

Land Rights Research

Introduction

Context

According to the Rights and Resources Initiative (RRI 2023), up to 80 percent of land area in Ghana is designated for local communities. Ghana therefore stands out compared to the 7.2 percent of the global land area designated for communities.

Land has a social, economic and political utility. It plays an important role in sustaining livelihoods, as almost all human activities involve some use of land. This includes housing, transport, agriculture, and recreation. Due to its importance, the legal regime governing land is sophisticated. Also, most disputes that come before the adjudicatory bodies are land related. In Ghana's case, since the colonial days up to present day, land cases have constituted the bulk of litigation in both customary tribunals and regular courts.¹ From 1998 to 2002, there were a total of 2,341 land cases before Ghanaian courts, out of which only 73 had been settled.² In addition to the rich case law, there were over twenty (20) legislation governing the ownership of land, formalities and procedures for transfer of land, creation of subsidiary interests in land and the rights and obligations of holders of subsidiary interest in Ghana prior to the enactment of the Land Act, 2020 (Act 1036).

Land may be either owned privately or publicly. Public land is vested in the President on behalf of, and in trust for, the people of Ghana. It includes any land the government compulsively acquired after the ratification of the 1992 Constitution. Privately-owned land is subject to one or several interests.

As a legal term, land includes the solid surface of the earth, trees, plant, crops and other vegetation, a part of the earth surface covered by water, any house, building or structure whatsoever. More notably, land also means any interest³ or right that a person can have in, to or over any portion of the earth's surface or any structure erected on such a surface (known as immovable property).⁴

The Land Act's definition of land can include water, buildings, mineral deposits under the earth's surface and resources such as timber which are affixed to the earth's surface. As such, land can be considered as a repository for minerals and other natural resources. It is interesting to know that, although landowners have right over their land, the laws of Ghana vest all natural resources in the President of Ghana for and on behalf of the citizens, including trees. Thus, it can be said that forests belong to landowners, but its management and utilisation of forest resources, such as timber harvesting rights are administered by the forestry commission⁵, the state institution responsible for managing forest resources and for the benefit of land owners. There are six interests in land that a natural or legal person can hold⁶:

- the allodial interest,
- common law freehold,
- customary law freehold,
- usufructuary interest,
- leasehold and

¹ Poku Adusei, 'Burden of Proof in Land Cases: An Analysis of Some Recent Decisions of the Court of Appeal and the Supreme Court of Ghana' (2000-2002) 21 U Ghana LJ 223

² Georgina Wood J.A. (as she then was), delivering a paper at a Forum organized the Ministry of Lands and Forestry and German Technical Co-operation to deliberate on the way forward in Land administration in the country - see Daily Graphic, July 11 2002, No. 148572 p. 1.

³ Interest in land is simply the bundle of right one may have over a Land. it is the right in or over land which is registrable under the Land Act, 2020 (Act 1036).

⁴ Land Act, 2020 (Act 1036) s 281

⁵ Constitution of Ghana 1992, Article 268

⁶ Land Act, 2020 (Act 1036) s 1

- customary tenancy.

These interests may be acquired or conferred by a family, a stool, or an individual possessing a transferable interest. The State may obtain an interest in land by compulsorily acquiring land from its owners in exchange for adequate compensation. Where land is owned by a stool or royal family, the stool holds it in trust and for the benefit of the stool's subjects⁷. As trustees, the stool owes its subjects a fiduciary duty which can be enforced by the subjects⁸.

The State plays an important role in the use and administration of land through administrative bodies such as the Regional Lands Commissions, the Local Government Service, and the Office of the Administrator of Stool Lands. The State also makes some efforts to protect land from destruction and degradation through policies such as the National Action Programme (NAP) to Combat Drought and Desertification (2002-2027) and the National Land Policy, 1999. These were adopted to help address the proximate and direct causes of land degradation holistically, and to promote community and participatory land management and land use planning within a decentralized planning system. Laws and regulations on mining such as the Minerals and Mining Act inadvertently guard against land degradation through mining activities.

In spite of the laws, regulations, and policies that are meant to prevent land degradation, activities like illegal surface mining and deforestation continue unabated and inadvertently to contribute to the degradation of land and affect the livelihoods of communities, particularly of farmers⁹. The impact of resource governance on land and vice versa cannot be over-emphasised. A working understanding of the complex legal framework and the multitude of issues that confronts land administration in Ghana is required to appreciate the systems in place for the extractive resource industries. The regimes for land and the extractive resources are arguably symbiotic and have several meeting points that require attention.

Four thematic briefings

The **first briefing** presents an overview of the Rights Allocation Regime for land in Ghana. This includes the nature of rights and interests obtainable in land, who is eligible to hold these rights, and the legal implications following the allocation of such land rights. This will serve as a foundation for understanding how land is administered in Ghana.

The **second briefing** focuses on benefit sharing arrangements. These play a crucial role in ensuring equitable access to and utilisation of land resources, particularly in scenarios where a stool holds property in trust for its subject or land is compulsorily acquired for public use. By exploring the legal framework for benefit sharing, this aspect will shed light on the legal framework for ensuring social and economic balance in land utilisation.

The **third and fourth briefings** will explore access to information and stakeholder involvement respectively. The former will outline the procedures and channels for accessing information about rights and interests in land, and show the roles that various entities in the rights allocation process play. The latter will examine the roles of stakeholders in the land administration process, elucidating the systems in place to ensure that stakeholders make informed decisions regarding land transactions and investments.

⁷ Land Act, 2020 (Act 1036) s. 281

⁸ Ibid s. 13(5)

⁹ Emmanuel AY, Jerry CS and Dzigbodi DA, 'Review of Environmental and Health Impacts of Mining in Ghana' (2018)

⁸ Journal of Health and Pollution 43 <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6221437/>>

It is also expected that these two briefings will provide an understanding of the roles various stakeholders play which ensures accountability and good land governance.

The **fifth briefing** on alternative dispute resolution delves into the mechanisms for alternative dispute resolution in resolving conflicts arising largely from the exercise of land rights and interests. These dispute resolution avenues are important in ensuring that there is stability and fairness in land administration, and that the rights of landowners are always protected from encroachers.

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Briefing 1: Right allocation regime under Ghanaian law

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1. Introduction

Before the Land Act, 2020 (Act 1036) was enacted, the land regime in Ghana was governed by a multitude of instruments, including Land Registry Act, 1962 (Act 122), Conveyancing Act, 1973 (N.R.CD. 175), Administration of Lands Act, 1962 (Act 123) and other principal legislation. However, Act 1036 was passed to “*revise, harmonise and consolidate the laws on land to ensure sustainable land administration and management, effective and efficient land tenure and to provide for related matters.*”¹

The Land Title Registration Act, 1986 (P.N.D.C.L. 152)² which used to govern the registration of title to land and other related matters provided for only five main categories of registrable interests in land, namely; (a) allodial title, (b) customary law freehold, (c) estate of freehold (d) leasehold interest and (e) lesser interests in land such as customary tenancy arrangement. Although Act 1036 retains these interests, it makes significant additions to interests that may be registered. It is worth noting that all these interest in land coexist with each other and are not wholly exclusive in themselves.

Currently, the Land Act, 2020 (Act 1036) provides for six major registrable interests and other rights in land. These are;

Major Interests

1. Allodial title
2. Common law freehold
3. Customary law freehold
4. Usufructuary interest
5. Leasehold interest
6. Customary tenancy

Minor Rights

1. Mortgage
2. Easement
3. Restrictive Covenant
4. Profit a prendre
5. Power of attorney
6. Contractual license
7. A user right under a Certificate of Allocation
8. Interest under a Constructive Trust
9. Equitable Interests

Major Interests in Land	Holder of Interest	Essential Qualities	Length of time	Allocation Process
1. Allodial Title	<ul style="list-style-type: none"> The state Stools Skins Clans Individuals Families 	<ul style="list-style-type: none"> ✓ Can be transferred ✓ Can be inherited 	Forever	<ul style="list-style-type: none"> Through pioneer discovery and settlement, conquest, gift, purchase or agreement Compulsory acquisition
2. Customary Freehold	<ul style="list-style-type: none"> The state Stools 	<ul style="list-style-type: none"> ✓ Can be transferred 	Forever	<ul style="list-style-type: none"> ✓ Outright purchase from the stool ✓ Gift

¹ Land Act, 2020 (Act 1036), Long Title

² The Land Title Registration Act, 1986 (P.N.D.C.L. 152) s 19

	<ul style="list-style-type: none"> • Skins • Clans • Individuals with Ghanaian citizenship • Families 	<ul style="list-style-type: none"> ✓ Can be inherited 		<ul style="list-style-type: none"> ✓ inheritance
3. Common Law Freehold	<ul style="list-style-type: none"> • The state • Stools • Skins • Clans • Individuals with Ghanaian citizenship • Families 	<ul style="list-style-type: none"> ✓ Can be transferred ✓ Can be inherited 	Forever	<ul style="list-style-type: none"> ✓ Outright purchase from the stool, skin, clan or family ✓ Gift ✓ inheritance
4. Usufructuary Interest	<ul style="list-style-type: none"> • Indigenes of stools, families • Non-indigenes 	<ul style="list-style-type: none"> ✓ Can be transferred ✓ Can be inherited 	Forever	<p>The development by indigenes of an unappropriated portion of land belonging to allodial title holder</p> <p>Settlement for a period of not less than fifty years by non-indigenes</p>
5. Leasehold Interest	individuals	<p>(i) Right of exclusive possession on the part of the tenant</p> <p>(ii) Certainty of the term of the lease and</p> <p>(iii) Payment of rent.</p>	A term or tenure determined by the parties to the lease	Agreement/Contract
6. Customary Tenancies	individuals	<p>(i) payment of rent</p> <p>(ii) the sharing of the produce of a farm</p> <p>(iii) the physical partition</p>	A term or tenure determined by the parties to the tenancy	Agreement/Contract

		or severance of the farm or land.		
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2. Major Rights and Interests in Land

2.1 Allodial Title

The allodial title is the highest form of interest that can be owned in land.³ The allodial owner is entitled to use the land in question without interference and to sell or transfer the land at will.

This interest can be held by a community of people, a stool, a skin, or a clan. It must be noted that although allodial title is usually held by a group of people, Act 1036 specifies that it can also be held by an individual and allodial title ownership is not restricted to a group of people. The allodial title is classified as a freehold; it exists potentially forever and is not limited by time.⁴

The four principal ways through which the allodial title to a piece of land can be acquired, affirmed in Ghanaian case law, are through conquest⁵ pioneer discovery and settlement, gift⁶, purchase⁷ or agreement.⁸ These means of acquisition have been confirmed by Act 1036.

The Act also includes compulsory acquisition, which is the principal way in which the state acquires the allodial title to land previously owned by a stool, skin, or family. The allodial title may be lost in the same way that it may be gained.⁹ However, in light of the development of land administration in Ghana, it appears the only likely way the allodial title may be lost currently is through compulsory acquisition.

2.2 Customary Law Freehold

A freehold interest is a proprietary interest in land which runs in perpetuity¹⁰ allowing the holder of the interest to potentially hold the interest forever. The customary law freehold is created by a transaction under customary law. It can only be acquired by Ghanaian citizens.¹¹

Like the allodial title, customary law freehold is an absolute interest in land and it is not subject to any proprietary obligations, especially to the allodial title holder. However, the customary freeholder is subject to the jurisdictional and cultural rights of the allodial title holder.¹² The customary law freehold interest holder is under a legal obligation to acknowledge the cultural practices associated with the land by the allodial title holder, although the latter has no ownership or proprietary control over the former. Thus, the customary law freehold interest can be alienated without the consent of the allodial title holder.¹³

³ Land Act, 2020 (Act 1036) s 1 & 2

⁴ Golightly v. Ashirifi (1961) 1 GLR 28

⁵ Owusu v. Manche of Labadi (1933) 1 WACA 278

⁶ Gift is the voluntary donation of property owned by a donor to another called the donee.

⁷ Purchase is where a person who owns a property (vendor) sells it to another (purchaser) for a consideration

⁸ Golightly v. Ashirifi (1961) 1 GLR 28

⁹ Thus, one may lose the allodial title through conquest by another group of people, by sale or by uninterrupted settlement.

¹⁰ Land Act, 2020 (Act 1036) s 3

¹¹ Constitution of Ghana 1992, Article 266

¹² Ibid

¹³ Land Act, 2020 (Act 1036) s 3(1)(c)

The customary law freehold can be acquired when a person or group of persons purchase an absolute interest in land outrightly from the stool or skin, or clan or family which holds the allodial title. The customary law freehold can also be acquired by a gift made in the lifetime of the holder or upon the death of the holder through inheritance.

2.3 Common Law Freehold

Like both the allodial title and customary freehold interest, the common law freehold is of perpetual duration. The most outstanding difference between the common law freehold and customary law freehold interests is that the former arises from a transaction to which the rules of law, generally known as common law, are applicable and the latter is created by a transaction governed by customary law.

The common law freehold interest is subject to the interest of the State. And just like the customary law freehold interest, the common law freehold interest is also subject to the jurisdictional and cultural rights of the stool or skin, or clan or family which holds the allodial title and any other person. The common law freehold interest is inheritable and alienable just like the customary law freehold interest. Usufructuary Interest

Usufruct is an interest in land which is held by a member of the stool, skin, family or clan which holds the allodial title to the land. This interest entitles the holder to acquire in a piece of vacant or virgin communal land by exercising his or her inherent right to develop such land by either farming or building on it.¹⁴ The interest can also be expressly granted by the allodial title holder to a subject of that stool, skin or family that hold the allodial title.

A non-indigene or group of non-indigenes may acquire usufructuary interest through settlement for a period of fifty years or more, with the permission of the holder of an allodial title. The usufructuary interest can otherwise be acquired by a non-indigene by settlement for a period of less than fifty years where the non-indigene and the allodial title holder come to an agreement to that effect.¹⁵

This usufructuary interest, when acquired by either an indigene or non-indigene, prevails against the whole world including the allodial title which gave birth to it.¹⁶ Judicial authority makes it clear that the allodial title holder cannot extinguish the usufruct and once the usufruct is created, it becomes a species of interest which co-exist with the allodial interest as long as nothing is done by the usufruct holder to prejudice the interest of the allodial title holder.¹⁷ Similar to the allodial title, common law and customary freehold interests, the usufructuary interest is inheritable and can be transferred or alienated. Such alienation is usually without any limitation.

However, where the usufruct is alienated to a person who is not a member or subject of the allodial title holder, or is a non-indigene or who is not part of a group of non-indigenes who hold the usufructuary interest by settlement for a fifty-year period, the alienation is subject to the written consent of the stool or skin, or clan or family or group and the performance of established customary obligations.¹⁸

2.4 Leasehold Interest

Unlike freehold interests which have a perpetual or indeterminable duration, a lease is an interest in land which is for a fixed duration or the duration is capable of being ascertained. It is created from allodial title,

¹⁴ Land Act, 2020 (Act 1036) s 5

¹⁵ Ibid s 5(1)(b)

¹⁶ Mansu v. Abboye (1982-83) GLR 1313

¹⁷ Kwame Gyan, A Textbook on Customary Land Law of Ghana.

¹⁸ Land Act, 2020 (Act 1036) s 5(2)(b)

customary law freehold, common law freehold or usufructuary interest.¹⁹ Thus a person holding these freehold interests may alienate a portion of their interest to another person for a specified period and this alienation is termed as a lease. A lease conveys to another person an interest in land for a specified term subject to terms and conditions agreed upon by the parties in the leasehold agreement. Usually, these terms are the payment of monthly or annual rent, and the right of the lessee to occupy the leased land without any interference from the lessor.²⁰ Where these terms are not present, a valid lease cannot be created.

A leasehold interest, as a matter of statutory requirement, does not exhaust the interest of the grantor in the land. There always has to be a right of reversion available to the lessor which will enable her to regain possession of the leased land on the expiration of the term of the lease.

2.5 Customary Tenancy

A customary tenancy is an interest in land which is created by a contract. It may be created by a stool, skin, clan, family which holds allodial title or by a person who holds a customary law freehold or usufructuary interest.²¹ This interest is created between two parties, where a person holding an allodial title, customary law freehold or usufructuary interest in the relevant land enters into an agreement as the customary landlord, with another person as the customary tenant to grant an interest in land to the customary tenant.

It largely depends on the parties involved, but generally, customary tenancy may involve the payment of rent, the sharing of the produce of a farm or the physical partition or severance of the farm or land.

3. Other Rights in Land

3.1 Mortgage

A mortgage is a contract charging immovable property as a collateral for the due repayment of a debt and the interest accruing on the debt.²² The law governing mortgages is flexible in the sense that it is not restricted to the payment of debt. A landed property, under the concept of mortgage, can be used to secure the performance of any other obligation, apart from the payment of debt, in accordance with the terms of the contract.

Although the law governing mortgages is flexible, it can only create a charge on a landed property such as a parcel of land or a building. A mortgage is only a mere burden on the property charged. This means that a mortgage does not operate to change or transfer the ownership or right to possession or any other interest. Therefore, a mortgage should not be mistaken for a sale or lease of the subject matter of the mortgage.

Before an agreement can qualify as a mortgage, it has to be in writing and signed by the mortgagor or the borrower or her authorized agent.²³ An enactment or the rules of equity may operate to excuse the requirement of writing, in order to create a valid mortgage. These rules may operate to make a mortgage valid although it is not in writing. For instance, if due to 'hardship', the parties could not evidence the

¹⁹ Land Act, 2020 (Act 1036) s 6

²⁰ It was established in the celebrated English case of *Street v. Mountford* [1985] AC 809 that the essential characteristics of a lease are the right of exclusive possession on the part of the tenant, certainty of the term of the lease and the payment of rent.

²¹ Land Act, 2020 (Act 1036) s 7

²² Mortgages Act, 1972 (NRCD 96) s 1

²³ *Ibid* s 3.

mortgage in writing, the rules of equity may operate to excuse the requirement of writing and thereby make the mortgage enforceable. Also, a writing evidencing a mortgage is an instrument which may be registered in accordance with the Land Act, 2020 (Act 1036).²⁴

3.2 Easement

This is a common law right attached to land. It allows the owner of the land to which the right of easement is attached to use another land to a particular extent.²⁵ Easement allows the right holder to restrict the use of another land in a certain manner but does not include any right capable of existing as a profit or a restrictive covenant.

The commonest form of easement is the right to cross, which gives a right of passage to the owner of a neighbouring land. An easement needs to be registered as a distinct right in land before it can be enforceable.²⁶

3.3 Restrictive Covenant

This is an agreement that gives the legal owner or informal occupier of one piece of land the right to put restrictions on the proprietor of another piece of land in respect of the user or enjoyment of the latter piece of land.²⁷ Both restrictive covenant and easement allow the owner or occupier of one parcel of land the right to put restrictions on the proprietor of another piece of land. However, the main difference between the two is that the former has more to do with putting restrictions on use or enjoyment of another land and the latter is more associated with the right of passage.

Unless noted in the land register, restrictive covenant in respect of land is not binding on the owner of the land unless the owner is a party to the covenant creating the restrictive covenant.²⁸

3.4 Profit à Prendre

It is also known as “profit by taking”. It refers to a legal right that grants an individual or entity the authority to enter someone else’s land and extract certain natural resources or benefits from it.²⁹

A profit à prendre is a right to enter another’s land and to take some profit of the soil, or a portion of the soil itself, for the use of the owner of the right.³⁰ Section 82 of the Land Act, 2020 (Act 1036) recognizes profit à prendre as a registrable right. It typically includes the removal of minerals, timber or game. The killing of wildlife living on the land, for example, rights of hunting and fishing.

3.5 Power of Attorney

Power of attorney is an instrument which is recognized by the Powers of Attorney Act, 1998³¹ and Act 1036. It operates to confer on a person, called the ‘donee’, the power or the authority to do on behalf of another person, referred to as the donor, anything which can be lawfully done by an attorney.³² With

²⁴ Land Act, 2020 (Act 1036) s 81

²⁵ Ibid s 281

²⁶ Ibid s 157

²⁷ Ibid s 158

²⁸ Ibid s 158(2)

²⁹ Ibid s 81

³⁰ *Obima v Yunes & 2 Ors* (Civil Appeal No. 1 of 2012) [2016] UGHCLD 60 (1 December 2016)

³¹ Act 549

³² Land Act, 2020 (Act 1036) s 170

respect to immovable property under Act 1036, power of attorney gives to a person, the power to dispose of land on behalf of another person.

Either a donor or donee of a power of attorney may apply to the Land Registrar to register an instrument which contains a power to dispose of land or interest in land, the power of attorney shall be entered in the register of powers of attorney.

3.6 Contractual licence

A contractual Licence is a licence that is granted through a contract between parties. It refers to a permission given by a person with an interest in land to another person to use the land or part of it after payment of a valuable consideration and subject to the terms and conditions specified in the licence. This licence is different from all other licences as this is created for value³³. It is not proprietary because the Licensor(owner) does not transfer any interest in land to the Licensee and thus not enforceable against a third party, nor binding on the successors in title of the parties³⁴.

A contractual licence like any other contract can be created either orally or in writing and terminable upon the end of a fixed term. Without a contractual licence a person who uses or enter another person's land or property will be a trespasser.

It is the only type of licence that is registrable as a right under the Land Act, 1036³⁵.

3.7 A User Right Under a Certificate of Allocation

When it comes to land allocation, a Certificate of Allocation may be issued to designate a specific parcel of land to an individual or group for a particular purpose, such as residential or commercial development, farming, or other land uses.³⁶ This certificate serves as evidence of the allocation and provides certain rights and responsibilities to the recipient.

A Certificate of Allocation may be issued by the Lands Commission. It must be noted that it does not have effect unless it is registered and it must indicate the;

- (i) beneficiary public body,
- (ii) the commencement date of the certificate,
- (iii) the use to which the land shall be put.

3.8 Interests under a Constructive Trust

A constructive trust is a legal concept that arises when someone holds legal title to property but is obligated to hold and manage that property for the benefit of another party. It is a remedy imposed by a court to prevent unjust enrichment or to rectify a situation where legal title has been acquired improperly or in violation of equitable principles

³³ Dennis Dominic Adjei, 'Land Law: Practice and Conveyancing in Ghana' (2021), 3rd edition, pp. 374

³⁴ Ashburn Anstalt v Arnold [1989] ch 1.

³⁵ Land Act, 2020 (Act 1036) s 161

³⁶ Ibid s 172

For instance, a fiduciary who obtains a benefit from committing a crime or an unconscionable act in breach of his duties to another, may hold the benefit on a constructive trust and is under a duty to pay and account for the benefit to the person to whom that duty was owed.³⁷

Generally, a contract cannot transfer an interest in land unless it is written and signed by both parties or their agents.³⁸ Act 1036 is so strict on this requirement to the extent that it does not deem a transfer of an interest in land which is not evidenced in writing and signed by both the transferee and transferor as valid or enforceable.

However, section 36 of Act 1036 provides for exceptional cases where land may be validly transferred without following the strict requirement for writing. Interest under a Constructive Trust is one of those exceptions.³⁹

3.9 Equitable Interests

Equitable interests in land refers to a non-legal interest in land that arises from the principles of equity. It arises where there is an interest in the property but no legal title exists. It is governed by the rules of equity. It must be noted that equitable interests rank in order of their creation unless the equities are not equal.

Generally, a contract for the transfer of land must be written before it can confer any interests. However, besides a constructive trust, there are other exceptions to this general rule which may validly transfer land without satisfying the requirement of writing. These exceptions include transactions governed by the rules of equity relating to the creation or operation of resulting, implied or constructive trusts.⁴⁰

To elaborate;

- (i) A Resulting Trust arises where, in the absence of an express declaration, the beneficial interest in the trust assets revert back to the person who donated the trust assets to the trustee. A resulting trust gives effect to the implied intentions of the owner or transferor of the trust property
- (ii) Implied Trust arises when there is a presumption that there is an intention to create a trust, even though there is no proof of the use of express words to that effect and the formalities for creating a trust are lacking.
- (iii) Interests arising from the rules relating to unconscionability, fraud, duress and part performance may be transferred without satisfying the requirement of writing.

4. Conveyancing and Registration of Interests in Land

A conveyance may be in the nature of an assignment, lease, sublease, trust instrument, appointment, or otherwise. The new Land Act requires the words in a conveyance to be expressed in clear and simple language.⁴¹ A conveyance passes all interest and rights in the land which the person making the transfer has power to convey and all words used in the conveyance indicate the intention of the person making the transfer⁴². A conveyance shall be executed by the person transferring interest in the land and the recipient. This must also be witnessed by at least one person who shall attest to the signature or mark of

³⁷ Attorney General For Hong Kong v. Reid (1993)3 WLR 1143.

³⁸ Land Act, 2020 (Act 1036) s 34 and 35

³⁹ Ibid s 36

⁴⁰ Ibid s 36(1)(b)

⁴¹ Ibid s 70

⁴² Ibid s 39(2)

each party.⁴³ The law also requires that conveyances be prepared by legal practitioners only.⁴⁴ A transfer of an interest in land may be lawfully made by an electronic conveyance⁴⁵ and only by a qualified legal practitioner who has been granted access to the land information system⁴⁶ by the Lands Commission.⁴⁷

There are three different systems of recording and registering interest and rights in land : deed registration (registration of instruments relating to land), registration of title and the recording of customary interest and rights by customary land secretariats.⁴⁸

A **deed registration** is the registration of documents or instruments conferring interests in or rights over land.⁴⁹ The Registrar of Lands is responsible for the registration of deeds.⁵⁰ It is worth noting that all instruments affecting land are registrable in law. An instrument affecting land include a vesting assent⁵¹, a power of attorney, a caveat⁵² or a restriction, a statutory declaration⁵³, a court judgment⁵⁴, a certificate of purchase⁵⁵ issued by a court or a certificate of purchase issued under the Borrowers and Lenders Act, 2008 (Act 773).

For an instrument to qualify for registration, it must: sufficiently describe, identify the location and boundary of the land to which it relates; make sufficient reference to the date and particulars of registration of any already registered instrument affecting the same land; have or make reference to an approved site plan; be duly stamped (where required); have a written consent and any statutory approvals; and conform to all requirements of the Act.⁵⁶ All instruments (unless exempted by law) to be registered must be proved⁵⁷ to have been duly executed by grantor, on oath by one of the subscribing witnesses of the grantor before the Land Registrar, a judge, a district court magistrate or a registrar of a High Court. Where the instrument is executed outside the republic and in a commonwealth country, then it must be proved before a diplomatic agent or consular officer, a judge, a magistrate or a notary public. Where it is executed in any other country, then it must be proved before a diplomatic agent or a consular officer representing and acting for and on behalf of Ghana or a notary public.⁵⁸ The Land registrar shall issue a certificate of registration as proof of registration.⁵⁹ This certificate helps in the determination of priority of instruments affecting the same parcel

⁴³ Land Act 2020, Act 1036 s 68

⁴⁴ Ibid s 33

⁴⁵ Ibid s 73

⁴⁶ It is an electronic system equipped with the requisite information technology infrastructures to aid in electronic conveyancing.

⁴⁷ Land Act 2020, Act 1036 s 75

⁴⁸ Ibid s 80

⁴⁹ Ibid s 207

⁵⁰ Ibid s 206

⁵¹ Vesting Assent is a document that transfer or vest property in a beneficiary to an estate

⁵² Caveat is a formal request that prohibits the registration of a disposition and the making of an entry on a land certificate or register to the extent specified in the certificate or register.

⁵³ Statutory Declaration is a written statement that sets out facts within the knowledge of a person, declared to be true and accurate in the presence of an authorised person.

⁵⁴ Court Judgement is a decision of a competent court.

⁵⁵ Certificate of Purchase is a document granted by the court to a person who has been declared the purchaser of a sale of his or right, title and interest in a property

⁵⁶ Land Act 2020, Act 1036 s 207(2)

⁵⁷ Ibid s 209

⁵⁸ Ibid s 210

⁵⁹ Ibid s 216

of land presented by different applicants,⁶⁰ and therefore an instrument is of no legal effect unless it is registered.⁶¹

A **title registration** deals with the registration of an interest or rights in land. All major interest⁶² and minor rights⁶³ in land are registrable under the Act. The Act also makes provisions for the registration of a condominium, an apartment or a flat through the enactment of regulations.⁶⁴ All persons who are allodial owners, or holds; common law freehold, customary law freehold, usufructuary interest, a leasehold interest of which more than three years are unexpired or a customary tenancy, qualifies to and may register their interest or rights in a land.⁶⁵ A licence granted under the Minerals and Mining Act, 2006 (Act 703) and a timber right granted under the Timber Management Act, 1998 (Act 547) or any other enactment are not registrable under the Land Act.⁶⁶ The Minister responsible for Land may on the advice of the Land Commission, declare an area as a registration district by the enactment of a legislative instrument. The effect of this is that, deed registration and plotting in relation to deed registration ceases to be applicable in such designated registered district.⁶⁷ A Land certificate is also issued by the Land Registrar after a registration process has been completed as prescribed in section 125 of Act 1036.

The legal effect of registration is to serve as notice to the whole world that the person in whose name the land has been registered has an interest in or right over that parcel of land.⁶⁸ Also an entry in the land register is a conclusive evidence of the title of the holder of the interest as specified in the land register.⁶⁹

There is also the **recording of customary interest and rights** by customary land secretariats.⁷⁰ The act requires the customary Land Secretariat to record the interest and rights in land, keep and maintain accurate and up-to-date records of all land transactions in the area of its operation. This serves as evidence and notice of transactions in relation to land in the area of operation of the customary law secretariat.⁷¹

⁶⁰ Dennis Dominic Adjei, 'Land Law: Practice and Conveyancing in Ghana' (2001), 3rd edition, pp. 403

⁶¹ Land Act 2020, Act 1036 s 227

⁶² Ibid s 81

⁶³ Ibid s 82

⁶⁴ Ibid s 81(2)

⁶⁵ Ibid s 83

⁶⁶ Ibid s 83 (5)

⁶⁷ Ibid s 89

⁶⁸ Ibid s 228

⁶⁹ Ibid s 111(1), (137)

⁷⁰ Ibid s 80

⁷¹ Ibid s 15

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Land Rights Research

Briefing 2: Benefit Sharing Arrangements for Land in Ghana

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1. Introduction

The 1992 Constitution imposes an obligation on the state to recognise that ownership and possession of land carry a social obligation to serve the larger community.¹

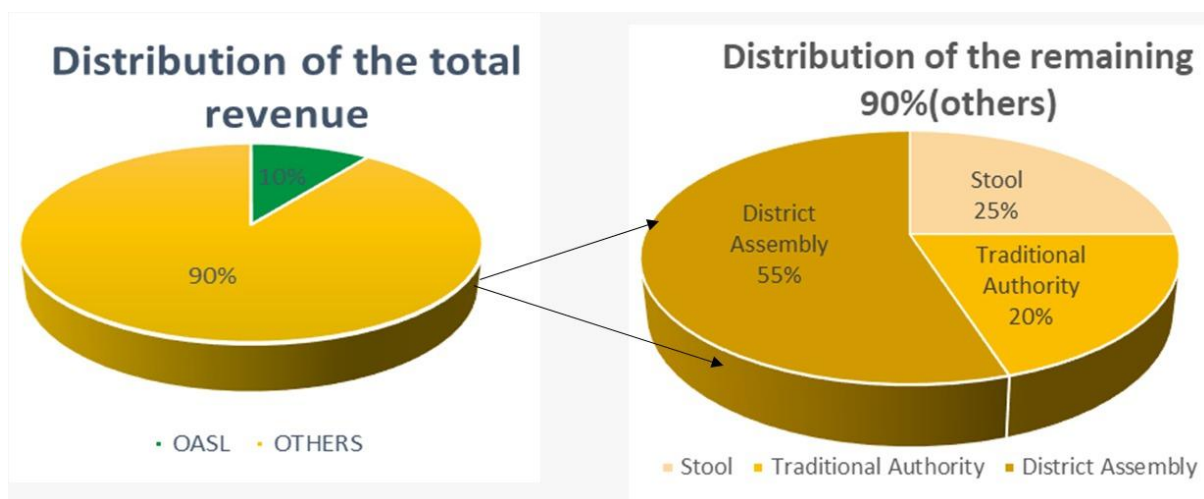
When any form of revenue accrues from land, Ghana's land law regime has sought to provide a robust mechanism for the sharing of the bounty that arises from a parcel of land. The Constitution, Acts of Parliament, customary law and case law have provided for a sophisticated arrangement for the sharing of the benefits that accrue to land. When revenue accrues, this detailed arrangement provides for what each interest or right holder with respect to the parcel of land in question is entitled to. It provides for what the holders of the allodial title, leasehold interest and all the other interest holders are entitled to with respect to the land to which the benefit accrued.

From here, all the significant land benefit-sharing arrangements in Ghana are extensively examined. The land benefit sharing arrangements examined are related to;

1. Distribution of Stool Land Revenue by Office of the Administrator of Stool Lands
2. Customary Land Management
3. Areas reserved for common use
4. Compulsory Acquisition
5. Benefit Sharing of Vested Lands

2. Distribution of Stool Land Revenue by Office of the Administrator of Stool Lands

The 1992 Constitution provides that when any form of revenue accrues to stool lands in Ghana it is shared as follows.²



¹ Constitution of Ghana 1992, Article 36(8)

² Ibid Article 267

3. Customary Land Management

The Land Act, 2020, Act 1036³ establishes the rules for the responsible management of stool or skin, clan, or family lands in Ghana.

It provides that any authority in charge of the management of stool or skin, or clan or family land, is a fiduciary charged with the obligation to discharge the management function for the benefit of the stool or skin, or clan or family concerned and is accountable as a fiduciary. Therefore, any authority tasked with the management of such collectively owned property has an enforceable duty to be transparent, open, fair and impartial in making decisions affecting such parcels of land.

A fiduciary who deals with the relevant landed property in a way that contravenes transparency and accountability commits an offence with punishment which may include a minimum of five years imprisonment.

Section 13 of Act 1036 gives the subjects and members of the relevant stools and family the right to sue the stool occupants and family heads managing collectively owned property to protect their share or interests in those properties.

The Act incorporates the Head of Family Accountability Act, 1985 (PNDCL 114) by offering a member of a stool or family who has or claims a beneficial interest in a property, the right to sue a stool occupant(s) or family head for the refusal to render proper accounts of the property.

4. Areas reserved for Common Use

The Land Act, 2020 (Act 1036)⁴ establishes the framework for the recognition, management, and use of common land within a community in Ghana, with an emphasis on adherence to customary practices, management plans, and collaboration with local authorities.

Act 1036 guarantees a community's right to agree to set aside one or more areas of land within the community for common use by the members of that community. It is only the relevant community which has the power to determine the boundaries of the area of land which has been set aside for common use. The community is also entitled to decide on the manner in which this designated land will be put to use, which must be in accordance with their customary law and practice.

This is a way Act 1036 allows the community which collectively owns land to collectively benefit from that land. The Act gives members of the relevant community the right to make reasonable use of common land and the right to exclude non-members of the community from the common land. However, a person who is not a member of the community may, with the agreement of the community, use common land in accordance with the terms of the customary law and usage and the management plan applicable to that land.

In order to ensure good maintenance and management, the Act provides for the formation of a committee, members of which shall possess the requisite/relevant skills, to prepare a management plan to guide the usage and management of the areas reserved for common use. The management plan may extend to cover more than one area.⁵

³ Land Act, 2020 (Act 1036) s 13

⁴ Ibid s 19

⁵ Ibid s 19

5. Benefit Sharing with respect to Vested Lands

Act 1036 affirms the abolition of the vesting of stool, skin, clan and family lands in the state by the 1992 constitution. It also establishes a committee to manage already vested lands.⁶ The Lands Commission shall constitute Management Committees for vested lands on which pre-vesting owners shall have adequate representation.

Rents due or other payments payable in respect of vested lands shall be paid by the Lands Commission to the Office of the Administrator of Stool Lands for payment to the appropriate stool or skin, or clan or family land account.

Where there is a dispute as to whom the rent should be paid to, the rent shall be paid into an interest-yielding escrow account established by the Office of the Administrator of Stool Lands or the Division of the Lands Commission established for the purpose.⁷

6. Compensation for Compulsory Acquisition

Compulsory Acquisition is one of the means by which the state may acquire land where necessary in the interest of the public. This is usually done by the publication of an executive instrument in the gazette, specifying the nature, extent and location of the land acquired and the purpose of the acquisition.⁸ A copy of the instrument is also served on persons with interest in the land, the traditional authority, the district assembly, the newspaper, a conspicuous place on the land and on local radio station within the area where the land is located.⁹ Where land in a locality is identified to be used for public purposes, a thirty (30) days notice is served on the affected locality by the land commission to conduct a preliminary investigation. This is to assess the land in terms of its suitability for the intended purpose. Once notice is served, the occupiers are required to give consent for the investigations to be carried out within fourteen (14) days and where they refuse to express their consent, the Land Commission has the right to enter without waiting for consent to be given.¹⁰ It is worth noting that, a compulsory acquisition of land shall not be undertaken without prior consultation with stakeholders of the locality within which the acquisition will be made.¹¹

Notice is also served on persons who have an interest or claim to have an interest in the land or any person after a reasonable enquiry. There is also a requirement to publish this notice at least once in the gazette, a daily newspaper of national circulation, a copy on the notice board of the District Assembly and Traditional Council and also fixed on a conspicuous part of the land. After this, the Land Commission may cause the land in question to be properly surveyed and demarcated for use as purported. An entry will also be made in the register for and on behalf of the state.¹² The state also reserves the right to withdraw from any intended compulsory acquisition by publishing a notice of withdrawal in the same manner as the notice of acquisition.¹³

⁶ Land Act, 2020 (Act 1036) s 268

⁷ Ibid s 269

⁸ Ibid s 233

⁹ Ibid s 249

¹⁰ Ibid s 241

¹¹ Ibid s 244

¹² Ibid s 243

¹³ Ibid s 247

6.1 General Principles of Compulsory Acquisition

The 1992 constitution¹⁴ broadly establishes strict conditions and legal safeguards for the compulsory acquisition of property by the State. It emphasizes fair compensation, access to legal recourse, and the importance of using acquired property for the intended public purposes. It also allows for reacquisition by the original owner if the property is not used as intended.

The state is barred from lawfully acquiring a person's property without the prompt payment of fair and adequate compensation to persons with interest in or right over the property. Also, where a compulsory acquisition causes the displacement of any lawful inhabitants on that land before the compulsory acquisition, the State is obligated to resettle the displaced inhabitants on suitable alternative land with due regard for their economic well-being and social and cultural values.

The constitution also provides that where the property is not used in the public interest or for the purpose for which it was acquired, the owner of the property immediately before the compulsory acquisition, shall be given the first option for acquiring the property. If this previous owner of the property chooses to exercise his right to reacquire the property, they shall, on such reacquisition, refund the whole or part of the compensation paid to them as provided for by law or such other amount which corresponds with the value of the property at the time of the reacquisition.

6.2 Persons entitled to claim compensation concerning compulsory acquisition¹⁵

Any person holding any interest or right in relation to the land, whose interest has been affected by the compulsory acquisition is entitled to claim compensation from the Lands Commission. This means that for one parcel of land which is compulsorily acquired, multiple persons or entities may have to be compensated for the loss of their interests in the land, thus complying with the constitutional requirement of compensation for the loss of property rights.

Where a person has a right or interest in land that is compulsorily acquired, the person has to make an application to the Lands Commission within six months from the date of the publication of the Executive Instrument that completes the compulsory acquisition in order to claim their compensation. This submission made to the Lands Commission must include particulars of the interest of that person in the land, the manner in which the interest of that person has been affected by the compulsory acquisition, the amount of compensation claimed, and the basis for the calculation of the compensation.

6.3 Disbursement of assessed compensation with respect to Compulsory Acquisition¹⁶

Act 1036 imposes an obligation on the state to ensure that the funds for the payment of compensation and other costs associated with the acquisition have been paid into an interest-yielding escrow account before compulsory acquisition can be undertaken by the Lands Commission.¹⁷ This ensures that there are funds ready for the prompt payment of compensation as soon as the compulsory acquisition is completed.

¹⁴ Constitution of Ghana 1992, Article 20

¹⁵ Land Act, 2020 (Act 1036) s 250

¹⁶ Ibid s 259

¹⁷ Ibid s 238

Compensation is paid after the Lands Commission has served notice of the assessed compensation on persons who have an interest in land. The ratio of the disbursement varies depending on the kinds of interests that existed in the land immediately before the compulsory acquisition was undertaken;

- Where an usufructuary interest exists at the time of acquisition, 60% of compensation is paid to the holder of the usufructuary interest and 40% is paid to the holder of the allodial title.
- Where there is no usufructuary interest, 100% is paid to the holder of the allodial title or the holder of the freehold interest.
- Where the land is used for a customary tenancy, 60% is paid to the holder of allodial title or the freehold interest and 40% to the customary tenant. The parties may agree otherwise that 40% is paid to the holder of the allodial title, 30% is paid to the holder of the usufructuary interest and 30% is paid to the customary tenant.

Despite these ratios of disbursement, compensation for the loss of buildings, crops or other improvements shall be paid to the owners of the buildings, crops or other improvements.

The only circumstances in which the Lands Commission may not pay compensation are where:

- a. there is no person competent to receive the payment;
- b. the person entitled refuses to receive payment;
- c. there is a dispute as to the right or title of the person to receive the compensation, in which case the compensation payable shall remain in a special purpose account.

A person who finds themselves aggrieved by a delay in the payment of compensation to which that person is entitled under Act 1036 may apply to the High Court for the purpose of obtaining prompt payment of compensation. Where the High Court upholds the claim of an applicant, there shall be added to the compensation, interest determined by the Court.¹⁸

¹⁸ Land Act, 2020, Act 1036 s 261

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Land Rights Research

Briefing 3: Access to Information

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Introduction

Access to information is a fundamental right that empowers individuals to seek and receive information from government bodies and institutions. In Ghana, this right is enshrined in Article 21(1)(f) of the 1992 Constitution and is implemented by the Right to Information Act, 2019 (Act 989). This right guarantees all citizens the freedom to access information, subject to certain qualifications and laws necessary in a democratic society.

Concretely, Article 21(1)(f) of the 1992 Constitution grants all persons the freedom to seek information from various sources, including government institutions and public authorities. Individuals can exercise their right to access information by making a formal request following the procedures outlined in the Right to Information Act.¹ An application for information under this Act shall be in writing, contain a sufficient description or particular to enable the information to be identified, indicate the form or manner of access required, state the capacity of the applicant if the application is made on behalf of another person, state the name and address for notice, provide identification of the applicant and be signed by the applicant.² Applicants, when making a formal request for information, are generally not required to provide a reason for their information request. However, in cases where urgency is involved, applicants must state the reason for the urgency when making a request.

While the right to information is protected, it is subject to certain qualifications and laws necessary in a democratic society. These limitations include considerations related to defence, public safety and public order.

Access to information on land matters is essential for transparency, accountability, and effective land administration in Ghana. The legal provisions outlined in the 1992 Constitution, Land Act, 2020 (Act 1036), and the Right to Information Act, 2019 (Act 989), collectively establish a comprehensive framework for citizens and stakeholders to access vital land-related information, promoting good governance and responsible land management.

The legal provisions and principles governing access to information in land-related matters in Ghana are explored below.

1. Access to Information on Customary Land³

The Land Act, 2020, establishes a framework for access to information on customary interests and rights in land through the Customary Land Secretariat. Act 1036 empowers the Customary Land Secretariat to perform various functions, including:

- (i) Recording and maintaining accurate land transaction records;
- (ii) Providing a list of existing customary interests and rights;
- (iii) Offering information on land hierarchy and dispute resolution processes;
- (iv) Facilitating land dispute resolution through alternative means;
- (v) Preparing periodic financial accounts for transparency;
- (vi) Providing facilities for land record searches.

Most of the secretariat's work has to do with record keeping on customary land. These records maintained by the Customary Land Secretariat serve as a notice and evidence of land transactions. Lands Officers

¹ Right to Information Act, 2019 (Act 989) s 1 and 2

² Ibid s 18

³ Land Act, 2020 (Act 1036) s 15

and Stool Lands Officers are also mandated to oversee compliance with the mandate of the Customary Land Secretariat within their districts.⁴

The records maintained by the Customary Land Secretariat are public records and accessible to the general public at the local level, especially members of the community within which the secretariat is established.⁵ The Land Act specifically provides that the Customary Land Secretariat should provide relevant records on land and information on the hierarchy of interests and rights in land when requested by a person with interest⁶ in those lands (e.g. landowners, prospective buyers).⁷ One of the main functions of the secretariat is to prepare periodic accounts of all revenue received and at the same time provide facilities for search to be conducted on the records on land.⁸ Not only is the secretariat under an obligation to make information accessible to the community members, it also bears the duty of undertaking community education, sensitization and awareness creation on land issues.⁹

2. Information from Digital Conveyancing¹⁰

In light of modern trends of ease of accessibility to digital information, Act 1036, attempted to inculcate digitization into Ghana's land conveyance regime. This is to facilitate electronic land conveyancing in Ghana. Act 1036 therefore directed the Lands Commission to, as far as practicable, establish a land information system equipped with the requisite information technology infrastructure.¹¹

The Land Commission's work in relation to the digitization of conveyancing in Ghana is not done after the establishment of an electronic land information system. It also has the responsibility to provide education generally on the land information system and particularly on electronic conveyancing for staff of the Lands Commission, professionals who provide services in relation to land and most importantly, the general public.

This is intended to modernize land transactions and enhance efficiency through electronic means. It will be easier for the general public to access information on land-related matters if such information is available electronically. This will break all manual and geographical barriers when it comes to accessing information on the conveyance of land in Ghana. This system is presently under development and has yet to be deployed.

3. Notice of Demarcation and Survey¹²

A licensed surveyor, who is directed by the Lands Commission to enter upon land which the surveyor is appointed to demarcate and survey, may cause a notice to be served on every person who has an interest in the land to be surveyed or demarcated. The surveyor may require a person who has an interest in a land to be surveyed or demarcated to attend personally or by an agent before the surveyor at the time and place stated in the notice. This person is to help the surveyor in identifying the boundaries of the land or providing information needed for purposes of the survey or demarcation. However, it is worth noting that

⁴ Land Act, 2020 (Act 1036) s 15(4)(b)

⁵ Ibid s 15(4)(d)

⁶ Persons with interest may include landowners, users, buyers, etc

⁷ Land Act, 2020 (Act 1036) s 15(1)(c)

⁸ Ibid s 15(1)(g)

⁹ Ibid s 15(1)(f)

¹⁰ Ibid s 74

¹¹ Ibid s 74(a)

¹² Ibid s 88

the timeframe within which the notice is to be served on the person(s) interested in the land to be surveyed or demarcated is not specified.

Also, apart from a person who has an interest in the land in question, the surveyor has the power to, by notice, invite any person who in the opinion of the surveyor or the opinion of the Land Registrar is in possession of information or document relating to the boundaries, to attend before the surveyor and give the information or produce the document at the time and place specified in the notice.

This provision is to the effect that access to information on land is not accessible to only the persons who have an interest in land. Even state officials, private professionals hired by state agencies, government bodies and institutions have the right under Act 1036 to request and retrieve vital land-related information from citizens and other stakeholders.

Chapter five (5) of Act 1036 entitled “*Title Registration*” which allows the surveyor authorized by the Land Registrar to invite stakeholders to attend before her and give the information does not specifically put any fetter on that power. It does not specifically make provisions for a situation where the invitee finds the invitation by the surveyor to be unreasonable. Also, it does not provide for the steps the surveyor should take in case the invitee dishonours their invitation to attend and produces information for the surveyor.

However, it would appear that since the notice of demarcation and survey is in relation to land title registration, a dispute arising in that process would be a land title registration dispute. Such disputes, as previously discussed, are to be first subjected to ADR mechanisms for an attempted resolution failing which the aggrieved parties may proceed to the courts.¹³

4. Access to information to the Land Registrar¹⁴

The Land Act, 2020 (Act 1036) has granted several powers to the Land Registrar. Among these powers is the power to:

- (i) Require any person to produce an instrument, a land certificate or any other document or plan relating to the land or interest in land to be registered;
- (ii) summon a person to appear and give information or explanation in respect of an interest in land to be registered and that person shall appear and give the information or explanation;
- (iii) Refuse to proceed with a registration if an instrument, a certificate or any other document required to be produced is withheld.

Where a person fails to obey an order made by the Land Registrar, the latter shall, where there is no reasonable justification for the failure, refer the disobedience to a court of competent jurisdiction, and that person may be dealt with by the court of competent jurisdiction as if the Land Registrar's order were the order of the Court.

Also, with respect to the disposition of a stool or skin land, or clan or family land, the Land Registrar shall not register a large-scale disposition of such lands unless the Regional Lands Commission has granted its consent or concurrence to the disposition. Before the Regional Lands Commission gives its consent and concurrence, it may request the person who is applying for the consent and concurrence, information that the Regional Lands Commission deems essential for the grant. The Regional Lands Commission has the right to refuse to grant its consent and concurrence until the information is received.

¹³ Land Act, 2020 (Act 1036) s 98

¹⁴ Ibid s 102

5. Searches and Copies¹⁵

Part of the due diligence expected to be done by a person seeking to purchase land or deal with a parcel of land in any way is that they need to conduct a search into all the information on that land usually at the land registry. Any person seeking information concerning a parcel of land in a land registration district or any other matters incidental to that parcel of land may apply to the Land Registrar to conduct an official search in the land register or on the registry map. However, where a person requires a true certified copy of the result of the search, that person must show proof of interest in the parcel of land.¹⁶

Fourteen days after the payment of the prescribed fees, the Lands Commission is under a statutory obligation to issue to the person seeking to conduct the search, a report of the result of the search. This report issued by the Lands Commission shall be presumed to be conclusive of matters stated in the form submitted by the applicant.

The Borrowers and Lenders Act, 2020 (Act 1052), which was enacted to regulate transactions between borrowers and lenders, establishes the Collateral Registry.¹⁷ The principal functions of the Collateral Registry are to¹⁸;

- (i) keep and maintain a register of security interests; and
- (ii) keep and maintain a platform for the conduct of searches in security interests.

This is to allow lenders to determine whether a property has any form of security-related encumbrances on it. It allows them to find out if the property the borrower intends to use as collateral has already been used as security for a loan. If a person wishes to conduct a search at the collateral registry, they may use one of the names or ID numbers of the borrower, the unique collateral identifier or the security interest registration number.¹⁹

A search result²⁰ will either return no records against the specified search criterion or return all registrations that exist in the Registry record with respect to the specified search criterion at the date and time when the search was conducted.²¹ Fees payable for searches and search certificates is GHS 5.00. which is subject to the periodic revision of the Bank of Ghana.²²

6. Information on land use of land scheduled for Compulsory Acquisition

The 1992 Constitution provides that the state cannot lawfully acquire a person's property without the prompt payment of fair and adequate compensation to persons with interest in or right over the property.²³ Also, the law, particularly the Executive Instrument that completes the compulsory acquisition must make provisions for a right of access to the Courts by any person who has an interest in the property for the determination of his interest and the amount of compensation to which he is entitled.

¹⁵ Land Act, 2020 (Act 1036) s 130

¹⁶ Ibid s 222(5)

¹⁷ Borrowers and Lenders Act, 2020 (Act 1052), Long Title

¹⁸ Ibid s 19

¹⁹ Rules For The Effective Implementation Of The Borrowers And Lenders Act, 2020 (Act 1052) Notice No. BG/GOV/SEC/2021/07, paragraph 18

²⁰ For a detailed/step-by-step criteria for conducting a search see: The Collateral Registry's "User Manual Collateral Registry System, July 2022" or see:

<https://www.collateralregistry.gov.gh/crghomefinal/docs/CRS%20Public%20User%20Manual.pdf>

²¹ Ibid Paragraph 19

²² Ibid Paragraph 20

²³ Constitution of Ghana 1992, Article 20

For the purposes of assessing the amount of compensation, the Lands Commission shall request from the local planning authority information on the following matters:

- (i) whether the scheduled land is subject to any local plan;
- (ii) if there is a local plan, the land use indicated in the local plan for the scheduled land; and
- (iii) environmental considerations.

The local planning authority shall provide the information required to the Lands Commission within thirty days after the request has been made. For the purpose of valuing the land scheduled for compulsory acquisition, the information obtained by the Lands Commission shall be conclusive evidence. It is worth noting that, a compulsory acquisition of land shall not be undertaken without prior consultation with stakeholders of the locality within which the acquisition will be made.²⁴

7. Right of Access to Information

In summary, apart from the specific provisions in the Land Act, 2020 which guarantee the right of access to information, the 1992 Constitution of Ghana and the Right to Information Act, 2019 (Act 989) generally provide for the right to access information in Ghana. This allows individuals to seek information freely from various sources, with certain procedural requirements and limitations in place to balance this right with broader societal interests. Therefore, if the information a person wishes to request from the Land Registry or Commission is not specifically provided for under Act 1036, that person may proceed under the general provision of the 1992 Constitution and the Right to Information Act, 2019 (Act 989) to access such information.

8. Conclusion

In conclusion, access to information on land matters is a fundamental right in Ghana, crucial for promoting transparency, accountability, and responsible land management. The legal framework, comprising the 1992 Constitution, the Land Act, 2020 (Act 1036), and the Right to Information Act, 2019 (Act 989), collectively ensures that citizens and stakeholders can access critical land-related information. These laws empower various institutions, such as the Customary Land Secretariat and the Lands Commission, to maintain records, facilitate digital conveyancing, conduct land surveys, and provide information to the public. Furthermore, they establish processes for land searches, copies, and compensation assessments, all aimed at ensuring efficient land administration and informed decision-making.

The right to access information plays a pivotal role in Ghana's land management, promoting good governance and responsible land use. It empowers individuals to make informed choices and ensures that land-related processes are conducted transparently and with accountability. Additionally, the regulatory authority vested in the Minister responsible for land allows for the creation of necessary regulations to govern access to land information, further enhancing the effectiveness of these legal provisions.

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²⁴ Land Act 2020, (Act 1036) s 244

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Land Rights Research

Briefing 4: Stakeholder involvement

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Introduction

The Land Act, 2020, in its quest to ensure proper consultation, transparency, and accountability in land management, especially concerning traditional and family-owned land, provides guidelines for stakeholder involvement in land-related decisions and disputes. Act 1036 outlines various processes and provisions related to land assessment and stakeholder involvement in land management.

1. Consultation with stakeholders with respect to Compulsory Acquisition

Both Article 20 of the 1992 Constitution and section 233 of Act 1036 allow the state to compulsorily acquire any land within Ghana where the acquisition of that land is necessary for a public purpose. This power is known as an eminent domain.

Pursuant to Act 1036, compulsory acquisition of land shall not be undertaken by the State unless the Lands Commission has consulted the persons with interest in the land to be affected and occupiers of the lands to be affected, the traditional authorities and community leaders. The Lands Commission, according to Act 1036, does not have to merely consult these persons but their concerns must be taken into consideration.

After consulting with the stakeholders, the Lands Commission shall prepare and publish a report of the consultation between itself and the stakeholders in respect of the proposed acquisition. A copy of the report must be made available to the traditional authority and the District Assembly of the area in which the land is situated and any person identified to have an interest in the land and upon request to any person who claims to have an interest in the land.

When the state declares its intention or even commences a process for the compulsory acquisition of a parcel of land, the state still reserves the right to withdraw from an intended compulsory acquisition of land by publishing a notice of the withdrawal in the same manner as the compulsory acquisition was published.

Where there is a withdrawal of compulsory acquisition, the Lands Commission will have to determine the amount of costs and damages incurred by the persons affected and compensate such affected persons. However, in arriving at the costs and damages incurred by the persons affected, the Lands Commission must consult with the persons affected by the withdrawal to determine the amount of costs and damages incurred by them.¹

2. Management of Stool or Skin, or Family Land

The Land Act, 2020 (Act 1036) establishes rules for registering land held by stools, skins, clans, or families, including consulting or obtaining consent from other members of their entities as per customary practices.

Act 1036, in order to ensure that the person managing the stool, skin, clan, or family property does not unlawfully benefit from this property, provides in section 13 that a disposition of stool or skin, or clan or family land or interest in land shall not be registered by the Land Registrar unless it is satisfactorily proved that the requisite consent and concurrence has been duly given and that the relevant provisions of article 267 of the 1992 Constitution have been complied with.

This section establishes a legal framework for the management and accountability of stool, skin, or family land, emphasizing transparency and fair decision-making by those in charge and imposing penalties for

¹ Land Act, 2020 (Act 1036) s 247

violations of fiduciary duties. It also outlines the conditions under which actions can be brought against land occupiers under the Head of Family Accountability Act.

Act 1036² makes a person in charge of the management of stool or skin, or clan or family land, a fiduciary, charged with the obligation to discharge the management function for the benefit of the stool or skin, or clan or family concerned and is accountable as a fiduciary. The person in charge therefore has the duty to be transparent, open, fair and impartial in making decisions affecting the specified land. A fiduciary in charge of the management of such a collectively owned land who contravenes the fiduciary duties commits an offence and may go to prison, upon conviction, for up to ten years.³

3. Alienation of Stool Property

It has become a widely accepted principle in Ghanaian land law that valid alienation is one which is made by the occupant of the stool with the consent and concurrence of the principal councillors⁴.

According to case law and custom, it is only the occupant of the stool or the head of family who is entitled, with the consent and concurrence of the principal elders of the stool or family, to alienate stool or family land.⁵ There can be no valid disposal of stool or family land without the participation of the occupant of the stool or the head of family; but there can be a valid alienation of stool or family land if the alienation was made by the occupant of the stool or the head of family with the consent and concurrence of some, but not necessarily all, the principal elders of the stool or family. The occupant of the stool or head of family is an indispensable figure in dealing with stool or family land.

4. Alienation of Family Property

A valid alienation is one which is made by the head of the family with the consent and concurrence of the principal members of the family. Where the head does not participate in the transaction such alienation is void *ab initio*.

To ensure proper management of collectively owned land, Act 1036 makes a person in charge of the management of stool or skin, or clan or family land, a fiduciary charged with the obligation to discharge the management function for the benefit of the group of people that owns the land and also makes them accountable as a *fiduciary*.⁶ These persons in charge of the management of collectively owned land are required to be transparent, open, fair and impartial in making decisions affecting the specified land.

The principal members of a family cannot give any title in a conveyance of family land without the participation of the head of the family.⁷ The head of family may be considered to be in a position analogous to a trustee from which it follows that it is quite impossible for land to be legally transferred and legal title given without his consent. Thus any alleged deed that seeks to transfer an interest in land without the head of family will be considered void *ab initio* and the party involved will not derive any right of absolute ownership.⁸

² Land Act, 2020 (Act 1036) s 13

³ Ibid s 13(4)

⁴ Allotey v. Abraham WALR 280 at page 286

⁵ Justice Ollennu in Allotey v. Abraham WALR 280 at page 286

⁶ Land Act, 2020 (Act 1036) s 13(2)

⁷ Agbloee v. Sappor (1947) 12 WACA 187

⁸ Ibid

5. Litigation in Respect of Stool and Family Property

As a general rule the head of a family, as representative of the family, is the proper person to institute suits for the recovery of family land. To this general rule, there are exceptions in certain special circumstances, such as: (i) where the family property is in danger of being lost to the family, and it is shown that the head (either out of personal interest or otherwise) will not make a move to save or preserve it; or (ii) where, owing to a division in the family, the head and some of the principal members will not take any step; or (iii) where the head and the principal members are deliberately disposing of the family property in their personal interest, to the detriment of the family as a whole. In any such special circumstances, the Court will entertain an action by any member of the family, either upon proof that he has been authorized by other members of the family to sue, or upon proof of necessity, provided that the Court is satisfied that the action is instituted in order to preserve the family character of the property.⁹ This rule similarly applies to stool lands such that in the absence of the stated exceptions, the proper person to sue or be sued in respect of stool lands is the chief.¹⁰

⁹ Kwan v. Nyieni (1959) GLR 67

¹⁰ Owusu v. Agyei [1991] 2 GLR 493 - 517

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Land Rights Research

Briefing 5: Access to Alternative Justice Resolution Mechanisms

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Introduction and Background

The Land Act of 2020 (Act 1036) represents a landmark reform in Ghana's legislative framework for managing land-related disputes. Recognizing the central role of land in socio-economic development and the persistence of disputes in this domain, the Act provides a robust mechanism for dispute resolution, emphasizing Alternative Dispute Resolution (ADR) to reduce litigation burdens on the judicial system. By incorporating ADR into its structure, the Act not only reflects international best practices but also aligns with Ghana's commitment to equitable and efficient justice delivery.

Historically, Ghanaian courts have been inundated with land disputes. Between 1998 and 2002 alone, a staggering 2,341 land-related cases were brought before the courts, of which only 73 were resolved¹. This backlog highlighted the limitations of traditional litigation in addressing land disputes and underscored the need for alternative mechanisms. Previous legislation, such as the Land Title Registration Law of 1986, attempted to redirect specific land-related disputes to administrative bodies for resolution². Building on this foundation, the Land Act of 2020 broadens the scope and efficacy of ADR mechanisms, positioning them as the first resort for resolving a wide range of land disputes.

The Act addresses various disputes, including conflicting claims over land ownership³, compensation disputes in compulsory acquisitions⁴, and disagreements over boundary demarcations⁵, lease renewals⁶, and vested lands⁷. Section 98 of the Act mandates that many of these disputes must first be subjected to ADR processes, as outlined in the Alternative Dispute Resolution Act of 2010 (Act 798), before recourse to the courts. This prioritization of ADR aims to alleviate the courts' caseload, expedite dispute resolution, and foster collaborative and community-driven solutions.

Notably, the Act retains the supervisory jurisdiction of the judiciary, as enshrined in Articles 125(3) and 140(1) of the 1992 Constitution. While the courts maintain the authority to adjudicate land-related matters, they may require parties to exhaust ADR mechanisms⁸ in instances where the process has been bypassed without substantial justification. This ensures a balanced approach that upholds the judiciary's constitutional mandate while promoting ADR as an efficient tool for resolving disputes.

Beyond dispute resolution, Act 1036 introduces safeguards to enhance transparency and fairness in land governance. These include penalties for Lands Commission officers who intentionally misvalue land⁹, strict timelines for granting or refusing lessors' consent to lease assignments¹⁰, and clear procedures for assessing and appealing compensation in compulsory acquisitions¹¹. The Act also empowers Customary Land Secretariats to establish dispute resolution mechanisms¹², reinforcing the integration of customary practices into formal legal structures.

¹ Poku Adusei, 'Burden of Proof in Land Cases: An Analysis of Some Recent Decisions of the Court of Appeal and the Supreme Court of Ghana' (2000-2002) 21 U Ghana LJ 223

² Land Title Registration Law, 1986 (PNDCL 152) s 12

³ Land Act 2020, (Act 1036) s 115

⁴ Ibid s 253 (3), s 274

⁵ Ibid s 91 (2)

⁶ Ibid s 50 (15)

⁷ Ibid s 269 (4)

⁸ Ibid s 98

⁹ Ibid s 253(5)

¹⁰ Ibid s 142(2)

¹¹ Ibid s 253

¹² Ibid s 15 (1) (d)

Additionally, the Act prioritizes the rights and responsibilities of individuals, communities, and public entities in land transactions. For example, it ensures that compensation for compulsory acquisitions is fair, timely, and equitable¹³, while also penalizing abuses of authority. Furthermore, it provides for the establishment of escrow accounts to hold disputed rents for vested lands¹⁴, ensuring transparency and fairness in their management.

This legal briefing explores the key provisions of the Land Act of 2020, with a focus on the dispute resolution mechanisms and their practical implications. It examines the range of disputes addressed by the Act, the procedural safeguards in place, and the potential gaps or ambiguities that may require further clarification or legislative reform. By doing so, it aims to provide practitioners, policymakers, and stakeholders with a comprehensive understanding of the Act's role in advancing equitable land governance in Ghana.

1. Alternative Dispute Resolution Mechanisms

In several situations, the Land Act, 2020 provides that parties to a land dispute should, voluntarily or under the direction of the Land Registrar, seek a solution to the dispute under the Alternative Dispute Resolution Act, 2010 (Act 798). Act 798 makes provision for Alternative Dispute Resolution (ADR) including Arbitration and Mediation. Alternative Dispute Resolution mechanisms are widely regarded as the preferred means of resolving disputes, including disputes in relation to land and other immovable property. That is true because, unlike litigation, ADR provides a speedy and expert dispute resolution process, usually subject to the parties' control, in a single, centralized forum. The merits ADR have over litigation is the main reason why Act 1036 makes provision for settling some land-related disputes through ADR instead of the regular courts. The characteristics of these ADR mechanisms under Act 798 are discussed below.

1.1 Arbitration

This is usually used to resolve a dispute between parties to a written agreement, where they undertake to resolve any dispute that arises under their contract through arbitration.¹⁵ An arbitration agreement may be in the form of an arbitration clause in the main contract or it may be in the form of a separate agreement.¹⁶ Where an action is before a court, and the court is of the view that the action can be resolved or may be resolved through arbitration, that court may with the consent of the parties in writing, despite the absence of an arbitration clause or agreement in respect of the matter in dispute, refer the action for arbitration.¹⁷

Some of the main features of arbitration are as follows:

- i. It is a consensual means to resolve disputes,
- ii. It involves the submission of disputes to a non-governmental or non-judiciary decision-maker selected by the parties.

¹³ Land Act 2020, (Act 1036) s 258 (1)

¹⁴ Ibid s 269 (4)

¹⁵ Alternative Dispute Resolution Act, 2010 (Act 798) s 2

¹⁶ UNCITRAL Model Law on International Commercial Arbitration (Adopted 21 June 1985) United Nations document A/40/17, annex 1

¹⁷ Alternative Dispute Resolution Act, 2010 (Act 798) s 7

- iii. Arbitration produces a binding award that decides the parties' dispute in a final manner and is subject only to limited grounds for challenge in national courts.¹⁸

1.2 Mediation

This process does not provide for a binding decision to be imposed on the parties.¹⁹ It rather provides for a non-binding process that may assist the parties in reaching a consensual settlement. The mediator is not empowered to decide the parties' dispute, but simply to discuss and negotiate with the parties in an effort to persuade them to reach a mutually agreeable resolution of their dispute. This does not constitute "arbitration" because it does not produce a final third-party decision that resolves the parties' dispute. In fact, Act 798 provides that a mediator is supposed to be independent and impartial and he must do everything necessary to help the parties to satisfactorily resolve their dispute.²⁰

1.3 Customary Arbitration

A party to a dispute may choose to submit the matter to customary arbitration, a voluntary and informal dispute resolution process rooted in customary law. In this process, both parties must agree in advance to submit their dispute to arbitrators and to accept the resulting award. The arbitrators resolve the dispute based on its merits after ensuring a fair hearing for both sides in a judicial manner. The procedure closely mirrors the practices of the local native court or tribunal and concludes with the publication of the award.

It is important to note that criminal matters cannot be resolved through customary arbitration.²¹ Like regular arbitration²², customary arbitration must be entirely voluntary; no person, institution, or authority can compel another to participate.²³ An agreement to engage in customary arbitration begins when one party submits a request to a qualified arbitrator to resolve the dispute. The arbitrator then informs the other party of the request and invites both parties to consent to the arbitration process.

Once rendered, an award in customary arbitration is binding on the parties and any persons claiming through or under them. Notably, there is no requirement for a customary arbitration award to be registered in a court for it to be binding.²⁴

¹⁸ Gary B. Born, *International Arbitration: Law and Practice* (2012 Kluwer Law International BV, The Netherlands) 33 and 34

¹⁹ Ibid

²⁰ Alternative Dispute Resolution Act, 2010 (Act 798) s 74

²¹ Ibid s 89

²² Regular arbitration means voluntary submission of a dispute to one or more impartial person for a final and binding determination. This could be in the form of a formal agreement (Ibid s135)

²³ Ibid s 90(6)

²⁴ Ibid s 109

2. Conflicts necessitating ADR under the Lands Act (Act 1036)

2.1 Conflicting claims in Land Title Registration²⁵

Under Ghanaian land law, there are three systems of recording and registration of land and interest in land.²⁶ There is (a) the deeds registration system²⁷, (b) the title registration system²⁸ and (c) the recording of customary interest and rights²⁹.

The Land Act, 2020 provides that in a situation where two or more persons are making claims to an interest in land situated in a title registration district and the Land Registrar is unable to arrive at an agreement among the claimants, the Land Registrar shall direct the claimants to seek resolution of the dispute under the Alternative Dispute Resolution Act, 2010 (Act 798). Act 1036 is very insistent on ADR as a first resort to the extent that, it directs all courts to refrain from entertaining any action in respect of conflicting claims until the ADR has been exhausted. This is to significantly lessen the burden of cases before the regular courts.

2.2 Resolution of Land Disputes in relation to Land Title Registration

Generally, the rule contained in Section 98 of Act 1036 is to the effect that any action concerning any land or interest in land in a registration district shall not commence in any court unless the procedures for resolution of disputes under the Alternative Dispute Resolution Act, 2010 (Act 798) have been exhausted.³⁰ This rule has been subject to some controversy, as it was unclear which types of disputes arising in title registration districts fell under its scope. A plain reading of the rule would suggest that all forms of land disputes in title registration districts would have to attempt ADR settlement before going to court.

The Ghanaian Supreme Court however, has clarified in a recent binding precedent that section 98 of Act 1036 refers to only disputes that arise in the course of the process of registration of title or interest in land falling within a registration district. This section is not meant to affect the well-established and long-standing jurisdiction of the regular courts in land disputes even if the land falls within a registration district. Thus section 98 does not operate to entirely oust the jurisdiction of the judiciary when it comes to all forms of land related disputes in a land related area. What section 98 does is to reserve disputes in relation to land title registration of land situated within a registration district to be resolved by ADR.

2.3 Dispute Resolution in relation to the rejection of application for first registration³¹

The Land Registrar is mandated to reject an application for first registration by a person claiming to be a proprietor of land and who bases the claim on an instrument, for reasons such as the land instrument was made in contravention of, or is void by virtue of, an enactment. If an applicant is

²⁵ Land Act, 2020 (Act 1036) s 115

²⁶ Ibid s 80

²⁷ Deed Registration System deals with the registration of documents or instruments conferring interests in or rights over land.

²⁸ Title Registration System deals with the registration of an interest or rights in land

²⁹ Recording of Customary interest and rights is the recording of interest and right in land as well as land transactions in the area of operation of a Customary Land Secretariat.

³⁰ Land Act, 2020 (Act 1036) s 98

³¹ Ibid s 107.

dissatisfied with the rejection of the first application, she may first appeal to the Regional Lands Commission. Where the matter is referred to the Regional Lands Commission, the latter has to determine the matter within thirty days. Where the applicant is dissatisfied with the decision of the Regional Lands Commission, the applicant may refer the matter for resolution under the Alternative Dispute Resolution Act, 2010 (Act 798) and eventually to a court of law.

The decision of a Regional Lands Commission or resolution under the Alternative Dispute Resolution Act, 2010 (Act 798) has to be communicated in writing to the applicant, the Land Registrar and any other person affected by the decision within fourteen days after the determination of the matter.

2.4 Dispute resolution in relation to rectification by the Land Registrar³²

The Land Registrar has the power to rectify or make alterations or corrections in the land register or any instrument presented for registration if:

- (a) The land register or the instrument contains errors, omissions or any other matters that do not materially affect the interests of a proprietor;
- (b) The interested persons consent to the rectification; or
- (c) On a survey verified and approved by the Lands Commission, an area shown in the land register is found to be incorrect.

Any person who is dissatisfied with a decision of the Land Registrar in rectifying the land register or any instrument presented for registration may refer the matter for resolution under the Alternative Dispute Resolution Act, 2010 (Act 798).

2.5 Claims in Relation to Compensation in the Event of Compulsory Acquisition

Compulsory acquisition of property by the state cannot be lawfully undertaken unless the law which procures the acquisition makes provision for the prompt payment of fair and adequate compensation.³³ The 1992 Constitution, in order to safeguard the rights of landowners to compensation in the event of compulsory acquisition, provides that if any person with an interest in the compulsorily acquired land is not satisfied with the amount of compensation paid, they may seek redress at the High Court.

Act 1036³⁴ has added another layer to the dispute resolution process in the payment of compensation in the event of a compulsory acquisition. It provides that the Lands Commission shall assess the value of the interest in the land scheduled for compulsory acquisition and the amount of compensation payable. The compensation will be immediately paid to the beneficiaries if there is no dispute regarding the amount of compensation assessed.

However, in a situation where a beneficiary is dissatisfied with the assessment of compensation by the Lands Commission, that person is entitled to apply to the Lands Commission for a review of the assessment and where that person is still dissatisfied after the review, that person may refer the matter

³² Land Act 2020 (Act 1036) s 194.

³³ Constitution of Ghana 1992, Article 20

³⁴ Land Act, 2020 (Act 1036) s 253

for resolution under the Alternative Dispute Resolution Act, 2010 (Act 798).³⁵ This means a person who wants to challenge the assessed compensation cannot go straight to the High Court for redress as may be the impression under Article 20 of the 1992 Constitution. That person has to first exhaust the mechanisms under the Lands Commission and under the ADR Act.

To further protect the rights of people with interest in compulsorily acquired land, Act 1036 creates a disincentive to prevent Lands Commission officers from trying to overstate or understate payable compensation. It provides that an officer of the Lands Commission who intentionally overvalues or undervalues land scheduled for compulsory acquisition commits an offence and may be liable on summary conviction to fine of not less than two thousand penalty unit and not more than twenty thousand penalty unit or to a term of imprisonment for a maximum of twenty years.³⁶

2.6 Dispute resolution in connection with Vested Lands

Act 1036 affirms the abolition of vesting of stool, skin, clan and family lands in the state by the 1992 constitution.³⁷ It also establishes a committee to manage already vested lands. The Lands Commission shall constitute Management Committees for vested lands on which pre-vesting owners shall have adequate representation. Rents due or other payments payable in respect of vested lands shall be paid by the Lands Commission to the Office of the Administrator of Stool Lands for payment to the appropriate stool or skin, or clan or family land account.³⁸

Where there is a dispute as to whom the rent should be paid to, the rent shall be paid into an interest yielding escrow account established by the Office of the Administrator of Stool Lands or the Division of the Lands Commission established for the purpose.³⁹ Generally, the Land Act requires conflicts to be resolved under the ADR Act in the first instance before any court processes are initiated. The provision on the management of vested lands is not specific on dispute resolution, thus the general rule may apply.

2.7 Dispute resolution with respect to Right to indemnity⁴⁰

A person is entitled to be indemnified or reimbursed by the Republic if that person has suffered damage as a result of being deprived of acquiring land by reason of a rectification of the register, a mistake in the register which cannot be rectified.⁴¹

A person may apply to the Lands Commission to be indemnified and when dissatisfied with the decision of the Lands Commission may refer the matter for resolution under the Alternative Dispute Resolution Act, 2010 (Act 798).⁴²

³⁵ Land Act 2020 (Act 1036) s 253(3) (4)

³⁶ Ibid s 253 (5)

³⁷ Land Act, 2020, Act 1036 s 268

³⁸ Ibid s 269

³⁹ Ibid s 269 (5)

⁴⁰ Ibid s 198

⁴¹ Ibid s 196

⁴² Ibid s 198

2.8 Disputes in Relation to Areas reserved for Common Use

Act 1036 guarantees a community's right to agree to set aside one or more areas of land within the community for common use by the members of that community.⁴³ It is only the relevant community which has the power to determine the boundaries of the area of land which has been set aside for common use.⁴⁴ The community is also entitled to decide on the manner in which this designated land will be put to use in accordance with the customary law and practice.⁴⁵

The Act gives members of the relevant community the right to make reasonable use of common land and the right to exclude non-members of the community from the common land. However, a person who is not a member of the community may, with the agreement of the community, use common land in accordance with the terms of the customary law and usage and the management plan applicable to that land.⁴⁶

Where any dispute arises from the use and management of the common land, section 19(7)(g) of Act 1036, requires all members of that community to comply with decisions of the community or any dispute settlement body established by the community or other applicable laws to settle disputes.

2.9 Access to Justice with respect to the Demarcation, Survey and Valuation of Land

The 1992 Constitution⁴⁷ guarantees the right of every person to own property. The constitution also provides that every person's right to privacy is safeguarded and no person shall be subjected to interference with the privacy of his property except in accordance with law.

However, the Lands Commission has the power under Act 1036⁴⁸ to direct the demarcation and/or surveillance of the boundaries of any land in Ghana. The Lands Commission may also authorize any official surveyor, in writing, to enter upon any land to carry out demarcation or survey work.

In the event that the demarcation and/or surveillance authorized by the Lands Commission causes any damage to the land, the Land Valuation Division of the Lands Commission shall assess the value of damage caused and compensation commensurate to the damage shall be paid.

A person dissatisfied with the assessment of compensation by the Land Valuation Division of the Lands Commission may apply to the Commission for a review of the assessment.⁴⁹ The Lands Commission shall respond to such an application within thirty days and where the person is still dissatisfied after the review, that person has the options of either referring the matter for redress at the High Court or for resolution under the Alternative Dispute Resolution Act, 2010 (Act 798).

⁴³ Land Act, 2020 (Act 1036) s 19(1)

⁴⁴ Ibid s 19(2)

⁴⁵ Ibid s 19(3)

⁴⁶ Ibid s 19(7)

⁴⁷ Constitution of Ghana 1992, Article 18

⁴⁸ Land Act, 2020 (Act 1036) s 23

⁴⁹ Ibid s 25

2.10 Dispute settlement in relation to the demarcation of boundaries within the Registration District⁵⁰

Where an uncertainty or a dispute arises as to the position of a boundary within a registration district, the Land Registrar shall advise the claimants to refer the dispute for resolution under the Alternative Dispute Resolution Act, 2010 (Act 798) for the purpose of the determination and indication of the position of the boundaries.

Act 1036 makes a very strict provision to the effect that no court shall entertain an action concerning a dispute as to the boundaries of a parcel within a registration district unless the process of ADR has been exhausted.

2.11 Settlement of disputes in connection with renewal of leases

In a leasehold agreement, when there is a dispute with regards to the renewal of a lease, the dispute may be resolved under the Alternative Dispute Resolution Act, 2010 (Act 798).⁵¹ Where the parties fail to resolve the dispute under the Alternative Dispute Resolution Act, 2010 (Act 798), the parties may settle the dispute in court.⁵² It must be noted that Act 1036 by recommending ADR as the preferable first point of call does not take away the right of a person who is dissatisfied with a decision under the ADR mechanism to resort to the High Court. The Act further provides that if the parties fail to resolve the dispute under Act 798, the parties may settle the dispute in court.

2.12 Dispute Resolution with respect to Consent of Lessor to assignment of lease⁵³

In the registration of a lease containing an agreement, express or implied, by a lessee or tenant that the tenant shall not transfer, sublet, mortgage or assign the lease or a part of the lease without the written consent of the lessor or landlord, a transaction in respect of the lease shall not be registered until the verified consent of the landlord has been produced to the Land Registrar.⁵⁴ Where the consent of the lessor or landlord is sought, the landlord has to, within three months, respond in writing stating whether he or she has given the consent. If the consent to assign the lease is refused, then the response has to contain the reasons for the refusal.⁵⁵

If the landlord refuses to give his consent to transfer, sublet, mortgage or assignment the tenant purports to undertake, Act 1036 provides that a tenant who is dissatisfied with the refusal, may refer the matter for resolution under the Alternative Dispute Resolution Act, 2010 (Act 798).⁵⁶ It must be noted that where the Land Registrar determines that the consent has been unreasonably withheld, the Land Registrar may proceed to register the interest.⁵⁷ Also, where the consent of

⁵⁰ Land Act, 2020 (Act 1036) s 91

⁵¹ Ibid s 50(15)

⁵² Ibid s 50(16)

⁵³ Ibid s 142.

⁵⁴ Ibid s 142(1)

⁵⁵ Ibid s 142(2)

⁵⁶ Ibid s 142(3)

⁵⁷ Ibid s 142(4)

the landlord is not granted within three months and the landlord does not provide written reasons for refusal, the landlord shall be deemed to have granted consent.⁵⁸

2.13 Dispute Resolution by Customary Land Secretariat

Every stool/skin, or clan/family that owns land is under a statutory obligation under Act 1036 to establish a Customary Land Secretariat.⁵⁹ This Secretariat has a duty to establish dispute resolution mechanisms in the relevant area to facilitate the settlement of land dispute, including ensuring the fortification of ADR.

2.14 Dispute Resolution in relation to the functions of the Regional Lands Commission⁶⁰

The Land Registrar has the power to summon individuals to provide information or explanations regarding land interests, and to refuse registration if there is reasonable suspicion of adverse effects, fraud, or improper dealings. Furthermore, the Land Registrar may refuse to proceed with a registration where there is reasonable cause to either believe that a person who lacks capacity to contract or who is absent from the Republic will be adversely affected by such registration. The Land Registrar is barred from registering large-scale transfers of stool, skin, clan or family land unless the Regional Lands Commission has granted consent or concurrence to the disposition taking the totality of the transaction into consideration.

Where the Regional Lands Commission refuses to give such consent and a person is adversely affected or is not satisfied, that person may use ADR methods to resolve the dispute. However, where the land concerned is stool or skin land, the person may proceed directly to the High Court for a resolution of the matter.

⁵⁸ Land Act, 2020 (Act 1036) s 142(5)

⁵⁹ Ibid s 14 and 15

⁶⁰ Ibid s 102

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