



Raymond Abdulai

Traditional Landholding Institutions in Sub-Saharan Africa

The Operation of Traditional Landholding Institutions in
Sub-Saharan Africa: A Case Study of Ghana

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CHAPTER ONE

AN INTRODUCTION

1.1 Research Background

The importance of land in any economy cannot be over-emphasized. It is a primary commodity that provides space for human and economic activities. This implies that for many people around the world it is a very strategic socio-economic asset (USAID, 2005). It is, therefore, not surprising that in many developing countries, land accounts for about 50% to 75% of the national wealth (Bell, 2006). Regarding the developed world, the immense contribution of real estate and for that matter land to its economic development has been well documented by Goldsmith (1995), Torstensson (1994), Rosenberg and Birdzell (1986) and North and Thomas (1973). Thus, the availability of and accessibility to land is a stimulus for economic development. As first level suppliers of land, the allodial interest in land is vested in indigenous corporate bodies like families and chiefs in sub-Saharan Africa (SSA). These corporate bodies are often referred to as traditional landholding institutions (TLIs). There are various perceptions about the institutions and based on such perceptions (which are explained as follows), some of the problems that exist, particularly, in urban centres of the sub-continent are often attributed to their existence and operation.

The longstanding argument that land registration guarantees landownership security and that land rights, which emanate from TLIs are insecure because the rights are not registered is common knowledge. Traditionally, ownership of land is not evidenced in writing; proof of ownership is by physical possession and occupation and the recognition of that fact by community members, particularly, by adjoining owners. Landownership security refers to the certainty that a person's land rights will be recognized by law and, especially, by members of the society and protected when there are challenges to such

rights (Abdulai et al., 2007; FAO, 2005). Thus, absence of disputes over land as well as enforceability and clarity of land rights are all parameters of ownership security. Prospective investors are unlikely to invest in land unless they are confident that their ownership rights would not be contested or where there are challenges to the ownership rights they will be protected. Thus, as aptly observed by Deininger (2003) and Quan (2000) security of landownership is an incentive to invest in land.

Admittedly, there is an argument that insecurity of landownership is equally an incentive to invest. According to Sjaastad and Bromley (1997), investments in trees, irrigation furrows, buildings or other fixed structures may provide a litigant in a land dispute with an unassailable case and that even though insecurity is a disincentive to invest, it is paradoxically often also an incentive to invest for security. However, such an argument is debatable and less convincing. It is difficult to accept that any prudent investor or disputant in a dispute over a plot of land, for instance, would commit resources to develop the land as a way of securing it when the dispute has not yet been resolved, which means that he does not know in whose favour the dispute would be resolved. More so, when a dispute arises and it is brought before the law courts for resolution an injunction is normally placed on the disputed land and, therefore, nobody is supposed to deal with it until the case is disposed of by the court. Indeed, in resolving land disputes, what has to be established beyond reasonable doubt by the court is the truth about who actually owns the land and not whether the land has already been developed by any of the disputants. Thus, the mere fact that a disputant has constructed buildings on a disputed plot of land cannot in any way provide him with an unassailable case.

There are various ramifications of landownership insecurity. Firstly, insecurity of real estate ownership in the form of land disputes negatively affects

construction or real estate development projects. This is so because, when a dispute arises over a plot of land where, for example, a real estate development project is to be carried out, the development cannot proceed until the land dispute is effectively settled. This, therefore, constitutes a source of major risks to investors. In terms of agricultural activities, a study from Uganda, for instance, established that land disputes reduced the output on a plot of land by at least 30% (Deininger and Castagnini, 2002). The negative impact is even more pronounced where there are delays in settling the land dispute. The situation often stifles land-based economic activities including construction or real estate development projects as injunction orders are normally placed on the land until the cases are decided by the courts.

Secondly, there is a direct link between land disputes and civil strife although in explaining the causes of civil strife, traditional models like those of Grossman (1991) and Collier and Hoeffler (1998) do not consider the role of land disputes and rather focus on rent-seeking arguments. Admittedly, not all wars are caused by land disputes but disputes over land can lead to large-scale wars. People have fought over land since the beginning of recorded history and population growth and environmental stresses have even exacerbated the perception of land as a dwindling resource, tightening the connection between land disputes and violent conflict (USAID, 2005). Civil strife arising from land disputes and control over land resources, with devastating human and economic consequences, has been reported in many countries around the world including Ghana (Abdulai, 2006), Uganda, Angola, Tajikistan, Kyrgyzstan, Uzbekistan, Kazakhstan, Namibia, Papua New Guinea, Peru, Brazil, East Timor, Kosovo, Mozambique, Mexico, Iraq, Nigeria, Ethiopia, Nepal and Venezuela (USAID, 2005), Kenya (Lumumba, 2004), Somalia (Farah, 2004), Sierra Leone (Richard, 2003) and Zimbabwe, Guatemala, Columbia and El Salvador (Deininger, 2003). Landownership disputes also provide fodder for conflict

entrepreneurs who use them to manipulate the emotional, cultural and symbolic dimensions of land for personal political or material gain, thereby fomenting civil strife as in Rwanda and Burundi (USAID, 2005; Andre and Platteau, 1998).

Thirdly, in a climate of insecure landownership, entrepreneurs are often compelled to spend valuable resources defending their ownership rights, thereby, diverting effort and valuable resources meant for other productive purposes such as investment (Deininger, 2003).

Thus, it is not astounding that security of landownership has been identified as one of the most important catalysts in stabilizing communities, improving shelter conditions, reducing social exclusion and improving access to urban services (UNCHS, 1999). The Millennium Development Goals (MDGs) also give prominence to the role of secure land rights in helping to alleviate poverty and to achieve economic development in third world countries.

However, because land registration is equated to security of land rights and it is argued that traditional land rights are insecure due to the fact that they are unregistered, various problems are attributed to the existence and operation of TLIs. As noted above, civil strife can emanate from land disputes, which is a form of landownership insecurity. Thus, it is believed that ethnic conflicts that are based on land disputes occur because traditional land rights are not registered (Richard, 2006; Fred-Mensah, 1999). Inadequate housing is a major problem in SSA, particularly, in urban centres. In Ghana, for instance, the estimated housing stock and deficit in 2000 were 895,049 and 1,015,276 respectively whilst in 2002 the housing stock and deficit were 943,490 and 1,23,835 respectively (HFC, 2006). This problem is much felt in urban centres where population is concentrated. An essential and important factor in housing development is land. It is, therefore, asserted that the lack of security in