality. In fact, customary land governance literature recognizes corruption and elite capture among the key issues at the forefront of reforms to protect customary land rights in many countries.

More importantly, as land becomes more commoditized, the underlying power imbalance between persons responsible for allocation and management of customary land as a community trust ought to be held to the highest standard of care (Sarbah, 1904). But yet, very few studies to date have attempted to establish a framework for evaluating the fiduciary duties implied by the concept of trusteeship and customary land management effectiveness. As observed by Yaro (2012, p.351) social relations are in a continuous state of flux, conditioned by power relations, external influences and sometimes greed, making it difficult to pinpoint tradition. These dynamic influences allow some traditional custodians and family heads, the trustees of customary land, to



# Land Governance in an Interconnected World

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY  
WASHINGTON DC, MARCH 19-23, 2018



re-codify tradition in parallel with neo-liberal market forces that appropriates the land and property rights of their citizens.

Effective customary land use management that is consistent with land governance aspirations should also facilitate of land utilization and development to optimize benefits to land-owning communities. This should include sustainable management of growth and population dynamics, assistance in natural environment management and protection of valuable areas. Trustees should also monitor land and real estate market development opportunities, and the best use of land assets of the community taking into consideration the rules of sustainable development (economy, environment, and society). Effective customary land use management will also require that both trustees and stakeholders rely on technical and professional analysis and results supplied by land and real property management professionals to determine the highest and best use of land and natural resource assets of the community. Should any custodian of customary land breach their fiduciary duties, good governance would require such trustees to account for any ill-gotten profit or failure to manage land and natural resource assets to achieve the most benefit for the community.

## **Trusteeship under Customary land law in Ghana**

Fiduciary culture—the culture of trust and entrustment—is only beginning to come into its own as a topic of study, but it has deep roots and noteworthy antecedents. The Anglo-American common law defines a fiduciary duty as the highest standard of care. A fiduciary owes the duty to the beneficiary. If a trustee breaches fiduciary responsibilities, he or she would need to account for the ill-gotten profit. However, the concept of trusteeship under customary land law presents a different dimension in the customary land law of Ghana and throughout the West African region. As articulated by S.K.B. Asante (1965), Danquah (1928), and Coker (1958), the fundamental premise that land is an ancestral trust has two significant implications for property concepts under customary law: First, it emphasizes the community interest in property and makes ownership a social obligation that precludes an individual concept of property. Second, it places the political, social and economic onus on persons charged with the administration of community property to



# Land Governance in an Interconnected World

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY  
WASHINGTON DC, MARCH 19-23, 2018



strictly discharge their functions in the primary interest of the group in question, (Asante, p 1145). This fundamental concept of ownership as a social trust designates the administrators of customary land (Chiefs, family heads, and caretakers) as “trustees” In short, “fiduciaries” holding land and real property in trust for the family or community. Although scholars on West African customary land law recognize the similarity with the Anglo-American common law, the trust analogy under the customary land law has significant differences that affect contemporary efforts to enforce land governance obligations.

The fiduciary responsibilities encountered under customary land governance is rooted in indigenous institutions and culture. In fact, Chiefs, heads of family, successors, and caretakers are executors entrusted with a responsibility to manage land and other real property in the interest of other beneficiaries. A family head, for example, assumes a fiduciary position with limited beneficial interest in the assets of the family and are strictly forbidden to exploit their position of trust for selfish reasons. However, family heads in Ghanaian, Nigerian and Sierra Leonean culture enjoys a unique social standing within the community; a revered status as the father of the household and a representative on the chief’s council of elders (Asante, p. 1146). The position of the family head is, therefore, more than that of a common law trustee in the Anglo-American sense. The appointment comes with the exercise of power over allocation, access, and distribution of family property, arbiter of internal affairs as well as lead negotiator of all family transactions. The head of the family presides over all family rituals, business transactions, and is expected to provide financial, legal assistance and counsel to members of the family.

Another distinction of customary trusteeships is the strict separation between the managerial powers of the head of a family and title to the family property. Both title and the right to beneficial enjoyment are vested in the family. The customary law emphasizes the corporate property as belonging to the collective and never vested in one individual. Furthermore, whereas a fiduciary under common law is strictly forbidden from enjoying the benefits of the trust, the family head, as the trustee, is also a member of the family and one of the beneficiaries of the family estate and is entitled to his share of the proceeds as any other member. This raises the question of whether an



# Land Governance in an Interconnected World

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY  
WASHINGTON DC, MARCH 19-23, 2018



interested trustee can separate self-interest, conflict of interest and the appearance of corruption from duty as a fiduciary. Because fiduciary obligations and power as head of the family are based on an affirmative duty to secure and enhance the welfare of the family, customary traditions make no material separation between self-dealing intentions and the family heads fiduciary duties.

The estate management obligations of customary land trustees can be summarized as follows:

*Management of family assets:* The family head is entrusted with the management of family property and other assets. To make improvements and such investments as will assure the collective welfare of the family as a duty. In this regard, the family head's role is not limited to preserving family property; he is also required and expected to enhance its value. In fact, according to Asante, "the bolder the improvement project he undertakes, the more rapturous the family acclaim."

*Improvements to family property:* Customary traditions do not place any restrictions as to the extent of improvement except as dictated by common sense. At the same time incurring excessive expenditures or undertaking investments that ignore the welfare of the family can be censured by principals. But even then, as the patriarch and benevolent head, the head is allowed to use his discretion, so long as they enhance the welfare of the family.

*Alienation of family land and real property:* Customary land law in Ghana has traditionally regarded land as a sacred heritage with inter-generational linkages to the dead and those yet to be born. A violation of this sacred trust is a fundamental violation of the customary land law. Changing attitudes towards markets and commoditization of land have resulted in a more liberal view of the concept of alienation. Although a family head has considerable freedom as the sole alienating authority, the consent and concurrence of the elders are required to legitimize the conveyance. A deed of transfer without the consent of the head of the family or the elders is not valid as each party needs the other to legitimize the conveyance.



# Land Governance in an Interconnected World

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY  
WASHINGTON DC, MARCH 19-23, 2018



*Fiduciary fidelity:* Under Anglo-American common law a trustee must administer his trust solely in the interest of the beneficiary with fidelity and must exclude all self-interest, focusing solely on the interest and welfare of the beneficiaries. Self-dealing of any kind that places the interest of the trustee in conflict with the interest of the family is regarded as a violation of the duty of loyalty. Customary law, on the other hand, regards the head's obligation to administer family property in the interest of the family a moral obligation and sacrosanct. Thus any deviation from this core principle is regarded as an outrageous act requiring drastic retribution and possible impeachment. Unfortunately, customary law has no automatic triggers or pre-emptive rules for deterring reckless behavior or conflict between self-interest and duty to the family. Consequently, the literature is replete with evidence reminiscent of self-dealing by highly interested Chiefs, family heads and customary trustees whose complicity in, for example, large-scale land acquisitions and other questionable transaction, would under common law declare them incompetent to execute their fiduciary obligations.

## **The customary tenure paradox**

An important virtue of customary tenure systems is the ability to support mixed tenure regimes that recognize individual and common property rights under locally defined rules and regulations. This social domain tenure arrangement is an organizing principle that serves to minimize inequality and access discrimination. In spite of the communal nature of ownership, traditional allocations to kin-groups, individual families, and households by local norms tend to be defined and alienable. The fact that family tenure is considered private to the family is what allows leasing and several forms of share-tenancy arrangements to operate under customary tenure.

The fiduciary duty of a family head - to manage the family property with care and skill and to safeguard the integrity of family assets - aligns with the principles of good governance and sustainable land use management. The head of the family is expected to take affirmative action not only to secure the land rights of the family. He is also expected to increase the value of the family property. As a trustee, the head is expected to make investment decisions and incur



# Land Governance in an Interconnected World

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY  
WASHINGTON DC, MARCH 19-23, 2018



reasonable expenses to enhance the value family property. This core desire to improve tenure security and livelihood opportunities is also consistent with land policy reforms aimed at removing obstacles to the emergence and operation of an efficient land market. Such reforms attempt to improve land administration and reduce transaction cost by developing strategies and procedures to make access to land fair, transparent and efficient.

However, as observed by Berry (1993), because customary tenure rules tend to be flexible and open to negotiations, it also allows those with social standing to negotiate rights to communal land resources with customary leaders and primordial members sometimes to the detriment of the community. Equally problematic for women is the fact that ambiguity of customary land rights and the dominance of patrilineal societies serves has been used to deny room for action. The proliferation of land sales and rentals involving large monetary payments and trends towards cost-effective demarcations, documentation, and formalization of customary land allocations represent a deviation from traditional practice. Mounting pressure to focus more attention on reforming fiduciary culture in the context of customary land governance reforms. The need for reform is more so in situations where Chiefs and traditional leaders use their power to seize control over community land or sell community land to outside investors, politicians and elite bureaucrats as if it were their private property. Because the system, in its contemporary operation, is not as communal, socially harmonious and egalitarian as advocates seem to imply, continuing abuses of the fiduciary obligations of trustees undermines the desire to make customary tenure systems the basis for land policy reforms.

## **Influence of land commoditization**

With the commoditization of customary land, the standard of duty and loyalty that customary law aspires is becoming more difficult to enforce for a number of reasons:

1. Because the customary trustee is enjoined as a beneficiary of the trust, fraudulent actions, if any is not easily observed because the line between interest and duty is often blurred;



# Land Governance in an Interconnected World

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY  
WASHINGTON DC, MARCH 19-23, 2018



2. Because Ghana's constitutional provisions and statutory laws continue to allow subjective manipulation of customs and traditions by Chiefs and family heads without retribution, this has, over time, insulated self-dealing Chiefs and family heads, often in collusion with rent-seeking elite bureaucrats from retribution even when their land use management decisions harm their subjects.
3. Although individual members hold usufructuary rights with respect to land and real property assets of the family, customary law does not define what share individual members have in the joint enjoyment of the property. As a result corruption by customary trustees has proliferated with no transparent way of requiring accountability.
4. Rendering account by a fiduciary is not required under customary law. Similarly, there is no clear delineation of how family funds are to be allocated. A member of the allodial community can only expect reasonable support for family purposes although, the amount and extent of support individuals are entitled is normally not defined.<sup>1</sup>
5. The absence of any objective standard for defining the proportion of the head of family's beneficiary interest makes the head of family the primary judge of the entitlement of each member and this undermines his obligations to demonstrate the highest fiduciary duty.

Unfortunately, as a by-product of the commoditization of land and the absence of strict definition of what constitutes self-dealing under customary land law, the authority of Chiefs and family heads to control access and use rights also provide a strong financial incentive for customary land trustees to by-pass the collective control of their citizens. Equally problematic for women is the fact that ambiguity of customary land rights and the dominance of patrilineal societies serves has been used

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<sup>1</sup> In the case of *Larkai v. Amorkor* (1933) 1 W.A.C.A. 323, 329, the court decided a head of family has the right to live on the property and receive rents and profits without accounting to any of the junior members of the family. However in the case of *Nelson v. Nelson* (1932) 1 WACA.215, the court held that a caretaker owe a duty to account.



# Land Governance in an Interconnected World

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY  
WASHINGTON DC, MARCH 19-23, 2018



to deny room for action. The proliferation of land sales and rentals involving large monetary payments and trends towards cost effective demarcations, documentation and formalization of customary land allocations represent a deviation from traditional practice. Mounting pressure to curb the corruption of traditional leaders, especially in situations where Chiefs and traditional leaders use their power to seize control over community land for their own personal benefit, or sell community land to outside investors, politicians and elite bureaucrats as if it were their own private property supports the need to focus more attention on reforming fiduciary culture in the context of customary land governance reforms.

## **Limits on the powers of trusteeship**

Customary limitations on the powers of trusteeship are circumscribed by procedural or formal requirements but must be exercised in the interest of the family. Major decisions always require the consent of family elders to be unimpeachable. Statutory law, the Courts and public institutions such as the office of the Administrator of Stool Lands in Ghana play only a limited role in regulating the powers of the head of the family and do not the accent to family heads using the Court to deviate from their trusteeship obligations to the family. However, the judicial system recognizes the family head as the rightful person to institute a lawsuit to protect or recover family property. Exceptions to the family head's right to sue may be granted only when; (a) the family property is in danger of being lost either out of personal interest, gross negligence or in situations where the head of a family is not interested in saving or preserving it; (b) when as a result of division in the family, the head and some elders will not act to preserve family assets, or (c) where the head and principal members of the family are deliberately disposing of family property in their interest to the detriment of the family as a whole.

The duty to account and furnish information in a transparent manner to the beneficiaries can deter any inclination to abuse the responsibilities of a fiduciary. The immunity provided by custom and the reverence accorded heads of family undermines the duty and loyalty to the community. In fact, profiting from a family or community land appear to be encouraged because the family ties make



# Land Governance in an Interconnected World

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY  
WASHINGTON DC, MARCH 19-23, 2018



the sale of the family property as personal property of the head difficult to challenge. This is the case because, under customary law, the self-acquired property reverts to the whole family after death intestate of the family head. The prevalence of interstate succession, therefore, encourages the elders to turn a blind eye to abuses of the trustee-beneficiary principles often to the detriment of the family as a whole. Impeachment of a Chief or family head is possible but require proof of flagrant impropriety which is difficult to establish without hard evidence and also because of the erosion of the traditional social and moral mechanisms.

## **Abdication of Fiduciary Obligations**

A recognized virtue of customary tenure is its adaptability and resilience. Customary tenure rules culturally embedded and informal but not static. Instead, the rules that regulate access distribution are often ambiguous enough to allow flexibility in customary practice and negotiable as demographic, economic and social conditions change (Berry, 2009; Platteau, 2008). However, the absence of codification creates disproportionate opportunities for subjective interpretation by individuals and families with social and financial status. At the same time deeply rooted cultural norms, including patrimony suggests these systems are not as communal, socially egalitarian and gender sensitive as advocates seem to imply. A problematic example is the system's rigidity towards women's land rights reform. As summarized by Lasse Kratz (2015: 5) assessment of the maneuvering space that women have for negotiating their rights are extremely weak and subordinate in customary systems, and this is further aggravated by the increasing scarcity and commercialization of land.

With no clear reporting and disclosure requirements for customary land trustees, how should community members judge the land governance decisions of customary fiduciaries? Arguments about the manipulation of customary norms by traditional trustees to accommodate commercialization raise three question about how the abdication of fiduciary duties threatens the social contract underpinning the integrity of the customary tenure system per se.



# Land Governance in an Interconnected World

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY  
WASHINGTON DC, MARCH 19-23, 2018



1. Has commoditization of customary land given rise to a new paradigm that gives more significance to the potential impact of corruption and the apparent abdication of the fiduciary duties of customary land trustees undermined the integrity of the system enough to support public investment in mass regularization of customary land rights?
2. What is the duty of fiduciaries in the commoditization process and what are the disclosure steps to follow in estimating fair value of rural land-based development decisions?
3. Can the principles of highest and best use valuation be used to determine the basis for community land assets and compensation as customary land becomes commoditized at the expense of rural communities for the benefit of national development?

In Ghana, the Office of the Administrator of Stool Lands in Ghana works closely with the Traditional House of Chiefs to ensure traditional jurisprudence and matters normally considered within the purview of the family do not contravene international conventions, agreements, human rights or go beyond flagrant abuse of fiduciary obligations. However, the immunity of heads from accounting can only be explained by the high social status of traditional leaders in Ghana. Contemporary principles of responsible land governance in Ghana's National Land Policy require better accounting although it provides no transparent mechanism for enforcement. Immunity from liability to account is also not absolute, although not an integral element in the administration of family property as a trust. Requiring standard accounting and keeping traditional leaders on alert can provide a transparent way of providing beneficiaries with information regarding the management of community land assets may fortify good governance. It will also provide information for imposing sanctions to stimulate honest and more effective management and administration family property. Obviously, policy makers are highly aware of the importance of helping customary tenure communities' better secure tenure and land assets by encouraging the involvement of land management professionals and fit for purpose technologies. Finding sustainable ways how this could be realized in practice is sometimes constrained by entrenched social, cultural and political resistance.



# Land Governance in an Interconnected World

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY  
WASHINGTON DC, MARCH 19-23, 2018



The de-facto commoditization of communal land tenure without paying attention to the abdication of fiduciary obligations by customary land trustees is a threat to the undergirding philosophy and social contract that provides legitimacy to the customary tenure system as a whole. Although the conventional approach to securing land rights through privatization has been tried with mixed results in several African countries, failure to critically address the abuse of fiduciary obligations by Chiefs and local elites is making the shift towards legal recognition and formalization of existing hierarchy of customary rights and communal tenure equally problematic. As acknowledged by the World Bank, poor governance is characterized by among other things, the abuse of executive power, arbitrary decision making, unaccountable bureaucracies, unenforced or unjust legal systems, a civil society unengaged in public life, and widespread corruption. Efforts to create an enabling environment and to build capacities for good land governance will be wasted if the political and cultural context is not favorable. Ultimately, better governance requires a concerted attack on corruption, by strengthening accountability, by encouraging public debate, and by fostering grassroots support for change.

## **Using asset management tools to inform customary land governance**

Some of the analytical approaches used by a land economy and asset managers to determine the highest and best uses for land and real property could improve customary land governance. A real estate asset manager views land as an investment, and decisions made by fiduciaries are those that impact the performance of land as a livelihood sustaining asset for the community of owners. From this perspective, customary land allocations and land use rights management decisions should be guided by fair valuation approaches and community welfare considerations to be efficient.

The challenge to the typical procedure that a professional asset manager could use to estimate the highest and best use value of customary land is not simply that of how to employ the concepts of valuation. The most common approach, such as market value, may not be legitimate in rural areas with no perceptible land market. In fact, the market value concept presumes that an underlying competitive market for customary rural land exist from which comparable sale, cost or future income can be generated. None of these may be available. Other approaches to determining the fair value of the best use of land such as the allocation of



# Land Governance in an Interconnected World

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY  
WASHINGTON DC, MARCH 19-23, 2018



value, extraction, land residual, and ground rent capitalization may also not be usable for some reasons; (a) Pre-development evidence from sales cannot be used to value post-development value of land. Post-development value may be so much higher that final valuation of the HBU becomes difficult, (b) Allocation for a land price as a ratio of the total price is useful only when sales have occurred. None may exist in rural communities in transition, and (c) Similarly, the extraction approach relies on the sale price of the improved property using cost data only when sales are available. Instead, the approaches to value used to generate annual value for property taxation are usually based on one of the following; (a) Rental/annual value; (b) Existing use/capital value; (c) Highest and best use/capital value; (d) Unimproved capital value or (e) some legally prescribed artificial bases. However, in case of rural agricultural land under subsistent use, more often than not, the basis for valuation prescribed in the relevant legislation tends to be artificial and inadequate.

A timing questions may also arise. It is important that the determination of the best use of customary land takes into account both the time value of money and the alternative use to which the land assets of the community could have been applied. This typically involves comparing benefit and cost streams that occur over long time frames. The time value of the loss of access to the community's land (equivalent to the time value of money) should be used to determine the community's intertemporal preference function. Concerning land, this determines a community's willingness to value a fixed nominal amount of money at different points in time. The difference in value is due in part to a perceived risk of uncertainty in the future, and an underlying assumption by the community that they will be better off in the future (Perkins, 1994, p53).

The alternative use to which the land could have been applied is the opportunity cost of land to the community. The opportunity cost of land is defined as the highest rate of return that the asset could have received if it was allocated to the next highest and best investment alternative. In other words, one of the costs of using the land for a proposed project is the income that could have been earned if that land had been invested in some alternative development project. These factors are taken into consideration in real property valuation by applying a discount rate. The discount rate incorporates the time value of money and the opportunity cost of land to the community and should incorporate the rate at which future benefit flows must be adjusted to reflect the current values of those benefit flows to the community.

A rural land-based investment should aim to achieve Pareto improvement by facilitating change in land use that results in some individuals being better off without making others worse off. If a change in land use or access distribution by a trustee makes some members of the community worse off, then the allocation



# Land Governance in an Interconnected World

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY  
WASHINGTON DC, MARCH 19-23, 2018



is Pareto optimal, and no improvement in welfare can be achieved. In determining whether customary land use decisions benefit affected communities, the potential for Pareto improvement is sufficient. i.e. the 'losers' could theoretically, but need not actually, be compensated by the project if the net benefits of the project improves the overall community welfare enough to benefit the losers in the end. This is the essence of the Kaldor-Hicks (K-H) criterion which states that even if some members of the community are made worse off as a result of undertaking an investment project, the project confers a net benefit if the gainers from the project could indirectly compensate the losers and remain more satisfied themselves after making this compensation. For instance, if an agricultural project displaces some landowners but creates better off-farm employment benefits in the community, the disenfranchised members could be compensated for their loss by the employment and income gains by the community. If so, the investment decision satisfies the K-H criterion (Campbell & Brown 2003).

## **Making effective land use management decisions**

From the view of economics, land and real estate is usually treated as the object of distribution among various subjects and ownership sectors. Both economy and real estate management require efficient information on the object of management including the possibility to identify different occurrences. For this reason, land use management is always connected with legal regulations and restrictions, changing economic conditions, administrating and managing the rules of land resources development. Every decision, including those concerning the land assets of customary communities, is connected with the necessity to choose among alternative possibilities. Trustees and family heads usually need information and data on land development and property market trends to inform potential economic and social impacts of land use activities. Advice for resolving the dilemma – whether to continue present activities on the land, improve its conditions or maybe sell it and invest money in some other project with higher expected benefits to the community. Similarly, a potential investor/developer or user may also require help to choose the particular activity, in which invested money brings a faster return and higher profit.

The introduction of Customary Land Secretariats (CLSs) in Ghana as an initial step for encouraging formal involvement trained land administration and land use management officers in day to day governance of customary land. Today, the more progressive CLSs provide better public



# Land Governance in an Interconnected World

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY  
WASHINGTON DC, MARCH 19-23, 2018



access to information regarding the land assets of the communities that have established them. In addition to their core function of recording new transactions and validation of existing ones, CLSs in some traditional areas, such as the Kwabenya CLS, located in the peri-urban fringe of Accra for example, now routinely assists clients to formally register their customary land transactions at the Lands Commission. Similarly, the Osu CLS which lies within the boundaries of metropolitan Accra has procured digital orthophoto maps and is developing a database for monitoring physical development, ground rent collection and royalties from highly developed areas within the jurisdictional boundaries of the traditional authority. Because of this increased transparency in land dealings and financial accountability, the CLSs concept has gained popularity as a link between persons interested in acquiring customary land. The clarity assured by conducting customary land business through the CLS is essential for sound land rights management as well as for reducing land-based commercial investment risk.

Using the real property management approach to evaluate land rights management decision by customary land trustees can provide a framework for assessing customary land governance effectiveness both at the family and community level. The influence of land valuation for customary land management can be divided into two groups: static – when valuation does not serve to change land value, but establishes the value that can be substituted for the asset on the land market; and dynamic – when land value is defined in order to assess the highest and best use to which it can be changed.

As commoditization of customary land heats up, encouraging the land valuation and land use planning professions to play a more active role in helping customary land trustees make informed land management decisions can be helpful in several ways:

- Study market trend of supply and demand to provide the landowning community with reliable data relevant for making the highest and best use decisions regarding the community's land assets.
- Set tenancy fees on the profitable level,
- define the possibilities of land use, building and renovating objects,



# Land Governance in an Interconnected World

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY  
WASHINGTON DC, MARCH 19-23, 2018



- verify the correctness of financial documentation,
- define closing down value in the case of forced sale or auctioning,
- give some investment advice,
- present probable results of alternative solutions,

## Conclusion

The land assets of a community are considered both as material and abstract good that includes rights of ownership, physical attributes regarding adaptability to various functions and specific characteristics, allocation and way of use. These attributes, qualified by the land tenure and manner of land use are linked and dependent on one another. Important activities connected with land resources management include the analysis of ownership structures, valuation of land resources components and the assessment of the highest and best use options. From the community's welfare perspective, land resources management should increase the efficiency of its use regarding economic and environmental rules. Active community land use management should be efficient and proper, no matter who is in charge of managing the resource – traditional leaders, and an individual owner or a licensed property manager.

The dominant economic development paradigm today espouses efficient markets and promotes as one of the core reasons for land rights reform, support for transformative agriculture and valorization of land as collateral for investments (De Soto, 2000). Well implemented land sector reforms in several parts of the world including Thailand, China and some of the former Eastern European economies have had transformative effects. Unfortunately, the social impact of customary land commoditization in Sierra Leone, Malawi and several African countries have also been shown to create tenure insecurity, worsen inequality and often result in disenfranchisement in poor rural and marginalized communities. As observed by Yaro (2012), land commoditization has encouraged traditional fiduciaries responsible for land allocation and land management to collude with rent-seeking elite bureaucrats to “re-codify” tradition to recklessly alienate the land rights of their citizens. Thus, in spite of the acclaimed economic benefits associated with



# Land Governance in an Interconnected World

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY  
WASHINGTON DC, MARCH 19-23, 2018



transforming customary tenure systems, reforms to secure and protect land rights and social capital has, in several African examples, encouraged rent-seeking strategies and corruption of the culture of trusteeship emblematic of customary land governance.

As customary land becomes more commoditized and privatized, its ability to support overlapping access rights over the same parcel of land or land-based community resource is also becoming untenable. The fact that even well-established but unregistered family rights are not being respected by customary fiduciaries has heightened insecurity even for members of the allodial group. Although issues of governance and corruption in the land sector continue to draw attention, more needs to be done to focus more on the widening power imbalance between trustees and their subjects; more attention has to be directed to the decision making the role of customary land trustees and how to regulate their fiduciary responsibilities.

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# Land Governance in an Interconnected World

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY  
WASHINGTON DC, MARCH 19-23, 2018



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