

Building for the Future? Investment, Land Reform and the Contingencies of Ownership in Contemporary Ghana

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Summary. — Case studies of individual investments in tree crops and houses illustrate recent changes in social and economic differentiation among families and communities in Asante Region, Ghana, and their implications for recent debates over state-led land reform *versus* community-led land reform. Seeking efficiency, neoliberal land reforms transfer land from state to private ownership, as well as tenure reforms designed to strengthen owners' rights. By treating communities as owners, reforms benefit the poor as well as the well-to-do. In Ghana and other West African countries, privatization may also work in the opposite direction—reinforcing inequalities within communities, and encouraging claims to land based on origin and indigeneity.
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1. INTRODUCTION

Since the 1980s, international financial institutions and major donor governments have pressed West African states to liberalize their economies, deregulating markets, dismantling controls on foreign trade and investment, downsizing the state, and privatizing ownership of assets and enterprises. Written off in the 1970s as misguided state regulation that stifled economic development rather than spreading its benefits, “land reform” reappeared on the policy agenda in the 1980s, but with a new meaning. Rather than state-led redistribution of land from rich to poor, neoliberal policy-makers urged governments to transfer state-owned land to private ownership, arguing that this would increase productivity by stimulating land markets and promoting private investment in land-based development. Asked, in effect, to organize their own dispossession, some government officials took the opportunity to acquire state-owned land for themselves, or their relatives and associates, in their capacity as private citizens. In many cases, private owners did not invest in more productive forms of land use, but simply held newly acquired land as a speculative investment, or leased it out to commercial companies that evicted local users, cleared forests, mined soil and valuable minerals, and left the land less productive than they found it. Understandably dismayed by these developments, researchers and policy analysts are beginning to advocate community-led land reform as a preferable alternative to the kind of state-led privatization carried out in many post-socialist and/or developing economies during the 1980s–90s (Sikor & Müller, 2009).

Community-led land reform, like community-based resource management, appears to offer a democratic alternative to state-led reforms that ignore ordinary people's concerns or reduce their access to land. Because communities are localized and comprise fewer people than regions or countries, community institutions are likely to allow for greater grassroots participation and be better informed about local environments than are state bureaucracies and ruling national regimes. Community-led land reforms are therefore likely to be more equitable, and lead to more sustainable forms of resource management than top-down policies imposed by the state.

By engaging diverse local interests in the design and implementation of land reform programs, Sikor and Müller argue that, community-led land reform is likely to be more flexible than land reform carried out by the state. While these assumptions are certainly plausible, recent experience suggests that they need to be carefully examined with reference to particular local contexts. Whether initiated by the state or undertaken in response to local demands, programs that transfer land from public to private control often benefit some people and while excluding others, reinforcing existing inequalities and/or creating new ones within communities as well as among them.

In West Africa, where competition over land is intense and communities are not all egalitarian, or necessarily local, community control over land and land tenure arrangements can be as disruptive or arbitrarily exclusionary as control by the state. In the following discussion, I develop and illustrate these points with examples taken from on-going research on land claims and socio-economic change in selected localities in the Ashanti Region of Ghana.¹ Rather than trace the effects of particular land reform policies, the case studies cited below focus on selected forms of land use—specifically, individuals' investments in land-based assets such as houses and tree crops—to examine some of the ways in which neoliberal policies and changing economic and political conditions are reshaping Ghanaian communities and patterns of local authority. Following a brief overview of land tenure policies in Ghana after independence, evidence from the case studies is used to illustrate changing configurations of land-based asset formation, local governance, and family and community relations, and discuss their implications for land tenure practices and directions of future reform.²

2. LAND REFORM IN GHANA

Land reform in Ghana is best thought of as an on-going process rather than as a one-time comprehensive effort to

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restructure the country's system of land holding and tenure arrangements. Introducing the new National Land Policy, published in 1999, the Minister of Land and Forestry noted that it was "the first time in the history of this country that a comprehensive land policy has been formulated" (Ghana, 1999, p. i). A policy brief rather than a program of action, the National Land Policy is as much a reflection of Ghana's complex history of land transactions and arrangements as a blueprint for future reform. After outlining a "framework" and "guidelines" for policy reform, the document details a series of "policy actions" to be implemented "in the short, medium and long-term" (Ghana, 1999, p. 15). Many of the actions are hortatory rather than practical, and the report specifies no time frame for implementation. The document concludes with an Appendix listing some 90 pieces of legislation, enacted during 1952–98 and currently in force, related to land tenure and natural resource management, with a note that "this List is by no means exhaustive" (Ghana, 1999, p. 28).

Of particular relevance to the following discussion are the paragraphs in the National Land Policy which reaffirm government's recognition of customary land usages and titles, or declare the state's intention to "collaborate with traditional authorities and other stakeholders" to promote "ecosystem maintenance [and] biodiversity conservation" (Ghana, 1999, p. 15), return lands acquired but never used by the state to their original owners (Ghana, 1999, p. 10), "harmonies (sic) and streamline customary practices", and develop "land management knowledge and skills among stool, skin, clan and family landowners..." (Ghana, 1999, p. 16). Far from straightforwardly progressive or egalitarian, the Policy's emphasis on custom and community-level participation begs a complex and contested set of questions about the history and meaning of land ownership, and relations between land, local authority, and community membership.

Following an abortive early move to claim all "vacant and unowned" land for the British Crown "by right of conquest," colonial authorities accepted the argument put forward by leading western-educated Ghanaian clergymen and lawyers that there was no "vacant" land for the state to appropriate because land was already "owned [by] the natives, under the jurisdiction of the native chiefs" (Sarbah, 1968, p. 56). Over time, this argument was interpreted to mean that land was permanently vested in public—that is, chiefly—offices (or "stools") and could not be alienated, although rights of possession and use could be transferred from one person to another (Berry, 1993, 105ff, 2001, p. 6). In his magisterial study of customary land law and the courts, Woodman (1996, 76ff) concluded that since modern courts treat "customary freehold" as tantamount to private ownership, the reversionary rights of customary holders have become ineffective. While this may be true in the majority of court rulings, many cases never reach the courts and even those that do often turn on elusive questions of "traditional" evidence that complicate the effects of court practice. Customary laws and courts were disbanded after independence, but plural rules and land tenure arrangements continue to figure in contemporary practice, not only through Constitutional recognition of "traditional" land ownership, but also through judicial practice, particularly in regard to questions of evidence. Both before and beyond the courts, "customary" claims to ownership remain subjects of intense contestation (Berry, 2001, 82–92 (chap. 6); Kotey, 2002; Lentz, 2001; Lund, 2008).

Following independence, Nkrumah confiscated some stool lands, vesting them in the President's office, but his government stopped short of abolishing customary claims altogether. After Nkrumah's downfall in 1966, his successors restored the

confiscated lands to their chiefly owners, and subsequent constitutions have reaffirmed the principle that "all stool and skin lands are vested in the appropriate stools on behalf of, and in trust for the subjects of the stool in accordance with customary usage" (Ghana, 1992, Art. 267(1)). In 1979, these principles were extended to Ghana's northern regions, where land had hitherto been treated as the property of the state (Kasanga, 1996; Lund, 2008; Ninsin, 1989, pp. 176, 177). Under the present Constitution, adopted eight years after Ghana committed itself to structural adjustment, freehold ownership of stool lands is explicitly prohibited: "no interest in, or right over, any stool land in Ghana shall be created which vests in any person or body of persons a freehold interest howsoever described" (Ghana, 1992, Art. 267(5)). Chiefs are not freeholders either: as occupants of chiefly offices, they hold allodial title to lands vested in their stools, which are inalienable but not exclusive. Members of the community—families, clans, and individuals—are entitled to use any portion of stool land that is not being used by someone else. "Strangers" must obtain permission to use and/or occupy stool land from the chief and any other community member who may hold concurrent rights to the land in question. Rights of land use and possession are generally heritable, but chiefs claim authority to consent to most land transactions within their respective jurisdictions.³

In short, claims to land "ownership" are linked to questions of community membership as well as to histories of past transactions. Both turn on interpretations of custom and historical precedent which, like all historical accounts, are open to question and debate. Far from stabilizing, simplifying, or democratizing patterns of land holding and ownership, legal and judicial recognition of customary claims to land and community membership tend to reproduce layered claims to land and recurring disputes over custom and historical precedent (Berry, 2001; Lund, 2008; Tiplle, Korboe, Willis, & Garrod, 1998; and many others). In these circumstances, whether the government's current policy of returning state-held lands (many of them improperly acquired by previous regimes) to "the original owners" is seen as a progressive response to community-based demands, or a recipe for land concentration and conflict, depends on whom one asks. I will return to this question below, after taking a look at some current patterns of land use and their implications for changing relations of property, authority, and belonging.

3. CASE STUDIES

To explore the implications of Ghana's complex land tenure arrangements for changing patterns of land use, local governance, and social relations, this section presents recent evidence on individual investments in two kinds of land-based assets—houses and tree crops. Long prominent in the asset portfolios of ordinary Ghanaians, tree crops and houses have reemerged as significant outlets for individual savings in the years since Ghana initiated its first structural adjustment program in 1984.⁴ Plantings of cocoa, Ghana's premier export crop, revived in the mid-1980s, following a twenty year decline, rising by ca 50% between 1985 and the end of the decade although they did not reach the level of the early 1960s until 2004. During 1993–2004, total outlays on construction rose by 55% in real terms, 80% of them used to build houses (Aryeetey, Harrigan, & Nissanke, 2000; ISSER, 2001, p. 5; IMF; WEO). Because of their historical importance, investments in houses and tree crops serve to illustrate changing linkages between land use and land tenure over time. Durable and fixed

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