

Optimizing Land Asset Management in Ghana a Shared Responsibility and Recipe for Good Governance

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SUMMARY

Land is a finite asset and therefore ought to be treated as such. However with indiscriminate and haphazard development, unreliable land records, insecurity of title and the lack of capital and low capacity for utilization of the resource, the availability of land for the benefit of future generations is seriously threatened. These problems seem to be assuming varied dimensions over time even as technology advances. This paper therefore seeks to examine the issues which have necessitated this problem and propose possible solutions.

Whilst acknowledging the existence of volumes of literature on this subject, the rapid rate of increase and little sign of abatement of the challenges are enough motivation for further discussion and a more aggressive approach towards finding appropriate solutions.

This paper therefore identifies the emerging challenges and constraints in implementing management procedures and the effect of these on the dwindling land asset of Ghana and also makes proposals aimed at resolving these and to provide the platform for the development of an effective system for the sector.

It must be emphasized that the major part of this presentation has been based on the author's own experience spanning 16 years of service as a Public land administrator.

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1. INTRODUCTION

Countries all over the world are increasingly having in place adequate measures aimed at putting land and its resources to uses that are beneficial not only for the present generation but for future generations as well. Again it has been recognized that having reliable records on land in terms of use, tenure and value assist governments in the exercise of their vital function of overall administration and control of land in the interest of development. Without such vital information, timely identification and reform of the many defects in existing systems of land legislation, tenure and use is rendered difficult if not impossible.

The reasons for this are not far fetched. Rapid population growth especially in the developing world, technological development, the fixed nature of land and the varied but competing uses for this resource have all acted as catalysts for the development of these measures.

The complexity of overall administration and control of the land structure increases with the pace of development. (Lawrence JDC 1984). It is now an accepted fact that governments cannot afford not to have policies in place for land records and management.

These measures have mainly revolved around legislation, organizations in the land sector, databases and maps as well as the funding mechanisms required for implementing and maintaining a sustainable land administration system.

2. CONCEPT OF LAND

Land has been viewed variously by different communities. The concept of land in most countries however, can be seen in three main dimensions, namely; socio-religious, economic and political. Even though these can all co-exist they sometimes appear incompatible and provide the ingredient for conflict and confusion in the formulation of land policies. For whilst the indigene may wish to preserve a piece of land because of cultural values or mystical connotations, the government may wish to acquire it and put it to a use that will derive optimum benefit from the land in a sustainable manner. It is the responsibility of governments to undertake all kinds of planning activities to improve social standards and life of the community. Governments therefore see this as a justification for increasing interference in proprietary structures. This includes intervention in land use and control, land management, operation of the land market and the framework within which customary land tenure operates. In the social context it is a function of social relationships and interwoven with issues such as kingship, the family system and the entire field of human relationships.

These are of practical importance when dealing with issues of land use, alienation, ownership, acquisition or development.

3. OBJECTIVES

The objectives of this paper are as follows: the bullet points start outside the margin.

- To assess the various land administration practices that have prevailed in the various land management bodies including the state and the customary sectors.
- To identify emerging challenges and constraints in implementing management procedures and the effect of these on the dwindling land asset of the country.
- To make proposals aimed at resolving these and to provide the platform for the development of an effective system for the sector
- A major source of information has been the author's own experience as a public land administrator spanning a period of over 16 years. The presentation is focused on the practical aspects of the subject.

4. THE LAND OWNERSHIP PATTERN:

Before discussing the management aspects of land it is pertinent to take a look at the land ownership pattern.

The different types of land tenure and the land administration system prevailing in Ghana today evolved over time from the interplay of the socio-political organizations of the various tribes, clans and families through trade, wars and incorporation; the advent of colonial rule; post independence politics; and urbanization. The basic land laws in Ghana are, therefore, deeply embedded in the socio-cultural systems and political institutions of its indigenous societies even though they have been fundamentally influenced by administrative and statutory rules of the modern state.

Land ownership in Ghana can broadly be divided into three namely: customary ownership, state ownership and a partnership between the state and the customary owners (split ownership).

Customary ownership occurs where the right to use or to dispose of user-rights over land rest neither on the exercise of brute force, nor on the evidence of rights guaranteed by government statute, but on the fact that they are recognized as legitimate by the community, the rules governing the acquisition and transmission of these rights being usually explicitly and generally known, though not normally recorded in writing.

(Bower P 1993). Such ownership may occur in any one or a combination of the following ways: (see about bullet points)

- Discovery and long uninterrupted settlement
- Conquest through war and subsequent settlement
- Gift from another land owning group or traditional overlord
- Purchase from another land owning group.

The following distinct scheme of interests exists in communal ownership: the allodial interest, which is the highest proprietary interest known to exist in customary land. It is equivalent to the concept of freeholds in the English conveyancing system. Such interest may reside in a stool, a clan, a family, an earth priest or a private person. This interest or title can be transferred from one owner to the other through Same as previous

- Compulsory acquisition by the state for public purposes
- Purchase by another community or an individual.
- Gift to another community or an individual.

The title when created can never be extinguished or terminated, because it is the highest title in land and extinguishment or termination of any interest in land presumes a superior title or interest into which the title or interest to be terminated shall merge. (Ollenu N.A 1962, Brobby K.W 1992, Kasanga K.R 1988).

Other lesser interests that flow out of the allodial interest include the following:

5. USUFRUCTURARY INTEREST ALSO KNOWN AS CUSTOMARY FREEHOLD

It's an interest in land held by groups, subgroups and individuals in land acknowledged to be owned allodially by a larger community of which they are members. It is an interest held as of right by members of such a community who acquire it by first cultivation or by allotment from the owning group of which they are members. The person who holds such an interest has the right of beneficiary occupation of the land concerned, which may devolve upon his successors ad infinitum but which will come to an end on the failure of his successors. The customary freeholder may dispose of his interest as he pleases. This interest is of indefinite duration and prevails against the whole world including the allodial title, which gave birth to it. Any group subgroup or individual member of a community owning the allodial title may acquire the customary freehold title or interest in land by exercising his or her inherent right to develop such vacant virgin communal land by either farming or building on it. It is normally believed that in the case of rural and farming lands, no express grant is required from the community holding the allodial title. The members occupy and use the land by implied grant. However in practice a member sometimes needs a document of title. It does not imply that the interest is dependant on obtaining the grant. A member's right to the land depends on the degree of occupation e.g. mere hunting on the land or granting licenses to strangers does not appropriate the title to the member.

6. TENANCIES

Owners of the allodial title or customary freehold or common law freehold create these lesser interests in land. They are usually share-cropping contractual arrangement by which the tenant farmer gives a specified portion of the produce of the farm to the landlord at each harvest time. The two best known of such tenancies are the Abunu and Abusa. There are other forms of customary tenancies in which the consideration for the grant is not the sharing of the produce of the farm, the subject matter of the grant at the harvest time but money for seasonal or yearly tenancy. In addition to these interests certain rights recognized by law also exist in land in Ghana. Examples are easements, profits, and prendre restrictive covenants, reversions and common law licenses. All these are importations from English common law and their terminology and usage are convenient and properly used because they do not have any origins in customary Laws. However other expressions such as fee simple do not exist in the context of Ghana law. The fee simple of the English law is a freehold interests but it is not quite the same as the freehold interest of the Ghana customary Law.

6.1 Customary Lands

Customary lands are managed by a custodian (a chief or a head of family) who undertakes the tasks with the principal elders of the community. Any decision taken by the custodian that affects rights and interests in the land, especially disposition of any portion of the communal land to non-members of the land holding community, require the concurrence of the principal elders. Custodians of customary lands therefore hold the land in a fiduciary capacity and they are accountable to the members of the land owning community.

6.2 State Lands

These are those, which have been expressly acquired by the state through compulsory acquisition. The boundaries of these lands are cadastrally surveyed but are scattered throughout the country. They vary in sizes, from as small as 8.11 m² to as large as 174.43 km², depending on the purpose of the acquisition. Leases, certificate of title or certificate of allocation of these lands are granted to statutory institutions and private individuals for development.

6.3 Vested Land

Split ownership occurs when the state takes over the legal incidents of ownership (the right to sell, lease, manage, collect rent, etc.) from the customary landowners and holds the land in trust for the land owning community. The landowners retain the equitable interest in the land – the right to enjoy the benefits from the land. This is generally referred to as vested stool land and it is managed in the same way as state lands. Unlike state lands however, the boundaries are not cadastrally surveyed and they are usually larger in size, covering wide areas.

The universal principle in Ghana is that “there is no land without an owner”. Therefore any piece of land will fall into one of the three ownership categories discussed above. Since state and vested lands are acquired expressly through legislation, all other lands outside these categories belong to the class of customary lands – either for stools, clans or families.

7. LEGAL AND INSTITUTIONAL ARRANGEMENTS

The following are the main Legislative instruments used in Land Administration in Ghana again:

- The Town and Country Planning Ordinance 1945 (Cap 84)
- Land Registry Act 1962 (Act 122)
- Administration of Lands Act 1962 (Act 123)
- State Lands Act 1962 (Act 125)
- Survey Act 1962 (Act 127)
- Conveyancing Decree 1973 (Act 175)
- Land Title Registration Law 1986 (PNDCL 152)
- Lands Commission Act 1994 (Act 483)
- Local Government Act 1993 (Act 462)
- Office of Administrator of Stool Lands Act 1994 (Act 481).

Enabled by enacted legislation and guided by the existing customary practices the state has set up a number of land sector agencies mainly under the Ministry of Lands and Forestry to facilitate a rational and orderly system of land administration. These include: again

- *The Lands Commission:* The functions of the Lands Commission as provided under Article 258(1) of the 1992 Constitution and Section 2 of the Lands Commission Act, 1994 (Act 483) include management of public lands, formulation of and submission to government recommendations with respect to land use and capability and registration of title to land.
- *Town and Country Planning Department:* responsible for the formulation of land development standards, coordination of land development activities and approval of settlement development plans.
- *Survey Department:* undertaking of national land surveys and mapping, licensing of land surveyors and verification of survey plans. It is also responsible for the maintenance of up-to-date scientific data, maps and plans.
- *Land Valuation Board:* responsible for the determination of land and other property values for various purposes where the government has an interest, rateable values and compensation for public land acquisitions.
- *Land Title Registry:* registration of titles and protection of interests in land.

- *Office of the Administrator of Stool Lands*: stool land administration including collection and disbursement of stool land revenue.(Ministry of Lands and Forestry, 1999)

8. THE PROBLEMS IN LAND ASSET MANAGEMENT

Admittedly there exists in Ghana volumes of literature on the problems that confront the land market to such an extent that one may end up writing about the same old story. However it is also a fact that very little headway has been made in all the attempts at resolving these issues. Information available also indicates that the problems appear to be assuming more serious dimensions. Attention will therefore be focused mainly on the emerging issues. An again

- The mode of acquisition of land and the payment of compensation by government has created a situation of discontentment among present generation of indigenes whose land was acquired for various development projects in the “public interest”. Because the country has not developed any standard policy on the size of land considered adequate for educational institutions, a lot of these lands now appear to be lying fallow and have become the subject of encroachment by the very people who received compensation for these acquisitions. In March 2005 students of St. John’s Grammar School in Accra had to adopt a self help measure by embarking on a demonstration to draw attention of the public and government in particular to attempts being made by some encroachers to develop portions of the school’s land which had been duly acquired. This presents a picture of a helpless situation for it is not the duty of students to protect their school boundaries. It has been observed that the mode of payment of compensation has contributed to this state of affairs. For it has been proven that in acquisitions that attracted compensation rentals as against one time bulk payments, fewer post acquisition problems have emerged. The Osu stool is currently agitating for portions of the Hausa reserve even though records available at the Lands Commission indicate that the Stool in 1894 was fully paid its compensation. If we believe that our land is for our ancestors, the living and the generations yet unborn, then obviously this situation did not cater for the present and future generations. The present agitation stems from the fact that no provision was made for the investment of the revenue realized by the stools as a result of the acquisitions by the state.
- The predominantly manual nature of recording land transactions has encouraged a lot of fraudulent land deals within the sector and also makes land documentation time consuming. In the Business News segment of the TV 3 evening news of 3rd October 2005 it was reported that it takes an average of 320 days to process a land document by the various public land sector agencies. On the issue of fraudulent transactions, they are usually successfully executed, because there is no scientific system in place to determine the authenticity of the document since it perfectly traces the root of title. It is also not a requirement to attach the original document to the transfer document before it is accepted for processing. The practice of keeping copies of plotted documents was instituted only in 2001 by the Lands Commission. The effect of this is that genuine owners of land as well as unsuspecting prospective purchasers are duped by the so called agents. The losers in

most cases are the “new” owners as their recorded transactions are reversed when it is proven that it was obtained by fraud. The first one is as they should be all

- The question of access to land has been one major challenge facing investors. Policy makers have tended to focus on measures towards the provision of affordable housing and other land uses without ensuring that there will be access to land. These have not been combined with issues on access to credit and security of title. It is not enough to ensure security of title and access to land without the provision of an enabling environment for access to capital and adequate capacity building for the optimum use of land. In a lot of situations even where there is no title due to the absence of a formal legal documentation, there is undisturbed occupation of these lands.
- However these lands are not put to optimum use due mainly to the lack of needed capital. There is also little sustainable use of these lands due to the unscientific and subsistence nature of the farming practices.
- There has not been effective monitoring and evaluation of current systems thus a number of these have not achieved expected results.
- Funding for the land sector has never been adequate. As a result the agencies have found it extremely difficult even to prioritize. Records available from the Ministry of Finance indicate that under the 2005 budget for the land sector there is a proposed reduction of 75% of what was submitted by the land sector agencies. The effect of all this and similar situations over the years is that the revision of the deteriorating records sheets in the agencies is progressing at a very slow pace, in fact slower than the rate of deterioration. With such a situation even the benefits of automation may not be achieved.
- It has not been easy for the land agencies especially the Lands Commission and the Survey Department to do the needed conversion of spatial data with the introduction of modern surveying and land data capture equipment such as GPS. Upon the introduction of the Legislative Instrument 1444 which essentially seeks to regulate the work of Land Surveyors it has been confirmed that a lot of the surveyed plans within the records of the Lands Commission are inaccurate. The challenge now is how to recall all the previously recorded transactions and convert them into the current reliable parcel plans provided by the Survey Department under the Land Title Registration Law of 1986. The present effect is that the spatial records are not accurate and therefore unreliable. The uncooperative attitude among the land sector agencies is also compounding the situation resulting in duplication of functions. Each of these agencies has duplicated some amount of both spatial and attribute data without any constructive system for updating the data
- The current land reforms in Ghana under the Land Administration Project (LAP) is intended to help in resolving the numerous and complex bottlenecks that impact on land administration in the country. But the implementation of this project has in itself contributed to the problems. The project Secretariat has been placed at the Ministry of

Lands, Forestry and Mines and directives are issued from the Ministry to the implementing agencies. Thus there is no sense of ownership among these agencies. A lot of awareness creation workshops and seminars have been organized for staff of these agencies but they have continued to express reservations about the project as it is seen as a threat to their very existence. They have not been given the right orientation to deal with the expected changes. There are also serious differences between the development partners and the Ministry. Whilst the development partners are of the view that the country is slow in assessing the funds under the project, the Ministry also claims that there is too much bureaucracy involved in the whole process. For example the pilot field inventory exercise on the state of all state occupied lands to determine the extent of occupancy and encroachment among others, was due to commence in August 2003 in Accra. However the vehicles for the exercise were made available in April 2004. This threw the entire program completely behind schedule. On the inventory exercise itself one wonders how effective and reliable the report will be since the activities on these lands both legal and illegal are still continuing. There has also been this talk about a one-stop-shop for the land sector agencies. This is seen as making them more serviceable to the public. It involves the construction of a multi-storey structure to accommodate the agencies. This is also supposed to reduce duplication and redundancy. However with modern technology in place one wonders if the idea of cohabitation is necessary or beneficiary. The content of the project itself is seen as rather too wide to make the objectives achievable. The same project is looking at reforming the entire legal regime of land administration, restructuring of the land sector agencies and the customary land sector and developing land information, registration and valuation systems. Lumping up these is making the implementation complicated.

- Another challenge to the land administration structure in Ghana is the extent to which various stakeholders are involved in land administration. Currently there is talk of an urban renewal program which aims at consolidating all the old buildings in the central parts of the capital city and reallocating them to investors to develop high rise offices and apartment complexes all aimed at putting the land to optimum use. Several discussions have taken place between the land sector agencies and prospective investors including HFC Limited, a financial Institution and the Social Security and National Insurance Trust SSNIT. However, the indigenous owners are yet to be consulted on this scheme. This obviously is bound to attract resistance since the timing of the consultations with the owners appears to be behind schedule.
- One major obstacle that the country faces is the lack of enforcement of rules and regulations. Where people have encroached on public lands and where people have developed on lands without permit and where landowners have been engaged in multiple sale of land there is hardly any prosecution to serve as a deterrent.

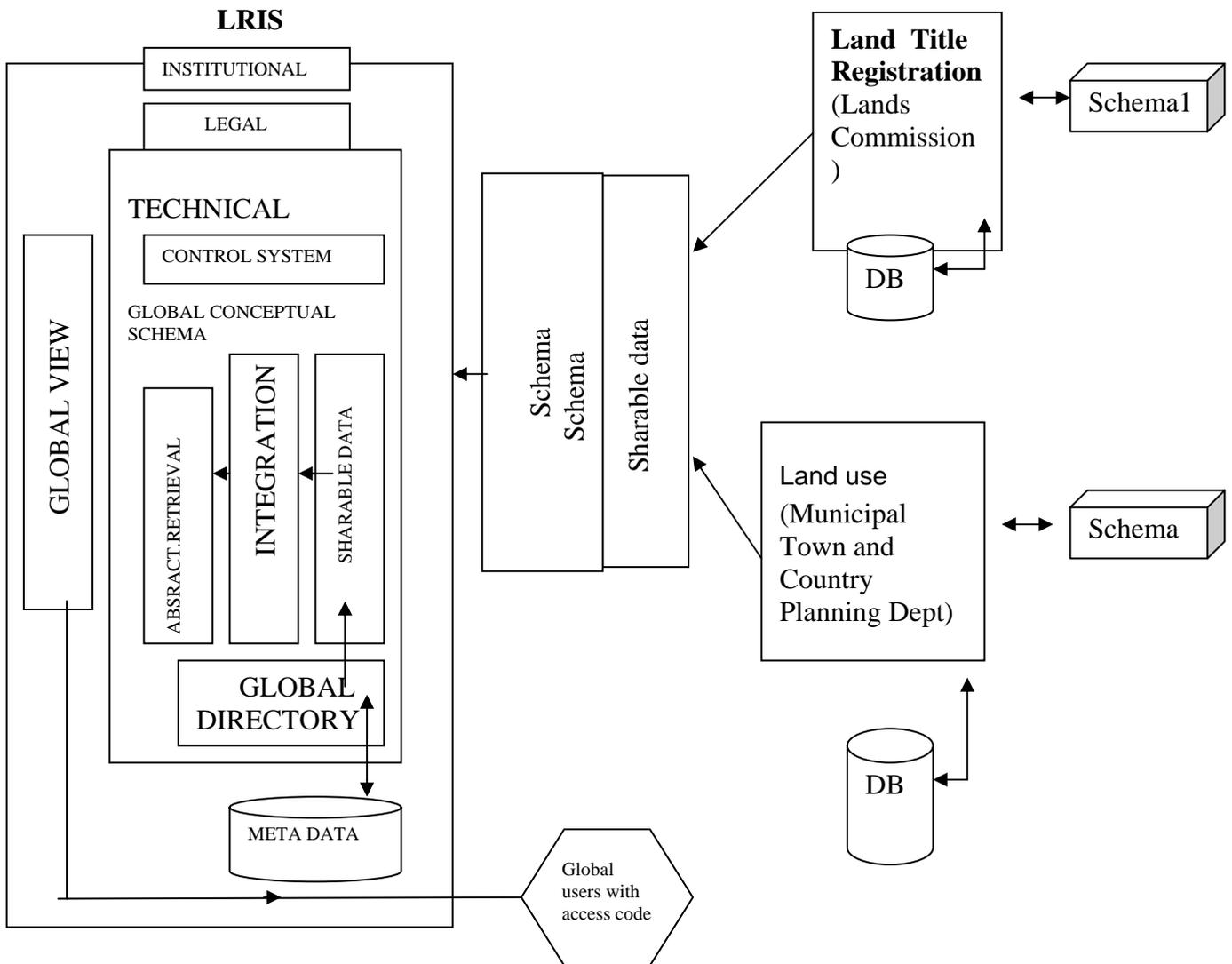
9. SOLUTIONS AND WAY FORWARD

9.1 Records Keeping

By keeping proper and comprehensive accessible, up-to-date and accurate records and inventory of land resources, the necessary information needed for policy formulation and implementation and especially for development planning will be readily available. The above proposal is based on the assumption that records will be managed through an automated system and from a central land information management centre. The land sector agencies should be responsible for the maintenance of their respective information and feed same into the central system to be accessed by all. In this regard the author has developed a prototype of an info-sharing system for the land sector as illustrated below: this picture is not fitting on the page, depend on comments etc. so cannot check...

Proposed System Framework To Assist the Land Sector Agencies to Reduce Duplication Update and Share Relevant Land Information Regarding Ownership and Use. This is a prototype of Two Agencies responsible for land use and land Title records respectively. The Proposed Medium is the Internet Map Server

Local Organisation Servers:



9.2 Description of Components

Service Center: this is where the sharable data is acquired, stored, processed, and delivered to global users. The center plays the role of a clearinghouse for providers and users.

Schema1 – (parcel number, area, location, lessee name, postal address, term of lease, commencement date, rent, review date, registration number.)

Schema2- (parcel number, area, location, land use, permit number, date, fee, applicant name, address)

Schema- (Lessee, land use)

DB - Databases of the organizations.

Sharable Data-This is the part of the database of the two organizations relevant for the design. That is lease title and land use type.

Legal- Extent of liability for data accuracy, privacy, copyright access and alteration authorization.

Institutional- this includes training of staff to improve skills and responsibilities.

Technical- Meta data, transfer standards and controls.

Global Directory-Used to locate relevant information.

Global View-the output point of the retrieved data.

Global users- Users of output information in this case the two organisations

9.3 Application Process

The above information sharing system is a model based upon which information on land use and land title can be incorporated to enable organisations to have regular and automatic updates of their relevant information which they do not produce themselves. When the relevant sharable data has been put together, appropriate Meta data has also been provided to enable the organisations access the information according to agreed standards and semantics through the global view.

The system also has the necessary control mechanism to deal with issues like quality control and security by the use of access codes. The Lands Commission may also not necessarily create a land use database since there is instant access to the information. The Municipality will also have similar conditions on land title information in the grant of the land use permits. Each organisation will only have to maintain its own data and make it available in the sharable data system. (Dadson J.E.K; 2000).

It must however be always borne in mind that this measure is only an aid to land reform and management and its level of success depends on a combination of factors including capacity building and availability of manual records for automation. Even though it is appropriate to ensure that copies of registered land documents are forwarded to the various customary owners, they should also be encouraged to keep reliable records on the transactions regarding their land.

9.3.1 Development of Land Policies

that will blend with existing policies of similar nature such as national development agenda or plan. The country cannot have an effective land policy that does not blend with the poverty reduction strategy or the millennium challenge goals.

9.3.2 Future Exercise of State's Power of Compulsory Acquisition

9.3.2.1 **there is no subtitle here. I am not sure if this is missing or something else is wrong need to be checked from the original- checker tirsdag**

In terms of policy direction, it is proposed that in view of the devastating impact of past compulsory acquisitions on the land rights of community members, especially women, in future, governments must use this power sparingly and with great circumspection. Compulsory acquisitions of land must be guided by strict justification for size of land to be acquired, supported by feasibility reports, development programmes and availability of compensation money. This would ensure that the land rights of individuals and communities as guaranteed by the constitution are not violated. The compensation rental option should be a more prudent option. The will discourage the payment of bulk sums to custodians of the stools who may not invest the monies obtained in a sustainable manner and for the benefit of future generations.

9.3.2.2 Review of Legal and Administrative Processes for Compulsory Acquisition

The Project document of LAP states that the Project would seek to institute legislative protection of the rights of poor farmers who are at risk of being evicted through acquisition of land by the state or local government or through urbanization. The following specific recommendations are made for the review of the legal and administrative processes for compulsory acquisition to make the process more equitable.

First of all, the entire process for the compulsory acquisition of land must be revised to ensure harmonization with the provisions of Article 20 of the constitution, which requires that payment of compensation be made an essential pre-condition for the exercise of the state's power of compulsory acquisition. The basis for the calculation of compensation must also be revised to conform to the prevailing market value of the land acquired. The procedure for compulsory acquisition should also be changed to involve the participation of original land owners in the selection of the site as well as the determination of the mode and quantum of compensation payable for the acquisition. Where there are conflicting compensation claims the compensation amount should be deposited in a bank account pending the determination of the conflict.

9.4 Mechanisms to make Chiefs Accountable for all Land Transactions

As a result of our own customary practices which give so much reverence to our chiefs and elders customary accountability has not been the practice. All land holding groups must have proper documentation of their land transactions. These must be records that can always be relied upon as a source of information on various parcels of land.

9.5 Concept of Land Information Banks something is wrong here

The idea of holding on to land for future development is what is referred to as a land bank. However there is an emerging concept of land bank that requires some consideration. That is having a medium where both owners and prospective purchasers or lessees of land can converge to obtain information on various parcels of land. Thus land banks will have a dual significance, one for preservation for future development and the other for present development. And as was done in the case of the Ghana Environmental Resource Management Program the information can include; location, soil type, title particulars, zoning and planning regulations. To avoid confusion in the minds of the general public the term Land Information bank is hereby proposed.

9.6 Consolidation and Adjudication

For any land reform programs to be successful there is the need to map out an effective land negotiation and participatory plan to ensure that the affected community is very much a part of the exercise. Then also to put land to a more viable and use and to achieve economic benefit from it, fragmented ownership may have to be merged so that larger ownership parcels may be created for large scale projects. In this regard there could be consideration for equivalent reinstatement as a form of compensation.

9.7 Capacity of Personnel

With the introduction of reforms there is the need to train the personnel involved in the management of the system. There will be new and modern tools to work with. The timing of the training program is very crucial here. There have been situations in the past where equipment for projects have been procured without the requisite training for personnel, thus turning the equipment into white elephants.

9.8 Use of Professionals

It has been observed rather sadly that custodians of about 80% of our lands hardly use the services of Professional. By this reference is being made to Surveyors, Administrative Managers, Accountants and Solicitors. There is another school of thought which believes that these Professionals have also not marketed themselves adequately. Thus there is a proliferation of quacks in the system which is detrimental to effective Land management. It is

therefore strongly recommended that mandatory steps be taken to compel land owners to use the services of these professionals in their land transactions.

9.9 Research

It is not enough to carry out research and not have implementation arrangements for the findings. Also since society is dynamic it is necessary to also carry research into current and potential issues including studies in some areas of best practices so as to ensure that the country is able to be abreast with the challenges.

10. CONCLUSION

The paper has made an attempt to unearth some of the salient issues that are considered pertinent for effective administration of the vital land asset. In an attempt to ensure that land as a finite asset is managed in an efficient manner to serve the interest of “the ancestors, the living and the generations yet unborn” it is the hope of the author that the recommendations made will form the basis for in depth discussions as we project into the future. Owners and managers of land have a shared responsibility to ensure the achievement of sound land management.

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BIOLOGRAPHICAL NOTES

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International Conference on Public Administration and Governance, Manila, Philippines – 2002 where he presented a paper on “The Challenges of Automation in the Ghanaian Land Administration Sector”. Commonwealth Workshops on Land and Development, Kenya, Sri Lanka, Barbados as a Resource Person in 2003. He also presented a paper on “Land Administration Framework; The Ghanaian Experience.”

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