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WHO OWNS THE LAND? LEGAL PLURALISM AND CONFLICTS OVER LAND RIGHTS IN GHANA

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Abstract

This paper examines the contemporary contestations over ascertaining the ownership of land in Northern Ghana. Presently land in Ghana is characterized by a plural legal system where customary and statutory systems overlap. The 1979 Constitution handed back land in the North to its "traditional owners," opening up possibilities for earth priests, chiefs, families, and individuals to re-interpret the language of the Constitution and claim ownership. In the North, the hierarchies of land tenure interests are commonly enshrined in contesting oral histories. Drawing on ethnographic field research in Ghana, I view these contestations not merely as struggles over access to "resources" and land but also as conflicts over competing models of political authority and governance. By elucidating how traditional authorities and state land agencies draw on, revise, and add to these models, this project aims to contribute to broader policy and scholarly debates about land rights and governance in Africa.

Key Words: Ghana, land rights, legal pluralism, conflict

Introduction

This paper employs qualitative methods to examine the contemporary contestations over ascertaining the ownership of land in Northern Ghana. Presently land remains the main factor of production in Ghana and the vast majority – 68% – of Ghana's land is used for agriculture (USAID 2013, 4). It is characterized by a plural legal system where customary and statutory systems overlap. According to Kasanga and Kotey, around 80 to 90 percent of all the land in Ghana is held under a multiplicity of customary claims and land tenure interests (Kasanga and Kotey 2001, 13). The ownership of land is expressed in terms of rights which form a hierarchy of interests in the land. At the top of this hierarchy is the allodial or paramount title followed by the sub-allodial title. The allodial title is the highest customary title to land in Ghana, which is vested in a stool, skin, clan or family and established through discovery and first settlement and, sometimes, conquest (Woodman 1996) There are a number of lesser rights that are derived from the allodial title such as the customary freehold (usufruct), leasehold, tenancy, license, and pledge. The local terms describing these tenure arrangements vary from region to region, but a key characteristic common to these landholding arrangements is that the substantive rights associated with each of them remain almost the same (Project Secretariat of ACLP 2009). In 1979 the new Constitution handed back land in the North, which was hitherto held in trust by the government, to its "traditional owners," opening up possibilities for earth priests, chiefs, families, and individuals to re-interpret the ambiguous language of the Constitution and claim ownership. In the North, the hierarchies of land tenure interests are commonly enshrined in contesting oral histories of founding ancestors' compacts with the land.

Drawing on field research in Ghana supported by the Fulbright Africa Regional Research Program and two University of North Carolina grants, I view these contestations not merely as struggles over access to "resources" and land but also as conflicts over competing models of political authority and governance. These conflicts have become fueled by the fluidity and dynamic transformation of indigenous notions of ancestral ownership and trusteeship of land within Ghana's plural land tenure system. By elucidating how traditional authorities and state land agencies draw on, revise, and add to these models, this project aims to contribute to broader policy and scholarly debates about land rights and governance in Africa.

The "land question" has always been central to the lives of Africans and has become an increasingly important item on the development agenda of most African governments, especially in the context of the recent intensification of land grabbing and litigation (Matondi et al. 2011, Nyari 2008). According to the World Bank, "poor land governance— the system that determines and administers land rights" may be the root of Sub-Saharan Africa's high rates of poverty and underdevelopment despite the region's abundant agricultural land and natural resources (Byamugisha 2013, 1) While Ghana is widely perceived as an

economic and political standout in Sub-Saharan Africa, insecurity of land rights and unequal access to land has been identified as "one of the biggest single threats to human security in the country" (Annan et al. 2013). Ghana's land administration system is currently under reorganization as a part of the Land Administration Project (LAP). The project aims to implement the National Land Policy, launched in 1999, and to increase the extent of land titling, harmonize customary and statutory law, and minimize land disputes. In 2004 LAP piloted community-based land administration throughout the country, creating Customary Land Secretariats (CLS) with the power to record and manage allocations and transactions of land by customary authorities. Due to Ghana's status as a development model amongst African countries, the LAP can have profound ramifications across the continent.

The challenges presented by the complexity of Ghana's plural land tenure systems and the changing power relations between land rights holders become particularly evident in the Upper East Region, where customary land allocation and ownership, as well as the remits of customary land rights, are contested by a plurality of actors such as chiefs, tindaanas and families. First, this paper introduces the basic principles of customary land law in Ghana, including the indigenous concept of property as a form of ancestral ownership and attribute of political sovereignty. It also clarifies the traditional schema of customary land tenure interests that is common to all regions of Ghana. Second, it spells out the connections between different notions of property, authority, and land use, and categories of actors – e.g. earth priests, chiefs, and clan elders – who are competing over land allocation and use in the Upper East region of Ghana. The complexity of customary arrangements in the North, as well as the full range of land rights, uses, and power relations, are still poorly understood and further research on these systems is needed. The paper clarifies who holds allocative authority over land in the region. Third, it illuminates the tensions between customary and formal land rights regimes and how these tensions shape and have been shaped by Ghana's Land Administration Project and various donor interventions intended to promote development.

The paper examines how Ghana's legal pluralism affects the country's weak and cumbersome land title registration system. I focus on the most common interests in land that are being registered by the Lands Commission and Customary Land Secretariats. The paper identifies the key shortcomings of the current practice of registration of leasehold, which does not take into account its subordinate place within the hierarchy of diverse, overlapping categories of interest in land in Ghana. This misalignment between customary and statutory systems is further compounded by the sporadic nature, lack of accessibility and the urban/residential bias of Ghana's registration system. The paper concludes with a set of policy recommendations that seek to address the above shortcomings.

PART I: **Legal Pluralism and the Changing Scheme of Customary Land Tenure in Ghana**

Ghana's Legal Pluralism: A Constitutional View

Ghana's land tenure system is complex and pluralistic, "consisting of customary law tenures, common-law tenures and various combinations of both" (Woodman 1967, 476). Indigenous law, which is the basis of land law in Ghana, has experienced significant changes in response to British colonialism, the advance of Christianity and various processes of political, social, and economic development. The customary system has been modified by the statutory enactments of courts and legislation, with common law interests and English equitable principles superimposed onto it (Woodman 1996, v).

Article 11 (2) of the 1992 Constitution of the Republic of Ghana defines the term "common law" as "the rules of law generally known as the common law, the rules generally known as the doctrines of equity and the rules of customary law including those determined by the Superior Court of Judicature." For the purposes of the same article, "customary law" means "the rules of law which by custom are applicable to particular communities in Ghana" and is recognized as one of the sources of Ghanaian law (Article 11 (3) of the 1992 Constitution of Ghana).

Article 267 (1) vests all customary lands in the appropriate stool, skin or family "on behalf of, and in trust for the subjects of the stool in accordance with customary law and usage" (1992 Constitution of Ghana). The Constitution of Ghana recognizes this concept of trusteeship in landholding in Article 36 (8), which emphasizes that stool and skin lands must be managed in accordance with the fiduciary obligations of traditional authorities:

> the state shall recognise that ownership and possession of land carry a social obligation to serve the larger community and, in particular, the state shall recognise that the managers of public, stool, skin and family lands are fiduciaries charged with the obligation to discharge their functions for the benefit respectively of the people of Ghana of the stool, skin or family concerned, and are accountable as fiduciaries in this regard (1992 Constitution of Ghana).

In the south of Ghana, customary land is defined as *stool land* in reference to the carved wooden stool which serves as a political symbol of the authority of the chieftaincy and a shrine of the spirits of the ancestors. In the north of Ghana, customary land is defined as *skin land* in reference to the animal skins that chiefs sit on or the skins that tindaanas (earth priests) wear. In the Volta Region and Greater Accra, customary land is known as *family land* because it is family heads who exercise the fiduciary management of such lands, holding them in trust for the people.[1]

[1] Article 295 (1) defines "stool" as a term that "includes a skin, and the person or body of persons having control over skin land." According to the same article, "stool land" includes "any land or interest in, or right over, any land controlled by a stool or skin, the head of a particular community or the captain of a company, for the benefit of the subjects of that Stool or the members of that community or company" (1992 Constitution of the Republic of Ghana).

Principles of Customary Land Law in Ghana: Sovereignty, Trusteeship, and Ancestral Ownership

In large parts of Ghana, the principal source of land law remains custom. The closest analogy to custom in western jurisprudence is common law, with the important distinction that in customary jurisprudence the law-making function cannot be entirely identified with the courts. Traditional courts "declared, applied and even made law over the years, but they were essentially regarded as providing a forum for applying well-established norms of the community rather than as specialized organs for the recording, systematizing and shaping the growth of the law" (Asante 1975, xviii). According to Kasanga and Kotey (2001), "customary land tenure systems and management mechanisms remain strong, dynamic and evolutionary" and "in spite of the state law and despite their inherent weaknesses" these systems and mechanisms "still reign supreme in the North, and remain very strong in the South" (iii-iv). In the context of Ghana's legal and institutional pluralism, it becomes essential to gain deeper understanding of how this dynamism of custom has shaped the shifting meanings of traditional conceptions of property and office-holding arrangements that are imbued with the idea of trusteeship. One of the most preeminent concepts in the customary property system is the view of land as an ancestral trust committed to the living and unborn generations for the benefit of the whole community, which is anchored in forms of sovereign oversight and religious authority that have important features in common across the north and south of Ghana.

Land Ownership as Attribute of Political Sovereignty

Indigenous systems of land ownership in Ghana fall into two broad categories depending on the structure of the political organization of the community in question. The first refers to most centralized states such as Ashanti, Akyem and Fanti, in which the answer to the question of who owns the land is that the land belongs to the state and is thus the property of the whole community represented by the stool. The king exercises paramountcy over the lands of the state and the power of ratifying and confirming what his subjects grant, which is a form of sovereign oversight that does not carry with it the ownership of any particular land (Asante 1965, 850). In contrast to the highly centralized Akan states, S.K.B. Asante observes that a number of political systems that are common among the Ewes, Ga Adangbe and many northern societies are not characterized by such degree of sophistication and centralization or strong civil authority. However, his analysis resists the Eurocentric bias of western jurists and anthropologists who have tended to equate law and political order with notions of Austinan sovereignty and hierarchy of courts and have viewed chiefless societies that do not exhibit such attributes as lawless. In Asante's view, the traditional legal process of less centralized polities has placed the administration of land law in the heads of family and clans who hold land in trust for family and clan members. The traditional normative schema has

included common features such as: the existence of an intricate web of precise norms of social conduct and reciprocal obligations and rights within the family system and the clan; well-established procedures for prosecuting claims and dispute settlement by headmen and religious functionaries; and the availability for devices for the invoking the collective sanction of the whole community in the case of serious offences. Another common theme discernible in customary jurisprudence in the north of Ghana, Asante shows, is the institution of the tindaana, a religious intermediary between the earth spirits and the living, who has been responsible for land allocation and administration. Asante also notes that successive constitutions of Ghana have dispelled any lingering doubts that such systems constitute law by recognizing customary law as one of the key sources of law of the Republic (Asante 1975, xvii-xx).

Despite this heterogeneity of customary legal and political systems, a set of features in common that are universal throughout Ghana include the group involvement in land ownership, the emphasis on corporate interest in property and the priority of conciliation in dispute settlement mechanisms (Ibid.). Everywhere in Ghana, concepts of sovereign oversight and ownership of land are also bound up with a notion of custom as ancestral prescriptions. It is this concept of ancestral ownership to which I turn next.

Ancestral Ownership and the Religious Basis of Customary Property Systems

Throughout Ghana, customary law reflects indigenous cosmovisions and religious precepts that situate the sovereign oversight of land within the metaphysical realm of ancestral jurisdiction. The idea of trusteeship, which underlies the traditional concept of property and the performance of fiduciary obligations by chiefs, tindanas, and family heads, proceeds from the fundamental premise that “basic property belonged to the ancestors and that the living were but temporary possessors, whose use of property was conditional upon strict compliance with time-honored ancestral prescriptions, which proclaimed the paramountcy of the interests of the kingroup” (Asante 1975, 22). As we will see in part two of the paper, land among many northern societies is seen as the property of the earth gods and ancestors, who still have a vested interest in the preservation and management of the land which they have left behind for their living descendants (see also Azaare forthcoming 2019). Likewise, the 2009 report of the Ascertainment and Codification of Customary Law Project (ACLP) notes that “the Gas attributed ownership of land to sacred lagoons, while the Ashantis regarded it as a supernatural female force - the inexhaustible source of sustenance and the provider of man's most basic needs. She was ‘helpful if propitiated and harmful if ignored.’” (4) Land was and continues to be viewed as the sanctuary and abode for the spirits of the dead ancestors that holds deep emotive and spiritual significance in community life in both the north and south of Ghana. S.K.B. Asante explains that this involvement with the ancestors proceeds from a metaphysical principle that asserts a

continuity of experience under which past, present and future are seen as a unified whole. The principle is given expression by the living's fidelity to the ancestors:

> In the celebrated words of the late Nana Sir Ofori Atta I…: '[L]and belongs to a vast family of whom many are dead, a few are living and countless host are still unborn." Concepts of land ownership were thus bound up with the cult of ancestral worship...predicated on the belief that the departed ancestors superintend the earthly affairs of their living descendants, protecting them from disaster and generally ensuring their welfare, but demanding in return strict compliance with time-honored ethical prescriptions. Reverence for ancestral spirits dictated the preservation of land which the living shared with the dead. In effect land was an ancestral trust committed to the living for the benefit of themselves and generations yet unborn (Asante 1965, 852).

For generations, family lands have been seen as an ancestral heritage. The ancestors, who have been looking after the wellbeing of their descendants, are always ready to intervene to ward off any undeserved disasters that might threaten the living.

Because property is conceived as an ancestral trust, traditional and political authorities – chiefs, tindanas, heads of families and clans– are expected to act as "trustees" who administer the property in the primary interest of the group. For Asante (1965), "the eternal corporation of the past, present and future was the state, embodied by the stool. It only needed a well-integrated and centralized political system, as in Ashanti, to extend the religious idea of ancestral ownership of land to the legal doctrine of the stool's absolute ownership of all land within its territorial boundaries" (852). Akan chiefs hold lands and other stool property in trust for the Asamanfo and for the wellbeing of stool subjects (see also Busia 1951). For Danquah (1928), to deny this notion of stool ownership means to forfeit political membership in the nation to which one claims to belong (200). In other words, stool lands are defined both as lands that belong to the whole community and the area of political jurisdiction of the Akan state (Bentsi-Enchill 1964, 29). In parts of northern Ghana, where the animal skins on which chiefs sit serve the same purpose as the stool in the south to express an indigenous concept of corporation, this fusion of political sovereignty and ancestral ownership emerges under the term "skin property" (Bentsi-Enchill 1964, 30).

In all political systems in Ghana, the indigenous order of norms conceives of custom and morality as ancestral prescriptions. The universal concept of property as an ancestral trust enjoins land trustees to uphold the honor of the ancestors, to promote the prosperity of the kingroup and ensure the security of unborn generations, safeguarding them against poverty or deprivation (Asante 1975, 23). It is an active regulatory force which imposes an obligation to use and manage resources within an individual's possession for the wellbeing of the group and prohibits any abuse of such resources that might affect the security of posterity. It advances the social or group interest in accordance with ancestral prescriptions and, in Asante's view, promotes the equitable distribution of community resources. The principle of trusteeship thus

excludes an absolutist conception of individual or family ownership as it qualifies the usufruct and private ownership by impressing them with a distinct social obligation, which does not admit of the unfettered right to use and dispose of property (Asante 1975, 13, 24, 82).

Although the indigenous legal process has been characterized by a lack of effective mechanisms for enforcement of the fiduciary duties of chiefs, tindaanas, and family heads, the notion of ultimate accountability to the ancestral spirits has served in the past as the most common and operative deterrent to breach of trust, rather than trustees' liability to deposition or destoolment/disenskinment (Asante 1975, 25). Across Ghana, taboos govern such breach of trust; ancestral sanctions can take place either immediately in this life in response to the breach of a norm, or may be deferred to punish future generations. The vitality and legitimacy of fiduciary institutions thus has been profoundly interdependent with people's continued adherence to indigenous cosmovisions, including the view of custom as ancestral moral prescriptions.

The Erosion of the Trusteeship Principle

In *Property Law and Social Goals in Ghana 1844-1966* S.K.B. Asante argues that there has been a "progressive erosion of the trusteeship idea" by the impact of British rule and ideas, new economic conditions, and the reception of Christianity, secularizing customary institutions and undermining the traditional doctrine of ancestral ownership. He observes not only a pronounced shift away from the traditional concept of property, which is impressed with the social obligation to advance group interest and wellbeing, but also a remarkable decline in fiduciary standards (Asante 1975, xiv, 83). New economic developments have "opened up to customary fiduciaries unprecedented opportunities for self-aggrandizement at the expense of the beneficiaries of their "trust," while the courts have shown themselves incredibly inept in fashioning effective substitutes for the old traditional restraints" (Asante 1975, 83-84).

Contemporary scholarly updates of Asante's analysis testify to the recent acceleration and intensification of such trends across Ghana. Kasanga and Kotey (2001) speak of "a breakdown in the "trusteeship principle" and observe that "many customary law managers no longer act as if they are holding a fiduciary position and, in fact, behave as if they own community land on a personal basis. Many of the values, processes and institutions that promoted good practice have lost their vitality, prompting the urgent need for new approaches." Like S.K.B. Asante, they raise the question of accountability and transparency of customary trustees of land in a rapidly monetizing economy characterized by the rise of commercial agriculture and the loss of traditional religion, especially in peri-urban areas of Ghana (iv, 22, 28). In a study of customary land regulation by chiefs in peri-urban Kumasi, Ubink and Quan (2008) concur that during the conception of the Land Administration Project in Ghana "there was there was no wide and open discussion of the role of chiefs in the administration of stool land—including the tendency of chiefs to

behave like private landlords—or of the possible checks and balances the state could place on stool land administration" (206). In the north of Ghana, a recent study by Yaro (2012) documents how "chiefs and clan heads are reinventing tradition in parallel with neoliberal modernization's forces that leads to disenfranchisement of their citizens of landed property" (351-52). These processes of reinvention of the principle of trusteeship have been identified as a driver of the contemporary proliferation of land disputes and litigation and the rising rates of landlessness and displacement. The ACLP report (2009) notes that "in the wake of increasing urbanization, there is pressure on landowners, chiefs and Tendamba to sell community land to developers for various purposes. In most regard the highest bidder is favoured at the expense of the larger community's social interests that may be involved. This leads to disputes in most urbanizing communities in Ghana" (124).

In part II of this paper, I examine these trends in northern Ghana, with an emphasis on the ways in which tindaanas (earth priests) and chiefs in the Upper East have sought to re-interpret the principle of trusteeship with its attendant notions of ancestral obligations and accountability. Whereas the tendency to reinvent this traditional concept in narrow proprietary and secular terms is distinctly present, it is far from uniform across the region. The indigenous concept of trusteeship is pronouncedly less diminished in rural areas. The recent revival of tindaanas and the formation of the Upper East Regional Tindaama Council to contest the privileged role of chiefs as grantors of land for development purposes have complicated these processes, sometimes reinforcing and sometimes undermining ideas of trusteeship and ancestral ownership. Despite this unevenness, however, the evidence suggests that many of these power struggles manifest in the type of interest in land, which shapes the type and degree of control over customary land exercised by land owners vis-à-vis traditional authorities. Domineering land interest holders such as chiefs, tindaanas and family heads are often manipulating multiple interest holding schemes and the plural tenure system in an effort to diminish the rights of other holders. This is a key source of land conflicts in Ghana, which requires first a more nuanced understanding of the substantive hierarchy of land interests in the country that different regions have in common.

Types of Customary Land Tenure and Interests in Ghana

Land tenure refers to the various laws, rules and regulations that govern the holding and ownership of rights and interests in land. The tenure system provides a dynamic framework within such rights and interests are exercised or left dormant in the use and transference of land (Project Secretariat of ACLP 2009, 6). The main percept of customary land law established by Ollennu (1962) is that there is no unowned land in Ghana. The indigenous land tenure system is characterized by the coexistence of multiple rights that are often held by different persons as a function of their role or position in society (Lund 2008, 16). In Ollennu's

view, the right, title or interest vested in a person or a group may be materially different from the right, title or interest vested in the other(s). Thus one person may have the absolute ownership vested in him, another may hold the right of the enjoyment of the beneficial interest in the same land, while a third may have a right by license vested in him to use the land for specific purpose such as building, farming or fishing for a certain period of time (Project Secretariat of ACLP 2009, 7). In indigenous land law, ownership in property can be sub-divided and lesser interests can be held by different people simultaneously. Bentsi-Enchill (1964) sees as a notable feature of this system its emphasis on the "relation between the interest (however large or small) and the person to whom it is vested rather than on the quantum of interest owned in the sense defined above as the widest liberty that may be had in respect of the lawful uses of a thing" (11).

This relational feature of Ghana's plural customary land tenure system means that there are multiple ways of gaining access to land and justifying claims to rights and ownership, linking property rights to the politics of social identities and belonging. Social identities become a site of contestation whereby categories such as first comers and late comers, indigenes and strangers, and allodial owners and usufructs become subject to intense interpretation and negotiation. Here the question of who has the legitimacy and authority to grant land and settle such conflicts and negotiations is equally at stake (Lund 2008, 10). Contestations over land in Ghana are thus as much about the scope and negotiation of political identities and authority as about the legal clarification of rights or access to "resources" (Lentz and Kuba 2006; Lund 2013; Macgaffey 2013). The nature of these struggles complicates the World Bank's dominant policy debates, which have focused on land reforms advocating individual land titling to promote market development and harmonization of formal and informal systems through community-based decentralization of land administration (Deininger and Binswanger 1999). Berry (2001), for example, reveals property as a multidimensional social process, in which the openness of Ghana's land tenure systems enables debate and negotiation of the constitution of authority. Rather than settling rules and boundaries, the formalization of land administration in Asante, in Berry's view, adds new layers of interpretation and debate, complicating lines of authority and exclusion. Like Berry, Juul and Lund (2008) show that property is best understood not as a thing, but a social relationship. Property is what people do, rules in use that are constantly made and remade. This also means that securing land rights is not a single event but "life-time arenas" (4).

Conflicts over land are never merely a question of ascertaining rights but also a question of property as social and political relationships that are continually negotiated and renegotiated. People's observance of customary property rights, which are authorized and sanctioned by politico-legal and religious institutions, is also a process of recognition of the legitimacy of these institutions. The legitimacy of these institutions is therefore linked to the degree to which their interpretation of property rights is heeded and

sources of jurisdiction recognized, turning the process of recognition into a political process of negotiation. As I have suggested in the previous section, this means that sometimes the erosion of traditional institutions and norms such as trusteeship can make the status of rights and interests that they previously guaranteed uncertain and contested (see also Lund 2008). In the pages to follow, I highlight how the contemporary shifts in the customary hierarchy of interests in land, and the altered understanding of the allodial title in particular, reflect broader changes in the roles of traditional political authority in land management.

The ownership of customary land in Ghana is expressed in terms of rights which form a hierarchy of interests in the land; it is this bundle of rights that enables a person or groups of people to exercise ownership of land. The major types of ownership of land in customary law are: a) *allodial or paramount title* (interest); b) *usufructuary/customary freehold* interest; c) *leasehold* interest; d) *tenancies*; e) *licenses*; and f) *pledges*. These forms of land ownership are first discussed in general terms below. In part II, this hierarchy of interests is examined in relation to specific traditional areas in the Upper East.

The Allodial Title

The allodial title is the foundation of Ghana's customary scheme of interests in land. All interests in land, both customary law interests and others, existing today are derived from this "root of title," except in a few special cases (Woodman 1996, 53).[2] According to Kasanga and Kotey (2001), "in a substantial number of cases, the allodial title beyond which there is no superior interest in land is vested in communities – represented by stools and sub-stools in the Akan and some Ga communities, and by skins in the Northern Region" (13). This interest formerly always resided in the group as a whole, with the stool's or skin's occupant acting as a custodian or trustee and performing the fiduciary responsibilities impressed on his office by the ancestral prescriptions described in the previous section. The two main forms of allodial ownership that prevail today are state ownership and family ownership. In the Ashanti, Brong-Ahafo, Western, Eastern, Northern and parts of Central regions the allodial title is vested in the state and is attached to the paramount stool, i.e. it is the property of the whole community. The allodial title to land within such a state can be transferred only by the paramount chief with the consent and concurrence of his principal elders and councilors. This means that the interests of the constituent community members in land occupied by them are considered as falling short of the allodial ownership (Project Secretariat of ACLP 2009). In most parts of Volta, Central and Greater Accra the allodial interest is in the trust of families and clans, and chiefs are mainly political administrators of the land on behalf of the land owning group. Land transactions

[2] Allodial is derived from the German term "allod" or "alod" meaning entire property, from which was derived the Medieval Latin term "allodium" designating an "interest in land held of no one, an absolute and original heritage" (Bentsi-Enchill 1964, 11).

require the consent of family members. Tindaanas and clan/family heads, and in a few cases chiefs, hold land in the Upper regions on behalf of the lineages of original settlers. Apart from state and family ownership, the courts have also upheld the possibility of vesting the allodial ownership in individuals in *Nyasemhwe and Another v. Afibiyesan* (1977) and in sub-stools in *James Town (Alata) Stool and Another v. Sempe Stool and Another* (1990).

The mode of creation or original acquisition of the allodial title has been examined in the judgment of Ollennu in the case *Ohimen v. Adjei and Another* (1957), which identifies four principal methods by which a stool acquires land: "conquest and subsequent settlement thereon and cultivation by subjects of the stool; discovery, by hunters or pioneers of the stool, of unoccupied land and subsequent settlement thereon and use thereof by the stool and its subjects; gift to the stool; purchase by the stool" (279). Two additional modes include foreclosure after a pledge or mortgage and reacquisition of title by reversion from a grantee. Discovery of unoccupied and unowned land by pioneer settlers appears to be the only mode that gives an original, rather than derivative title to the settling community (Woodman 1996, 54-56).

The derivative modes of acquisition above are also modes of loss of the allodial title by the previous holders. Sale, gift, foreclosure and conquest are all modes whereby one owner loses the title while another acquires it. The title may be also extinguished as a result of legislative enactment through the operation of the state's powers of compulsory acquisition, which extinguishes all existing titles to land and creates an absolute title in the state (Woodman 1996, 58).[3]

Usufructuary/ Customary Freehold Interest

The usufructuary title is the highest type of land ownership in Ghana that a subject or individual member of a family can hold in stool or skin or family land. It is an interest in land held by sub-groups and individuals based upon the acknowledgement that the land is owned allodially by a larger community of which they are constituents. This includes a) families and individual subjects of a clan in part of the clan's land and b) families and individual subjects of a stool or skin in part of the stool's or skin's land (Project

[3] According to the ACLP project (2009), the rights of allodial title holders include: a) exclusive possession; b) use and enjoyment; c) right of alienation, i.e. the right of the holder to give either the entire interest, or part of the interest, lesser rights such share tenancy and customary license or leases; d) right of proprietorship in perpetuity, which manifests itself in group ownership – e.g. the stool or skin - as a group is a corporate entity that never dies while the occupants of the stool and skin come and go; and e) right to residual proprietary interest (reversion), which allows for parallel rights in the land together with anybody to whom the allodial title holder have transferred some of the rights to, which come back to the them upon the expiration of the term (e.g. the grant of a lease after which the land returns to them) (14-15). Woodman observes that these rights are most pronounced in the case of vacant communal land, i.e. land in which no rights have been granted to strangers and no community members have acquired usufruct/customary freehold. Community members who own the allodial title are entitled to use such land by taking the natural fruits or developing it with farms/buildings but as soon as the latter developments take place and members acquire the usufruct/customary freehold, the land leaves the present category (Woodman 1996, 66).

Secretariat of ACLP 2009, 16). Nearly every Ghanaian belongs by birth to one of these communities that hold the allodial title to land, and as citizen of such community has an inherent right to occupy and use free of charge any vacant communal land. If he develops the land by farming or building on it, he acquires a usufruct in it. It is a substantial encumbrance on the allodial interest without extinguishing the paramount or absolute title vested in a stool/skin.

The term "usufruct" is used to refer to the full right of the holder to the use and fruits of the land, and Woodman and Ollennu concur that it should not be equated with the Roman *ususfructus* because the Ghanaian interest confers more rights (Woodman 1967, 457). It is a potentially perpetual interest, which is inheritable and alienable. The term "customary freehold" was introduced by Bentsi-Enchill and was later adopted by the Ghana Law Reform Commission in its recommendations for reform of land law (Bentsi-Enchill 1973). The new Land Bill submitted to Ghana's Parliament in 2018 clarifies a key distinction between the usufruct and the customary freehold on the basis of the mode of acquisition: the customary freehold is granted and arises out of a transaction under customary law, and is not inherent by birthright like the usufruct. Customary freeholders are subject to "the jurisdictional and cultural rights of the stool, skin, clan or family which holds the allodial title;" like the usufruct, the interest is of perpetual duration, inheritable and alienable (Article 3 (1) of 2017 Draft Land Bill). The Supreme Court has also defined the usufruct as a "a specie of ownership co-existent and simultaneous with the stool's absolute ownership" (*Awuah v. Adututu and Another* 1987-88).[4]

Leasehold Interest

Leasehold is one of the most common types of interest in land in Ghana and it is held for a specific duration of time. It arises when a person who holds an allodial title, customary freehold or usufructuary interest grants to another person an interest in land for a specified term subject to terms and conditions and exercises the right of a reversionary owner (Article 6 of 2017 Draft Land Bill). The duration given depends on the proposed use of the land and may be subject to renewal upon expiration. The most common practice

[4] The holder of the usufructuary interest is entitled to the following rights: a) right of possession, i.e. a right in rem that is exclusive, that can exercised potentially in perpetuity, and that cannot be divested by the stool/family to another party or for public purpose without the consent of the land holder; b) use and enjoyment, which includes the owner's entitlement to all economic trees that he plants while the allodial owners are entitled to the trees naturally growing on the land; c) right of alienation, i.e. the title holder can grant a lesser right or all of his right to another person, without the need for the allodial owner's consent provided due recognition is given to the allodial title in the transaction; d) right to an action in trespass, which allows the usufruct to maintain an action in trespass against the stool and can impeach a grant made by the stool without his consent; e) heritability, which means that upon the death of the usufructuary holder, the interest devolves on his next of kin; f) rights to compensation; and g) rights to customary service, i.e. the duty of the usufruct to render customary service to the stool. (Project Secretariat of ACLP 2009, 19-22; Woodman 1967, 461-64; *Awuah v. Adututu and Another* (1987-88); *Thompson v. Mensah* (1957)).

for Ghanaian citizens is 99 years for residential use and 50 years for commercial/industrial/cultural/agricultural use. For non-Ghanaians, the term of leasehold is limited to 50 years. Holders of such interests are also expected to use lands acquired solely for the purpose for which it was given. Any alteration to the latter is subject to negotiations with the land owner.

Tenancies

The terms "tenancy" and "license" are often used interchangeably without drawing a firm distinction. "Tenancy" generally has been used to refer to interests that are held on terms fixed by standard categories whereas "license" has been used to describe interests that are held on expressly negotiated terms. However, there is considerable negotiability of the terms of both forms of interest today, which merges the distinct meanings of the two categories (Woodman 1996, 117).

The two main forms of tenancy are *share tenancies* and *cash tenancies*. The share tenancy refers to a contractual form of landlord-tenant relation, which is extensively used in agriculture and inland fishing. The most common forms are *abusa* and *abunu*. The *abusa* tenancy arises when the allodial holder of uncultivated land grants it to a stranger in exchange for a share of the crops that will be grown on it. The tenant is normally expected to meet the costs of cultivation of land and is entitled to all the food that he grows while cultivating the main crop (e.g. cocoa and other cash crops). The landlord is entitled to one-third of the produce when the main crop bears fruit. The *abunu* tenancy is similar to the *abusa* tenancy but it usually arises in cases where the tenant does not have to bear the cost of making the farm and the land has been already partly developed. The tenant is put in charge of the maintenance and improvement of the farm under a duty to pay one-half of the proceeds of the land to the landlord, or even to divide the farm instead of the produce (Woodman 1967, 466-67).

The share tenancy does not create or pass any legal interest in the property to the tenant and the tenancy is created only with reference to the share of the proceeds. In other words, ownership always remains in the landlord and the tenant cannot use the land as collateral security.[5]

The emergence of the second type – cash tenancy – can be traced to a historical practice of land acquisition by strangers, which generally required the possession of certain qualifications such as permanent residence in the community for about one year to demonstrate the stranger's personal attributes

[5] A share tenant may enjoy the following rights: a) security/quiet enjoyment, which entails the right to keep possession of the property and use it without claims from the grantor, which includes protection from unilateral alteration of the terms of the tenancy by the grantor; b) right of alienation, which does not amount necessarily to a right to alienate the land but the right to dispose of the tenancy inter vivos with the consent of the landlord who may exercise the right of pre-emption; c) heritability, which means that it may be passed onto the next of kin, unless the parties agree otherwise, and that it is of potentially perpetual duration (Project Secretariat of ACLP 2009, 26-27).

and cooperation. With the rise of commercial agriculture, strangers became willing to pay larger sums of money to landlords and today this form of acquisition depends on the size of the customary "drink" money a prospective tenant is able to offer (Project Secretariat of ACLP 2009, 26-27).

Licenses

This is one of the most widespread arrangements that confers the right to occupy and use land in accordance with negotiated terms. It may be granted by a member or subject of a landholding family or skin to another member or subject, or by a member to a stranger. A license is usually irrevocable and inheritable as long as the terms of agreement are observed. A condition that restricts it to a specific term or rendering it revocable can be included in the agreement. A common restriction on the licensee concerns the uses he can put the land to (Woodman 1967, 464-65; Project Secretariat of ACLP 2009, 29-30)

The two main forms of licenses are *short term licenses* and *long term licenses*. The short term license (sowing tenure/seasonal license) involves a permit to cultivate annual crops but does not allow for the right to put up a structures and cannot be revoked unilaterally until the end of the season. Upon expiration of the permit, a new license is needed but with the passage of time the renewal may become implied and eventually perpetual. The licensee does not have a right of alienation. The long term license involves a permit for agricultural or residential purposes. The license to build on the licensor's land is known as a "building license." Like the short term license, this type of license does not amount to any legal interest or estate and enjoys the right of possession free from disturbances.

Pledge

A pledge is a security transaction similar to a mortgage. It is defined as "delivery of possession and custody of a property by a person to his creditor to hold and use till redemption by payment of debt or discharge of obligation" (Project Secretariat of ACLP 2009, 31). Any right, title or interest in land capable of ownership, except for annual tenancies, may be pledged. The pledgee has the right to the use and enjoyment of the land without accounting to the pledger, who has no access to anything on the land. A pledge is redeemable any time and customary pledges are not alienable, which means that the pledgee is not permitted to sell the land except in the case of a court order (Ibid.32).

Part II Legal Pluralism and Conflicts over Land Rights in the Upper East Region of Ghana

The challenges presented by the complexity of Ghana's plural land tenure systems and the changing power relations between land rights holders become particularly evident in the Upper East region. The region covers a small area of the savanna, but the story it tells about land is a much larger one. On the one hand, the region is typical of much of rural Sub-Saharan Africa. Its inhabitants cope with occasional periods

of droughts and excessive rain or small-scale conflicts through combinations of subsistence-oriented agriculture and income from migration labor. Agriculture continues to be the most significant activity and access to land is vital (Lentz 2013). On the other hand, whereas chiefs occupy the customary office in most of Ghana, in the Upper East region customary offices are split between tindaanas, chiefs, and clan/family heads. Transactions in land had rarely been the business of chiefs until the colonial period when, by appointing and in many places "inventing" chiefs, the colonial administration delegated land control to them, which they retained after Independence (Lund 2008; Rattray 1932). But in practice, land administration by tindaanas continued, remaining invisible to the law until 1979 when the Constitution divested the state of its trusteeship over most lands in the Northern and Upper regions and the need to clarify the question to whom these lands were to be given became critical. This legal development produced new conditions for the reinterpretation of customary land tenure arrangements and ancestrally-prescribed principles of trusteeship, intensifying struggles over ownership among tindaanas, chiefs, and family heads.

First, I provide an overview of the major land tenure rights and interests in the region, examining some of the key connections between different notions of property, authority, and land use, and categories of actors – e.g. earth priests, chiefs, and clan elders – who are competing over land allocation and administration in the Upper East region. The complexity of customary land law arrangements in the region, as well as the full range of rights, uses, and power relations, are still poorly researched and understood. The "unified" view of Ghana's customary land law discussed in part I of the paper has been largely constructed and shaped by a series of judicial pronouncements, case law, and authoritative works of jurists such as S.K.B. Asante, N.A. Ollennu, Kwamena Bentsi-Enchill, and Gordon Woodman that have been exclusively focused on the south of Ghana. Woodman, for example, notes that the conspicuous lack of judicial decisions from northern Ghana "presents a special problem for legal research" and like many of the above authors makes a point that his research "does not claim to describe the customary land law of this area in any complete fashion" (Woodman 1996, 48).[6] It was not until very recently that a growing body of academic scholarship such as the works of Christian Lund, Carola Lentz, Kasim Kasanga, Steve Tonah, Wyatt Macgaffey, Zaid Abubakari and Joseph Yaro have cast light on certain aspects of northern tenure systems and the changing relations among land rights holders. One notable research project is the ACLP project, coordinated by Sheila Minkah-Premo, which has covered so far twenty-eight traditional areas of Ghana.

Second, drawing on ethnographic field research in the Bolgatanga and Bongo traditional areas, I explore the recent revival of tindaanas and their growing influence in the contemporary contestations over

[6] Woodman (1996) notes, for instance, that only seven cases from the north could be included in the three volumes of *Reports of Land Cases, 1938-55* (48).

allocative authority over land.[7] Here I also examine chiefs' and tindaanas' reinterpretations of the principles of trusteeship and renegotiation of the customary terms of ancestral ownership and accountability. Third, I situate these contestations within the broader tensions between customary and formal land rights regimes in Ghana and explore how these tensions have been intensified by recent land policy reforms that have prioritized administration concerns over tenure reform and registration of lesser interests such as leasehold over allodial and usufructuary interests, from which leasehold is derived.

Major Land Tenure Interests in Bolgatanga Traditional Area

This study concurs with the report on the pilot phase of the ACLP project in Ghana (2011), which observes that customary land ownership is vested in clans and families. Some lands are also owned by *tindaama* (pl.) who are the spiritual leaders in the Bolgatanga traditional area. Every community has a *tindaana* (sg.) and the title of the office is derived from "tiŋa" (i.e. the term for "land" in Gurene, which includes both the territory of a community and the community itself) and "daana" (which means "owner of" or "trustee") (274). Tiŋa daana thus designates the fiduciary appointment by the will of the community to assume responsibility for the spiritual oversight of community land. The tindaana performs the sacrifices to the land spirits on behalf of the whole community with regard to various uses of land. Besides the *tindaama*, *yizukɛɛ'duuma* (clan heads) oversee clan lands. *Naduma* (chiefs) usually belong to land owning

[7] This study employs qualitative research, based on a blend of interpretive and ethnographic methods. First, I engage in participant observation in the everyday activities of opinion leaders, elders, and officials who are responsible for or involved in land use, administration and management and in various rituals and rites related to land. Participant observation is a research approach that privileges empirical complexity, thick descriptions, and conflicting interpretations, all of which are essential for gaining deeper understanding of the complexity of land tenure arrangements in northern Ghana. Ethnography enables me to explore practices of endogenous governance that remain largely invisible in the debates on land in Africa such as the hitherto marginalized office of earth priests (tindaanas) and its interactions with the chieftaincy and postcolonial forms of governance in Ghana. It allows me to follow land allocation, mapping, and adjudication of disputes by customary authorities. Second, I conduct in-depth interviews with policymakers in Accra and with earth priests (tindaama), chiefs (naduma), and clan heads (yizukɛɛma) in the Upper East Region. I approach informants through "snowball sampling," whereby initial contacts generate new ones. In Accra, I have been conducting a series of interviews with policymakers on the progress of land reform in Ghana, including the Land Administration Project and the new Land Bill. In the Bolgatanga and Bongo districts, I have been collecting oral histories of people's relationships with the land and people's views of the relationship between earth priests and chiefs. The interviews cover a wide range of topics: various "local" categories for land; whether land can be owned and/or sold, and if so, who owns the land; the forms of customary land tenure practiced in the area; the main uses of land associated with them and how they have changed over time; the customary land controls systems in the area. The interviews allow interviewees to articulate how they understand their obligations, their relationships with one another, how they view the roles of customary authorities in community life, and how these roles have changed. Third, I enlist interpretive methodologies in the social sciences, a set of interdisciplinary research strategies that view knowledge, including scientific and indigenous knowledge, as historically situated and entangled in power relationships. The interpretive method enables me to approach the categories, presuppositions, and classifications referring to land in Ghana as socially made and manufactured, rather than natural. It allows me to examine the social conditions and everyday practices that make such classifications and perceptions meaningful to policymakers, earth priests, chiefs, and elders.

clans and families and can own land by virtue of their membership in the clan/family. In Gurene, a common statement by elders differentiates between the office of the tindaana and naba (sg.): "Naba suɔ la a nɛriba, tindaana suɔ la a tiŋa" (i.e. "the chief is for the people, the tindaana is for the land"). It is possible, however, for a chief to be at the same time a tindaama such as BeoDana in Beo-Tongo or the chief of Gowrie.

Allodial Interest

The allodial title may be held by clans, families or the tindaana. The basic principle of land ownership is related to the history of original settlement in the area. The title is vested in the community whose ancestors were the first to occupy and demarcate a piece of land, appointing the head of that family as the custodian of the land (tindaana): "*Tindongo* (i.e. tindaanaship) started with the first ancestor who discovered and settled on the land. At the time they the ancestors settled, the place was yet a wild virgin land uninhabited by humans. Then your ancestor settles there, scouts the area to any extended length and creates the needed boundary that he wants through physical land marks such as trees, valleys, etc. He does this by farming along such places to announce his presence" (Interview with tindaana and elders, July 26, 2018). This mode of acquisition of the allodial title by occupation was only valid if the occupants settled on the land permanently. In the past the title could be also acquired by conquest. Another mode of acquisition is by transfer (gift).

As the family of the tindaana grows and he allocates portions of his land to his sons, who later get married and become family heads, the size of land directly controlled by the tindaana diminishes. Like the *tindaama*, the *yizukeema* manage their portions of the land and pass their interest to their sons who are expected to transfer it to their sons when they pass on. The tindaana can appoint some of his relatives as *tinga pogsigra* to oversee the land, perform minor rites, and serve as intermediaries between the land owning clan and tenants. If someone wants to build a house, dig a grave, or finds a stray animal, they inform the *tinga pogsigra*, who would, in turn, inform the tindaana (Project Secretariat of the ACLP 2011, 277).

Usufructuary interest

Members of landowning clans and families have the right to use part of their land to put up a structure or to farm. They have the right to transfer interest in land under their custody but must inform the head of the family and ultimately the tindaana. In particular, a land owner can give out a portion of his land to a relative to farm without the consent of the tindaana. But he cannot allow a relative to build on his land without the express permission of the tindaana. This is because it is customary for the tindaana to perform *kuure* (cut the sod) before building commences. Indigenes also have inheritance rights over their deceased father's land handed down from the ancestors.

Kuure (land allocation for residential building)

When a clan member or settler seeks to obtain land for settlement from a landowning family, the *yizukeema/tindaana* is informed and may allocate a portion to the Saana (settler). If the land is allocated for building purposes, both *tingambisi* (indigenes) or *saama* (migrants/settlers) are expected to provide the tindaana with items such as fowls, millet flour, tobacco and a hoe blade to perform *kuure* (cutting the sod) before construction can begin. The tobacco cake and hoe blade are modelled differently from the normal hoes and tobacco sold at the Bolga market and the fowl is used for a sacrifice to welcome the new settler to the land (Interview with Tindaana and Elders, July 20, 2017). Other rites are performed after construction in order to ensure that the house is fit for habitation. If a clan member wishes to allocate his share of land to a *saana* for residential purposes, he can perform the *kuure* in consultation with the tindaana. The *saana* then enters into a relationship which requires him to contribute certain items to the *kusuodaana* during the performance of seasonal sacrifices or funerals (Project Secretariat of the ACLP 2011, 278).

Leasehold interest

This is a newly introduced interest. In the case of lease of land for residential and commercial purposes, a land owning member or a *Kusuodaana* may transfer interest in land with the consent of the *Yizukeema/Tindaana/Naba*.

The table below summarizes the main land tenure interests, terms and conditions of such interests, those who can acquire such interests, and their duration and means of alienation.

Gurene /English name	**Terms and conditions of interest**	**Who can acquire interest**	**Duration of interest**	**Means of alienation and other features**
Yizuo/yire tinga (allodial ownership)	• Ancestral lands "handed down to clans/families to utilize for their survival on behalf of the ancestors and those yet unborn," administered by clan and family heads (*Yizukeenduma/Yidaanduma*) in consultation with the *Tindaana*; • the *Yizukeenduma, Yidaanduma* and *Kusuodaana* are requested seasonally (before sowing and after harvest) to contribute foodstuffs, fowls, pito and millet flour to participate in performing sacrifices to the *tingane* (earth god)	Land owning clans and families	Permanent	Indigenous family members have usufructuary rights in clan/family land; they give lesser interests such as customary tenancies and leasehold
Tingambisi tinga (usufructuary interest)	• *Tingambisi* (indigenes) can farm any type of crops on their land such as *sampan* (farmland around compounds), *allege* (farmlands beyond sampan and away from compounds) or *bu'o/kulika* (farmlands along valleys/rivers);	Members of land-owning clans and families	Indefinite	Accountable to the *Yizukeenduma, Yidaanduma*, and tindaama for the use of their land;

	• they are requested occasionally by the *Tindaana* through clan/family heads to contribute foodstuffs, fowls, pito and millet flour to participate in performing sacrifices to the *tingane* (earth god) • members have exclusive right to economic trees on their ancestral land • they can settle on or build any type of structure on land allocated to them through the required process			they can grant lesser interests to *Saama* (migrants) and other Tingambisi on tenancy basis in consultation with the *Yidaana*, *Yizukeema* and ultimately the *Tindaana*
Kuure (customary land allocation for residential building)	• *Tingambisi* (indigenes) and *Saama* (migrants/settlers) can acquire land from landowning families, the *Kusuodaana* or the *Tindaana* on terms; • Once the required customary rites (*kuure*) are performed by the Tindaana or *Kusuodaana*, including demarcating portions of land for farming (*samanɛ)*, such interest stays indefinitely as long as the family exists in the area	Indigenes and migrants/ settlers	Indefinite, except for *saama* who repeatedly violate community values	*Saama* cannot transfer interest in the land and cannot perform sacrifices on it
”*Tinga da'a*” (“purchase of land”-lease)	• Transfer of land interest by the owner of land to another person for a period of time (usually 99 years for residential purposes and 25-50 years for commercial purposes); • locally people use the word “purchase” or “sale” for this arrangement even though land is not sold outright; • it is prevalent in urban and peri-urban areas and involves the payment of items such as cola nut, pito, fowls and money • involves documentation at the Customary Land Secretariat and/or land agencies such as the Lands Commission and Town and Country Planning	Any person who needs land on such terms	As agreed by the two parties	Upon expiration the land reverts to the original owner; inheritable by next of kin within lease period
Kua zi'am sakerɛ (customary tenancies)	• The release of a plot of land to a tenant to farm for a relatively short period, e.g. a farming season, under specific terms • *Korhum* (Farm land): Tingambisi and Saama can access land from other families, the Tindaana, or the Naba on which they can only farm crops, but cannot harvest the trees, build or transfer their interest without permission; tenants need to show appreciation in various forms such as giving part of the farm produce to the	*Tingambisi* and *Saama* subject to the terms of the farm owner	Temporal/seasonal but extension depends on relation with original owner	Land can be taken back from tenant after harvest when needed by the owner; tenants cannot transfer interest in land and cannot perform sacrifices on it

	owner after harvest and recognizing the authority of the landowner • *Kua/Bumbuura song're*: an arrangement, in which the landowner gives his land for farming in exchange for assistance with ploughing his land and receiving seed support for planting; applies to farming season and renewal is required for subsequent seasons			
Tingda'areka (short-term licenses for irrigation farming during dry-season)	• Licensees acquire plots of land from the Irrigation Company of the Upper East Region (ICOUR) for irrigation farming; • the land is controlled and managed by ICOUR during the dry season; it reverts to land owner during rainy seasons; • farmers pay water and land levy	*Tingambisi* and *Saama*	Every dry season (October-May)	Tenants/licensees cannot transfer land without the consent of ICOUR or other landowners
Tingana (earth shrines)	• Restricted lands, the abodes of the earth gods and/or other community spirits that are not released to any other person, group or institution; • Seasonal sacrifices are performed by indigenous clans presided by *Tindaama*	The *Tindaana* and representatives of clans	Indefinite	Cannot be transferred to anybody but can be accessed by indigenes for spiritual purposes
Yorh tinga (burial land)	• Burial lands controlled by the respective clans and families; • other burial lands exist for non-indigenes/people of other beliefs	Indigenes and settlers	Indefinite	The *Tindaana* and land owners can allocate their land for burial purposes

Table 1. Adapted from Project Secretariat of the ACLP, "Report on the Pilot Phase of Ascertainment and Codification of Customary Law on Land and Family in Ghana," Volume III, *National House of Chiefs/Law Reform Commission*, March 2011, 276-88.

Chiefs, Tindaanas and the Reinvention of Trusteeship in the Upper East Region

Tiŋa, the Gurene term for "land," refers simultaneously to (1) land, ground, earth, the physical world, and (2) country, town, settlement (Dakubu et al.2007, 170). *Tiŋa* is the whole community, be it trees, stones, humans, or spirits; it is the ground on which we are sitting and "in which we bury" (Interview with Chris Azaare, August 15, 2012). As we have seen in part I of the paper, the indigenous concept of land as an ancestral trust in Ghana means that it is the dead –the ancestors (*yaabaduuma*) and the Earth gods (*tingana*) –who are recognized as the allodial "owners" of the land. *Tindaama* (earth priests) and *Yizuukɛɛma* (clan elders), and in a few cases *Naduma* (chiefs), are land trustees and hold custody of the *tingane*, i.e. the shrine containing the community spirits. But it is the "skin," the shrine itself that serves as the repository of ownership of the land and not the person of the tindaana.

This principle of ancestral ownership, which makes the living temporary possessors of a heritage, is frequently acknowledged in discussions with chiefs, tindaanas and elders:

> In our Gurune tradition, what we are sitting on we call Tingɔnŋɔ (land). The land also has its legs (entourage) in the forms of trees and stones…The land therefore belongs to our ancestors, those yet unborn and those living today... Our environment includes our trees, our stones, our rivers, our shrines, and we the human beings…Anything that we want to do on land we have to seek the consent of the dead and also the shrines before you can do any development on the land (Interview with Chief and Traditional Council, July 4, 2018).

In the chief's statement above, the Gurene view of land as intergenerational asset indicates "a hierarchy in divine beings, spiritual beings (especially the ancestors), natural forces (such as climate, diseases, floods), soil, vegetation, animals, man and woman. These hierarchies…give rise to several rituals in which the elders, priests and soothsayers play prominent roles and prescribe the way problem-solving can take place (Millar 1999, 133-34). These hierarchies are reflected in the indigenous scheme of land rights and interests described in Table 1, and especially in interests such as *yire tinga*, *tingambisi*, *kuure*, *tingana* and *yorh tinga*. The terms and conditions of these interests include sacrifices and rites as binding mechanisms for the ancestral regulation of land. Sacrifices are made on a seasonal basis to encourage the ancestors to plead with God on behalf of the living before the growing season and after harvest. The performance of funerary rites is an essential condition for the inheritance of land: "there is the need to perform the funeral to bid your relative a farewell to the ancestral world and performing the funeral means he is gone forever and will reach the ancestors…The funerals are also performed to inherit the properties of your deceased relative. If the funeral is not performed you cannot inherit, it is a taboo…it means the deceased is still existing with you in spirit" (Interview with Chief and Traditional Council, July 4, 2018).

This view of land law as ancestral prescriptions and taboos includes a notion of accountability to the land spirits, explains the chief, that traditionally serves as the most common deterrent to breach of such taboos: "The procedure of accountability is death. If you the chief does not perform your role well, the gods or ancestors can kill you, if you the Tindaana does not perform your role very well, the Tingama will kill you" (Ibid.). A tindaana agrees that the accountability for deceit in disputes is death: "Everybody knows that you can't cheat land. For anything you can cheat, but you can't cheat land, when you cheat land they bring you here [i.e. tindaana's house], and usually the result is that the person who cheated will die" (Interview with Tindana and elders, July 12, 2017).

These ancestral regulations, which are guided by history, posterity, and spirituality, prescribe that access to production resources should be "negotiated and rarely traded-off for money" (Millar 1999, 136). This prescription is constantly reaffirmed by chiefs, elders and tindaanas who insist that "we do not sell land here." Elder Chris Azaare (2019) explains that taboo on the sale of land is governed by ethical concerns

about the security of posterity: "Neither the tindaana nor any one individual could sell out land. The reason for the prohibition is that land belongs to the ancestors who live underneath the Earth. These ancestors still have vested interest in the preservation of the land which they have left behind for the living descendants."

The recent upsurge of leases, however, and the growing role of money in the formalities for allocation of land have put this taboo under pressure and have intensified the debate about whether land can be sold. Part of the disagreement arises due to the local term - "purchase" or "sale" (*tinga da'a*) - for this arrangement even though land is not sold outright in this area: "When the ancestors first occupied the land, the land was shared within the group…We do not sell the land but lease it out. Looking at the document that we sign, it is a lease document that is given to the person in exchange of money. Maybe because of illiteracy, they are feeling that they have sold the land but it is a lease" (Interview with Tindaana and Elders, July 20, 2017). In contrast to the tindaana's assurance that land cannot be sold, a chief suggests that custom is no longer respected by many people who have resorted to selling land as a way of addressing poverty. For him, due to the monetization of the allocation process, these practices amount to a *de facto* sale of land, even if legally land cannot be alienated permanently:

> Land is not for sale, our ancestors never sold the land. If anybody wanted to develop the land for any purpose, it was free for that fellow to develop, if anyone wanted to farm, it was given free to that fellow to farm. But today we are witnessing a different trend of events. In one way or the other, we sell land with the pretense that it is being leased and because of its nature of taboo we hide behind leasing of land…The increasing of the world's population has affected us…we cannot just say we will give our land out freely (Interview with Chief and Traditional Council, July 4, 2018).

Who Owns the Land? Chiefs, Tindaanas, and Struggles over the Allodial Title in the Upper East of Ghana

While these trends of commercialization of land relations are often shunned by both chiefs and tindaanas in public pronouncements, they have also intensified competition over who has the authority to endorse transfers of land interest, resolve land disputes and lay claim to the ground rent which accrues constitutionally to the allodial title holder of the land. Terms such as allodial title and leasehold have become regularly incorporated into the definitions of customary prerogatives of the two offices. These struggles over the allodial title between chiefs and earth priests can be also understood as contestations over competing constructions of land, jurisdiction, and space (Lund 2013). For chiefs, land is usually conceptualized as a political territory that they administer and hold in custody for their subjects: "The chief is the sole custodian of the land. If the Naba owns you as a person, how can he not own the land? With regards to farming, we have the person tendering the land to feed the family but the overall land is the chief's" (Interview with Chief and Traditional Council, July 4, 2018). Land is regarded as a domain of chiefs' administrative jurisdiction governed via taxation, litigation, and provision of infrastructure and development. From this perspective, the naba controls the land by exercising his administrative authority

over people and facilitating the release of land for development purposes. This form of customary land control by chiefs is contested, however, by tindaanas: "They call us Tinga-daana (land owner)…The Tindaana is the allodial owner of the land... Everything on the land belongs to the Tindaana. Any person in need of land to settle acquires the land from the Tindaana. It has come that we now lease land. It is the Tindaana who endorses the land documents. Like the developments that has come, the Tindaana gives out land for such infrastructural development (Interview with Tindaana and Elders, July 20, 2017).

Whereas chiefs emphasize a concept of trusteeship as an attribute of political and administrative sovereignty, tindaanas stress their position as trustees of ancestral property on behalf of the community by virtue of their privileged role as intermediaries with the land spirits: "One of my roles is that if there is drought during the planting season, the clan heads come to me, the Tindaana. They will tell me they want to leave the land because there is no rain. When we know that Tingane and the subsequent form of appeasement, we offer them the sacrifice so that our cry will reach God in order that we have our rain...This is work related to the land, not the chieftaincy" (Interview with Tindaana and Elders, July 26, 2018). For tindaanas, land embodies a reciprocal social contract with the ancestors and spiritual agencies that must be continually renewed through rituals, sacrifices, and rites: "I put on a calabash as a cap, the chief has a red cap. Can he command rain with his red cap? It is the Tindaana whose sacrificial role ensures the increase of the human race, not the chief. He Tindaana, makes sacrifices for the fruit of the womb" (Tindaana at meeting of the Upper East Regional Tindaama Council, July 6, 2018). In such statements, a recurrent theme is that the tindana not only owns the land, but by virtue of his ownership, he is the only one who knows and is known by the spirits of the land. Such assertions usually identify the tindaana as the first settler of a community and custodian of community land who "met the land." Traditionally, the Tindana is rarely seen in public and performs a variety of roles and responsibilities: a) he/she perform rituals and sacrifices to the earth gods; b) allocates land for farming and building purposes within his area of jurisdiction; c) cleanses the land and pacifies the gods when there is bloodshed caused by murder or fatal accident; d) arbitrates or settles land disputes; e) grants permission for digging a new grave for burial of a deceased elder; f) organizes the burial of any stranger who dies within his area without any known relatives; g) validates transfers of land; h) receives stray animals for sacrifice to the earth gods (Member of the Upper East Regional Tindaama Council, Bolgatanga, August 11, 2017).

Tindaanas and elders tend to view the above responsibilities as an expression of the complementary roles that tindaanas and chiefs have traditionally played in social life, placing tindaanas in charge of spiritual issues, including land management, and chiefs in charge of conflict resolution in their role as community

leaders. Tindaanas often emphasize their own role as descendants of the pioneer settlers who delegated power to chiefs and appointed the latter as "valets" to the White man:

> Tindaama are the ancestors who were first to settle in the land. And anyone who comes after, and desires to settle, they will have to call on the Tindama who shows them where to build and settle… when the Whiteman was coming…the Tindaana appointed somebody to see the man through because it is not traditional to gird a loin cloth, slung a skin and move about with the Whiteman. He is in charge of the land and does not move about from place to place with his Earth Spirits. So this chap, sort of valet to the Whiteman, later called chief, was nominated to move with the Whiteman…As it exists now, nothing really has changed since the government of the day really acknowledges only the chiefs but not us. The initial role of the chief was to play a supervisory role in tax collection...Forms of litigation were settled by the Tindaana but the government have relegated us to the background which is why we are championing this cause: to resist the attempts of the chiefs to filch our authority and diminish our roles (Tindaana at meeting of the Upper East Regional Tindaama Council, July 6, 2018).

The tindaana's account of the origin of chieftaincy in the Bolgatanga area resonates with the reports of colonial anthropologists and officials such as Rattray and Cardinall who sounded early warnings that many of the colonial chiefs were a British invention, "petty unconstitutional European-made Chiefs" (Rattray 1932, xvii). In *Tribes of the Ashanti Hinterland* Rattray recognized the influence of tindaanas and advanced recommendations designed to temper the arbitrariness of indirect rule: "A remedy is simple and need cause no great upheaval…every rightful Ten'dana who is not actually a chief, and the Ten'dana's hereditary Elders should act with the Chief as his councilors. Commissioners can do a great deal towards this end by merely insisting, when interviewing Chiefs, on seeing and greeting these Elders" (Ibid.). Rattray's advice was largely ignored and oral histories recall numerous examples of local residents who were picked out from groups of lineage elders and subsequently appointed as chiefs. According to elders, those who were pro-British and showed some sort of devotion to work were always the best candidates. There were others who worked for British officers in some capacity, e.g. as messengers or as guides. Rattray also observed the "emergence in this part of Africa" of "something which every one, African and European alike, knows to be an anomaly – a local despotic ruler" (Ibid.). Even those chiefs who held traditional offices had now been vested by the administration with vastly extended and modified powers. Indirect rule diminished the role of tindaanas, and elevated the status of chiefs. The responsibilities expected of the latter far exceeded their traditional responsibilities and limited enforcement powers.

The formation of the Upper East Tindaama Council– an organization that whose membership now includes more than fifty tindaanas from the Upper East Region - is intent on rectifying some of these histories of chiefs' usurpation of tindaanas' prerogatives. Its goals also include revitalizing customary land practices and addressing the recent proliferation of land disputes in the region: "One of the aims is to make sure that we protect the tingana from encroachment, and to preserve our cultural heritage, our norms…And

the land disputes, to minimize them. We are all the same ancestors, so why do we quarrel about this piece of land or soon we will all go and leave it." (Interview with member of Tindaama Council, July 12, 2017). The Council also aims to enable tindaanas to communicate more directly with Ghana's government and assume a more prominent role in the allocation of land for development projects: "The Tindaana and the chief have come a long way together. Government enskinned chiefs. Same cannot be said of a Tindaana whose institutionalization is by the ancestor…If government wants to embark on any project, they consult the chief outlining their plans. The chief then has to consult the Tindana, without whose land no project can be embarked…government is in bed with the chiefs with the sole agenda of filching our authority…this association is formed to resist these attempts" (Tindaana at Meeting of the Upper East Tindaama Council, July 6, 2018). Tindaanas acknowledge that chiefs are better educated, well-resourced and connected to the government. They point out that while tindaanas are selected by the ancestors, the mode of selection of chiefs is determined by consideration of wealth, material status and government connections.

Despite this history of colonial invention and extension of chiefs' powers with regard to land, in practice, land administration by tindaanas continued largely uninterrupted. It was not until recently that the growing commercialization of land via leasing gave rise to claims by both chiefs and tindaanas:

> A Tindaana must sign or thump print the document as he is owner of the land. They also stand to gain favors in this new documentation process. Because of these gains, the chiefs are protesting saying the Tindaana has no right to give out part of someone's land. They now want to strip the Tindaana from this position. This is the cause of many misfortunes. When there were no economic gains with regards to land, there were no issues since each have their boundaries marking their land. With the current wealth associated to land, you will often see a Tindaana encroaching on another's land to sell. The chiefs sometimes ask why they take responsibilities of the people and cannot the land that people have as well…The chiefs are doing this because there are gains to be made out of that. Their claim is a false claim (Interview with Tindaana and Elders, July 26, 2018).

The tindaana's analysis is reiterated by a Lands Commission official who notes a new trend - the rush to install new tindaanas in the traditional area: "If we take the money out, everybody will leave. If we take money out, nobody will be willing to go…the Dapore Tindana he was a Tindana, wears shoes, wears a cap, you're not supposed to dress that way, no!" (Interview, July 20, 2017). The changing economics and rising commercial value of land have generated disputes, conflicts and protracted litigation, which I examine next.

Who Grants the Land? Major Types of Conflicts over Land Rights in Northern Ghana

These contestations between chiefs and tindaanas over the allodial title reveal land disputes not merely as struggles over economic and productive resources but also as debates over issues of identity, belonging, power, and security. In the context of heightened insecurity and ambiguity that characterizes Ghana's legal pluralism, people seek to exact their identity and gain recognition of their ancestral attachment to land, reconfiguring power relations between key players and recrafting the spiritual basis of

customary landholding and trusteeship. As a result, three major types of conflicts have emerged that affect not only allodial titleholders but also their relations with holders of lesser rights such as the usufruct, leasehold, and customary licenses.

1. Who grants the land? If the land is being allocated or sold by the allodial owner, a key issue arises: is it solely the tindaana as an individual who owns the land and who has the authority to sell or transfer it to another person? Is it the tindana's family or is it the elders of the tindana's family who hold these rights? According to Supreme Court Justice Pwamang, the position of customary law related to stool land has been settled by law and it is the stool occupant with the consent of the principal elders of the stool who has this right to grant. In the legal precedent, it is less clear, however, how this very established position applies to the Upper East region. With the changing economics of land and fading views of land as an ancestral trust, disputes arise even within the office of the stool or skin occupant: "it leads even to disputes in the office of the occupant of the stool, whether he is the rightful person… Landowning families actually split up and they have rival heads of family or rival occupants of stools. Now, it becomes difficult to know: yes, this land belongs to this community but who do I acquire it from?" (Interview with Justice Pwamang, June 8, 2018). Such conflicts have become common in the Bolgatanga area. Two of the most prominent examples include the conflict over the rightful occupant of the office of the Daporetingo tindaana between Asohe's and Atindaana's families and the rival occupants of Bolga Naba's office Apakre and Abilba.

2. *What interest is being granted and does the grantor take into account lesser or higher interests?* With population growth and market pressures on land, another tendency has emerged: the attempt to override or diminish other interest holders' rights in land. On the one hand, in an increasing number of land disputes, occupants of the stool/skin or landowning families would claim "the land is mine," disrespecting the quantum of interest and encumbrance on the interest vested in their office by a usufruct. On the other hand, there are also instances whereby people with lesser interests, derived from the historical acquisition of land as usufructs or as licensees under customary terms and conditions, overlook higher interests and claim land ownership.

A recent high profile court case between Tindana Agongo Akubayela, the tindaana of Tindonsobligo, and the Awure family from Kalbeo illustrates the high stakes of this type of conflict. In 2013, the tindaana of Tindonsobligo was taken to the Bolgatanga High Court by the Awure family, which claimed its share of a payment of the reversionary interest to the tindaana by the Bulk Oil Storage and Transportation Company Limited (BOST) in the regional capital. The court ruled in favor of the Awure family and the tindaana appealed the decision. In May 2016, the Court of Appeal in Tamale not only upheld the High Court's ruling but also declared that the Awure family are the allodial owners of the lands at

Kalbeo, a determination the plaintiff had not asked for in their claim to the reversionary interest compensation. The tindaana appealed to the Supreme Court of Ghana. In its ruling on November 23, 2016, the Court overturned the judgments of the High Court and the Court of Appeal and determined that the tindaana of Tindonsobligo "is the Tindana of Kalbeo also and consequently the allodial owner of Kalbeo land in trust for them. It follows also that the respondent family can only have usufructuary title over such of Kalbeo lands as have been reduced into their possession as customary free holders thereof" (*Awabego v Akubayela and Another* (J4/6/2016), 17). The Court also ruled that the parties remain bound by their special Memorandum of Understanding (MOU) relating to the compensation in respect of the disputed land. BOST had signed a MOU with the tindana of Tindonsobligo and the Awure family, according to which 60% of the compensation was to be paid to the former and 40% of it to the latter. BOST had paid a reversionary interest to Tindana Akubayela as the allodial title holder. The Awure took the Tindana to court for their share of 40% of the reversionary interest, but the tindaana claimed that the MOU was not on the reversionary interest but on the pending compensation.

Rather than resolving the dispute, the Supreme Court ruling might have deepened some of the ongoing tensions between the two parties. After the decision, Tindonsobligo made a public radio announcement that all lessees in Kalbeo, Basingo, Kumbangre, and Dorongo have to come and acknowledge Tindonsobligo as the allodial owner of their lands. The office of the tindaana advised them to come and renegotiate their leases, and with regard to leasing lands in Kalbeo instructed people not to go to Kalbeo, but to Tindonsobligo instead. Two days later Kalbeo made a counter announcement and told people that what Tindonsobligo said was not true and that they were the usufructs. According to Lands Commission officials in Bolgatanga, some of the resulting confusion and tensions required police interventions. The dispute is still unresolved. In Tindonsobligo's interpretation, Kalbeo does not have the right to make grants in the BOST area, where there is no residential housing and only farmlands (due to the periodic flooding of the area). Kalbeo have the right to make grants only where they live around their compounds. Here Tindonsobligo suggests that people who are farming in the BOST area are not usufructs because they have not settled there and these lands are better understood as vacant lands that are held in custody by the tindaana. An official at the Lands Commission, however, disputes this argument and notes the Awure family are not strangers from Zuarungu or Tamale, who have obtained lands to farm elsewhere under customary licenses; they are usufructuary interest holders. The Lands Commission has suggested a compromise solution - whenever Kalbeo makes a grant, the Tindana of Tindonsobligo signs and approves it too, just like in Tamale where the leases of sub-chiefs are approved by Dakpema - but because of the sour relations this proposal has been rejected (Interview with officials at Lands Commission, August 3, 2017).

In response, Kalbeo have also decided to create their own tindaanaship and enskin their own tindaana. They have notified the Lands Commission but the Commission has not accepted the new tindaana until these issues are resolved. In an interview with Starr FM, Kalbeo's opinion leader, Mathias Asokiyine Gandaa, reiterates the Awure family's claim to ownership of the land: "We respect the ruling but that does not mean the people of Tindonsobligo own our lands. It doesn't mean they have control over all family lands in Kalbeo. The Awure family can break away from the Tindana of Tindonsobligo and say we have our own tindana. It's their constitutional right. Even the Awure family, who is perceived to be the first settlers of Kalbeo, they don't have control over the lands of other families who settled in Kalbeo. They only have control over their own lands. Then, how much less the Tindana of Tindonsobligo who was only engaged by the Awure family to play a spiritual role" ("SC overturns 'controversial' rulings for traditional landowner," *Starr FM*, November 28, 2016). The Awure family are planning to go back to the Supreme Court for an interpretation of the ruling, clarifying the rights of allodial and usufructuary land holders.

In a related development after the ruling, the Upper East Regional Tindaama Council has petitioned the project coordinator of the Ghana Land Administration Project with a demand that the tindaana be mentioned categorically as an allodial title holder in the Upper East region in Ghana's Land Bill. The petition also emphasizes that the position of the Tindana is higher than that of a head of family or a head of clan, which are both subservient to the tindana and answer to him in matters of land usage and administration in the Upper East Region of Ghana. The Council has also filed a proposal for amendment of clause 7 (b) of the draft Bill, which currently allows customary freeholders, common law freeholders and usufructs to convey to another person an interest in land without recourse to the allodial owners. This is how Sulemana Mahama, the Technical Director of the Ministry of Lands and Natural Resources, situates these petitions within the context of shifting relations between various interest holders in Ghana:

> What they want is a definite reference to tindaana as the allodial owner. But the point is: what do they hold? Are they holding the allodial title, are they holding the customary freehold, are they holding the usufructuary interest? Their own interpretation of what the tindaana's interest is fluid. …he was the original settler on the area, others who came and settled congregated around him purely for spiritual protection. Now, if you are looking at it in terms of that, does that convey to him the allodial interest of that land? Has the tindaana reduced that amount of land into his effective possession, for him to claim that "that land is mine?" Otherwise, you are just a trustee. The customary freeholder, who maybe have also reduced it to his possession in all circumstance, he may owe allegiance to you because he thinks that you are a powerful…he needs spiritual guidance. But does that make you a landowner? The point is that they want to be quoted as if they are chiefs, but they are not (Interview with Sulemana Mahama, August 2, 2017).

Mahama also explains that research indicates that the office of tindaanaship may be better understood as a species of clan ownership: "It is just a species of clan ownership. So when we come into an interpretation,

we have defined what the tindaana's role as far as land ownership or what the clan really is, and the interpretation in this instance was something that was given lots of attention" (Ibid.). Mahama's argument also highlights a distinction between the rights associated with tindaanas' trusteeship of community lands and the rights of landowners that enable them to reduce such lands into effective possession. Like Mahama, Bakari Sadiq Nyari, former National Chairman of the Lands Commission, views the allodial title more as a prestige symbol of community recognition, and less as a source of material proprietary benefits:

> …there are several grants which can be made, in different forms, over that same parcel of land, out of the usufructuary right. Now all of these are put together and they constitute the total rights of the community and that is what finds expression in the allodial title. I argue that when a parcel of land is acquired, over which a native has a usufructuary right, if compensation is to be paid, the allodial title holder's compensation is very minimal. Because he holds a right which he may never exercise, under this absence of survivorship. So, it's perpetually very remote, it's just a token, a recognition of the person. The person who really is the owner, if I can put it in context, like the one who benefits directly, materially from it, is the usufructuary holder …that's why I would prefer the chiefs and the tindamba recognizing that the position they hold relative to land is a prestige position. That right in the customary system is like a pyramid, where the bottom is like the value of the estate itself, while as you go up you know it diminishes into a point, and that is where the tindana and the chief stands (Interview with Bakari Nyari, July 9, 2018).

Justice Pwamang concurs with Mahama and Nyari that the trusteeship role of tindaanas should not be understood in a narrow proprietary sense and that even though the tindaana holds the legal title to land as a trustee on behalf of the community, this does not mean that within his boundaries he controls the beneficial interest 100 percent (Interview with Justice Pwamang and Justice Akamba, August 4, 2017). However, he admits that tindaanas may have a point that their office is different from that of clan elders because when it comes to the issues to deal with land, the tindana does not share that office with the other elders and is not necessarily part of the political jurisdiction of the wider council of elders.

Unlike the customary system of chieftaincy, in which chiefs account to their council of elders for whatever monies the chief collects as a trustee, the distinct nature of the tindaana's office raises the question of accountability for his trusteeship of land: "when it comes to accountability for his trusteeship, he is virtually alone…he is appointed through divination…So it is a rather autocratic office, opaque, un-transparent, dark. To mold it without unsettling things, my theory is that you have to use legislation…Normally, if you go back in the spiritual realm, when he does something wrong, they should kill him. That's how they account. But how do we enforce that?"(Ibid.) In the past, the tindaana led an ascetic life, communicating with the spirits and pleading on behalf of the living. The customary system of accountability for breach of his trusteeship prescribes death by ancestral punishment. Today, this might not be a sufficient form of accountability to the living within Ghana's system of legal pluralism:

> This trust statement made about it is that the tindana is the custodian of the land, but the full ambit or limit of what that custodianship means – and which should be the defining conception of what the people think about the land – is not gone into it. He also rides on the bus of commoditization of the land. But if he was to play this role and lead his ascetic life, then he would not have been interested in the commoditization. He has now left that and he has come to be more interested in the material things. He wants to ride in a car, he wants to eat food in the restaurant in Bolga, he wants to drink beer at the popular places...And we cannot leave the ancestors to hold you accountable because you have gone beyond your remits that have been given to you by the ancestors. You are now entering the physical realm, which we control. Then we have to hold you accountable for your transition. We can't have both worlds (Interview with Justice Pwamang and Justice Akamba, August 4, 2017).

3. What is being registered or documented? A significant portion of conflicts in Ghana are related to the lack of documentation of land transactions, or inadequate documentation of the diversity of interests in land. For instance, there are a number of terms and conditions under which land is given according to customary law (see Table 1). The deeds of transfer that are being drawn out by stools or skins no longer contain those terms, which under customary law are parts of the grant of land. A breach of these terms, in historical times, entitled the landowner to revoke one's license and recover the land. But with modern development, the statutes that have evolved to regulate the conditions of recovering land in such cases, e.g. the Conveyancing Act of 1973, offer protections to grantees that provide opportunities for "forum shopping" by tenants to resolve disputes with landlords, which often preclude the exercise of these customary rights (Interview with Justice Pwamang, Accra, June 8, 2018).

Another key source of conflicts in this category involves the process of land rights registration in Ghana, which is exclusively focused on the registration of leasehold titles neglecting the other registrable land rights, from which leasehold is derived such as the allodial title and the usufruct:

> One would have expected that the title registration would have started with allodial ownerships, followed by the usufructuary ownerships, then you can go on to the individuals. But we started from the individuals, so the contestation that is now coming and what has clogged the entire system is the fact that the person who granted you, the individual, what is his capacity, to grant you the land?... nobody really seems to have a solution to it. People come up with all sorts of schemes about it but they are all short-term fixes. Until we go back to basics and start looking at "what are we registering?" Start from the allodial, and then go down because if you don't solve the allodial, you can never solve the usufructuary or the individual parcels (Interview with Mahama, June 28, 2017).

What explains this neglect of the diversity of land rights in official registration in Ghana? Mahama's statement illustrates a broad consensus by land experts in Ghana that this neglect is a product of the interaction of several processes over the past two decades of administrative reforms in the country. First, one major factor, according to officials, is the history of adoption of the Torrens system of land title registration in the late 1980s as part of land administration reforms to facilitate infrastructural development:

> The way land titling was brought into Ghana, it came with its own difficulties. They just adapted the Torrens systems as if it was the panacea to almost all the land administration issues that we were facing in this country. My worry has been: why the titling? It was to satisfy a World Bank condition. The Bank was doing a lot of infrastructure projects, and during the infrastructure projects issues of resettlement, of project-affected persons came up. But typical of a western mind, it means that when your land is affected and you are going to be paid compensation, then you should show proof of title, which most people didn't have. Then their solution to it was to start a land titling process. They just copied the Torrens system from Australia without looking at the type of interest in land and the complicated nature and brought it (Interview with official at the Ministry of Lands and Natural Resources, June 2017).

This account of the cultural unsuitability of the Torrens system to register the hierarchy of land rights is reiterated by a Lands Commission official: "By our land ownership system we have the customary owners and we know that chiefs or family heads or clan heads who control those lands are custodians. So all that we needed was not necessarily the Torrens system. All that we needed was to identify those rights within the general community or the broader family setup: Who is the custodian of the land? What are the rights of citizens or subjects of the stool or skin or members of the family? Or what community rights exist?" (Interview with Lands Commission official, May 30, 2018). The leasehold system, which arrived with English norms and has become propelled by administrative reforms, runs parallel to the customary system, within which leasehold is subordinated to the allodial and usufructuary interests. The current process of leasehold registration can be seen as a loss of rights by usufructs, rather than source of security:

> I will not go and spend my time queuing at the Lands Commission in order to be able to convert it into the leasehold system, which effectively truncated my rights…when I go to my village and I take a piece of land and I want to prepare a document on this, the Lands Commission would say 'we are giving you a 99-year lease'. Why should I take a 99-year lease? This land belongs to me! I have a customary right of occupancy over that land, in perpetuity, and I cannot lose that right. So if today you are reflecting my right over that land, you cannot truncate it to a 99-year lease (Interview with Bakari Nyari, July 9, 2018).

This concern about the possible truncation of the rights of usufructs becomes also evident in land documentation practices in the Upper East region, particularly in the Bolgatanga and Bongo areas, this time with regard to the relations between tindaanas as allodial owners and landowning families as usufructs. The issue of the term "farm owner" has arisen, an expression that has been brought into the documentation process whereby a document on a piece of land indicates that it is being granted by the tindana and witnessed by the farm owner. But, essentially, it is the farm owner who has reduced the land to effective possession and collected the money upon transfer of his or her interest: "when the lease comes and expires, from whom should they seek renewal? Legally, it should be to the tindana because the document says that he is the landlord and he has made this grant. The farm owner is only a witness. But the reality is that it is the farm owner who has that control, and that is often either the head of the family that owns the land within

the area" (Ibid.). There is a widespread concern at the land agencies in Bolgatanga that this practice of leasing by Customary Land Secretariats can lead to conflicts like that between Tindonsobligo and Kalbeo, which offers an example of the intense debate over the ambiguous meaning of "farm owner."

Second, this exclusive emphasis on leasehold is also seen as the result of policymakers' infatuation with the perceived simplicity and enforceability of the common law system, which leads them to privilege it as their basis for land security, rather than attempt to give meaningful expression to the complexity of customary law: "So we take the simplest path, statute law, leasehold, and that is what we will enforce in the Lands Commission. Customary law – you need to go through a long process – and if somebody comes from the clan and says: "no, the head of the clan has these rights but I also have these rights. You say: "hold on, I have to go investigate and find out: from whom do I get this information?"…the enforcement of the law make the leasehold system more attractive because that is what is easier to enforce" (Ibid.).

Third, this misalignment between customary and statutory systems is further compounded by the sporadic nature, lack of accessibility and the urban/residential bias of Ghana's registration system: "from its implementation in 1988 the systematic approach also failed, it virtually became a sporadic sort of registration system. So you can see that consistently from colonial days we have never approached the issue from the whole to the part" (Interview with Lands Commission official, May 30, 2018). Many of the current administration reforms are informed by urban, residential perspectives, and not small-holder, rural perspectives. The current mechanism for registration is costly and burdensome and concentrated in regional capitals, marginalizing the rural poor (Interview with Nana Ama Yirrah, June 8, 2018). It privileges educated elites, public officials, investors, and traditional authorities, who are well versed in both statutory and customary terminologies, over poor landowning families and rural farmers who are often illiterate and do not command the resources to pay for surveys or pursue litigation in the statutory court system. The emphasis on leasehold promotes values of transferability and marketability of land relations over concerns of strengthening customary forms of security, embedded in higher land interests such the perpetuity of the usufruct or the trusteeship of allodial title holding. It reveals land conflicts not merely as reflection of lack of administrative capacity and implementation gaps but also as manifestations of unequal power relations.

The Way Forward: Land Tenure or Administration Reform?

A list of policy recommendations can be provided to address the above shortcomings and reduce land litigation and conflicts. First, it becomes essential to document and clarify the various categories of interests and rights in land in Ghana, starting with the allodial interest, allodial boundary demarcations and the customary freehold/usufruct. Second, such process of documentation and clarification means supporting the ascertainment and codification of customary land law and the completion of projects such as the

Ascertainment and Codification of Customary Law Project (ACLP), which has mapped 28 traditional areas so far and projects such as Colandef's low-cost documentation of customary rights. Third, this process of ascertainment needs to be accompanied by support for the passage of Ghana's new Land Bill in Parliament, which seeks to give expression to the various customary interests and makes them enforceable in law. The Bill needs to include provisions that address the accountability of stools and skins as trustees of land on behalf of Ghanaian communities. Fourth, the registration system needs to be decentralized and promotion of Customary Land Secretariats' role in documentation and formalization is needed (i.e. promotion of documentation at the traditional level). Fifth, the effects of these measures will be amplified by the implementation of a national information database such as the Ghana Enterprise Land Information System.

Nonetheless, this study also reveals the contestations over the ownership of land in Ghana not merely as contestations over the allocation and grants of land but also as contestations over identity, power and authority. As tindaanas and chiefs are hopping on the "bus of commoditization," sacrifice money is being converted into ground rent and traditional notions of trusteeship become individualized, the current focus on administration reform might be insufficient to address the contemporary challenges produced by legal pluralism in Ghana:

> we have a certain social set up, with all its norms, and then we have seen this new one, brought in by common law and we think we can superimpose it on the social setup here, with all its interests in land. Our challenge now is: do we mold the social setup into the new one, and what remedies do we have for the fallout that will emerge? This is a key policy issue we are facing. That is why you find that in the Land Administration Project we are shying away from the issue of tenure reform, because we know what it means. We have been dealing with administrative reforms, working on the legal framework…on the public institutional structures, but tenure reform we are shying away from it because you are going to hit this whole social fabric of society that has not adjusted sufficiently to the received system which we are bringing in from the colonial era...Are we going to go by that system which we have imported, and therefore re-adjust the social setup to fit into it? Or do we allow the social setup to mold itself into responding in another way to the new realities, particularly the economic realities? (Interview with Bakari Nyari, Tamale, July 9, 2018)

Any policy that seeks to address effectively the intensifying conflicts over land rights in Ghana has to take into account not only questions of land administration, management and technical capacity, but also questions of governance, accountability, and authority. The challenge is how to respond to the transforming economic, political and cultural milieus, within which Ghana's plural tenure system is embedded, without creating social upheaval and undermining the system's principles of trusteeship, which remain well positioned to promote community interests and the responsibility of the living for the unborn.

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