

**Study of Transferable Usufruct Rights in the Context of Village  
Heads and the Rights of the Paramount Chiefs**

**November 2000**



**Sigma One Corporation**



**Study of Transferable Usufruct Rights in the Context of Village Heads  
and the Rights of the Paramount Chiefs**

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**Report Submitted**

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## Table Of Contents

Acknowledgements.....	4
Summary.....	5
CHAPTER ONE: INTRODUCTION.....	8
I.    The Policy Context.....	8
II.   Objectives of Study.....	8
III.  Outline of Discussion.....	9
CHAPTER TWO: Customary and Statutory Laws and Regulations Pertaining to Land Acquisition.....	10
a. Recognized Tenure Regimes under Ghana Law.....	10
b. Transferable Usufruct Rights and Long-Term Investments – A Value Theoretic Framework.....	12
c. The Economics of Land Rights.....	13
d. The Property Rights Constraint to the Transfer of Usufructuary Rights.....	14
e. Transaction Costs and the Transfer of Usufructuary Rights.....	15
CHAPTER THREE: Informing the Public.....	17
a. Introduction.....	17
1. Informing and Educating the Public.....	17
2. Incorporate Public Values, Assumptions, and Preference into Decision-making.....	18
3. Increase the Substantive Quality of Decisions.....	20
4. Foster Trust in Institutions.....	20
5. Reduce Conflict Among Stakeholders.....	21
6. Cost-Effectiveness.....	22
b. Linking Mechanism and Goals.....	22
1. Non-Deliberative Mechanisms for Obtaining Information from the Public.....	22
2. Public Hearings.....	24
3. Citizen Advisory Committees.....	24
4. Alternative Dispute Resolution Mechanisms.....	24
5. Citizen deliberations.....	26
CHAPTER FOUR: ALTERNATIVE INSTITUTIONAL ARRANGEMENTS TO FACILITATE THE TRANSFER OF USUFRUCT RIGHTS IN LAND.....	27
a. Introduction.....	27
b. Institutional Option One: Land Banking.....	28
i. Definition of Land Banking and Application to Ghana.....	28
ii. Assessment of the Benefits and Costs Associated with Land Banking.....	29
c. Institutional Option Two: Community Land Trust.....	30
i. Definition of Community Land Trust and Application to Ghana.....	30
ii. Assessment of the Benefits and Costs of the Community Land Trust.....	31
d. Institutional Option Three: Statutory Adjudication of Land Rights.....	32
i. The Adjudication Process as Applied to Water Resources.....	32
ii. The Adjudication Process as Applied to Land Rights in Ghana.....	33
iii. Borrowing from Water Rights Adjudication to Resolve Land Rights Problems in Ghana.....	33
iv. The Case for Statutory Adjudication.....	34

v. The Specifics of an Adjudication Statute.....	35
vi. Structure of Alternative Adjudication Statutes .....	35
1. Primarily Administrative Systems .....	36
2. Primarily Judicial Systems.....	37
3. Hybrid Systems .....	37
Spillover Effects - The Instrumental Role of Law.....	37
Chapter Five: Conclusions and Policy Recommendations.....	39
References .....	41

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I am responsible for all errors.

## Summary

There is a growing debate in Ghana as to the extent the current land tenure system is a constraint on investment, especially in rural areas. The current debate goes beyond the well known problems presented by the complexity in bureaucratic procedures in land acquisition, delays in the court system in dealing with land disputes, the transaction costs associated with ‘sharp’ market practices by land agents, and opportunism in contractual interactions related to land. The debate speaks to the underlying foundation of the land market in the sense that the very structure of land rights is seen as a constraint to large-scale investment, and may deter potential investors from undertaking large ‘sunk’ investments in the absence of any guarantees to the security of tenure in land. It is partly to address this core issue that the Government of Ghana formulated for the first time in the history of the country, a comprehensive National Land Policy.

The overall objective of this report is to examine the extent to which restrictions on transferable usufruct rights in Ghana act as serious constraints on investment and development, and to recommend policies and actions that are needed to address this issue. To accomplish this broader objective, the examined the extent to which the absence of long-term and transferable usufruct rights to land act as deterrent to long-term investments. Also, strategies for informing the public about land tenure issues and their impact on Ghana’s development potential were discussed, and finally, options and recommendations for land tenure reform aimed at achieving best international practices for secure usufruct rights in Ghana were proposed. The report sought to recommend a comprehensive nation-wide strategy to facilitate the transfer of usufruct rights by village heads and chiefs in Ghana. The core of this strategy is an effective **public education program** that allows the public to make informed decisions about issues related to land ownership in Ghana.

Three main institutional governance options for promoting the transfer of usufruct rights were considered. These options were examined within a value-theoretic framework supportive of efficient or quasi-efficient markets in land. The institutional regimes examined were:

- 1. Land Banking:** One general definition of land banking is “a system in which a governmental entity acquires a substantial fraction of the land in a region that is available for future development for the purposes of controlling the future growth of the region” (The American Law Institute (ALI), *A Model Land Development Guide*, 1976, Washington, D.C.). It was argued that while land banking would make possible the creation of “large land sizes” for industrial purposes, there were significant transaction costs that may outweigh the benefits. If the acquisition of land is undertaken by Government, one encounters the problem of compensation, a rather difficult problem facing the Government at the present time. If land banking is undertaken by Chiefs, village heads or private entities, then there are the transaction costs associated with information search, bargaining, monitoring, and ‘free-riding’. Information costs are especially high because there is a need to ascertain ownership and boundaries of land before these lands could be included in a land bank. At

present, land boundaries are very poorly established. Bargaining costs could be significant due to ‘hold-out’ and other strategic behavior.

- 2. Community Land Trusts (CLT):** According to the Institute for Community Economics, a CLT is “an organization created to hold land for the benefit of a community and of individuals within the community. It is a democratically structured nonprofit corporation, with an open membership and a board of trustees elected by the membership”. The CLT model holds considerable promise for the transfer of usufructuary rights by Chiefs and Village heads in Ghana. Under the CLT, title to land is transferred to the non-profit corporation set up to manage the land. The permissible use of the land is determined through a process similar to the land planning or zoning process. The key element of the CLT is that the land may be “leased to individuals, families, cooperatives, community organizations, businesses, or for public purposes” (ICE, p. 18). The leases may be “lifetime or long-term basis and are transferable to leaseholders’ heirs if they wish to continue the use of the land” (*id.*). The leaseholders do not own the land they use but they may own buildings and other improvements on the land.

The CLT model has been successfully implemented at Voi, Kenya but as experts are quick to point out, the replicability of the model in other areas and countries is still in issue. The success of the program in Kenya was due primarily to the fact that the land involved was government-controlled so the issue of ownership was moot. In the situation where land is controlled by Chiefs, tribal leaders, and families, we are still confronted with the problem of ownership, and the power to relinquish land for purposes of the CLT. Currently in Ghana, there are raging problems with stool and family lands boundaries. These boundary problems need to be resolved before any legitimate transfers could occur. In this sense, we are still confronted with the high information search costs similar to those discussed under the land bank system.

There are also important jurisdictional issues to resolve in efforts to implement the CLT model in Ghana. The District Assemblies have been vested with sweeping powers over allocation of land for large-scale investment purposes. On the other hand, the CLT model contemplates the formation of an independent non-profit entity to manage the CLT. In practical terms, the formation of the CLT will directly cut into the revenues of the District Assemblies, especially since as a non-profit entity, the CLT has no tax liability. Bargaining over the allocation of land revenues could be quite difficult since in the limit, there is an inverse relationship between an expanding CLT program and the financial health of the Assemblies. In effect, the same information search, bargaining and monitoring costs associated with the land bank system are also present with the land trust system.

- 3. Statutory Adjudication of Land Rights:** The third option discussed in the report borrows from adjudication procedures that have proven very effective in resolving water rights issues in the Western United States. The objective is to move away from the common law approach of resolving land disputes through civil action, and to consolidate all claims to land in one action for adjudication. In its simplest form, an

agency will be set up to document **all** claims to land. Where disputes arise as to boundaries, an arbitration mechanism will be used to define boundaries. Once boundaries have been demarcated, the agency will submit to the Supreme Court its findings. The court will issue a ruling affecting all the claims that have been submitted. This ruling becomes the reference based on which all future disputes are resolved. Note that in contrast to the land bank and the Community Land Trust, the adjudication process begins with the establishment of the boundaries, and the rights to the land. Indeed, the adjudication approach could serve as a basis for developing a land bank or a community land trust because it eliminates the difficult information search costs.

The adjudication procedure would require considerable financial commitment and political support. Its success drives on the government's ability to undertake an intensive educational program and getting 'stakeholders to buy' into the process. What may seem to be a weakness, that is the massive financial input, may at the same time be one of its strongest benefits. The multiplier effects of a massive infusion of money into the economy could be a major source of wealth-creation consistent with the value-theoretic framework suggested in this report. One could envisage the involvement of Chiefs, Village heads, private landowners, surveyors, lawyers, community education experts, the courts, the academic institutions, the donor community all working together to accomplish a single objective to 'clean' the land market. The current approach of court resolution of land disputes is *ad hoc* and piecemeal. This last option is recommended for further action in this report.

In terms of future actions and policy initiatives, the report recommends that given the novelty of the concept, an expert should be invited to make a series of presentations to explain the details to strategic groups – Ministries, the Economic Management Unit of the Government, the District Assemblies, Surveyors, Chiefs, lawyer and members of the judiciary, and the donor community. The objective is to gather **public support** by showing how each group would benefit from the program. The report strongly advises submitting the concept to a **working group** in the initial phase. A misunderstanding of the concept could do irreparable damage to efforts to gather public support. A successful lecture tour and education should be followed by further studies to estimate the actual costs and benefits of the general adjudication option, and also the sequencing of subsequent policy actions. The issues may now be presented for organized public debate and comments. It is also recommended that actions are taken soon after elections in Ghana when the people have had an opportunity to reveal their mandate. All committees formed to deal with issues must be bi-partisan to avoid the possibility of opportunistic capture of political capital through mis-information. The creation of a credible land market governance regime is vital to the attainment of the objectives of Ghana's Vision 2020.

## CHAPTER ONE: INTRODUCTION

### I. The Policy Context

There is a growing debate in Ghana as to the extent the current land tenure system is a constraint on investment, especially in rural areas. The current debate goes beyond the well known problems presented by the complexity in bureaucratic procedures in land acquisition, delays in the court system in dealing with land disputes, the transaction costs associated with ‘sharp’ market practices by land agents, and opportunism in contractual interactions related to land. The debate speaks to the underlying foundation of the land market in the sense that the very structure of land rights is seen as a constraint to large-scale investment, and may deter potential investors from undertaking large ‘sunk’ investments in the absence of any guarantees to the security of tenure in land. It is partly to address this core issue that the Government of Ghana formulated for the first time in the history of the country, a comprehensive land policy (National Land Policy, *approved*, January 21, 1999) which among other objectives, seeks to:

- facilitate equitable access to and security of tenure of land based on registered land
- protect the rights of landowners and their descendants from becoming landless or tenants on their own land
- ensure the payment, within reasonable time, of fair and adequate compensation for land acquired by government from stool, skin or traditional council, clan, family and individuals
- instill order and discipline into the land market to curb the incidence of land encroachment, unapproved development schemes, multiple or illegal land sales, land speculation and other forms of land racketeering
- minimize, and eliminate, where possible, the sources of protracted land boundary disputes, conflicts and litigations in order to bring their associated economic costs and socio-political upheavals under control.

While the National Land Policy document does not purport to provide all the answers to the myriad of problems in the land market, it “provides the framework and direction for dealing with the issues of land ownership, security of tenure, land use and development, and environmental conservation on a sustained basis” (National Land Policy, *foreword*).

### II. Objectives of Study

The overall objective of this report is to examine the extent to which restrictions on transferable usufruct rights in Ghana act as serious constraints on investment and development, and to recommend policies and actions that are needed to address this issue. To accomplish this broader objective, the study will:

1. Provide insights on the extent to which the absence of long-term and transferable usufruct rights to land act as deterrent to long-term investments.

2. Suggest strategies for informing the public about land tenure issues and their impact on Ghana's development potential.
3. Suggest options and recommendations for land tenure reform aimed at achieving best international practices for secure usufruct rights in Ghana.

Customary and local practices in land acquisition vary considerably in Ghana. Even within a particular region, there are oftentimes very fine distinctions in practices. Since the broader objective of this study is to provide general principles to guide public debate on land transferability issues, it is not necessary to restrict the discussion to a particular region in Ghana. A more useful approach is to consult with strategic stakeholders in Ghana, and to distil from discussions with them, the necessary information that can be organized within a value-theoretic framework to yield alternative hypotheses about the land tenure problems in Ghana.

### **III. Outline of Discussion**

The next section of the report begins with a brief background of the structure of customary rights, laws, and regulations applicable to land ownership in selected regions in Ghana. The section ends with a discussion of the essential characteristics of the value-theoretic framework, and uses the framework to examine how restrictions on transferable usufructuary rights may impede investments and economic development in Ghana. Chapter III discusses the results of a survey and focus group (investors, private sector leaders, village heads and paramount chiefs) interviews along with a discussion of a comparative assessment of the experiences of neighbor, and other developing countries. The discussion is used as backdrop to exploring alternative strategies for informing the public about land tenure issues in Ghana. A set of alternative governance mechanisms and land tenure reform aimed at achieving best international practices for secure usufruct rights in Ghana are presented in Chapter IV. Chapter V contains conclusions and policy recommendations.

## **CHAPTER TWO: Customary and Statutory Laws and Regulations Pertaining to Land Acquisition**

### **a. Recognized Tenure Regimes under Ghana Law**

The rights and interest in land are defined under the provisions of the 1992 Constitution of Ghana. The Constitution recognizes three (3) main property rights regimes related to land.

- 1. Public or Government Lands** are lands acquired for public purposes under the State Lands Act, 1962 (ACT 125) and the Administration of Lands Act 123. Under the Constitution, the President holds these lands in behalf and in trust for the people of Ghana. The State Lands Act, 1962 requires the Government to pay compensation for acquired lands. However, as Table One shows, the payment of compensation has been a major problem and possibly one main source of the conflicts concerning land ownership and transfer. Public lands are managed by the Lands Commission as mandated under the Lands Commission Act of 1993, and investors may apply to the Commission for the use of the land.
- 2. Stool Lands** are lands held by Chiefs in trust of the community as a whole. Members of the Stool owe allegiance to the common stool. As Kasanga, et. Al (1995) explain it, “A stool is a community governance structure similar to chieftaincies or dynasties in other cultures. The term similar in use to “throne” of England’s royalty or “chair” of a committee, refers at once to the administrative structure and the actual chair on which the community leader sits. In the north of Ghana, a roughly equivalent administrative term is “skin” (p.5). Under the Conveyancing laws of Ghana, the transfer of stool lands for money is valid only with the approval of the Lands Commission (Section 47 (1), PNDCL 42).

Size of Land	Region	Distance <sup>a</sup>	Year <sup>b</sup>	Documentation <sup>c</sup>	Compensation	Current Use	Best Use
1552.749 ac.	Greater Accra	30	1979	E.I. Act 125	Not Paid	none	0
2570.05 ac.	Greater Accra	10	1940	Certificate of Title	Paid	Livestock	0
1273.60 ac.	Greater Accra	10	1970	E.I. Act 125	Paid	Dairy Farm	0
5600 ha.	Ashanti	350	1968	Land Agreement	0	Farm Stead	0
5314 ha.	Volta	200	0	Govt. Acquired	0	none	Oil Palm
1,526 ha	Volta	200	0	Govt. Acquired	0	none	Oil Palm
2,400 ha	Volta	230	1958	Legally Acquired	Not Paid	Farming	Vegetables
1,200 ha.	Volta	230	1958	Legally Acquired	Not Paid	Farming	Vegetables
1,400 ha.	Volta	230	0	0	0	0	Vegetables
2342 ha.	Northern	800	0	0	0	0	Cereals
1036 ha.	Northern	800	0	0	0	0	Cereals
5628 ha.	Northern	800	0	0	0	0	Cereals
1882 ha.	Northern	800	0	0	0	0	Rice
4,000 ac.	Brong Ahafo	350	1972	Yes	0	Encroached	0
2690 ac.	Brong Ahafo	350	1962	Sunyani 14890	0	Agric. Station	0
1,200 ha.	Volta	250	1967	Legally Acquired	Not Paid	Farming	Vegetables

Source: Extracted from Ministry of Food and Agriculture, *Available Land For Investment Situation Report*, 1998.

\* Indicates Information not provided in Report.

NOTE: The *Report* indicates also that a total of 47,527 hectares of stool/individual lands are available for acquisition.

a- Distance refers to approximate distance (kilometers) of location of land (town) from capital city, Accra.

b- Year refers to year property was acquired by the Government.

c- E.I. stands for Executive Instrument.

**Family Lands** are lands belonging to a group the membership of which is based on blood relationship. Unlike stool lands, the control of family lands lies with a committee of family heads and senior family members. Kasanga, et. Al. have pointed out the uncertainty surrounding the disposition of family lands in Ghana today. According to the authors, while regulatory bodies, specifically the Lands Commission continues to treat family lands as stool lands and therefore subject to their jurisdiction in terms of approving transactions, the Courts in Ghana have recently ruled that transactions involving family lands do not require the concurrence of the Lands Commission (*Republic v. Regional Lands Officer, Ho, Ex parte Prof. A.K.P. Kludze*)(July 4, 1994)).

3. **Private Lands** are lands that have been acquired from other developers who had obtained earlier grants from either a stool, quarter or a family (Larbi, p. 82 (ft. nt)). A transaction involving private land is a *Secondary transaction* since the *primary transaction* is the first transfer of interest from the allodial rights holder. The Constitution does not mention private land as a tenure regime but it has been treated such in this study for analytical clarity.

## **b. Transferable Usufruct Rights and Long-Term Investments – A Value Theoretic Framework.**

The term ‘usufruct’ refers to “the right of enjoying a thing, the property of which is vested in another, and to draw from the same all the profit, utility, and advantage which it may produce, provided it be without altering the substance of the thing” (Black’s Law Dictionary, *Abridged Fifth Edition*, 1983, p. 802). Webster’s defines the term as “the legal right of enjoying the fruits or profits of something belonging to another” (Webster’s Seventh New Collegiate Dictionary, p.682). These definitions help to better place bounds on the limits of this report. The report is not directly concerned with the broader question of reform of the land tenure system in Ghana. It does not question the legitimacy of the current tenure regimes enshrined in the Constitution, nor does it advocate, for example, the abrogation of the Constitutional ban on alien ownership of land in Ghana. The position taken in this report is consistent with the vision and spirit of the recently published National Land Policy. In launching the document, the President stated, “Although various people advocated the abolition of traditional land tenure systems to avoid the problems arising from chieftaincy disputes, the National Land Policy, however, reaffirms our confidence in the principles evolved and defended by our ancestors” ([www.ghanaweb.com/GhanaHomePage/NewsArchive/](http://www.ghanaweb.com/GhanaHomePage/NewsArchive/) July 28, 1999). Put in other words, the focus of this report is not the allodia rights to land in Ghana, rather, the narrow focus of the report is to address the question, ‘given that Ghana has opted to recognize both customary and statutory rights to land, what are the sources of risk and transaction costs that prevent the attainment of an efficient land market so that usufructuary rights are maximized?’

To address this question the issue of the impact of an inefficient land market needs to be addressed. There seems to be a consensus both among economists, public policy decision-makers, and private citizens that the current land market in Ghana, and the acquisition of land for investment purposes are both disincentives to investment. The

Ghanaian press in particular is replete with statements calling for an orderly land market as a precondition to attracting investment. A sampling of opinions from the popular press sets the stage for the discussion of the theoretical and empirical arguments presented by economists.

“Where protracted disputes over land are causing fraudulent sales, unplanned development, violent clashes and bloodshed, we may be compelled to use existing legislation to vest the disputed land in the state and administer it on behalf of the owners pending the resolution of the dispute” (President Jerry John Rawlings, *Message launching the National Land Policy Document*, July 28, 1999)

“Certainly no investor is interested in getting involved in long delays and complex disputes over land” – Professor John Evans Atta Mills, Vice-President of Ghana (*Message to Durbar of Chiefs*, December 7, 1998).

“The government does not intend to interfere in chieftaincy matters but it will intervene when chieftaincy disputes threaten the peace, unity and the socio-economic development of the country” (Mr. Kojo Yankah, Central Regional Minister, announcing a freeze on the sale of stool lands at Gomoa Feteh, October 10, 1997).

The importance of land reform within the context of ongoing structural adjustment program in Ghana and other developing countries is best summarized in the following observation:

“Partial reforms and single-minded focus on macroeconomic management, without commitment to private property, competitive markets and strong judicial and democratic political institutions, result in mercantilistic systems that deny the vast majority the opportunities and benefits of economic growth” – McLaughlin and McKenna, 1998 *citing* Alvro Vargas Llosa, “To give Latins Real Reform,” The Wall Street Journal, January 3<sup>rd</sup>.

(The above quotation was part of an introduction to a special issue of *Land Use Policy*, which examined and focused on “building, strengthening, and sustaining the necessary infrastructure to formalize property in land and provide clear land title”. The goal is to foster the *climate and conditions to support the subsequent development of viable, transparent property markets* (emphasis mine)).

### **C. The Economics of Land Rights**

Land reform is concerned with intervention in the prevailing pattern of land ownership, control, and usage (World Bank, 1975). Macmillan, (2000), has argued that the primary cause of social unrest over land is due to market failure rather than the free-market per se. The author’s argument revolves around the possible failure of one or more of the conditions necessary for an efficient allocation of land resources: 1) there must be markets for all goods and services; 2) markets are competitive; 3) no externalities exist; 4) there are no public goods; 5) property rights are fully specified; 6) all transactions have perfect information; 7) firms are profit maximizers and all individuals are utility

maximizers; 8) long-run average costs are non-decreasing; 9) transaction costs are zero; 10) all relevant functions satisfy convexity conditions.

While the failure of any of the above conditions could lead to market failure, two conditions are especially relevant to the issue of transferable usufruct rights in Ghana. – the full specification of property rights, and the assumption of zero transaction costs. The failure of one or more of these two conditions directly impinges on the transferability of usufructuary rights in Ghana. Also, the conditions are interrelated and jointly influence economizing behavior in the land market. In essence, the conditions are discussed separately for analytical purposes only.

#### **d. The Property Rights Constraint to the Transfer of Usufructuary Rights**

Economists have consistently held that secure property rights is fundamental to economic growth. The more traditional explanation, (Demsetz, 1967; Alchian and Demsetz, 1973) focuses on freedom from expropriation. If individuals can be assured that they would be able to reap the fruits of their labor, they are more likely to make improvements in land. Another relationship between property rights and economic growth is through the credit market (Feder, 1988). Those who have secure property rights in land are able to use the land as collateral for a loan. Also secure property rights in land foster social stability and may prevent some property disputes from arising. One only needs to read the headlines in the local Ghanaian newspapers to better appreciate the importance of this last relationship.

A sampling of these headlines is irresistible:

“The police are investigating the death of a man ...suspected to be connected to a long standing land dispute between two factions in the Ga District.” (*Daily Graphic*, February 7, 2000).

“Two Police Officers and three civilians, including a chief, suspected to have been supplying arms and ammunition to land guards at Gbawe in the Greater Accra Region, are currently helping the Police in their investigation into alleged illegal arms supply.” (*Ghana Review International*, June 15, 1999).

“Tension is mounting between Bortianor and Weija, both suburbs in Accra, following reports that a group of about 55 people, believed to be land guards, are guarding a disputed piece of land lying along the Accra-Kasoa road, and which is being claimed by both villages” (*Daily Graphic*, July 15, 1999)

“The Daily Graphic with a front-page banner, “Mayhem at Aplaku” reports that Aplaku a village near Bortianor in the Ga district was thrown into shock and mourning following the murders of three persons. The three died of gunshot wounds when they were attacked by assailants believed to be land guards operating in the area” (*Press Review*, May 12, 1999).

The above observations about tensions in the land market in Ghana reflect the painful adjustments in the land market as Ghanaian land rights move gradually away from the

communal tenure system to the individualistic property rights regime largely due to population pressures. Currently land in Ghana is generally not considered “private property” subject to rights of exclusive ownership vested in an individual. But this in itself is not fatal to the issue of transferability of usufructuary rights. As Besley (1995) explains:

There is no necessary link between development of individualistic property rights and increased investment. If individuals cared equally about all members of the community, then the incentive to invest need not be diminished by the fact that their land will revert to the community rather than to their own progeny at the end of their lives. Similarly, if consumption is shared among members of a community, then it is efficient to have investment on land decided at a community level...It is the dysfunction between communal rights and individualized decisions that may result in an efficiency loss.

While the search for a governance regime for transferability of usufructuary rights has focused on titling (Atwood, 1990; Palmer, 1998; Feder and Nishio, 1999), and implied individualization of land rights, Besley seems to be reminding us that efficiency is not unique and it may be useful to explore both individualistic and communal-based options for encouraging the transfer of usufructuary rights.

#### **e. Transaction Costs and the Transfer of Usufructuary Rights**

In an earlier paper, it was argued that the poor information infrastructure supporting the land market in Ghana and a resource-starved court system are major sources of high information search costs, high bargaining costs, and a costly contract monitoring system (Boadu, *A RoadMap to Land Acquisition in Ghana, Report Submitted to the Sigma One Corporation, Accra, Ghana*, 1999). Transaction costs in the land market are associated primarily with the functioning of land administration institutions. Poor information management infrastructure at the land titles office, for example, makes it difficult to verify property rights to land and the scope of one’s rights (Johnson, 1969). In the context of transfer of usufruct rights, questions may arise as to the owner’s right to lease, rent or sell the land. Is the owner’s action subject to Government approval? May the potential lessee sublet to anyone for any price he is able to charge with or without the consent of the owner? Answers to these questions are obtainable at the lowest cost in a situation where a land administration agency has an efficient information infrastructure in place for use by landowners and potential lessees and renters.

The transaction cost literature suggests that long delays in resolving land disputes through the court system raise the cost of contract enforcement and militates against the attainment of legal certainty and ability to forecast the result of legal action. The resort to violence in protecting interests in land in Ghana is partly the result of the inadequacy of the court system to resolve land disputes. Historically, disputes over stool lands were heard by the Stool Lands Boundaries Commission, which was created under the Stool Lands Boundaries Settlement Decree 1973 (NRCD 172). Under this law, one Commissioner who had the qualification of a High court judge heard all stool lands cases. A new law, the Stool Lands Boundaries Settlement (Repeal) Bill was introduced in 1999

to transfer all cases before the Commission to the judiciary proper. The view was that the transfer of the cases to the judiciary would accelerate the pace of case disposal. Given the existing number of cases before the courts, it is difficult to determine how the pace of dispute disposals would quicken. It is suggested that the disposal of land disputes be undertaken as part of a general adjudication process discussed in Chapter Four.

## **CHAPTER THREE: Informing the Public**

### **a. Introduction**

The National Land Policy framework makes several references regarding the need to involve “the local community, opinion leaders, traditional authorities, as well as, government agencies in the land development process. It provides for a decision-making framework that takes on board all identifiable stakeholders” (*Preamble*). The acceptance of change in a community and into community life is dependent on whether the change emerged from within or imposed from outside. Where change is imposed from outside, it is likely that those adversely affected by the change would resort to strategic behavior, and significantly raise compliance and monitoring costs. Ghana’s experience in attempting to introduce a new tax law without adequate public education and involvement stands as a vivid example of the dangers of a top-down approach to social policymaking. The literature contains several references to the futility in attempting to impose natural resource policies and management strategies from above (Chambers, 1983; Poffenberger, 1990; Ite, 1998; Gbadegesin and Ayileka, 2000).

Strategies for involving the public in land use governance are varied. Each society has to examine its own unique politico-economic, social, and cultural matrix within which decisions are made in order to determine the best governance mechanism for land use and transfers. In a recent paper, Thomas Beierle (1998) of the Resources for the Future introduced an innovative framework for evaluating mechanisms that involve the public in environmental decision-making. Beierle’s framework while introduced in the context of environmental decisions, is also applicable to decision-making concerning a natural resource such as land. Accordingly, the framework is adapted and used to explore alternative strategies for informing and involving the public in the debate and programs to institutionalize orderly transfers of interest in land in Ghana.

Beierle first makes a distinction between (1) the traditional participatory mechanisms such as public hearings, notice and comment procedures, and advisory committees, and (2) more innovative mechanisms such as regulatory negotiations, mediations, and citizen juries. The author then identifies a set of “social goals” defined as, “those goals which are valued outcomes of a participatory process, but which transcend the immediate interests of any party in that process” (p. ii). These goals are discussed in this report in the context of Ghana’s experiences in making some recent important public policy decisions. The six goals discussed by the author include:

### **1. Informing and Educating the Public**

Public education is critical to sound decision-making in a maturing constitutional democracy. In a maturing society, failure to adequately inform the public about a major policy initiative could cast doubt on the legitimacy of the policy, and in some situations lead to public rejection and costly policy reversals. Ghana’s experience in passing a tax law, the Value Added Tax (VAT) Law (Act 546), and accompanying regulations, the VAT

Regulations, 1998 (LI 1646) provides anecdotal evidence of how a failure to adhere to the principles and guidelines for effective governance in the form of public participation could lead to costly policy reversals, and wasted time and effort. As one notable tax expert points out, “Ghana is probably the only exception to the observation that, aside from the short-lived value added tax in Vietnam in the early 1970s, no country has ever repealed VAT legislation (Terkper, 1996). There is broad consensus that a major reason for the failure of the first VAT law (Act 486, passed on December 1, 1994), and the withdrawal of the law two months after passage was the lack of public education. The Finance Committee’s Report and the debates in Parliament are replete with statements about the cost of failing to inform and educate the public, “many institutions and individuals were of the view that the VAT should be imposed only after a well structured and meaningful educational programme has been carried out, to bring about a better understanding of the system so as to obviate the state of confusion which greeted the 1994 VAT Act” (Finance Committee Report, p. 20).

The Minister of Finance reiterated the Committee's conclusion, “Mr. Speaker, one of the maybe not as oft-discussed contributing part of the 1995 withdrawal was the fact that a lot of people felt out of the decision making process, felt out of being a part of the processes that led to the introduction of the tax. And not only that, the general feeling that there was not enough discussions and consultations on all aspects of the economy is one of the general lessons that we have picked from the era” (Statement by the Minister of Finance (*Second Reading*) at p. 836). The VAT law experience is instructive. Unless there is massive public education about the objectives of any proposed restructuring of property rights in land, the policy would likely fail with significant welfare losses.

## **2. Incorporate Public Values, Assumptions, and Preference into Decision-making**

To avoid costly information asymmetries between the public and the agencies working with the public, agency leaders need to be educated. Mutual education of the public and control agencies is intended to enhance the incorporation of public values and preferences in public policies. Educating both entities has the effect of reducing strategic behavior during negotiations, and also to prevent opportunism. Education of the public and public agencies is intended to bridge the differences in risk perception, and in effect the preference ordering by the two entities (Beierle, p. 6 *referencing* studies by Krinsky and Golding; Davies and Mazurek).

The critical agencies and departments to be included in a national education effort are, The National Lands Commission which is responsible for public lands, including compulsory acquisitions in the national interest, The Office of the Administrator of Stool Lands, responsible for the establishment of a Stool lands account for each stool, for the collection of revenues and the disbursement of such revenues to the beneficiaries as specified in the 1992 Constitution, the Valuation Board, responsible for public lands acquisition, and other valuation matters, the Survey Department, responsible for surveys and mappings, licensing of surveyors and verification of survey plans, the Land Title Registry established under the Land Title Registration Law, 1986 (PNDCL. 152), Stool Lands Boundary Settlement Commission responsible for settling boundary disputes in conjunction with the survey department, the Town and Country Planning Department (technically dissolved under Section 161 of the Local Government Act, 1993 (Act 462)

responsible for formulating land development standards. Currently the functions of the Town and Country Planning Department have been fused into the District and Metropolitan Assemblies, and the Forestry Department responsible for identifying areas as forest reserves.

Ghana introduced a new local government structure in 1988 under the Local Government Law, 1988 (PNDC 207). The new structure is a four-tier Metropolitan and three-tier Municipal/District Assemblies system. Under the new structure, the Assemblies became the principal agents in land administration and management because they are responsible “for the overall development of the District and shall ensure preparation and submission to the [PNDC] for approval the development plan and budget for the district.” Specific to the issue of education, the need to eliminate costs associated with information asymmetries is implicitly recognized by the key land policy leaders, “District Assembly members as a vehicle for the successful implementation of the decentralization process should be educated on the content of the new National Land Policy and other laws regulating the use of land. ...*land owning groups* should equally be educated on the provisions that regulate land use. In view of this, it is recommended that the various land agencies at the regional level should be invited to a forum periodically to educate *District Assemblies, Landowners and other stakeholders* on their functions” (Fiadzigbey, *Administrator of Stool Lands*, 1999)). The importance of the Assemblies cannot be emphasized enough. For example, the National Land Policy states:

*There can be no valid transaction in private lands between or among private entities if the area has been declared a protected area or no planning scheme which conforms to the provisions in Article 267 Sections 30 and (8) of the 1992 Constitution has been approved for the area where the transaction is to take place”.*

further,

*District Assemblies in conjunction with land owners and the Lands Commission should prepare planning schemes for all land uses to facilitate dispositions of land for development,*

and,

*District Assemblies may negotiate for land for development purposes at concessionary prices or as a gift but all such grants should be properly documented and processed.*

In addition to the elevated status in land acquisition, Assemblies are the major beneficiaries of all land transactions within their respective districts. According to Article 267 (6)(a), (b) and (c) of the 1992 Constitution, Assemblies are to receive fifty-five percent (55%) of all revenues from all stool skins and lands transactions. Since these lands constitute over 80% of all lands, the central importance of the Assemblies in land transactions becomes transparent. It is this central position of the Assemblies in land use and management that argues in support of the need to involve the Assemblies in the

national debate on restructuring the property rights relationships governing land in Ghana.

### **3. Increase the Substantive Quality of Decisions**

Educating the public and public agencies was argued to be an important factor in reducing the bargaining costs associated with information asymmetries. Beierle also argues that “public input can make decisions more technically rigorous and satisfying to a wider range of interests”. The author recognizes the difficulties associated with a quantitative determination of ‘quality of a decision,’ and in effect, the practical issues that need to be addressed in an effort to include public input to enhance the quality of decisions. There are several ways to gauge the contribution of public input in enhancing the quality of decisions. For example, one may ask whether relevant factual information was contributed by the public, or whether public participants identified mistakes, or generated alternatives that helped to reach a wider range of interests. In the case of Ghana, to the extent that the District Assemblies are ‘deliberative’ bodies, there is an opportunity to strengthen the forum for public interaction.

### **4. Foster Trust in Institutions**

In a recent report, Boadu et.al. (1999) identified several inefficiencies imposed on the economy by underlying institutional imperfections, especially in the functioning of governance institutions. The authors argued that unless the participation of non-state actors in the process of government is enhanced, a culture of reciprocal mistrust and suspicions on the part of business and government would prevail and undermine the credibility in government policy. Public opinion leaders, the Press, and political leaders have all expressed concerns about what is generally known as a “culture of silence,” whereby a large majority of members of the Ghanaian society simply refuse to participate or comment on matters of public policy. One plausible hypothesis for the silence or what one author has described as a “decline of deference to society’s authoritative institutions” (Laird, 1989) (cited in Beierle at 8) is that citizens simply do not believe that their views would be valued in the process of policy making.

In their survey of members of civil society in Ghana, Boadu et. al. found that while the majority (85%) of civil society respondents consider participation in the legislative process to be important in economic development, the same majority did not consider their role in the legislative process to be important, or for that matter, did not find any role played by ordinary citizens in the legislative process. Civil society respondents also found the participation of the business community in the legislative process to be poor. Over 66% found the participation to be below average (43.2%) and poor (23%). About one-third of respondents found the participation of the business community to be average, and only about 3% found their participation to be above average. One implication of the absence of civil society participation in the legislative process is that the cost of implementing policy is significantly increased because citizens are likely to react to the impact of policies in an erratic manner due to lack of information about the process. It is not surprising that the rejection of the first attempt to enact the VAT law was spontaneous and violent.

One way to foster trust in government institutions and public policy is for the government to foster good governance, openness, and accountability in the Ghanaian society. There must be an effort to convince a suspicious public that the government's policies are credible. In the land market, the government faces a major hurdle in the sense that most may find the government's initiatives suspicious given the record on compensation paid for lands acquired by the government over time. Information on the current status of payments for land by the government is sketchy but Table 1 shows that the government has not paid for large tracts of land acquired for investment purposes. A major effort to improve the land market must begin with the government settling all its outstanding payments to convince the population of the government's commitment to reform.

## **5. Reduce Conflict Among Stakeholders**

According to Beierle, "public participation ought to be a process of identifying shared norms and values rather than a lever for exercising the will of one set of stakeholders" (p. 8). The initial phase in any effort to reduce conflict among stakeholders in the land market must be an identification of the relevant stakeholders. One way to identify the stakeholders is to focus on the relevant interests in land recognized under Ghanaian law. First there are the chiefs, the custodians of stool lands. There are also families and private landholders, and finally there is the government. Conflicts may arise between members of these four main groups of stakeholders, or within a particular group itself. For example, families and private individuals may lay claim to stool lands or two chiefs maybe feuding over a boundary line.

In a sense the Local Government system currently in operation in Ghana may be a blessing as well as a potentially major source of conflict. Under the new system, 'Unit Committees,' "that is a settlement or a group settlements with a population of between 500-1000 in the rural areas and higher populations (1,500) for the urban areas" are entrusted with major decision making responsibilities, including decisions affecting land. The sources of conflict are significantly reduced, and the transaction costs of decision-making are also low because these Unit committees are dealing with smaller populations. This is in contrast to the previous local government structure where decisions were made at the national level and passed down for implementation at the local level. Under the old system there was no assurance that land use policies would be satisfactory to the local stakeholders.

While the allocation of decision-making authority to the local level is laudable in terms of reduced transaction costs, it may also be a major source of conflict. Article 267 (6)(a), (b) and (c) of the 1992 Constitution directs that 55% of all revenues accruing to stool and skin land be allocated to the District Assemblies and their connected organizations. This is the primary source of financing for the new Local government system. Given the differences in the location of land and other factors such as available infrastructure, the land value that determines the amount of rent payable by developers would differ. In turn, the differences in revenues could lead to conflicts between district assemblies. Even within a particular district assembly, the allocation of resources to specific development objectives could lead to conflicts under restrictive revenue receipts.

## 6. Cost-Effectiveness

The value-theoretic framework followed in this paper suggests that the incremental benefit from a particular strategy to involve the public in decision-making must be greater than the incremental cost. In this sense, cost effectiveness is referring to the relative costs and benefits of the first five goals – that is, “public participation programs must earn their keep by producing results – such as education, trust, and conflict reduction- - which justify the added effort.”

The issue of cost-effectiveness should be paramount in any discussion of strategies to facilitate the transfer of usufructuary rights in land. Generally, administrative agencies in developing countries have performed poorly in determining the cost of regulation. In a recent survey of regulatory agencies in Ghana, Boadu, et. al. (2000) found that no agency was able to determine the cost associated with a particular regulation. The approaches to estimating the cost of regulation are now well established and the deficiency in regulatory policy analysis in Ghana can be addressed.

### b. Linking Mechanism and Goals

Having defined the goals sought to be achieved in restructuring the land market, the next task facing policy makers is to define mechanisms for achieving the goals. The relationship between mechanisms and goals is summarized in Table 2. These alternative mechanisms are to be used consistent with the resource endowment of the policy maker. Also, the mechanisms may be used alone or in combination considering such factors as the culture, acceptable social practices, politics, and history of government/private sector interaction. Details of the mechanisms are provided below.

#### 1. Non-Deliberative Mechanisms for Obtaining Information from the Public

Ghana has laid down procedures and acceptable practice in involving private citizens in the legislative/regulatory process. For example, Parliamentary practice allows any party with an interest in a particular legislation to appear and testify before the relevant Parliamentary Committee (Boadu et. al., 2000). Also, proposed laws are published as public information in the Government’s official Gazette, the *Hansard*, and in the local papers. There are also lesser-used approaches (surveys, focus group) to obtaining information from the public. As Beierle explains, these various approaches represent only, “one-way flows of information from the public to the government. little to no deliberation among different stakeholders takes place, and input is rarely binding on decision-makers” (p. 19). There is no evidence pointing to the use of surveys or focus group by the Parliament or by the regulatory agencies in making policy decisions in Ghana.

Table 2: Matrix of Goals and Mechanisms for Involving the Public in Policy Making

	Goal 1		Goal 2	Goal 3	Goal 4	Goal 5	Goal 6	
Mechanisms	education	information	Public Values	Substantive quality	Trust	Reduced conflict	Cost-effectiveness	
Non-deliberative Mechanisms for Obtaining Information From the Public								
Survey	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Focus group	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
N & C Rulemaking	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Non-deliberative Mechanisms for Providing Information to the Public								
Information provision	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Public Notice	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
Public education	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Traditional Mechanisms								
Public hearing	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Citizen Advisory Ctte	<input checked="" type="checkbox"/>							
Public Deliberation								
Citizen Juries/Panel	<input checked="" type="checkbox"/>							
Consensus Confe.	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Alternative Dispute Resolution								
Mediation	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Regulatory Negotiation	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	

= not applicable;  = may be applicable;  = applicable

Source: Adapted from Beierle, 1998.

## **2. Public Hearings**

Public hearings or stakeholder workshops, or retreats have been popular approaches to gathering public and expert input in the policy making process in Ghana. Probably due to the transaction costs associated with decision-making in a public hearing context, some have criticized this approach in gathering citizen input in the policy process. The public hearing mechanism facilitates two-way information flow but is not “deliberative”. As Table 2 shows, the public hearing mechanism has potential to contribute to the attainment of several of the policy goals defined in this report. The major concern with the public hearing approach is whether it would foster the building of “trust” or the fact that it does not promote deliberation might lead to costly strategic behavior by participants.

## **3. Citizen Advisory Committees**

Citizen advisory groups consist of “a relatively small group of citizens who are called together to represent ideas and attitudes of various groups and or communities” (Rosener, 1978 *cited in* Beierle at 21). A Citizen advisory committee can be an effective vehicle to gather public support for a policy. The difficulty with these advisory bodies is that the desire to be inclusive may increase the advisory group size so that decision-making costs rise significantly. On the other hand, if there is a perception that actually the role of the group is merely “advisory”, group members and the public may put less faith in the role of the group in the policy process. A carefully selected advisory group would be invaluable in mobilizing consensus behind an issue as difficult as land market reform.

## **4. Alternative Dispute Resolution Mechanisms**

Alternative dispute resolution approaches come in two forms – regulatory negotiations and stakeholder mediations. In regulatory negotiations, stakeholders actually participate in determining the content of policies, while in the case of stakeholder mediation, the effort is to bring together and reconcile opposing interests. While a formal regulatory negotiation process is not popular in Ghana, in some sense the informal stakeholder mediation approach has been used. Informally, there has been ongoing discussion about using mediation to resolve issues between the government and the labor unions regarding wages and the conditions of employment. In the land market, there has been an attempt to get chiefs to withdraw cases from the courts and to use the traditional chiefs in resolving land disputes (*see text box*).

## **Otumfuo intervenes in land disputes at Fumesua**

Kumasi, Aug. 27, GNA - Otumfuo Osei Tutu II, Asantehene, has called for a halt to all developments at Fumesua, Kwamo, Bebre, Saape and Adakwa-Jachie in the Ejisu-Juaben District until land disputes in that area are resolved by the Kumasi Traditional Council.

He has also ordered that all documents relating to the acquisition of lands in the possession of chiefs and sub-chiefs be submitted to the Council for study before any settlement can begin.

The Asantehene gave the orders when the Council sat to deliberate on the numerous chieftaincy cases and land disputes before it on Thursday. This was after Miss Rose Oteng, Ejisu-Juaben District Chief Executive, had catalogued problems facing the district assembly following the protracted land disputes.

Miss Oteng said the disputes are retarding the socio-economic development of the area and, therefore, appealed to the Asantehene to help resolve them. When the chiefs were called before the Asantehene, some of their sub-chiefs were not present.

The Registrar was, therefore, asked to fix a suitable date for the hearing of the cases. The Asantehene advised the chiefs to stop selling plots and warned that any chief who flouts any of the orders will not be spared.

## 5. Citizen deliberations

The use of non-expert citizens in deliberations concerning complex and technical issues has become very popular in the United States. Citizens are used as “value consultants” and their role is to work with experts so that the solution to complex issues would reflect the value system in the society. Citizen deliberations is a two-way information flow that helps to accomplish several of the goals – conflict reduction, trust formation, participant education, and providing substantive information to improve policy decisions.

As pointed out at the beginning of this chapter, the involvement of the public in the debate over transferable usufructuary rights in land, efficiency in the land market, the methods of involving the public, and what is expected out of the involvement are all questions the answers to which lie in culture of the people, the political and economic context, and resource availability. Here again, the new local government system moves us one step closer to creating a true citizens' deliberative body. The Metropolitan/Municipal/District Assemblies created under the law, *Local Government Law 1988* (PNDCL 207) and subsequent amendments is:

- (1) the pivot of administrative and developmental decision-making in the District and therefore the basic unit of government administration;
- (2) assigned with **deliberative**, legislative as well as executive functions under law;
- (3) established as a monolithic structure to which is assigned the responsibility of the totality of government to bring about integration of political, administrative and development support needed to achieve a more equitable allocation of power, wealth and geographically dispersed development in Ghana;
- (4) constituted as the Planning Authority for the district.

The citizen deliberations body contemplated under the Beirle framework is to be a small group of individuals providing information input into the policy process. The District Assemblies on the other hand are large bodies charged with both policy planning and implementation responsibilities. It must be noted however that the Assemblies form sub-committees or invite expert input during deliberations. In essence the Assembly may be regarded as the ultimate decision-making entity while the sub-committees and experts act as the citizen deliberation body contemplated under the Beierle framework.

## CHAPTER FOUR: ALTERNATIVE INSTITUTIONAL ARRANGEMENTS TO FACILITATE THE TRANSFER OF USUFRUCT RIGHTS IN LAND

### a. Introduction

The evaluation of alternative governance arrangements for the transfer of usufruct rights in land is an exercise in comparative institutional analysis. Oliver Williamson has suggested that for such comparisons, the goal is to assess the risk and transaction costs associated with alternative institutions. The efficient governance regime must also address the problem of opportunism and other costly strategic behavior. Since Ghana seeks to tap into international capital markets, an added criterion in the evaluation of the governance regime is the acceptance of the regime consistent with international practice. This does not mean that Ghana copies blindly from other countries. It only means that the criterion is seen as leading to the emergence of a credible governance regime to support the transfer of usufruct rights in land.

The value-theoretic framework adopted in this report cast the usufruct transfer problem in the context of market failure. In this context, the search for an efficient governance structure reduces to a search for outcomes supportive of efficient or quasi-efficient markets. Three governance regimes to facilitate the transfer of usufructuary land rights are examined in this chapter. The three regimes are – (1) land banking, (2) community land trusts, and (3) general adjudication of land rights. In each case, a definition of the nature of the regime is provided followed by an assessment of the advantages and disadvantages of each regime. Recommendations for an appropriate governance regime are provided based on an assessment of associated transaction costs and potential wealth maximization effect. The use of wealth maximization as criterion in evaluating the governance regimes for the transfer of usufructuary rights in land is not unique or original to this report. In a seminal paper on land tenure systems in Sierra Leone, Johnson (p. 259) (*see also citations by Johnson*) explains the use of this criterion as follows:

Economists have developed a clear notion of economic efficiency but discussions of land tenure invariably bring in some sociological and wealth-distribution constraints when discussing the efficiency aspects of tenure systems. Social anthropologists and others stress that certain tenure systems are integral parts of social systems involving such things as insurance for old and young with the implication that even though these tenure systems might not facilitate (pecuniary) wealth-maximization, yet the non-pecuniary wealth facilitated provides “enough” compensation in some general welfare sense. *I shall discard such sociological arguments because I believe that there is no reason why sociological benefits of particular tenure systems cannot be obtained by some alternative arrangement while creating a tenure system that is designed to facilitate wealth maximization and wealth increases. (emphasis mine).*

As would be made clearer below, this report uses the wealth maximization criterion to accomplish two objectives. First, it is used to help define the nature of efficiency in the land market, and secondly, as a basis of for explaining how a carefully crafted

governance regime can be an **instrument** for creating multiplier effects in wealth creation.

## **b. Institutional Option One: Land Banking**

One of the policy actions proposed under the Ghana Land Policy is to “encourage, through appropriate incentives, stool/skins, clans and land owning families to create *land banks for present and future generations* (Policy Actions 5.2 (c)). But what exactly is the meaning of this policy action and what is it intended to achieve? If this is interpreted as simply setting land aside for future generations, that is, in a “lock box,” for future generations to decide what to do with it, then clearly it could have a chilling effect on transfer of usufruct rights because all opportunities for potential Pareto-improvement are vitiated. However, since the action statement hints of “appropriate incentives,” the window is left open for the possibility of setting up land banking in a manner that encourages the transfers of usufruct rights.

### **i. Definition of Land Banking and Application to Ghana**

One general definition of land banking is “a system in which a governmental entity acquires a substantial fraction of the land in a region that is available for future development for the purposes of controlling the future growth of the region” (The American Law Institute (ALI), *A Model Land Development Guide*, 1976, Washington, D.C.; also see Carr and Smith, (1975)). The ALI has offered two basic requirements for a land bank, (1) the land being acquired does not become committed to a specified future use at the time of acquisition, and (2) the land being acquired is sufficiently large in amount to have a substantial effect on [industrial] growth. The key terms in the ALI definition are “governmental entity,” “no commitment to a specified future use,” and “large land size”.

While the ALI definition refers to the acquisition of land by a ‘governmental agency,’ the Land Policy paper contemplates the creation of land banks by private and communal entities. Both as a theoretical and practical matter, the issue as to the entity, public or private, acquiring the land is of little and no effect in terms of the objectives sought to be achieved under a land bank. As Pasour (1976) points out, “there is no empirical evidence or strong a priori reason to expect public officials to be more efficient than private speculators in allocating land resources between different uses over time” (p. 562). If one were to hold rigidly to the ALI guidelines, the District Assemblies as governmental entities are empowered under the enabling legislation to acquire land for development purposes. In terms of “committing the land to a specified future use,” it must be noted that all land planning schemes leave room for unanticipated needs for land. The requirement for “large land size” is especially relevant to Ghana since one of the constraints to the development of industrial estates in Ghana is the lack of suitable land sizes (World Bank/IFC, 1998).

The discussion so far leads to a conclusion that conceptually it is possible to develop a land banking system to facilitate the transfer of usufructuary rights to promote

investments in Ghana. The conclusion is bolstered by what some experts perceive to be one of the major rationales for land banking, to wit, the elimination of speculative profits to arrest the upward pressure on land prices (Carr and Smith, 1975). The recently implemented National Land Policy also seeks “to instill order and discipline into the land market to curb the incidence of land encroachment, unapproved development schemes, multiple or illegal land sales, *land speculation* and other forms of land racketeering” (National Land Policy, p.6). The issue facing policy makers is to assess the transaction costs associated with the establishment of the land banking objective, and especially how these costs compare to those associated with other institutional arrangements.

## **ii. Assessment of the Benefits and Costs Associated with Land Banking**

Note that in this assessment, one is dealing primarily with land banking as a device to facilitate the transfer of usufructuary rights, and not as a conservation or land development device. In this sense, the obvious advantage of land banking is the opportunity to have available a large tract of land that could be transferred to a developer for investment purposes. If as contemplated under the National Land Policy, private individuals or rural communities came together to create the land bank, then acquisition costs would be lower because there is no public compensation costs as part of the acquisition cost. Furthermore, the creation of the bank by voluntary private or communal entities is one measure of social cohesion sustainability so vital in decision making related to an important resource.

There are however significant transaction costs associated with the creation and operation of a land bank. If land is acquired by a governmental entity, there is the irritating compensation problem to wrestle with. On the other hand, if the land bank is to be set up by private or communal entities, then there is the usual cost of information search, bargaining, and monitoring. In terms of information, there is the need to ascertain that parties yielding rights to land are the true owners vested with authority to relinquish rights to land. Given the information infrastructure at the land administration offices, ascertaining the owners of land may be costly. Furthermore, most of the land under communal or stool control have not been registered and in some cases, boundaries have not been marked. These gaps in information could prevent efforts to consolidate land into a banking scheme.

The inability to ascertain ownership and boundaries will significantly raise bargaining costs. To determine both current and future benefits to participating members in a land banking scheme, each owner has to know how much land they are putting into the pot. The contribution to the land banking scheme determines the owner’s share of the usufruct. Even in those situations where parties’ contributions can be ascertained, there can be ‘holdouts’ in an effort to extract a larger share of the usufruct, especially if an owner determines that the location of their land is key to a successful consolidation of the land. Even within single family units, it is not uncommon to find one member of the family ‘opt out’ of a deal to grant land to an investor for investment purposes. Finally, the monitoring of a land banking scheme presents its own unique contract monitoring problems such as opportunism. Opportunism is a post-contract phenomenon where one

party to a contract behaves in such a way that there is a net transfer of wealth from the victim to the opportunist. Land banking is both a short and long term scheme. Over time, parties' assessment of the usufruct may change, and this may encourage defection from the agreement. In those situations where land banking is through communal effort, it is likely that new challenges to an initial agreement may emerge as the balance of power within the community shifts.

To the extent that parties cannot write complete contingent contracts, those paying the usufruct may be held 'hostage' to an ever-changing contract interpretation. 'Hostage' taking is an especially costly event because the successful implementation of a project involving large sunk costs is dependent on the acceptance of that project into the life of the community in which the project is located. What one may conclude from this discussion is that despite the immense benefits associated with land banking as an instrument to encourage the transfer of usufructuary rights, the associated transaction costs could be quite high and may not be easily eliminated through contract specification or through a court system.

### **c. Institutional Option Two: Community Land Trust**

One of the guiding principles of the National Land Policy in Ghana is that, "land is a common national or communal property resource held in trust for the people and which must be used in the long term interest of the people" (3.1). While similar philosophically, this broad guiding principle must be distinguished from the narrower concept of "Community Land Trust" (CLT) suggested as a mechanism to promote the transferability of usufructuary rights to land in Ghana. While the CLT concept is rooted in land tenure systems found in Africa and India, it gained prominence as a conservation tool primarily in the United States. Between 1950 and the end of 1990, the number of land trusts in the United States grew from 53 in 26 states to 889 in all 50 states (Land Trust Alliance, [www.possibility.com/Landtrust/](http://www.possibility.com/Landtrust/)). Today, Land Trusts are being used to protect scenic vistas, streams, old forest stand, wetlands, deserts, city parks, greenways, farmlands, and other valuable land resources (id).

#### **i. Definition of Community Land Trust and Application to Ghana.**

The Land Trust Alliance defines a land trust as a "local, regional, or statewide nonprofit conservation organization directly involved in helping protect natural, scenic, recreational, agricultural, historic, or cultural property. Land trusts work to preserve open land that is important to the communities and regions where they operate. Land trusts respond rapidly to conservation needs and operate in cities, rural, and suburban areas." Another definition offered by the Institute of Community Economics (ICE)(1982) helps to better distinguish between the CLT concept and the general idea of state ownership of land in trust for a community. According to the ICE, a CLT is "an organization created to hold land for the benefit of a community and of individuals within the community. It is a democratically structured nonprofit corporation, with an open membership and a board of trustees elected by the membership. The board typically includes residents of trust-owned lands, other community residents, and public-interest representatives. Board

members are elected for limited terms, so that the community retains ultimate control of the organization and of the lands it owns." (*The Community Land Trust Handbook*, p.18). In brief, the CLT model allows individuals to relinquish control of land to an established entity to manage the land for the benefit of owners and the community.

## **ii. Assessment of the Benefits and Costs of the Community Land Trust**

The CLT model holds considerable promise for the transfer of usufructuary rights by Chiefs and Village heads in Ghana. For brevity, this section of the report draws heavily on the description of the benefits of the CLT as presented in the *Handbook* published by the ICE. Under the CLT, title to land is transferred to the non-profit corporation set up to manage the land. The permissible use of the land is determined through a process similar to the land planning or zoning process. The key element of the CLT is that the land may be "leased to individuals, families, cooperatives, community organizations, businesses, or for public purposes" (ICE, p. 18). The leases may be "lifetime or long-term basis and are transferable to leaseholders' heirs if they wish to continue the use of the land" (*id.*). The leaseholders do not own the land they use but they may own buildings and other improvements on the land. Leaseholders may sell or remove the improvements they made on the land if they terminate the lease or choose to sell the lease. On the other hand, any increases in the value of the land not due to the leaseholder's effort remain with the CLT.

The most important aspect of the CLT model is that, "the lease agreement becomes the specific, flexible, legal means by which the legitimate interests of both the community and the individual leaseholder are explicitly described and protected in accordance with the policies of the CLT." Furthermore the leaseholder enjoys the "same basic security of land use that is traditionally enjoyed only by landowners." The CLT receives revenues from the land it leases out and may use these revenues to acquire more land on behalf of the community. Since the CLT leases land to community residents, it prevents community residents from becoming landless on their own land. In this context, the CLT model helps to achieve one of the major goals of the National Land Policy, "to protect the rights of landowners and their descendants from becoming landless or tenants on their own land."

The CLT model has been successfully implemented at Voi, Kenya but as experts are quick to point out, the replicability of the model in other areas and countries is still in issue. The success of the program in Kenya was due primarily to the fact that the land involved was government-controlled so the issue of ownership was moot. In the situation where land is controlled by Chiefs, tribal leaders, and families, we are still confronted with the problem of ownership, and the power to relinquish land for purposes of the CLT. Currently in Ghana, there are raging problems with stool and family lands boundaries. These boundary problems need to be resolved before any legitimate transfers could occur. In this sense, we are still confronted with the high information search costs similar to those discussed under the land bank system.

There are also important jurisdictional issues to resolve in efforts to implement the CLT model in Ghana. The District Assemblies have been vested with sweeping powers over allocation of land for large-scale investment purposes. On the other hand, the CLT model contemplates the formation of an independent non-profit entity to manage the CLT. In practical terms, the formation of the CLT will directly cut into the revenues of the District Assemblies, especially since as a non-profit entity, the CLT has no tax liability. Bargaining over the allocation of land revenues could be quite difficult since in the limit, there is an inverse relationship between an expanding CLT program and the financial health of the Assemblies. A restructuring of the relationship between the CLTs and the District Assemblies over the issue of financing would probably require revisions in the Constitution of Ghana since these matters are mandated in the Constitution.

There are also the monitoring and ‘holdout’ problems discussed under the land bank system. The basic idea under the CLT is that chiefs and families should be willing to yield control of land to an independent agency in the form of a non-profit entity. In traditional societies where community members recognize the authority of chiefs, it is not exactly clear whether community members will recognize the monitoring powers of a board of trustees, an admittedly alien institution in the context of village governance. Note that while a chief may have advisors who may be considered a ‘board’, in practical terms, the chief is the one people look up to. A board instituted to manage land in a rural setting may be interpreted as a usurpation of the authority of the chief and may not enjoy the support of the people. In effect, the same transaction costs problems encountered in the establishment of a land bank program also are present in setting up a CLT program.

#### **d. Institutional Option Three: Statutory Adjudication of Land Rights**

A third institutional mechanism to encourage the transfer of usufructuary rights in land by chiefs and village heads is to undertake a comprehensive statutory adjudication of land rights. Statutory adjudication of rights to a natural resource, especially water resources has been undertaken by most Western States in the United States. It is argued in this report that the statutory adjudication framework is appropriate for resolving issues related to land in Ghana, and indeed could be instrumental in generating multiplier effects promoting economic growth in a broader context. Since statutory adjudication of rights to a natural resource is a novel concept in Ghana, it would be helpful to a reader to understand the rationale for this institutional device in the context of water resources so that meaningful comparisons to land allocation can be made.

##### **i. The Adjudication Process as Applied to Water Resources**

Krogh (1995) (*30 Land & Water L. Rev.* 9) has described in considerable detail the procedures, constitutionality, problems, and solutions to water rights adjudication in the Western States of the United States. The discussion in this section draws on the analysis presented by the author. The fundamental reason for the adjudication of water rights is the lack of accurate records on water rights. An accurate record of water rights, according to Krogh is necessary for ascertaining certainty of title to water rights,

distribution of water in accordance with those rights, and water resource planning. Uncertainty with regard to water rights reduces the value of property, pose obstacles to water marketing, and stifles voluntary transfers to increase efficiency in water markets. An accurate record of water rights also facilitates efficient distribution of water. When water is needed, parties do not always have to go to court to ascertain their rights before transfers. Finally, certainty of title is the beginning point in planning future use of water, as the planner needs an accurate database to determine the boundaries of appropriate policies.

## **ii. The Adjudication Process as Applied to Land Rights in Ghana.**

The problems encountered in the water sector in the United States, and which led to the adoption of statutory adjudication techniques are quite similar to the problems that exist in the land market in Ghana today. A sampling of enumerated problems from the National Land Policy document to confirm the similarities:

*“general indiscipline in the land market characterized by the spate of land encroachment, multiple sales..leading to environmental problems, disputes, conflicts and endless litigation”*

*“indeterminate boundaries of stool/skin lands resulting directly from the lack of reliable maps/plans, and the use of unapproved, old or inaccurate maps, leading to land conflicts and litigation between stools, skins and other land-owning groups”*

*“inadequate security of land tenure due to conflicts of interests between and within land-owning groups and the state, land racketeering, slow disposal of land cases by the courts and a weak land administration system”*

## **iii. Borrowing from Water Rights Adjudication to Resolve Land Rights Problems in Ghana.**

The use of institutional mechanisms that have been successful in Western countries to address problems in a developing country should proceed under extreme caution. Even though the problems in both societies may be similar, it is not necessarily the case that the solutions would be similar. However, one ought not be deterred by the verdict of history. Sometimes, knowledge gained in applying a Western principle could enrich the solution process in a developing country. To put in proper perspective the reasons for optimism in recommending a statutory adjudication approach to dealing with the problem of land transfers in Ghana, it is necessary to once again explain the similarities between the approaches to dealing with water rights problems in the United States, and the approaches to dealing with land rights problems in Ghana. The objective is to convince the reader that there are good reasons to depart from current practice and adopt the statutory adjudication approach.

According to Krogh (1995) before the adoption of statutory adjudication procedures, States in the United States relied on the general procedures applicable to civil actions in common law to deal with water rights issues. Basically, one party will file an action

asserting infringement by another party. The parties will go through the judicial process and a court will then determine the rights of parties. Sometimes the results will be appealed until a final resolution is made. The outcome of this process is binding only on the named parties. The outcome of this process is piecemeal because it is binding only on the parties involved in the litigation, and often results in multiple litigation and inconsistent judgments. While it may be possible to join parties or consolidate cases where necessary, the process imposes significant transaction costs on parties, especially in those situations where the number of parties is large. There are situations where the proper parties may not be available because the litigation has lingered in the courts for too long.

Like the water rights situation in the Western United States prior to the adoption of a statutory adjudication procedures, the current practice in land rights adjudication in Ghana is of a common law origin and is initiated by individuals filing a civil action for the determination of title to land or some other claim related to land. As was the experience in the United States, Larbi (1992) has documented numerous inconsistent decisions that have been issued by Ghanaian courts over the years. Also as was the case in the United States, there is considerable land cases backlog in Ghana. Finally, as was the experience in the United States, limited technology and lack of information about land also create difficulties under common law adjudication of land rights. Individual litigants bear the cost and the burden of proof on land rights, and for courts to sort through pleadings, the evidence, and the validity of documents, etc. Under conditions of escalating case disposal costs, courts are likely to issue incorrect decisions, arbitrary determination of land rights, and errors due to technical sufficiency of documents based upon which the court issued its decision.

#### **iv. The Case for Statutory Adjudication**

The problems described above may be addressed with the enactment of an *Adjudication Statute*. In its most simplistic form, a general adjudication statute would (1) set up a state agency or use an existing agency; (2) require that **All** parties with claim to land submit their claims to the agency; (3) claims would be backed by a duly certified document showing boundaries, size, location, etc. (3) the agency verifies all claims and certifies them as valid; (4) a register of claims is prepared and submitted to the Supreme Court of Ghana; (5) the Supreme Court issues a final ruling with respect to those claims; (6) once a ruling is issued, all future claims shall be in reference to the adjudicated rights. In those cases where there are conflicts, the agency appoints an arbiter who shall determine rights. Using this approach the State of Idaho in the United States was able to determine 260 rights to one river basin, the Boise River Basin in 1906. In 1932, Idaho was able to determine another 140 rights in the Riley/Billingsley Creek Basin. Prior to that in 1921, the State had determined 500 rights in the Weiser River Basin. The point being is that the adjudication process is not a mere intellectual exercise that produces no results. It has been proven to be an efficient method for resolving difficult property rights issues as far back as the 1900 when most societies did not possess the massive information-processing capability as one finds today.

Before describing in greater detail the elements of an adjudication statute, it is noteworthy that some areas in Ghana are already taking steps that are consistent with the spirit of a general adjudication approach. For example, on October 22, 1997, the Kpando District Assembly “set up a 11-member boundary committee to address boundary demarcation problems with its sister districts. the committee is to work hard to justify the confidence reposed in it and to ensure that ‘the district’ is neatly demarcated to lessen tension and administrative inconvenience created by the boundary problems.” Pointing to the increased use of violence in land disputes, one Member of Parliament noted that “the **streamlining** of court procedures in land matters has become imperative and crucial, and urged the Chief Justice to come out with **special** rules for land matters so that land cases can be quickly disposed of by the courts” (*Ghana Review International*, June 11, 1999). Also, to curb the rise in land disputes, the Chiefs from the Greater Accra Region signed “a declaration of intent to stop the sale of lands with effect from November 1, [1999] until **proper documentation of all lands in the region** has been done” (*Daily Graphic*, October 30, 1999). These initiatives by private individuals and communities need to be buttressed by government action so that they become a part of public policy.

#### **v. The Specifics of an Adjudication Statute**

The statute should define procedures to be followed in the adjudication, and delegate certain functions to an executive officer or agency. The statute should promote the complete, accurate, fair, and efficient determination of land rights by (1) providing procedures specifically designed to address the unique problems encountered in civil adjudication of land rights, (2) utilizing the specialized expertise of the various state land resource agencies, and (3) shifting to the State a portion of the costs otherwise borne by private parties. The functions assigned to a **State agency** would include: 1) joinder of claimants; 2) receipt of claims to land rights; 3) examination of the land and its uses; 4) initial determination of land rights; 5) participation in judicial resolution of contested claims as party, referee, special master, or witness/expert; 6) preparation of decrees/certificates of land rights; 7) administration of land rights pending final determination. It is not necessary that agencies be created *de novo*. There are several agencies in place already that may be re-tooled to perform the functions defined under the statute.

The statute should also define the judicial procedures to be followed. These procedures ought not be different from the regular procedures followed in a civil action. Some of the critical procedural issues to be addressed under the statute would include: 1) jurisdiction; 2) venue; 3) notice and joinder; 4) proper parties; 5) pleadings; 6) burden of proof; 7) evidence; 8) reference; and, 9) contents of decrees. The statute should also define all other requirements for proper resolution of disputes before the courts of Ghana.

#### **vi. Structure of Alternative Adjudication Statutes**

There are three general categories of adjudication statutes – (1) administrative systems, (2) judicial systems, and (3) hybrids. Under the administrative systems, the role of the courts is limited to judicial review of agency determinations. Under the judicial systems,

the role of the state land agency is generally limited to participation as a party in the judicial determination of land rights. The land agency may have duties with respect to the investigation of claims to, or uses of land. In the hybrid systems, the land agency has a reporting function that forms the basis for a later judicial determination of land rights. Below, we summarize the advantages and disadvantages of the various adjudication statutes.

## 1. Primarily Administrative Systems

The basic advantage of the administrative system is that the agency has special knowledge and expertise as to land rights. The agency has data both scientific and policy to work in determining rights. The specific specialized information held by agencies include:

**i. market information:** the state agency is the constitutionally mandated repository of land rights information. They have files on filings approvals, maps, judicial decrees, the nature and sources of land disputes, etc.

**ii. scientific information:** Since the agency is responsible for approvals, it possesses considerable information regarding the physical, location, and cartographic information about land. This information is critical since it forms the basis of designing appropriate institutions and legal rules concerning rights to land.

**iii. policy expertise:** the land agency is charged with the administration of lands in Ghana. In this regard the agency has accumulated considerable historical experience in policy making with regard to the land market. The agency is in the best position to formulate an integrated land policy that accounts for the concerns of the strategic participants in the land market.

**iv. legal Expertise:** Land law is a narrow field within the broad spectrum of laws in a country. While courts have legal expertise, this spans the broad spectrum of law, and judicial staff may be unduly burdened to develop expertise in a narrowly defined area of law. In Ghana however, the courts more so than the land administration agencies have been responsible for shaping the laws affecting land.

**v. lower cost of dispute resolution:** a major advantage of administrative systems is that administrative procedures are less formal and may help in reducing the transaction costs that accompany formalized modes of dispute resolution.

### Disadvantages of Administrative Systems

The major disadvantage of administrative systems is that they require more extensive supporting information infrastructure. This is due primarily to the fact that these agencies have to gather all details about particular tracts of land, and to reconcile all differences if a final resolution of disputes would be obtained. Unless properly managed, the agency would be overwhelmed with information, and could create chaos in an already confusing

market. Another major disadvantage of administrative systems is that administrative personnel often lack experience in land dispute resolution. Agencies may trample on the due process rights of parties and render substantive solutions to land disputes unenforceable or easily subject to challenge. Persistent challenges to administrative determinations would undermine the legitimacy of the process.

## **2. Primarily Judicial Systems.**

In a primarily judicial system of adjudication, administrative agencies merely supply information to the courts based on which the court makes decisions. The courts face the same information management infrastructure constraints as in the administrative systems. However, courts help to deal with a very difficult institutional problem facing administrative agencies – the problem credibility and political acceptability. While the constitution grants authority to the land agency to administer lands, the resolution of land conflicts rests with the Chiefs and the Court system in Ghana. Getting a predominantly traditional society accustomed to land dispute resolution through a blend of traditional and modern court system to switch to administrative determinations may not be an easy sell. As a historical matter, administrative determination of property rights to land in Ghana is a novel concept. Even the regulatory role of agencies is only now becoming fashionable, and the teething problems associated with this evolution have not been easy to resolve (Boadu et. al, 2000).

## **3. Hybrid Systems**

The combination of administrative and judicial systems helps to accomplish a much-desired goal in statutory adjudication processes – the need for expertise combined with lower cost judicial proceedings. In hybrid systems, the administrative agencies prepare the background reports that are used by courts in judicial determinations. In this case the system benefits from the expertise of the administrative agencies while saving the society the high cost that would be incurred by courts if they were to undertake the task of preparing background reports on a subject matter where they do not possess comparative advantage. There are no ‘bright’ rules on the optimal combination of administrative versus judicial roles in the adjudication process. Ghana will have to make such determination based on its own unique history of dispute resolution practices, resource and information constraints, and the degree of political commitment to undertake a restructuring of fundamental property rights to land.

### **Spillover Effects - The Instrumental Role of Law**

A key advantage to a developing Country like Ghana in going the route of statutory adjudication is the potential spillover effects the process may have on both the growth of nascent institutions, and the instrumental role in wealth generation in identifiable markets. While the role of law in the evolution of markets in Western societies has been extensively studied, little is known about the subject matter in the context of developing countries. Often times the role of law in wealth generation has been argued to be of an indirect nature, that is via the stabilization of property rights, and consequently in the

efficient performance of the market. What is being argued here is a **direct effect** in the context of actual distribution of resources in connected markets within the ambit of the adjudication process.

A few examples will suffice. The information processing capability of the Lands Commission is simply inadequate even to meet the demands for land title processing today. One can only imagine what a credible land rights adjudication program could do to improving the information processing capacity of this public agency. Another example is the potential impact on private markets. Conversations with some members of the Ghana Association of Surveyors indicated that members would welcome the opportunity given the potential impact on incomes. One can only imagine what a major land adjudication effort could do to wealth-creation in the private surveyors market. A third example is the opportunity to boost the growth of the advanced technology market such as the geographical information systems market. A similar argument could be made in terms of the effect on the legal market. Today's technology would allow fairly accurate demarcation of land using GIS technology. This technology is not widely used in Ghana even though it could be applied to resolve several conflicts over boundary lines. A GIS program initiated by Cornell University is currently under-used as a result of lack of effective demand. The contention here is that a useful jurisprudence of the land rights adjudication process in Ghana cannot underestimate the instrumental role of law in terms of wealth creation in the land market.

## **Chapter Five: Conclusions and Policy Recommendations**

The overall objective of this report is to examine the extent to which restrictions on transferable usufruct rights in Ghana act as serious constraints on investment and development, and to recommend policies and actions that are needed to address this issue. To accomplish this broader objective, the report examined the extent to which the absence of long-term and transferable usufruct rights to land act as deterrent to long-term investments. Also, strategies for informing the public about land tenure issues and their impact on Ghana's development potential were discussed, and finally, options and recommendations for land tenure reform aimed at achieving best international practices for secure usufruct rights in Ghana were proposed. The report sought to recommend a comprehensive nation-wide strategy to facilitate the transfer of usufruct rights by village heads and chiefs in Ghana.

The report examined a public participation model developed by Beierle and concluded that the model could be adopted and applied in Ghana as part of the efforts to involve the public in the policy debate on options for promoting the transfer of usufruct rights in Ghana. It was argued that a successful public education program should be targeted to both private sector entities and government agencies to avoid the cost of information asymmetries in policy making. It was also argued that there are established institutions, such as the District/metropolitan, and local Assemblies that could be utilized effectively in a public education program.

The report examined three main institutional governance regimes to promote the transfer of usufructuary rights in Ghana. Specifically, the report examined land banking, community land trusts, and a general adjudication statute as possible governance regimes. These regimes were examined within a value-theoretic framework that allowed a comparison of the transaction costs associated with the establishment and management of each regime. The general conclusion is that while all the regimes have some positive elements in terms of promoting the transfer of rights, the general adjudication statute entails the least transaction cost even though the financial cost could be quite substantial. The report finds that the problems (information search costs, bargaining, and monitoring costs) encountered in land banking and the community land trust can be addressed with the adoption of a general adjudication statute. Within the framework of wealth maximization, the report finds that the general adjudication statute has the greatest potential to yield spillover and multiplier effects given the number of identifiable publics whose participation is necessary for successful implementation of the adjudication process.

Given the novel nature of the adjudication process, the report recommends the following specific plan of future actions:

1. That an expert be engaged to present seminars/lectures on the nature of the adjudication process and how it has worked in other countries to solve difficult natural resource property rights problems. The objective of these presentations is to explain the nature of the benefits of the adjudication process to identifiable

stakeholders. The position in this report is that unless the strategic stakeholders can identify direct benefits to them, they are unlikely to participate. In other words, we do not believe that a claim that the process would benefit “society” in a hypothetical welfare sense is likely to convince owners of property rights to give up these rights.

2. It is also proposed that the initial discussion of the suggested governance regime be undertaken at the highest level of the policy apparatus. This would allow a proper assessment of the political cost and benefits of the proposal. Any reversals of policy such as occurred with the first introduction of the Value Added Tax law would do irreparable damage to future efforts to promote the efficient transfer of usufruct rights.
3. The services of a consultant may be needed to undertake an estimate of the financial cost of the adjudication regime and the spillover effects. This would give policy makers the incentive to make the financial commitment needed to support the program.
4. It is also proposed that the government works closely with the donor community to protect the integrity and credibility of the program against charges of political maneuvering.
5. The report strongly encourages the initiation of activities soon after elections when the electorate has revealed their preferences in terms of leadership. This would protect the proposal against opportunistic behavior given that no party has an opportunity to use the recommendations as a conduit for generating political capital.

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