

Customary Land Tenure Dynamics at Peri-urban Ghana: Implications for Land Administration System Modeling

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Key words: Customary land tenure dynamics, peri-urban areas, land administration

SUMMARY

Customary land tenure is criticized as dynamic with the institutional framework unable to provide enough tenure security at all times. It is also criticized as ineffective to cope with the trends in land tenure delivery at peri-urban areas where individualization of land and demand for land is high. The aim of this paper is to investigate how customary land tenure systems of Ghana meet the dynamic need of the modern life in peri-urban areas. The study used a mixture of qualitative and quantitative methods including general and in-depth interviews, oral narrations, focus group discussions and questionnaires to collect and analyze data from stakeholders in three peri-urban areas of the three land owning groups in Ghana. The study shows that the institutional framework is resilient with the customary land tenure institutions maintaining their traditional power to allocate land and resolve land conflicts. The findings from the study have implications for land administration in peri-urban areas. Cadastres in these areas do not reflect the situation on the ground. The paper concludes that although dynamics of customary land tenure presents many challenges to the existing land administration system, it also has positive implications which provide framework for designing an alternative land administration system that can cope with the dynamics of customary land tenure.

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1. INTRODUCTION

The Land Administration Systems (LAS) in sub-Saharan Africa have seen land policy reform activities over the past decades. These land policy reforms have aimed at reconciling indigenous land tenure practices with those introduced by colonial regimes in order to eradicate poverty, economic growth, housing, deforestation, food security among others. They have centered on modification of tenure rules on access, ownership, administration and transfer of land rights coupled with land redistribution and/or restitution in some countries (Kalabamu, 2000). Land policy reform programs spearheaded by the World Bank have been focused on land titling whose objective is creating an individualization of land rights as a way of improving tenure security and promoting land market. However, these efforts have not yielded the desired results because research indicates that where land titling registration has been pursued, this has proved slow, expensive, difficult to keep up-to-date, hard for poor people to access (Chauveau et al., 2006) and had a negligible or no impact on investment behaviour and income and is not the only solution to increase tenure security for land development (Zevenbergen, 1998; World Bank, 2003). The effect of customary land tenure on land administration is a global concern (United Nations, 1992; World Bank, 2001). It emphasizes the inclusion of indigenous interests in land as an importance step for maintaining and developing land information systems in support of sustainable development.

At the same time, a number of factors have created evolutionary change in the customary tenure systems. The rules to access, use and transfer land have changed to adapt to the changing context of commercialization, population growth resulting in rural-urban migration, urbanization and high demand for land and its consequent translation into monetary values (Kasanga and Kotey, 2001). How this humankind-to-land relationship changes over time, providing new forms of rights to land which did not exist before, is what we refer to as tenure dynamics. These phenomena are often observed in peri-urban areas where complex functional relations and changing social structure and land rights are observed (Larbi, 2006). For example, several interlocking rights in hierarchy can exist on the same piece of land. LAS so much desired should be able to support this tenure dynamics in order to facilitate decision making and support implementation of those decisions at all levels. Is it necessary to accommodate these tenure dynamics in the design of alternative land administration system for customary areas? This is what this paper seeks to investigate.

This paper is part of an ongoing study that seeks to analyze the dynamics of customary land tenure and how to include that dynamics in the design of land administration systems. It analyses land owners/holders' perception of tenure dynamics and its implications for land administration. Although many aspects of customary land tenure have been investigated, we present dynamics in tenure rules, land ownership, use rights, tenure security and methods of

transfer to support the argument in the paper. The paper examines the different forms of ownership and use rights that are carved from communal land ownership. It discusses how respondents perceived the right they hold in their land – ownership or use rights. Tenure security issues in this paper relate to the displacement of land holders when there are land development activities like rezoning in peri-urban areas. In the methods of land transfer, the paper examines the changes in indigenous methods of land transfer and also respondents' preference of land transfer through sale, inheritance, gift and land pledge. The paper discusses the dynamics in the institutional arrangements for customary land delivery. Innovations in methods of land acquisition, record keeping and the selection of custodians are also discussed.

This paper argues that although the dynamics have implications for land administration, the customary institutions provide framework for dealing with the impact. The innovations in the customary institutional structure provide a framework for designing an alternative land administration model for customary areas.

2. DYNAMICS OF CUSTOMARY LAND TENURE SYSTEMS: A SYNTHESIS OF THE LITERATURE

In customary land tenure, people are linked to land through their membership of groups - clans and families. It is their group standing which gives them access to land. For example, in Ghana, land belongs to the clan, a community made up of family groups consisting of all the descendants - living and dead – of a common ancestor and all generations to come. Consequently their concern was with maintaining their position linked to other persons rather than with rights in land. Links to and rights in persons through whom land was acquired and by whom it could be used were crucial, not rights to land as such (Pottier, 2005).

Customary land tenure systems like many social systems are subject to evolution, reflecting on changes in the society and pressure from the growth of urban areas (Törhönen, 2004). In the course of transmission over time, as well as through experiments, good workable and key elements of the tenure system are retained and poor ones dropped to suit new socio-geopolitical and climatic conditions (Kalabamu, 2000). Aspects of customary land tenure that have changed to reflect on the dynamic humankind-to-land relationship as reported by (Kalabamu, 2000; Boydell and Holzknicht, 2003; Abdulai and Ndekugri, 2007; Obioha, 2008) include change of social value of land to economic value; change of communal rights in land to individual rights; change of customary ownership to other forms of land ownership; and change of land use pattern.

Several authors have discussed the implication of customary land tenure dynamics on land administration. Economists of so called property rights school argue that the flexibility and fluidity of customary land tenure arrangements is tantamount to tenure insecurity and leads to market inefficiencies (Dorner, 1972; World Bank, 1974). Toulmin and Quan (2000) however argue that land registration introduces some simplifications that are difficult to work in a complex and dynamic set of practices as in customary tenure systems. For instance, where many interests co-exist on the same piece of land, the existing system has to simplify it before it can be recorded. This creates tenure security for few and insecurity for many.

Van der Molen (2002) reports that conventional adjudication and mapping processes record information on tenure in its static (non-dynamic) state. However, the information may change as a result of developments that might occur in a society with respect to tenure, value and use of land. For example, in customary land, rights and ownership may change with time to reflect the prevailing conditions which have proven difficult for the conventional land administration system to record. Tuladhar (2004) argues from systems development view that when there are changes in land development activities or policy which consequently affects land tenure, the entities and their relationships also change. However the structures of the land administrations systems (cadastral databases) which have been designed based on predefined rules (situation at an instant) does not allow the changing entities to reflect the dynamic situation in reality.

Customary land tenure systems evolve to cope with the statutory institutional arrangements of many countries, hierarchy of complex rights and interests associated with ownership, control and use of land develops. Larbi (2006) explains that in such areas the right to own, deal with and use land neither rests on the exercise of brute force [customary] nor on the evidence of rights guaranteed by government status. Also there is a clash between traditional and modern authorities with partly overlapping responsibilities as a result of demographic and economic transition (World Bank, 2003). In such situations, it becomes difficult whether the state laws or the customary laws should be applied.

It is now acknowledged that the present statutory institutional arrangements cannot deal with the complexities of customary land tenure dynamics. If land administration wants to serve the need of the society at all times, then it should be able to record the dynamics aspects of tenure as well. Innovative approaches are required to design such systems, especially in sub-Saharan Africa countries like Ghana, where more than 80% of land mass is under customary tenure arrangements. This will require thorough analysis of customary land tenure systems and the customary institutional framework for land delivery.

3. RESEARCH METHODOLOGY

3.1 Location of the Study

The study was carried out in three peri-urban customary areas in Ghana: Gbawe (family lands), Japekrom (stool land) and Tamale (skin land). The tenure systems of the study areas blend state and customary land ownership. These areas were selected for fair representations of the three land owning groups in Ghana and also in order to determine whether the perceived problems highlighted were limited to part of the country or are growing national problem.

3.2 Methods of Data Collection

The study is based on qualitative and quantitative data collected in the three (3) study areas. The qualitative data collected was based on a variety of techniques including snowballing, individual and group interviews, focus group discussions and oral narrations with chiefs, other traditional leaders and land holders in the identified settlements. This was done in order to understand relationships between inhabitants (key informants) and their land so as to identify aspects of tenure that are dynamic. The key informant interviewing technique was adopted to overcome the interpretation problems that might arise from the observations. The technique allowed follow up questions to back up interviews and also offered the opportunity for exploring the necessary knowledge through persistent questions.

Based on the initial analysis and findings of the transcribed qualitative data, the quantitative data from sample size of 312 stakeholders in 8 communities were collected. Quantitative data was collected on how land holders and users have conducted and participated in land acquisition processes, land use, land transfer and the indigenous dispute mechanisms. To consolidate the findings of the study, current trends in terms of spatial structure and land use patterns were explored through physical observation and use of the recent satellite imagery (Quick bird). Secondary data (both published and unpublished) was gathered through literature study which helped to understand the nature of customary tenure dynamics.

The method of analysis employed in the study is the descriptive analytical method involving critical examinations and explanations of information and data collected during the fieldwork. Data of each case is analyzed separately and also in comparison with other cases to project the dynamic aspects of customary land tenure and the factors responsible for the change.

4. PRESENTATION OF FINDINGS

In the areas under study some aspects of the ‘normal’ customary land tenure systems were discovered to have undergone evolution. The study indicates different dimensions of change in customary land tenure: social settings, tenure rules, land ownership and use rights, land tenure security, methods of transferring customary land and customary institutional mechanism for land delivery. The nature of the change, the extent of the change, the cause of the change and the effect of the change on land administration form the basis of presenting these findings.

4.1 Dynamics in social settings and tenure rules

Social systems of customary areas have been developed along social settings in which inheritance plays equitable function. Population growth and changing economic importance of land has translated into series of changes in social relations, farming practices and security implications. Communal-based farming systems where groups of people come together to help each other to cultivate their respective farms no longer exist within the communities. Individual interest supersedes communal interest in all the study areas. Where there is land for

agriculture, family members cultivate lineage lands with changing rules on sharing of the farm plots. The high demand for money and commercialization in land activities has influenced land owners to change some aspects of tenure rules in most peri-urban areas. Rules for inheritance and successions which seek to protect subsistence and security of the group/community ownership are modified to suit individualization. Certain traditional rules, taboos and customs that protect community and social interests have been seen as out-dated and having negative impact on productivity and are therefore violated. The existence of these traditional rules had ensured proper use of land resources and provided that land could be recalled at anytime and that future clan members would always have access to land. For example, in Japekrom, community members were banned from farming or tilling the land on Tuesdays – a day set aside for social work and discussing issues pertinent to the community. Rules that prevent farming in forest or along river banks are changed and violated resulting in many environmental and social problems in the various communities.

Rules governing the transfer of customary land are now unclear and constitute huge source of tenure insecurity. For example, according to one of the key informants of Japekrom, the aspect of the inheritance rule, which stipulates that where there is no successor to a lineage, land is returned to the community pool, has changed. Land owners (alloidal owners) try to manipulate these rules to their advantage in order to exploit land users (usufructs and settlers). Changing tenure rules result in land conflicts and unfair practices. Land sales have contributed to the break up of the social structures of these communities. Chiefs sell communal land while individual families try to invest into land that belongs to the entire community so they can claim it. We investigate respondents' perception on the effectiveness of customary laws and tenure rules in the three customary areas (Table 1).

Table 1
Respondents' perception of the effectiveness of tenure rules

<i>How effective and binding are the rules governing customary land holding in this area?</i>	Japekrom		Tamale		Gbawe	
	Indigene (n=67)	Settler (n=36)	Indigene (n=85)	Settler (n=65)	Indigene (n=30)	Settler (n=20)
Effective and binding (%)	36	17	55	32	93	75
Ineffective and non-binding (%)	64	83	45	68	7	25

The trend shows that rules governing land delivery in Gbawe are effective and binding. Gbawe family has over the years enforced customary laws in their land management practices. Land is equitably distributed to family members who can sublease or use. Proceeds from the lease have been used for public good. However the situation is different in Tamale and Japekrom where respondents were uncertain about the effectiveness of the tenure rules. The informants claim that although customary rules still prevail, they are not enforced in practice.

The manipulation of customary rules has been a source of worry to many customary authorities as expressed by one of the sub-chiefs of Japekrom who said

“Although the rules for inheritance stipulates that portion or quantity of land to be inherited be added to the community pool, these rules have gradually changed over time such that sometimes what need to be given to the family to sustain the lineage are transferred to the children of the deceased through ‘wills’ (*Nana Asuako Tachie; qualitative interview*).

4.2 Dynamics in communal land ownership and use rights

In theory, land is communally owned in all the study areas, and customary trustees such as chiefs and family heads hold the land in trust for the families, stools and skins. These customary trustees hold the allodial title from which all other rights are derived. Members of the stools/skins/families have ‘usufructory’ rights that allow them to freely enter into forest and neighboring farmlands to collect fruits and mushrooms. Pressure by forces of modernization that is transforming traditional society to capitalist one has forced family heads and chiefs to dispose communal land to government and individuals through sale or lease. Many other interests have carved from communal land ownership, the most common among them being the common law freehold as well as short and long-term leasehold.

Usufructory rights have been curtailed because there is no idle forest or land. In Japekrom and Tamale, indigenes have to enter into leasehold agreement with their families/stools/skins in order to secure their interests. In some cases, land is sold to these community members just like any other person. Leasehold interest, as a concept is foreign to some of the allodial owners. A typical illustration to this is a response to the question on how long developers can use their acquired land for residential purposes, as “forever” (*Chandela-Naa, Vittin, peri-urban Tamale, Qualitative interview*). However permanent alienation of land is against the customary practices and the constitution of Ghana (1992) which prevents the creation of freehold titles in customary land. Landholders who hold user rights on customary land perceive it as ownership. Table 2 shows how respondents perceived their land holding-ownership or use rights.

Table 2

Respondents’ perception of the type of their landholding

Type of land holding	Japekrom		Tamale		Gbawe	
	Indigene (n=67)	Settler (n=36)	Indigene (n=85)	Settler (n=65)	Indigene (n=30)	Settler (n=20)
Use right under communal ownership (%)	48	11	19	11	56	15
Ownership (%)	52	89	81	89	54	85

The trend shows that more than 85% of settlers perceived their land holding as ownership. There is no difference in perception of the settlers in the three areas. However, the results indicate significant difference in perception of the indigenes. For example, 81% of indigenes of Tamale perceived their land holding as ownership. These respondents were of the view that only land units for cemetery, farmlands and public places are under communal ownership.

The differences in perception for the three study areas can be explained from the fact that Japekrom is less urbanized than the other study areas with subsistence farming as the predominant activity. Many indigenes therefore perceived their farmlands as community resource. Gbawe has well functioning customary institutions which ensure the enforcement of customary laws. Generally communal ownership is weakened - giving way to individualization of communal land rights. Simpson (1976) observes that the individualization of communal rights prevents communities from exercising their traditional rights to resume possession of land when there is abandonment.

4.3 Dynamics in tenure security

In the pre-colonial era, any group or members of communities owning the allodial title may acquire the customary freehold title or interest in land (usufructuary right) by exercising their inherent right to develop any vacant virgin communal land. The holder has security for use and only terminable upon abandonment, forfeiture or with consent and concurrence of the interest holder (Ollenu, 1962). Tenure security for usufructs was high because their rights of occupation and use of land were recognized by the society.

However, the security of tenure for usufructs at peri-urban areas has been a subject of debate in recent times. Usufructs at peri-urban areas lose their farmlands during land development or spatial planning, with little or no compensation. This has implications on the people because their livelihoods depend on farming. The study investigates respondents' experience of land loss in the various communities as results of land development activities and whether or not they were compensated (Table 3).

Table 3

Respondents' experiences of land loss and compensation

<i>Response</i>	Japekrom		Tamale		Gbawe	
	Indigene (n=67)	Settler (n=36)	Indigene (n=85)	Settler (n=65)	Indigene (n=30)	Settler (n=20)
Have you ever lost all or part of the land you own/use before? (%)	42	17	38	28	63	40
Were you compensated ? (%)	14	50	50	62	60	68

The trend shows that in all the communities, more indigenes lost land than settlers. The affected persons lost their land through compulsory acquisition by State, re-allocation to other people or re-zoning during land use planning. Most of the indigenes that lost their land are farmers whose farmland gave way to residential developments. In the case of the settlers, most informants lost their land as a result of 'double allocation' - where the same piece of land is allocated to more than one person. The trend shows that more settlers than indigenes were compensated. Most of these settlers have been re-allocated different land. It was also observed that settlers who were not compensated had acquired their land improperly. The trend shows that settlers have better tenure security than indigenes. This tenure insecurity creates a kind of struggle between indigenes and allodial title holders. For example, in Japekrom, there are

severe struggles between indigenous farmers and families on one hand and chiefs on the other over the right to convert their farmland into residential use.

4.4 Dynamics in methods of transfer

In pre-colonial era, methods of transferring land rights were basically within lineage through gift and inheritance. Land rights could also be transferred to non-members of the lineage through rent, sharecropping contracts (tenancies), customary mortgage and land pledging. These forms and mechanisms of land transfer have roots embedded in traditions and also a reflection of the socio-economic arrangements of the area (Agbosu, 2000). Land gift system was a common practice in all the three study areas. In this case, the original owner of the title presents the land to another person without exchange of money or property. This act is a permanent one which cannot be reversed, as long as there are witnesses to the transfer. This type of transfer is a benevolent one and normally occurs between friends, relatives and servants of traditional rulers. Land transfer through inheritance follows matrilineal or patrilineal rule, depending on the kinship organization of an ethnic group. In patrilineal inheritance (practice in Japekrom), land goes to the eldest son of the brother of the diseased while the matrilineal inheritance (practiced in Gbawe and Tamale) transfer land to the eldest son of the sister of the diseased. Land pledging is customary way of transferring land whereby the original owner of the land uses the title either to borrow money from an individual or group of people. Land pledging is indigenous form of collateral system.

Table 4

Respondents' preference on methods of transferring rights in customary land

<i>Response</i>	Japekrom		Tamale		Gbawe	
	Indigene (n=67)	Settler (n=36)	Indigene (n=85)	Settler (n=65)	Indigene (n=30)	Settler (n=20)
	Yes	Yes	Yes	Yes	Yes	Yes
Sale (%)	78	92	82	93	65	100
Inheritance (through main lineage) (%)	45	12	42	10	50	5
Gift (%)	20	5	18	5	10	2
Land pledging (%)	28	3	22	10	5	5

The scarcity of land and appreciation in value of land has made land transfer through gift and land pledging, things of the past. Trend in Table 4 shows less than 20% of respondents in all the study areas want to give their title in land as gift. Even for those who want to present their land as gift, they would want to present it to their closed relatives.

More indigenes than settlers prefer transferring land through the main family lineage. Although the rules regarding inheritance have not changed, individualization of communal land has affected land transfer through inheritance. Many people misinterpret the intestate succession law (PNDCL 111), which stipulates that assets of deceased person go to the children of the deceased family. This way they try to transfer communal land to their own children. The trend also shows that respondents have less preference for land pledging. The

informants also reported that in several cases such contracts lead to litigation and that they will not want to involve themselves in such transactions in modern times. They also mentioned the availability of the financial institutions (credit union) to give credit makes land pledging no more worthwhile.

Evidence from the study suggests, to a greater degree, monetization of land transfers across the three study areas. In Japekrom, for instance, the Omanehene of the Mpuasu-Japekrom Traditional area complained bitterly about haphazard sale of customary land. Indigenes, prepare site plans for their farmlands, subdivide them and sell to settlers – without the consent of anybody in the family or chief. A typical view of a settler of Tamale to explain his point to sell land as

‘I have properly acquired the land from the chief, the necessary customary rites have been performed. This land is therefore my bona-fide property. I can sell or transfer my right to anybody if I so wish’ (*Abdul Latif; qualitative interview*).

5. DYNAMICS IN THE INSTITUTIONAL ARRANGEMENTS OF CUSTOMARY LAND TENURE

The recent development has seen institutional innovation by customary land tenure institutions seeking to reaffirm their control over their territories and resources (Chauveau et al., 2006). In all the study areas, customary institutions have set up structures to improve their land management: creating new procedures for land acquisition; improved conflict resolution mechanism; recording of land transactions; and introduction of educated chiefs into chieftaincy institutions.

5.1 Land acquisition and delivery processes

In the past, when land was in abundance, occupation by the individual is upon an actual grant. The right to give the grant on the land is vested in the headman of the village who is answerable to the sub-chief or to the head of the quota in the town, to which quota the land is attached (Ollenu, 1962). Individuals or subjects of the stools or families who want to acquire land for farming need no permission for the rights to occupy vacant land. However, in order to avoid any clash with other individuals already occupying land in the area, it becomes necessary for the applicant to ask for express grant of the land for farming through the head of the unit. Individual family heads and care taker chiefs were therefore responsible for allocating vacant and bush lands to people who needed it, most especially settlers. Land acquisition by indigenes was through appropriation, in which indigenes farm on vacant land of any size belonging to the family so long as nobody occupied it. Settlers were given farmland by their landlords/household heads without any problems. In case of land for development, settlers were introduced to the Chiefs by their landlords/household heads before allocating land to them. In all the cases, settlers offer ‘drink money’ in the form of kola nuts, yams, guinea fowls and drinks to the traditional authority in order to seal the transaction.

When land became scarce and the economic value of land appreciated, all land allocations including land for development and farming has to pass through not only the village chief, but

the paramount chief who has to give his final approval. The recent experience has seen changes in the land acquisition processes which blend customary methods with aspects of statutory systems. In many communities land allocations are based on prepared land use planning schemes (rudimentary or statutory approved). They also involve the services of surveyors and other professional bodies in the land allocation processes. Today both indigenes and settlers can be allocated land only after they have gone through the appropriate procedures. The use of “allocation notes” issued by chiefs to land holders as evidence of allocation and payment soon became a common practice. The allocation note contains the terms in the contract between the various stools/skins and the developers. It is subsequently used by land holders during land registration processes with the formal land sector agencies. We investigated the security offered by the allocation note to landholders. Table 5 shows respondents’ perception of tenure security offered by the allocation note to the land holder.

Table 5

Respondents’ perception of tenure security offered by the allocation note

<i>Response</i>	Japekrom		Tamale		Gbawe	
	Indigene (n=67)	Settler (n=36)	Indigene (n=85)	Settler (n=65)	Indigene (n=30)	Settler (n=20)
	Yes	Yes	Yes	Yes	Yes	Yes
Yes (%)	75	65	85	63	87	50
No (%)	10	36	5	32	10	40
Don’t know (%)	15	9	10	5	3	10

The results show that more than 75% of indigenes from all the study area perceived that, the allocation note offer them high tenure security. However, 65%, 63% and 50% of settlers from Japekrom, Tamale and Gbawe respectively perceived that the allocation note offers them tenure security. There is significant difference in perception between the indigenes and the settlers over the security provided by the allocation note. The settler respondents argue that sometimes chiefs can re-allocate the same piece of land to other people although one may have been issued the allocation note. They were however of the opinion that securing document from the statutory institutions with governments approval will improve their tenure security. They also explained that the allocation note has limitation because the financial institutions do not accept such documents as collateral. However, they were quick to add that when the indigenous land management is enhanced and the problems associated with double allocation dealt with, the financial institutions will accept such documents.

5.2 Recording of land transactions

It is the responsibility of chiefs to check the day to day activities of the land. These activities are characterized by conflicts, attributed to the absence of recording land transactions which used to be oral and unwritten. The study shows some innovations from the customary land tenure institutions for recording land transaction. One of the innovations is the setting up of local land management committees to manage lands. This dissociates political chieftaincy from land chieftaincy, both of which were handled by chiefs and family heads. For example,

Japekrom has Land and Natural Resources Committee (LNRC) responsible for land allocations and management of all natural resources. The mandate of the committee is to ensure resourceful use of all natural resources including land in the paramount area. The six-member committee has a chief who represents the traditional council as the chairperson. There are no immediate known criteria for selecting the other five members of the committee, however, persons knowledgeable in land tenure and the ability to read and write are much considered (*Emmanuel Abisa, Secretary to the LNRC, Japekrom, qualitative interview*). The committee has also been created to fit into the statutory established local council. Prospective developers apply for land through special application forms which require the personal details of the applicant. This information is vetted and approved by the local land committees before land can be issued. When allocations are approved, applicants are issued 'allocation note' endorsed by the paramount chief.

Medium for storing and recording data ranges from simple form to sophisticated data storage equipments. Information on land transactions are stored on simple files and ledger books. Copies of allocation notes are kept by these institutions for future reference. Sometimes, names of proprietors are written on copies of layouts used for the land allocation. Cash transactions are recorded into ledgers and cash books. The particulars of landholders, how much they paid as drink money and date on which the land was allocated are recorded in log books. In Gbawe, computers have been provided by the Government of Ghana from the ongoing Land Administration Project (LAP) for their activities. The family relies on government agencies for advice on proper record keeping, prudent ground rent collection strategies, modern tools and other land related advices.

5.3 Conflict resolution mechanism

Conflicts over customary land in the study areas occur at different levels. It can either occur between landholders, alloidal owners and in many cases between landholders and alloidal owners. The common forms of land conflict in the study area are 'indeterminate boundary' and 'double allocation' of plots. Indeterminate boundary deals with uncertainty of the boundary between neighbors. Double allocation is where the same land is allocated to two or more persons. Whatever forms the conflict occurs it is the responsibility of the customary tenure institutions to exercise their judicial role through the conflict resolution mechanism. These mechanisms are rooted in the culture and history of the African people, and are in one way or another unique to each community. The customary courts rely on goodwill of the society to adhere to its ruling. It involves mediation and arbitration which are based on customary laws and local knowledge. Parties involved in the conflict are brought to a common platform (in the presence of the chief and in the field) to testify their knowledge for the amicable solution of the conflict.

The recent development has seen significant improvements in the conflict resolution mechanism. Land surveyors are called upon to survey for arbitration and demarcate when the conflict is resolved. Also, the 'allocation note' issued to proprietors are used as a tool for solving conflicts. Table 6 shows respondents preference to the mechanism for solving conflicts.

Table 6*Respondents' preference on conflict resolution mechanism*

<i>Which of the following means of arbitration would you prefer to use when you are confronted with land conflict?</i>	Japekrom		Tamale		Gbawe	
	Indigene (n=67)	Settler (n=36)	Indigene (n=85)	Settler (n=65)	Indigene (n=30)	Settler (n=20)
Customary mechanism (%)	81	92	78	83	83	75
State courts (%)	19	8	22	17	17	25

Most of respondents' irrespective of their community status prefer customary conflict resolution mechanism to state courts for solving conflicts. The common reasons assigned by respondents for their choice are the high cost and the bureaucratic processes involved in statutory court procedures. Others said chiefs have more power to enforce their ruling than the state courts which will have to rely on the police and other institutions for enforcement. This is clearly shown in the remark from a female teacher of Jisonayili as

“Chiefs are in charge of allocation of land in their area. They know whoever they have allocated the land and therefore should be accountable and responsible for solving any problem they create. They can compensate affected person without any additional cost to the proprietor” (Joyce *Sugro*, *qualitative interview*).

5.4 Proliferation of literate and educated chiefs

The scheme of customary landholding also reflects on the socio-political hierarchy of the community. The political structure of chieftaincy is based on kingship, with each lineage being a political unit with its own headman acting as the representative of higher council. The primary form of this social organization is the family - the basic unit in a society based on matrilineal. Through the exogamous matrilineal system, local identity and individual status, inheritance, succession to wealth and to political offices, and even basic relations within the village community are determined. Every lineage is a corporate group with its own identity, group solidarity, exclusive property, and symbols. Chiefs are elected within this lineage. The basic requirements for electing chiefs include good character, knowledge of the customs of the community and acceptability of the candidature by the entire community. The chief should not have any deformities that will impede his work.

However, a modern Chief needs to possess other potentials – education being one of the important criteria. As customary authorities have to liaise with statutory institutions, it has become a practical necessity that chiefs should be able to read and write. The recent development has seen members outside the royal family being bestowed as chief. These chiefs are created as means of tapping the knowledge, skills or resources of the people for the community.

6. DISCUSSIONS

This study outlined several changes in some aspects of the customary land tenure relating to ownership, use rights, tenure rules, methods of land acquisition and transfer. For example, there have been changes in the customary rule that prevented complete alienation of customary land. While in the past customary law prevents the sale of customary land, presently some members of the communities sell customary land in which they have use rights in exchange for money. Land transfer is predominantly through sale. Although the constitution of Ghana does not allow the sale of customary land, the recent development where chiefs quote high values as 'drink money' make it difficult to separate paying for the value of the land from the 'drink money' (Kasanga et al., 1996). The rule of inheritance specifying who to inherit land and what portion should go to the extended family is modified or not followed. Tenure security for the indigenous farmers is under great threat. Farmers at peri-urban areas lose their land to chiefs who allocate farmlands to settlers without compensation. In order to protect their legitimate interest, these farmers also sell their farmlands to other people resulting in struggle and contestation between these indigenes and their chiefs. In some cases, indigenes take their chiefs to statutory law courts, a situation which is against customary tradition.

The above has implications on the social setting of these peri-urban areas. Intra-family land relations which focus on the way land rights should be distributed and managed by lineages and extended families have greatly been affected. The need of these communities differ at different times – influencing the extent of change that occur in the land tenure system. Customary land tenure system is criticized for not consistently providing enough security because it is dynamic. At the same time, there is no clear evidence that the current traditional institutional and policy arrangements are effective for tenure security in customary areas. There is urgent need to bridge between customary and statutory laws (Toulmin, 2009) and also customary and statutory institution (World Bank, 2003). Appropriate institutional and legislative innovations are needed to administer effectively the complex rights and interests in land to create an enabling environment for land market. Failure to do this creates an environment for land grabbing and conflict (World Bank, 2003).

Meanwhile, there have been several innovations in the customary land delivery mechanism. Methods of allocation and recording of land rights have been modified to suit modern conditions. Land allocation committees and customary land secretariats have been set up by chiefs and family heads to manage land. Members of some of these committees are constituted by professionals from these villages who work on the committee as social contributions to their communities (Arko-Adjei, 2006).

Customary or traditional justice systems have played and still play a key role in protecting land rights where they have been legalized by the state, as in Ghana. Most people still rely on the indigenous ruling mechanism to solve conflicts on land. The stakeholders' preference for the customary conflict resolution mechanism to state courts (Table 6) shows that either the state institutions are not functioning well or people cannot meet the cost to access these

institutions. Kasanga and Kotey (2001) reports that the Asantehene (King of the Ashanti nation) Otumfuo Osei Tutu II in 1999 authorized all land disputes in the Kumasi Traditional Council area to be withdrawn from the regular courts for traditional court settlement. Within one month this order was obeyed and several protracted land disputes, which had been pending for over ten years were all settled. This portrays the authority of the customary conflict solving institutions and the confidence the people have in the institutions.

Although there are some indications of tenure insecurity in customary land tenure systems, the study has shown that providing tenure security does not require sophisticated rules and tools. For land administration systems to perform well in peri-urban customary areas, appropriate strategies have to be adopted. In order to cope with the pace of these social changes, land administration must follow a wise migration path (Arko-Adjei, 2001) that recognizes wide range of interests in the customary land. The flexibility of the customary institutions and the social systems allows for simple and flexible tools to be used. Land administration systems should take advantage of the innovations introduced by customary land tenure institutions that are seeking to affirm their control over their land resources.

7. CONCLUSIONS

The paper has demonstrated that customary land tenure systems evolve to cope with the socio-economic pressure of peri-urban communities. Customary rules for land delivery have mutated and are modified to suit commercialization. There is high degree of individualization of land within the communities. Communal rights in customary land have changed to individual rights whilst use rights in customary land is being replaced with ownership. Different forms of user rights have been introduced into customary land tenure systems. Tenure security for the usufructs has been affected and that indigenes have to protect their interest by entering into leasehold agreement with allodial owners. Land transfer is predominantly by sale which is against the traditional norm that land should be preserved for numerous unborn children. The dynamics create several forms of land rights at peri-urban areas which have proved difficult for the conventional land administration system to handle. However, the customary institutional structures have proven resilient to the pressure from the external environs. Several innovations have been introduced into the customary land tenure institutions as a way of reaffirming their control over land and also to meet the demand of the statutory systems. Land allocation committees set up have adopted different approaches for recording and writing transactions on customary land. Chiefs have introduced land allocation committees to deal with land allocation.

The poor performances of land administration systems in customary areas have been associated with these tenure dynamisms. The biggest problem is the inability to deal with the dynamic aspect of land tenure – for example, where several interests exist on the same piece of land. For example, African rural people generally need both secure individual rights to farm plots and secure collective rights to common pool resources upon which the whole villages depend. At peri-urban areas, households and communities may also need to be able to exchange their rights, sometimes through the market. Since land administration should serve the need of the society all the time, it should be able to deal with these dynamic aspects of

tenure. There is clear indication that the current land administration based on technical titling processes cannot handle this. Innovations are much needed in the provision of secured rights in customary areas.

Land administration should take advantage of the dynamics in the customary institutional mechanism for land acquisition and delivery to design flexible systems to mitigate the negative effect of the dynamism. A systematic migration path is required to deal with the different interest that occurs in customary land at different times. Proper assessment of the customary institutions is needed, if it should be incorporated or used in land administration.

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