Land Use Regulations and Urban Planning Initiatives in Accra, Ghana

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Our government rests in public opinion. Whoever can change public opinion, can change the government, practically just so much. Public opinion, on any subject, always has a 'central idea,' from which all its minor thoughts radiate (Abraham Lincoln, 1856).

In this and like communities, public sentiment is everything. With public sentiment, nothing can fail; without it nothing can succeed. Consequently he who moulds public sentiment goes deeper than he who enacts statues or pronounces decisions (Abraham Lincoln, 1858).

Abstract

This paper is submitted in partial fulfillment of the course requirements of Advanced Issues in Development Planning, a course led by the Earth Institute's Millennium Cities Initiative that included the active participation of faculty, students and staff from Columbia University's Graduate School of Architecture, Planning and Preservation and the School of Engineering. The paper is intended to contribute to the information gathering process aimed at realizing the strategic plan for the development of the Accra, Ghana, metropolitan region initiated by Accra's Mayor, the Honorable Alfred Okoe Vanderpuije. It focuses on the prospects for instituting land use policy initiatives in the Accra metropolitan region and the challenges posed by Ghana's pluralistic land tenure system, which consists of a traditional communal system of law along with one based on the rights of individual property ownership derived from English common law and constitutional and statutory law. The paper suggests that the effectiveness of a plan for development in Accra will be heavily influenced by the local and national government's ability to: 1) institute effective land use policies amidst potentially conflicting land tenure systems; 2) achieve a balance between the imposition and enforcement of necessary command-and-control regulations in accordance with a coordinated list of goals for the city and region; and 3) garner support for the same goals by various local community stakeholders on a large scale. It will also depend upon the choices made by the local and national government in designing and implementing the plan and the resources devoted to those efforts. The paper concludes that further research is needed to identify ways of overcoming political challenges, find creative solutions that address and reflect Ghana's unique land tenure system and meet capacity challenges.

I. <u>INTRODUCTION</u>

The Mayor of Accra, Honorable Alfred Okoe Vanderpuije, has identified a number of important goals to be included in a plan for development of the Accra metropolitan region.

These goals include, but are not limited to, the following:

- 1. Alleviating traffic congestion through the removal of unauthorized structures on streets;
- 2. Improving drainage systems through the removal of unauthorized structures in water ways and the construction of new drains;
- 3. Enhancing tax revenue collection through cadastral mapping and other means;
- 4. Instituting beautification efforts, including measures that address signage;
- 5. Instituting road and transportation improvements to existing roads and constructing new roads and mass transit;
- 6. Improving social facilities, including water; and
- 7. Utilizing communal land for the development of needed amenities such as parks.¹

Land use policies have proven an effective means of achieving similar objectives in other developing cities. Since the Accra metropolitan region currently possesses few effective land use policies, the region stands to benefit a great deal from the establishment of a comprehensive and diverse set of policies. In this sense, the region demonstrates tremendous opportunity for improvement but is also very likely to encounter significant challenges in implementing an effective body of land use policies. This paper sets out to outline some of the most pressing challenges while presenting assessments by academics on the subject. It also seeks to identify a number of items requiring further research before implementing land use regulations.

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¹ These goals were included in the presentation by the Mayor Vanderpuije at the Earth Institute on February 16, 2010.

First and foremost, Accra's unique land tenure system makes the implementation of land use policies an interesting challenge; the typical models of land use policies under the English common law system do not necessarily fit the customary land tenure system, nor were they designed to do so. Accra's land tenure system is characterized by the co-existence of two very different land tenure systems: 1) a traditional communal system governed by customary law and 2) an English common law system. The English common law system recognizes the ownership of property by individuals and the bundle of rights the owner has by virtue of obtaining a title to property. While the nature and scope of land use controls typically utilized in the English common law system vary with respect to the apportionment of power between property owners and the government according to differing ideological viewpoints, land use controls and commands are quite common under common law land tenure systems. Indeed, the common law system has a relatively long history in utilizing land use policies and a wide variety of models from which to draw in creating a menu of laws and regulations that could address the various goals set out for Accra.

By contrast, the traditional communal land tenure system in Ghana, in which land is managed by a chief, head of a family or stool for the benefit of a community, does not, based on the research conducted for the purpose of this paper, have a similar record with respect to the implementation of land use policies. The nature of the traditional system places powers analogous to those from which land use policies stem in the hands of local chiefs and heads of families or stools. In this sense, if land use controls or commands were imposed from above, they would likely contradict one of the foundational principles associated with the traditional system, which explicitly places such control within the powers of the local chief or family head. Plans are created, implemented and enforced by those in charge of the communal land as

opposed to a governmental body. Nevertheless, while the implementation of land use policies is in many ways at odds with the customary land tenure system, this does not necessarily imply that land use policies cannot exist in the customary land tenure system. Rather, the creation of effective land use policies will require a new approach – one that is tailored to the unique character and framework of the customary land tenure system.

A second and equally important challenge encountered in Accra with respect to the imposition of land use policies is the capacity of the local government to draft, enact and enforce such policies. Accra law stems from a variety of sources, including customary law, English common law, the Ghanaian Constitution and specific statutes. For any plan to succeed, it will require a clearly defined and widely accepted body of law that provides for both consistent and desirable outcomes. Inconsistencies between various sources of law must be identified and addressed, and changes to the law must be communicated to and accepted by all those affected. Furthermore, a means of effectively enforcing the law must be provided for and carried out.

There is a third challenge facing the implementation of land use policies in Accra. In order for the land use policies put forth by a governmental body to be effective, they require a certain degree of cooperation with a chief or family head as well as other holders of rights and beneficiaries under the existing customary land tenure system. This is a significant political hurdle – one that requires a drastic change to the status quo.

This paper is not intended to provide a comprehensive evaluation of all issues pertaining to the implementation of land use policy reforms in Accra, nor is it a comprehensive list of recommendations for such land use policy reforms. Rather, it seeks to provide an initial assessment of opportunities and challenges from an urban planning perspective, with respect to

the Mayor's goals and preliminary guidance, as the work on a development plan for Accra continues. The paper is divided into five sections:

- (1) A summary of the relevant history pertaining to the land tenure system in Accra, Ghana;
- (2) An examination of the current regulatory framework under which the traditional communal and English common law land tenure systems co-exist and the opportunities and challenges for land use policies within this framework;
- (3) A summary of challenges to land use policy reform efforts;
- (4) Strategy recommendations for implementing a set of land use policies consistent with some of the Mayor of Accra's goals; and
- (5) A list of remaining questions, the answers to which would contribute to strategies designed to meet a variety of urban planning goals in Accra, such as those expressed by the Mayor of Accra.

II. HISTORICAL BACKGROUND

A. Ghana Land Tenure System History

During the Pre-Colonial era and up until the late 19th Century, land ownership in Ghana was practiced differently than in Western countries. The concept of land ownership on the part of the individual did not exist. Instead, land was held by a group or community. The Ghanaian communal system of land ownership is founded upon a religious view of land, which frames it as a community asset and resource as opposed to an individual one. The system also associates land with ancestral heritage. In this view, to alienate land absolutely would be to sever the living from the dead ancestors as land provides the bridge between the two (Agbosu, 2007).

The Ghanaian traditional communal land tenure system included several concepts that do not exist in the English common law system of property ownership. The first concept concerns the term *allodial title*, which refers to a residual title to a community's land – generally managed by a Chief, head of a family or stool. All other rights related to land are derived from this

allodial right, and this right is vested in community ownership. The community finds economic, legal and social expression in this communal right (Agbosu, 2007).

The second concept is known as the *usufruct* or *usufructory* interest, also referred to as a *customary law freehold* interest. The usufructory or customary law freehold interest is an interest or title to land by which a member of a community acquires land by exercising his or her inherent right to develop it. The community holds allodial title in the land, and the usufructory interest is obtained from the allodial title (Agbosu, 2007). An usufruct interest is a recognized estate that can be transferred under customary law, and is potentially perpetual (Agbosu, 2007). There are secondary rights associated with the usufructory right, such as rights relating to the utilization of land for the purpose of sustenance (Agbosu, 2007).

The manager of an allodial title, such as a chief, cannot displace or extinguish the usufruct, since the rights associated with the allodial title and the usufructory interest are understood to co-exist. So long as nothing is done by the usufruct holder to prejudice the interest of the allodial title holder, the usufructory right remains. However, there are certain limited and specific circumstances under customary law by which the usufructory right can be relinquished (Agbosu, 2007).

During the pre-colonial era in Ghana, land was abundant and there was little competition for land under the customary system. Despite seemingly ambiguous methods for distinguishing between various communal land ownership interests, the abundance of land, and the communal and religious views of it, resulted in very few disputes concerning property ownership (Agbosu, 2007). In the late 1800s, new economic activities began to emerge, changing the manner in

which land was treated in Ghana and setting the stage for land tenure disputes and efforts to modify the communal system, which exist to this day (Agbosu, 2007).

Colonial Ghana witnessed many radical changes, among them changes to its communal land ownership system. In the late 19th Century, as global norms surrounding slavery changed, Ghana shifted from an economy based on the slave trade to one that capitalized on resources. Traders sought to gain profit through trading precious metals and agricultural and forest goods. The cocoa industry emerged in Ghana in a region of Africa that was known as the "Gold Coast." These activities not only created commodities out of the products of the land but also led to a commodification of land itself and a desire to challenge the communal land ownership system (Agbosu, 2007).

Around the same time, in the year 1877, Accra had been chosen by the British government as the new location of its colonial headquarters (Grant and Yankson, 2004). The colonization of the Gold Coast led to the implementation of a new system of land tenure in Ghana on top of the existing traditional system. Thereafter, Ghana included, on the one hand, a capitalist sector, which was located in the urban and commercial center and provided a means of entrepreneurial business activities and, on the other hand, a communal system, which was located on the periphery of the urban center and provided subsistence agriculture (Agbosu, 2007).

The introduction of land as a means for commercial and economic enterprise through agricultural business created an environment ripe for dispute over land and contrasted greatly with an environment in which land was viewed not only as a source of subsistence, but as a religious connection between past ancestors and future descendants. As entrepreneurs wanting

to capitalize on the economic opportunities associated with agriculture in Ghana sought to acquire communal land, they introduced an English common law system of land ownership. The foundation for this system was the provision of notice of property ownership through written documents, which was quite foreign to the members of the communal system (Agbosu, 2007).

The discrepancies between these two systems were significant. A lack of familiarity with the English system and the manner in which it questioned so many pillars of the communal tenure system created a new sense of insecurity regarding land tenure – one that remains today in a variety of respects. The communal land tenure system lacked boundary definitions that conformed to western interpretations, and the issue of insecure title only grew more serious as a result of boundary disputes and resulting litigation (Agbosu, 2007).

One of the ways in which entrepreneurial-minded persons would acquire property interests was through seeking *concessions*, which were leases of land by a group or community from chiefs. Unfortunately, many of these concessions were acquired by taking advantage of chiefs, many of whom were illiterate or unfamiliar with the English common law system of property ownership. There were also chiefs who, in seeking to acquire their own pecuniary gain, took advantage of the communal land tenure system (Agbosu, 2007).

The traditional communal land ownership system was viewed by traders and entrepreneurs as an impediment to their interests and to the development of Ghana, and thus they advocated the institution of mechanisms to record titles.² Though the English common law notion of property ownership was very much at odds with the communal view of land, it continually gained support in Ghana over time (Agbosu, 2007).

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² As discussed more fully below, the overwhelming focus of policy reforms related to the land tenure system to this day have been related to the recording of title.

Agbosu attributes this support for the English common law property system to several factors. First, Ghana was a largely illiterate society at the time, and admiration for literate foreigners helped contribute to the adoption of the English common law property system. Many Ghanaians sought to imitate foreigners and their habits.³ Agbosu also states that middle class indigenous people often acted as intermediaries between colonial and indigenous groups as lawyers, for example. Many lawyers were entrepreneurial in their own right and sold and bought concessions themselves. However, in doing so, their interests were aligned with those of foreign entrepreneurs as opposed to the members of the Ghanaian communities they may have been representing. Lastly, Agbosu notes that the commercialization of land was viewed as a necessary means of "civilizing" Ghanaians by emerging local entrepreneurs (Agbosu, 2007).

B. Nationalist Ghana

In 1957, colonial rule in Ghana came to an end. Thereafter, the Nkrumah Government promoted Accra as the central focus for development, to the detriment of other cities in Ghana. The nationalist government was founded on a socialist ideology and pursued import substitution through protectionist measures, seeking to discourage foreign involvement (Grant and Yankson, 2004).

During this period, Ghana suffered from economic decline and a lack of development in the private sector. These problems were characterized by increasing rural-urban growth pressures, a lack of foreign investment and socioeconomic mismanagement, which involved

³ Grant notes a similar mindset today as he discusses the popularity of owning property in gated communities as a status symbol coveted by many Ghanaians. Grant calls this the "prestige effect". This is perhaps similar in some ways to the manner in which many Ghanaians accepted the English common law property system changes during colonial times (Grant, 2009).

little, if any, planning and resulted in many spatial distinctions between different regions of the country.

C. <u>Liberalization policies</u>

In 1983, liberalization policies supported by free-market enthusiasts informed many of Ghana's goals and policies, and the English common law system's influence on the customary tenure system was encouraged to ensure that economic activities would not be hampered.

During the liberalization period, Structural Adjustment Policies (SAPs) were implemented to foster free-market opportunities and development in Ghana.

The SAPs involved a wide range of policy measures, including the privatization of parastatals, the introduction of competition in the economy, the deregulation of currency markets, the active encouragement of the private sector and foreign direct investment, the reduction of public services and especially trade liberalization (Grant and Yankson, 2004).

These policies were intended to bring about an end to economic decline and encourage growth (Grant and Yankson, 2004). Given the importance of land use policies to engendering economic opportunities, land tenure policies continue to play a prominent role as a source of reform.

D. Attempts at land tenure reform

Beginning in the late 19th century, a number of different attempts at land tenure reform were undertaken to create a system in Ghana that would resemble Western land tenure systems. The reforms primarily attempted to reduce disputes and facilitate financial investment, but despite such attempts, many proved to be relatively unsuccessful. Below is an examination of many of the reforms implemented over the years. Many of the criticisms of land tenure system

reforms enacted in the past continue to be made with respect to more recent and current land reform proposals. .

In 1883 a bill was enacted which required the registration of instruments evidencing the conveyance and transference of an interest in land. However, a lack of adequate administrative capabilities and qualified personnel to administer the registrations made the bill ineffective, and in 1895 an ordinance was enacted which modified the 1883 bill. The 1895 ordinance provided for a mode of registration, a description of the nature of records to be registered and a description of how records were to be maintained. Nevertheless, problems remained with respect to the 1895 ordinance; for example, registration under the ordinance still did not guarantee title. In addition, the ordinance only concerned the recording of deeds but did nothing to address the lack of proper surveys or title registration (Agbosu, 2007).

In 1894 and 1897, attempts were made to bring all unoccupied Gold Coast lands under colonial government control and administration. These attempts failed because they were opposed by locals as well as concession speculators (Agbosu, 2007).⁴ In 1954, the UN Housing Mission published a memorandum stating that land tenure uncertainty was the primary obstacle to Ghana's housing problem. In 1960, the Land Development Act (Protection of Purchasers) was enacted to protect the interest of potential transferees; however, this legislation proved to be ineffective and an insufficient substitute for comprehensive legislation reform (Agbosu, 2007).

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⁴ It is important to note that a similar strain of opposition to reform exists today, whereby persons and entities seeking property in Ghana, as well as chiefs and family heads in charge of communal property, may benefit from a system lacking clarity and order, which permits them to manipulate the system's inadequacies to suit their own benefit. This represents a component of the potential political challenge facing land tenure reform.

The Land Registry Act of 1962 was the next attempt at land tenure reform in Ghana. It required that instruments registered contain location and boundary information, but failed to address two problems. First, qualified surveyors were not available to conduct accurate surveys; second, as a result, inaccurate site plans were continually registered after the Act's enactment (Agbosu, 2007). In the mid-1980s Ghana began implementing International Monetary Fund (IMF) and World Bank-backed structural adjustment programs (SAPs) in an effort to nurture private sector growth. Land registration improvements were seen as essential to opening such financial opportunities. Historically, one of the main obstacles to successful land registration reform was the lack of financial resources to support it. The World Bank and IMF were said to be providing financial resources to this effort because land registration was considered an essential element of the SAPs. The Land Title Registration Law of 1986, the government's first major land reform effort since the 1962 land registry act, was thus enacted to satisfy the demands of the local and international business community (Agbosu, 2007).

As evidenced by the above list, land tenure reform efforts have mostly centered on implementing a land title registration system. Land registration is not only deemed essential to encouraging the efficient use of land; it is also an important basis for tax revenue collection and offers the following additional benefits:

- 1. Increased tenure security;
- 2. Removal of disincentives for investment in longer term management and productivity;
- 3. Creation of a land transfer market, whereby land can be transferred from less dynamic to more dynamic parties; and
- 4. The ability to use land as collateral with financial institutions (Agbosu, 2007; see also Aryteetey, 2007).

While these benefits of land title registration are the intention of such systems, they do not occur automatically. Agbosu discusses several ways in which undesirable results occur. First, traditional communal land tenure system reforms have engendered disputes and fostered corruption and land-grabbing. Second, very few customary freeholders have recorded rights, making them particularly vulnerable in a system that requires time, financial costs, and familiarity with foreign rules. Such secondary rights holders tend to be penalized under such a system. Lastly, the high costs associated with the system discourage recording from actually taking place, and registration records become outdated and ineffective as a result (Agbosu, 2007).

III. REGULATORY FRAMEWORK FOR LAND USE POLICIES

A. Introduction

Using land use policies in Accra to facilitate a broader plan for development must ultimately rely on the city's pluralistic land tenure system: a hybrid of English common law, Ghanaian customary law, constitutional provisions and statutes. In order to determine the prospects for implementing the necessary land use command-and-control mechanisms upon which many of the objectives outlined above would rest, we must assess the powers of governmental, communal and private interests in Ghana, including the extent to which land use controls can exist under this legal framework. Despite efforts to implement a private land ownership system in Ghana since 1983, approximately 78 percent of the land is still communal land owned by stools, skins, clans and families, under a customary land tenure system.⁵ The

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⁵ Presentation by Dr. Benjamin Dodoo, Earth Institute, February 9, 2010. According to the Accra Urban Profile prepared by UN Habitat, 75% of private land in Accra is owned under the customary land tenure. (UN Habitat, 2009)

conflicts between the traditional communal land tenure and English common law systems present a number of challenges, and success in achieving many of the goals for the region will depend on the ability to reconcile these differences.

Two crippling problems associated with the pluralistic land tenure system in Ghana are uncertainty of title and costly litigation, which create an inhospitable environment for the free-market to work efficiently. Grant writes that despite increasing foreign direct investment in Accra, one of the main impediments to foreign direct investment is the land tenure system. There is relatively little foreign direct investment, resulting in far more investors making use of the joint venture mechanism, which helps to defray risk, as their preferred mode of investing in Ghana (Grant, 2009).

Grant also writes about the staggering costs of development in Ghana: 70 percent of costs are allocated to initial land development (Grant, 2009), which leads property developers to concentrate on such high-end market developments as gated communities. Foreign real estate buyers strongly prefer to purchase in planned, gated communities, where the difficulties of land acquisition and building can be avoided (Grant, 2009). In the end, predictably, the biggest losers are the most vulnerable—those depending on the communal system and the sustenance provided by the rights it affords them (Agbosu, 2007).

Today, land continues to be transferred within the traditional customary framework (Grant, 2009). For example, many Ghanaians acquire land to build houses through 99-year lease arrangements, foreigners through 55-year. lease arrangements. Nevertheless, land tenure insecurity and frequent litigation continue to be prominent in Ghana, as different land tenure systems have yet to merge in an effective and clear way. Many of the reforms instituted,

including those relating to land registration, have been enacted by a combination of constitutional and statutory legislation, which collectively include numerous contradictions.

One of the major questions facing Accra and Ghana as a whole is to the extent to which traditional customary land tenure framework can co-exist with the English common law system of property ownership, which many believe is crucial to future economic development and prosperity in Ghana. Furthermore, if the traditional system cannot exist, it raises significant questions about those individuals, families and communities who depend on the secondary land ownership rights associated with it.

B. <u>Constitutional provisions and statutory interventions</u>

Several constitutional and statutory provisions have been implemented to reduce the issues associated with land tenure in Ghana, including land ownership disputes and resulting litigation. The Constitution and several statutes restrict the exercise of the proprietary rights and land management functions of customary landowners, otherwise not provided for under customary law.

Articles 266 and 267 of the Constitution provide for the following:

- 1. A restriction on the extent of interest granted in a family or stool's lands and;
- 2. A requirement that the state government validate grants of family or stool land in form of a Lands Commission Concurrence as well as a grant and certification of family and stool land dispositions by the Regional Lands Commission (Agbosu, p. 74).

Constitution Article 267 also gives the Office of Administrator of Stool Lands the right to administer stool lands revenues and the amount that will be distributed between the state, local governments and allodial owners (Agbosu, 2007). In addition, there have been several attempts

at introducing statutory conditions and consents, which are required in order to legitimize land interests. These conditions provide a means for challenging and canceling customary land interests through recourse to state legislation or authorities (Agbosu, 2007).

Despite extensive statutory intervention, chieftaincy disputes and protracted land disputes and litigation continue to result from the following:

- 1. Loss of public confidence in the justice system;
- 2. People resorting to self-help (e.g., land guards);
- 3. Freezing land for development;
- 4. Encroachment on public and private land;
- 5. Multiple sales of land;
- 6. Unapproved development; and
- 7. Violent confrontations.

Like other land tenure reforms, restrictions on customary land rights are not without problems. One issue concerns the needs of the holders of secondary rights, who may be more vulnerable given as a result of the restrictions. A second issue concerns the reluctance of chiefs and other bearers of rights under the customary system to either accept the system's changes or to know how to behave in accordance with new and unfamiliar restrictions.

The Constitution and several statutory provisions impose conditions, consent and concurrence requirements, including certification, in order for the validation of disposition of stool or family lands to take place. Consent by the Regional Lands Commission is required for any disposition of land, including a mortgage affecting a stool, family or any group held land, and no disposition can be effective until such consent is obtained (Agbosu, 2007).

In addition, the Regional Lands Commission, an agency established in part to provide a certification to the disposition of land, was introduced as a means of effectuating urban planning initiatives. Section 4(1) of the Land Commission Act, 1994 (Act 483), which is founded on Article 267(3) of the 1992 Constitution, states that no stool land shall be disposed of or developed without a certificate from the relevant Regional Lands Commission. The certification depends upon the consistence of the disposition or development being consistent with the regional development plan; a disposition without such a certificate would be deemed invalid (Agbosu, 2007).

From an urban planning perspective, the provisions of the law associated with the Regional Lands Commission are significant. From a legal standpoint, the law provided for in the Constitution and Land Commission Act provides a basis for enforcing a comprehensive plan, insofar as dispositions which contradict the plan can be rejected by the Regional Lands Commission. However, Agbosu writes that the Regional Lands Commission has neither the staff nor the resources to perform its duties and may not be in a position to actually certify grants of stool or family lands, leading to a series of bottlenecks characterized by delays and corruption.

C. Compulsory acquisition

The ability of the government or private interests to assemble land is important to a number of urban planning initiatives, including the improvement of public roads and other transport routes. Ghana's means of exercising governmental control of land is known as compulsory acquisition, as with the use of eminent domain in the United States., the compulsory acquisition of land by the state is governed by the State Lands Act, 1962 (Act 123), which gives the state extensive power to acquire any stool, family or private land for any purpose it considers to be in the public interest (although that acquisition is subject to the payment of compensation).

The State Lands Act empowers the President to expropriate any land for this purpose by publishing an Executive Instrument specifying the site, dimension and time associated with the compulsory acquisition (Agbosu, 2007). In addition to the State Lands Act, compulsory acquisition in Ghana is also governed by the State Lands Regulations, 1962 (L.I. 230), which provide for the establishment of an advisory committee empowered to recommend suitability of lands to be acquired under the Act (Agbosu, 2007).

As might be expected, compulsory land acquisition raises many issues. It has not, to date, been exercised in a judicious manner. Since independence, the state has acquired land with little regard for the indigenous peoples from whom it has been taken. On most occasions, no compensation was paid, former owners forced to give up their lands were left without means to provide for themselves and many of the land parcels expropriated by the state remain unused (Agbosu, 2007).

The greatest concern associated with compulsory acquisition is the state's failure to provide compensation. As of December 1989, approximately 881 billion cedis in unpaid compensation were outstanding. Compulsory acquisition poses a particular problem to holders of usufruct interests, since they are not provided compensation under the current law. Instead, the allodial title holder, usually the chief or family head, is paid compensation as a trustee of a family or stool in the form of a lump sum (Agbosu, 2007). Usufruct or customary freehold interest holders are only entitled to compensation for the value of the crops. ⁶ Currently, there is no formal mechanism for ensuring that adequate compensation for the land is paid to chiefs or allodial title holders.

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⁶ This is similar to the issue in the U.S. whereby eminent domain is exercised and businesses with commercial leases receive no compensation for the loss of their space or the good will associated with that space.

The 1992 Constitution attempted to limit the state's compulsory acquisition power by requiring that, for the acquisition to be seen as valid, the specific uses to which the land is to be put be stated at the time of the acquisition in order for the acquisition to be valid. However, successive governmental regimes have changed the use or uses to suit their convenience at such time as the original purpose no longer fit (Agbosu, 2007). The 1992 Constitution attempted to address the change-of-purpose issue by giving original land owners the right to reacquire land with a refund of all or part of the compensation provided for it. However, Agbosu argues that a full overhaul of the State Lands Act is needed to ensure harmony between the statutes and the Constitution and advocates a more equitable land policy that pays compensation to usufructory interests in case of compulsory acquisition and for the elimination of lump sum payments to a chief that are to be distributed thereafter. Agbosu proposes that the amount of compensation should be premised on recognizable land interests that can be valued in monetary terms and calls for separate negotiations between government and allodial title holders and usufruct holders (Agbosu, 2007).

Compulsory land acquisition has created a shortage of land for all uses, population pressure on limited lands, outmigration to central Accra and the surrounding suburbs, and changes in occupation and means of livelihood (Agbosu, 2007). Despite this, compulsory land

⁷ For example, the state has re-zoned for a different use land initially acquired for a particular, justifiable purpose, allocating it instead to private development in a manner inconsistent with the original stated purpose (Agbosu, 2007). This is similar to the eminent domain disputes taking place in the U.S., in which many view as unacceptable the way in which eminent domain power has been construed to include such public purposes as economic development by transferring property rights to private interests.

⁸ The valuation issue is perhaps much more complex and difficult, insofar as similar issues in the U.S. are a source of much disagreement, even without the added complexity associated with the usufructory interest.

acquisition remains an important tool for effecting a wide variety of development goals, but its use must be considered carefully.

D. <u>Vesting</u>

Vesting is a variation on government intervention in land ownership in Ghana, in which the land shifts from communal interest to state interest. The state holds the land in trust for the community and assumes management responsibilities but does not take ownership of the land (Agbosu, 2007). Vesting is governed by the Administration of Lands Act, 1962 (Act 123). Its features are as follows:

- 1. Communal land interest holders receive no compensation;
- 2. The state vests in itself the power of alienation, including the right to sell and lease, the right to manage and the right to receive revenue accruing from land;
- 3. The land remains stool, skin or family land, and it is their right to enjoy its benefits. (Agbosu, 2007);

The vesting process begins with the President, by executive instrument, declaring a stool land to be vested in him. Following the declaration, the government takes management responsibilities from the traditional owner and passes them to the Land Commission and Office of Administrator of Stool Lands.

As is the case with respect to compulsory acquisition, there are several issues with the government utilizing the vesting option. First, though in keeping with the spirit of the law to do so, revenues accruing from vested lands are not channeled to landowners. This creates tension between the chiefs and agencies, and there is no effective mechanism for ensuring that revenues are used for improving the welfare of communities that own the land. Second, the Lands Commission will occasionally lease the land at the same time as Chiefs lease the land and

usufruct users use the land, which creates conflicts between all parties involved. Third, many traditional land owners seek that vested land be "de-vested" and returned to the landowner or compensation be provided. Fourthly, ambiguity in the law is created by Article 267 (5), which states that no interest in or right over any stool or family land in Ghana shall be created that vests in a person or body of persons a freehold interest. While Agbosu still points out that the vesting system has been positive in providing a means of orderly and planned development, he fails to provide specifics.

E. <u>Management of stool and family land revenues</u>

Article 267(2) of the 1992 Constitution creates a regime whereby the state manages stool and family land revenues (Agbosu, p. 84). All revenues due to stools in the form of rents or compensation payments are required to be paid first to the Office of Administrator of Stool Lands, which then disburses revenue according to Constitutional framework. Unfortunately, in practice, this does not happen according to design.

The Office of Administrator of Stool Lands is only able to collect a small fraction of actual revenue. In reality, the typical practice is for customary landowners to demand an amount at the time that an agreement is reached (known as "customary drinks") to be paid upfront and a nominal amount inserted in the lease thereafter as rent. The nominal amount is collected by the office. Only 22.5 percent of revenue collected is paid to the landowner, and 59.5 percent paid to

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⁹ This sounds similar to the argument often heard in U.S. courts that some regulations pertaining to property constitute a regulatory seizure for which just compensation is required.

¹⁰ Chiefs and allodial land title holders can interpret this to mean that in order for strangers or a usufruct right holder to have a right in land, they would need to have the land leased to them by a chief. This interpretation would create a conflict with the customary law system and would further erode customary land -holders' rights, as well as their ability to thwart efforts of chiefs wanting to take advantage of rising property values.

the state. The remaining 18 percent is paid to the traditional council, which is an association of the heads of traditional groups (Agbosu, 2007).

Even though money given to the state under these circumstances is supposed to benefit the stool or family through development projects for this community, it is rarely used for such purposes. Therefore, there is a disincentive for a stool to give money to the state under this procedure. In addition, 55 percent of revenue on land is paid to district assemblies, but the assemblies are not required to submit development plans for approval before revenue is paid for such projects. Given the ineffectiveness of this system, Agbosu questions whether this regime should remain in place (Agbosu, 2007).

IV. SUMMARY OF CHALLENGES TO LAND USE POLICY REFORM EFFORTS

A. <u>Political challenges in obtaining support for reform by holders of rights under customary system</u>

This paper does not comprehensively evaluate the wide variety of political issues presented by the pluralistic land tenure system, nor does it seek to downplay the complexity and difficulty in addressing such issues. It does, however, recommend that the political obstacles facing effective land use reform must be confronted in order for any progress to be achieved.

The sentiments expressed by Lincoln in the two opening quotations of this paper are relevant to the ambitious development goals laid out by the Mayor of Accra. The drafting, enactment and enforcement of effective land use policies are an important component of achieving Accra's development goals. Yet without political support with respect to the drafting, enactment and enforcement of such policies, the policies' effectiveness will be significantly compromised. Land use policies present a stark change for those who are accustomed to and depend on the customary land tenure system. If land use policies are to obtain political support

and community buy-ins, they must involve the community in their creation, ensuring that those policies reflect the community's needs and interests.

Unfortunately, there are several obstacles facing the implementation of land use policy. There are currently some partnerships between chiefs and politicians, whereby they have disincentives to changing the status quo or opening the system up to debate (Aryteetey, 2007). Furthermore, from the perspective of the holders of secondary rights under the customary system, until the significance of their interests is both recognized and assured, holders of such rights also have little incentive to promote change in the system. Political support is therefore contingent on reaching a widespread consensus about the benefits of land use policies and achieving cooperation and participation in creating and carrying out such policies. The "central idea" of a new and improved Accra articulated by the Mayor must win the acceptance of the various communities affected by the reforms and trump the schemes of self-interested chiefs and politicians. This will be a significant challenge, but also, arguably, an essential component of any effective development plan.

B. <u>Inventing new land use policies that reflect an understanding of terminological and regional variations and the needs and interests of holders of secondary rights under the customary land tenure system</u>

Aside from its political dimensions, the pluralistic land tenure system presents a variety of other obstacles to land use policy implementation. Agbosu recommends identifying the range of varied interests recognized under customary systems, determining the scope, nature and incidents of these interests and developing procedures for documentation and validation (Agbosu, 2007). Since many of the secondary rights that exist under the customary land tenure system are not recognized under the English common law system, procedures for effectively recording and documenting such rights need to be developed.

Another obstacle to land use policy reform in Ghana is the wide variety of rights that exist under different customary systems and the terms used with respect to such rights.

Definitional and terminological problems arise as a result of the pluralistic system (Agbosu, 2007). For example, some local systems are not really laws according to the western understanding of the term, but are, rather, socially embedded practices. The influence of English common law system upon communal systems, and vice versa, has clouded the meaning of terms in each. For example, the term "usufruct" is alternately referred to as "law freehold", "customary freehold", "determinable interest" and "subordinate interest". The use of different terms for similar concepts, along with varying definitions associated with each term, contributes to confusion and leads to disputes. Greater clarity is needed with regard to these terms.

In addition to the different terminology and definitions associated with the pluralistic system, Aryteetey notes that traditional land tenure systems vary from one region to another (Aryteetey, 2007). This further complicates efforts to address land tenure system problems. Agbosu calls for uniformity, which accommodates local variants and distinctions (Agbosu, 2007). He also recommends the identification and documentation of various customary land interests in different communities (Agbosu, 2007). There is a lack of clarity in the scope of the usufruct interest, which Agbosu also recommends addressing (Agbosu, 2007). For example, some allodial owners have attempted to limit the bundle of rights attached to the usufruct, as land is valued more highly. This is a concern for secondary rights holders under the customary land tenure system.

Indeed, the wide variety of terms and identities associated with various rights under the customary system presents a significant challenge to implementing land use policies. To the extent that land use policies ignore these rights or intend to eliminate them, such policies will

hardly engender widespread support from those dependent upon such rights or those who are more familiar with the customary land tenure system than with English common law reforms. Therefore, effective land use policies must not only reflect an understanding of the variety of interests under the customary system, but must also promote and provide protection to such interests. If the benefits of investment and development supposedly derived from a free market are to be obtained, a greater understanding of the variety of interests must be reached, as well as greater consistency with respect to these understandings.

C. <u>Improving the capacity to draft, enact and enforce land use regulations</u>

The above discussion concerning the legal framework for current land use policies in Ghana raises several capacity issues, ranging from accessibility to the ability of governmental agencies to process actions such as the recording of rights in accordance with laws. There are also issues concerning, for example, the accuracy of surveys and other technical products. If laws are to be followed by citizens of Accra and Ghana, the processes and procedures required must not be unreasonably burdensome and must provide a net benefit. Based on the research conducted for this paper, it appears that while many laws make sense in theory, they fall short of their intended purpose in practice.

In addition to obtaining political support, the research conducted for this paper indicates that many Ghanaians are unfamiliar with the procedures associated with land policy reforms. It appears that in addition to obtaining much-needed political support for reform, significant resources will also be needed to facilitate compliance with land use reform policies and educate communities about such policies.

V. STRATEGIES FOR THE IMPLEMENTATION OF LAND USE POLICIES THAT CAN ACHIEVE DEVELOPMENT GOALS IN ACCRA

Abundance and free access to land no longer characterize Ghana as they did in its precolonial days. Not only has the competition for resources and land emerged as a result of the
commodification of land and resources, population growth and urbanization have further
exacerbated these problems. These phenomena have important implications with respect to the
efforts to enact land use policies that are part of a broader effort to plan for development in the
Accra metropolitan region. Based upon my readings, below is a list of strategies which may be
used in light of the current state of the land tenure system in Ghana.

A. <u>Building the capacity to support land use policies</u>

The institutionalization of land registration in Ghana has been a primary focus of many land tenure reform efforts to date. While further reforms pertaining to the recording of title are needed, reforms must go further. Reform is needed in terms of capacity-building to support existing and future land use policies. An additional issue that appears throughout the readings is the lack of capacity, skills and resources associated with governmental agencies concerned with land tenure issues.

Agbosu recommends the use of a greater number of registration centers for rural dwellers to register as well as public education with regard to changes in the system (Agbosu, 2007).

Agbuso also recommends that proper demarcation of lands be completed, since these boundaries were not clearly established prior to the institution of the system and the lack of accurate boundaries has led to fraud and mistakes (Agbosu, 2007).

B. Ensure protection of vulnerable society segments

The insecurity of tenure on the periphery of urban areas where farmland is being converted to buildings is one of the largest issues in Ghana (Agbosu, 2007). Vulnerable members of a stool who hold customary freeholds but no written agreement confirming their interest are very much at risk. The main victims are women, whose interests are secondary to those of their husbands and sons. Statutory recognition of the nature, scope and extent of existing land rights and interests under customary law and procedures and processes for documenting, titling and registering these interests are needed. There is also a need for scrutiny of and empirical research on chiefs and heads of families, along with greater recognition and assistance for women who possess secondary rights currently not acknowledged under the system (e.g., the right to collect fruit, fuel wood and other forest products) (Agbosu, 2007).

Agbosu questions the practicality of the land registration system in some parts of the country where it would be too expensive and difficult, and suggests that land security can be accomplished through simpler means (Agbosu, 2007). One of the challenges will include identifying which reform efforts will and will not be effective and how to prioritize such reforms.

C. Registration of competent transferors of land under customary system

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¹¹ A research paper by Accra planning seminar classmate Leah Mosall explores many of the issues facing woman in Ghana, including, but not limited to, the treatment of women under the land tenure system.

Registration requirements should also require members of a body or group who are legally competent to deal with land or make grants to be registered (Agbosu, 2007). Often, under the communal system, only specific persons are authorized to convey land, but these individuals are not always clearly identified. As a result, some individuals act in an official capacity even when not authorized to do so (Agbosu, 2007). Competency requirements are essential to preventing such misunderstandings.

D. <u>Improve effectiveness and perception of compulsory acquisition</u>

With regards to the government's right to the compulsory acquisition of land, power must be used more appropriately. The government needs to address the following issues:

- 1. Negative consequences of people's loss of land and sustenance;
- 2. The extent to which the allodial owner does or does not act in the best interest of a family or group;¹²
- 3. The government's failure to provide compensation and/or delays in doing so;
- 4. Negative consequences for usufruct right holders;
- 5. Negative consequences in terms of creating land scarcity; and
- 6. Whether the government's stock of unused land previously acquired can be put to a use which benefits the community at large.

Insofar as compulsory acquisition will be an important tool for carrying out a development plan in Accra, the issues listed above need to be addressed.

E. Vesting power reforms

There are also several possibilities for reform relating to the government's vesting right.

Clarity and effectiveness are needed with respect to the channeling of revenues collected by state

¹² Insofar as the legal concept of fiduciary duty on the part of allodial owners exists under Ghanian law, it may provide a means of addressing this concern.

agencies to vested land still owned under the communal system. In addition, reforms are needed to prevent chiefs and the Lands Commission from leasing vested land to multiple parties at the same time that the usufruct claims a right to that land. As with compulsory acquisition, ways of increasing credibility with respect to the use of vesting power should be explored.

F. Collection of tax revenue from stool, family and group lands

The governmental regime managing the collection of stool land revenues is in need of reform. The "customary drinks" practice discounts the effectiveness of the system and needs to be addressed. Mechanisms for ensuring that money collected by the government is put to use for the benefit of stools need much improvement.

G. Regional Lands Commission Reform

The Regional Lands Commission Certification process is of key importance in instituting urban planning in Ghana. In order to better address prospects for improving the realization of urban planning recommendations, further information is required. The information needed is listed below in the next section together with other research questions that can inform the process going forward.

V. QUESTIONS AND RECOMMENDATIONS GOING FORWARD

- 1. How many offices are there in the Regional Lands Commission and where are they located?
- 2. How many persons are included in the staff of the Regional Lands Commission?
- 3. What is their budget?

- 4. What is their relationship with the communities they serve?
- 5. How are their decisions enforced or not enforced?
- 6. Is there currently a plan which provides the basis for the Commission's judgments?
- 7. What is the process for creating a plan according to which the Commission reviews applications?
- 8. Under Ghanaian law, to what extent is the concept of fiduciary duty applicable to chiefs and heads of family? To what extent could it be utilized as a means of addressing corruption?
- 9. To what extent, if any, is a comprehensive plan required under the Ghanaian Constitution? Should it be required even if funding is not provided to actually implement it?
- 10. Section 4(1) of the Land Commission Act, 1994 (Act 483), which is founded on Article 267(3) of the 1992 Constitution, states that no stool land shall be disposed of or developed without a certificate from the relevant Regional Lands Commission. The certification depends on the disposition or development being consistent with the regional development plan. Since these laws represent an important component of the possibility of conducting urban planning in Accra, it would be beneficial to review these laws more carefully, delve into the specifics of the processes, examine the limits of power under these laws and evaluate prospects for possible urban planning goals we might intend to pursue.
- 11. It would also be beneficial to examine specific laws associated with compulsory land acquisition and vesting in Ghana for the reasons listed above.
- 12. It would be useful to create GIS maps to identify and categorize land according to whether it is owned under the traditional customary system, private ownership or government ownership, and, if under government ownership, whether it has been acquired through compulsory land acquisition or another method. A starting point for this would involve using the Ghana Land Bank Directory 2008.
- 13. What powers are conferred under the Local Government Act of 1993 to the Accra metropolitan region? To what extent, if any, can zoning regulations (including aesthetic zoning regulations such as those addressing signage) and building codes be promulgated in Accra on the basis of the Local Government Act of 1993? What is the process associated with this?
- 14. What effective land use policies and strategies exist in other countries that share similar customary land tenure systems which could serve as models?

VI. CONCLUSION

As outlined above, there are a number of issues relating to the creation of land use policies in the effort to achieve significant development in Accra. The customary land tenure system is analogous, in some ways, to home-rule localities in the United States. Accordingly, challenges facing the implementation of land use policies in Accra and Ghana are characterized by many of the same obstacles present in regional planning initiatives in the United States.

While much research is still needed and many questions must be answered in order to address these issues, a number of recommendations have been suggested by the authors cited in this paper. Whatever land use policy reforms are sought, they will be far more effective if local community interests, particularly those under the customary land tenure system, are included in the reform process and their interests are reflected in the policies enacted.

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