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Towards a Sustainable Socio-Economic Development in Gomoa Traditional Area of Ghana, the Need to De-Vest all Vested Lands to Original allodial Owners

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ABSTRACT

Lands in Ghana can be broadly classified into public lands, stool/skin lands, clan/family lands and private lands. Public lands can further be classified into state and vested lands. Over the years, most customary owners in areas where lands are/were vested have called for those lands to be de-vested. The aim of this study was to assess the need to de-vest all vested lands to original owners towards a sustainable socio-economic development in Gommoa traditional areas. A research population of 105 respondents with knowledge in land issues (vesting & de-vesting) were interviewed to ascertain their position on de-vesting of lands. All respondents (100%) agreed that vesting ensured orderly development. Majority (60%) of respondents were of the opinion that vested lands should not only be maintained but government should take steps to nationalize all lands in Ghana to ensure prudent management adding that de-vesting will lead to indiscriminate alienation by chiefs. Also, 11% of respondent agreed that the lands so vested should be returned since the chiefs can manage their own affairs. Again, 29% of respondents took a middle ground, stating for those areas where vesting was still relevant, measures should be put in place to strengthen them and for those which the purpose had been defeated, it should be de-vested but with certain condition precedent. Having examined the reasons, shortcomings and potentials of vesting in Ghana, it can be concluded that areas where the purpose of vesting no longer hold should on the basis of fairness and equity be de-vested as quickly as possible under a given set of conditions whereas areas where it is still relevant for vesting to be maintained should be ensured.

Key words: Ghana, Gommoa Traditional Area, De-vest, Vested, Lands

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BACKGROUND

Lands in Ghana can be broadly classified into public lands, stool/skin lands, clan/family lands and private lands. Public lands are managed by the Lands Commission on behalf of the President of the Republic and can further be classified into state and vested lands. While state lands are lands that have been acquired by the State absolutely under various legislations and free from all encumbrances, vested lands originally belonged to particular indigenous communities, but were declared under an ***appropriate law*** to have been vested in the State and administered for the benefit of the particular community. According to Gambrah (2002), vested lands refer to the category of lands previously belonging to a given traditional indigenous community but declared under the Administration of Lands Act (Act 123) to be vested in the state and administered for the benefit of the community. Vested land forms about 2% of total land in Ghana as compared to state lands which forms about 18% (Odame-Larbi, 2008).

With vested land, a kind of split ownership is created (Odame-Larbi, 2008) where the state becomes

the legal owner and the traditional owners retain the beneficial interest (National Land Policy, 1999:2). They are similar to state lands in that in both cases, the incumbent legal owner is the state and differs from state lands in that the ownership is shared with the state. The state thus possesses the legal interest as a trustee while the community possesses the beneficial interest as beneficiary in the case of vested lands. The state thus acquires an overriding interest over access, control and management of land irrespective of the tenure category under which the land is held or owned (Okoth-Ogendo, 2000). The Lands Commission is then vested with the authority to administer vested lands for and on behalf of the President of the Republic of Ghana {See Article 258 (1) (a) of the 1992 Republican Constitution of Ghana}. Kassanga (1996) stated it succinctly, thus:

''At the stroke of a pen, lands were vested in the Government and all management functions delegated to and monopolised by the Lands Commission and its Regional Secretariats''

It is worth mentioning that vested land could be returned to the original owner(s) for various reasons, especially when the conditions making for their vesting no longer exists and it will not be prudent to maintain such lands as vested. The act of the government returning vested lands to the original owners of lands, hitherto vested is termed de-vesting. The implication of de-vesting is that the state strips of itself the legal interest in such lands and clothes the original owners with the power to manage and control their lands.

HISTORICAL OVERVIEW OF VESTING ORDERS IN GHANA

The Stool Lands Act, 1960 (Act 27) was enacted to grant authority to the President to vest in himself in trust for the stools, if any area of stool land is required in the public interest. As a prelude to the examine of the outcome of the exercise of vesting powers by the government under the Act, an introspective glance is cast at the historical circumstances from which the Act emerged.

It would be recalled that in the colonial period, the Lands in (the Northern Territories) Northern and Upper Regions, were vested in the Government. It is worth mentioning that under section 17 (1) of the Land and Native Rights Ordinance, 1951 (Cap 147) was provided thus: -

"*It shall not be lawful, without the consent of the Governor –*

a). For any native to purport to alienate any estate, right, or interest in, or with respect to, any land lying within the Protectorate to a non-native;

b). For any occupier to purport to alienate his right of occupancy granted under this ordinance, or any part thereof, or interest therein, either (i) to a non-native or (ii) otherwise than in accordance with regulations made under section 24, and any conveyance, grant, mortgage, transfer of possession, lease, bequest, or other instrument or transaction (whether in writing or not) which purports to effect an alienation in contravention of this section shall be void of effect".

Significantly the ordinance was repealed by the Section 26 of the State Property and Contract Act, 1960 (CA6), the year of birth of the Nationalist Government's radical intervention in the management of Stool Land in Southern Ghana. It bears mention that the colonial authority had earlier on attempted to take away all lands in Ghana and vest them in the British Crown, but for the nationalist agitations.

The reason for this was mainly political. In the early years of the political struggle for self rule, two political groupings emerged in the country. They were the Convention People Party (CPP) and the National Liberation Movement (NLM). The National Liberation Movement (NLM) agitated for a federal form of government for Ghana with a philosophy of liberal democratic governance and the Convention Peoples Party, the dominant political party at the time proclaimed a unitary system with doctrinaire socialism for the country.

The conflictual political environment created by the inter-play of the diametrically opposed philosophies resulted in tension in the country, particularly in Ashanti Region where the National Liberation Movement had its roots. Several Chiefs in Ashanti supported the National Liberation Movement with the income earned from the disposal of the Stool Land to bankroll the National Liberation Movement activities. At least that was the well-lubricated perception at the time. For rational self-interest and self-preservation, the Nkrumah government had to truncate that source of revenue of its opponents. Secondly there was the need to find money to pay the ever growing political activists of the ruling government. The last point has been better emphasized in Memorandum on the Proposals for a Constitution for Ghana (1968) page 192 paragraphs 705 to 708 where the Commission found as follows:

"Our Chiefs have from time immemorial been holding Lands on behalf of their respective communities. In 1958 for purely political reasons, and in order to render ineffective the power of the chiefs, the first step was taken to deprive our chiefs of their traditional holding of land in trust for their people".

Thus was passed the Akim Abuakwa (Stool Revenue) Act, 1958 and the Ashanti Stool Lands Act, 1958. These two pieces of legislation are identical. Their purpose was ostensibly to provide for the control of revenues and property of the Stools in Akyem Abuakwa State and Ashanti and for the administration of those revenues. But in essence, it sought to create a Stool Revenue Account for each Stool into which stool land revenue was paid, and out of which account amounts

determined by the Minister of Local Government were paid to the Urban and Local councils in these areas.

It is well known that once these moneys went into the urban and local councils, means were found whereby they left the coffers of these local government bodies into the pockets of party activist and functionaries of the Convention People's Party, thus leaving very little for the maintenance of traditional authorities, for defraying expenses of the Akyem Abuakwa State and its Council, the Kumasi State and its Council and the making of grants for scholarships and other projects for the benefits of the people of the Akyem Abuakwa State and the Kumasi state. So successful was this attempt to rob the Stools of their wealth that the scheme was extended generally to all Stool Lands in the country by the Stool Lands Act, 1960 (Act 27).

This was the proposal of the Constitutional Commission that was subsequently incorporated in the 1969 and 1979 constitutions. Currently, under the 1992 constitution, Article 267 (1) states as follows:
"*All Stool Lands in Ghana shall vest in the appropriate stool on behalf of and in trust for the subjects of the stool in accordance with customary law and usage*".

Moreover, the Stool Lands Act, 1960 (Act 27) which introduced the vesting concept had also been repealed by section 32 of the Administration of Lands Act (Act 123) in 1962. Thus the substratum of the instruments was removed. Equally the political motivation which induced the enactment of the Stool Land Act, 1960, (Act 27) and section 7 of the Administration of Lands Act, 1962, (Act 123) the former's lineal successor is spent.

REASONS FOR VESTING IN GHANA

There are various reasons for the use of vesting orders as essential ingredient in the prudent management of our land resource. These include but not limited to the following:

1. Town and Country Planning

Stools which continue to manage their lands without governmental control do not have technocrats to prepare schemes or layouts for orderly development in their area. This results in the creation of slums and the building of houses in water courses and lanes. Worse still, the desire of the chiefs to sell every bit of their lands, particularly in the fast developing metropolitan areas like Accra, Kumasi, etc without much regard to social needs of land for schools, playing grounds, clinics, etc makes the vesting orders necessary instruments for control. It is also worth mentioning the provisions of Article 267 (3) that requires the Lands Commission to certify that alienation of stool lands is done in accordance to development plan for an area. Despite the existence of this provision, disorderly developments have been noted in certain areas of the country. However, evidence exists to support the fact that in the case of vested lands, this provision is religiously complied with.

2. Protracted Litigation

The vesting orders ensured that, land which would otherwise have lied fallow due to protracted litigation between the stools, have been economically developed to the benefit of the local communities. The vesting of Twifo-Hemang lands and their subsequent allocation to Twifo Oil Palm Plantation (TOPP) is a clear example of the beneficial use of the power of vesting lands in the executive branch of government. This way, vesting aids in the prevention of violence upheavals, loss of lives and property.

3. Prudent Management

Available evidence in the Deed Registry shows that when chiefs transfer or sell lands independently without official control, it is the absolute or freehold interest or estate that they grant not-withstanding the fact that the constitution has now ostracized absolute grants as per provisions of Article 267 (5) of the 1992 Constitution. They take lump sums of money for the sales. This denies not only the living communities of the stool land area for whom the chiefs hold the land in trust, their heritage, but also that of the future generations as well.

On the other hand, the lands which the Lands Commission manages under the vesting orders are granted in leases. The rents are efficiently collected annually and distributed equitably. The 1992 Constitution in Article 267 (6) defined the proportions in percentage terms how much of the total income realized from the management of lands must go to the Chiefs in the particular traditional areas and what goes to the district councils for development of the areas concerned.

THE CONFLICT – VEXED QUESTION OF VESTING OR DE - VESTING

Over the years, most customary owners in areas where lands are/were vested have called for those lands to be de-vested citing reasons such as lack of transparency in its management by the state (Lands Commission), the need to benefit from resources within their jurisdiction and the defeat of the purpose of the vesting.

The above notwithstanding, agents of state are still of the opinion that the status quo in respect of vested lands should be maintained since the traditional authorities lack the capacity to manage them properly citing the challenges in respect of the de-vesting of the northern lands for instance.

LEGAL FRAMEWORK FOR VESTING IN GHANA

1. Enabling Legislations and Areas Affected

The main legislation making for vesting in Ghana is the Administration of Lands Act, Act 123 of 1962. Section 7(1) of 123 provide the basis for the President of the Republic of Ghana to vest in himself, in the public's interest any stool/skin land, in trust for the community concerned and accordingly after the publication, execute a deed or act as trustee in respect of the land specified in the instrument. Moneys accruing as a result shall be paid into the appropriate account as per Section 7(2) of Act 123.

Also, Regulation 1 of the State Lands Regulations of 1962 (LI 230) forms the basis for the grant of leases out of vested lands by the Lands Commissio. Further, AFRCD 63 makes it impossible for anyone or group of persons to obtain more than one residential plot in a particular city.

The table below provides information on particular areas in Ghana where lands had been vested. The reasons for the vesting in the respective cases were also mentioned.

	AREA	INSTRUMENT	REASON
1	Eastern Region 1. Koforidua 2. Parts of Nkawkaw	E.I 195 of 1961	1. Political (to prevent the chiefs from using proceeds to finance the political opposition) 2. Town Planning
2	Brong Ahafo 1. Sunyani to Brekum 2. Ahafo 3. Parts of Techiman	E.I 46 of 1961	1. Political (to enable the creation of the region) 2. Town Planning
3	Western Region 1. Inchban	E.I 28 of 1988	1. Litigation.
4	Central Region 1. Winneba	E.I 206 of 1961	1. Chieftency dispute between Adjumako & Efutu stools.
5	Northern Regions	CAP 111 of 1902 (Northern Territories Ordinance)	To effectively nationalise all the northern lands and to give the colonial administration unfettered access to land.

Source: *Lands Commission, 2014.*

2. Management, Control & Administration

The management, control and administration of vested lands is exercised by the Lands Commission on behalf of the President of the Republic of Ghana. After an approved planning scheme has been prepared by the Town & Country Planning Department (Article 267(3) of 1992 Constitution) for an area in question, allocations are made to applicants irrespective of their origin and without recourse to the particular stool/skin concerned.

The Lands Commission manages the land as if it were a state land estate by granting leases to allottees (as per provisions of Regulation 1 of LI 230) who apply directly to the Commission and not through the stool. Thus any allocation to any individual by the stool concerned is considered an encroachment and illegal. Rents are collected and disbursed to the appropriate stool/skin account by the Office of the Administrator of Stool Lands in accordance with Article 267 (2) of 1992 Constitution.

3. Disbursement of Revenue

The proceeds that accrue to a stool whose land is vested is mainly rent collected by the Office of the Administrator of Stool Lands (OASL) and disbursed in accordance with Article 267 (6) of 1992 Constitution.

1. Ten percent (10%) to OASL as administrative expense
2. Twenty-five percent (25%) of remaining (90%) to stool through traditional authorities for the maintenance of the stool in keeping with its status.
3. Twenty percent (20%) of remaining (90%) to traditional authority.
4. Fifty-five percent (55%) of remaining (90%) to district assembly where land is located.

With this, there is regularity of income and the benefit trickles down to the entire community.

CHALLENGES & POTENTIAL BENEFITS OF VESTING

Challenges of vesting

a. Resistance

It is necessary to delineate the main problems which the vesting orders created in farm land areas and contrast them with those of the townships. like Koforidua and Nkawkaw. Besides the claim of legal theorist that after the year 1724 there is no un-owned land in Ghana, the reality is that apart from the forest reserves one cannot find any area of ten acres in the forest belt which has not known the ravages of man and so cannot be claimed by one family or the other. This being the case when the Ahafo lands were vested in the President in trust for the stools it unleashed problems of varying magnitude. For instance, the Acheampong Government's attempt to establish large state cocoa farms like those in Ivory Coast failed to take off on account of the fact that any land the board tried to cultivate was met with protest from the farmers already on the land. Moreover, allocations made by the Lands Commission from its office in Sunyani were challenged in law suits. The instrument was made without regard to the fact that large parts of the area it covered was under some kind of cultivation before it was made.

b. Boundary Problems

In the townships of Koforidua and Nkawkaw the first problem was the fact that the instruments did not define with specificity or at all the boundaries of the towns they affect. The boundaries were to be sought from the Orders in Council made under the Towns Ordinance (Cap 86) 1892. This lapse fuels the problem of encroachment as chiefs knowingly or unknowingly end up allocating vested lands.

c. Lack of Transparency

It bears emphasis that the stools are not too satisfied with the way lands are managed under vesting orders. They claim that the officers of the secretariat sell their lands and make use of the money realized therefrom, thereby making the technocrats the richer and they the chiefs poorer. The lesser chiefs to whose stools the lands are attached complain that their over lords do not pay them their share of the revenue.

d. Position of the Customary freeholder

The vesting instrument did not provide for the payment of compensation to the customary freeholder whose lands fell under the purview of the law. These owners have been a bane in the smooth administration of vested lands as they resort to court actions to seek redress as well as indiscriminatingly selling of the lands to innocent developers.

Another interesting observation is that whereas the customary freeholder could have stayed on the land with quite enjoyment as long as he had successors in title, now his interest is reduced to a mere lease (Article 267 clause 5) for a term not exceeding ninety-nine (99) years at any one time.

Potential benefit of vesting

a. Maintenance of Peace

In places such as Winneba and Inchaban for instance where the vesting was as a result of chieftaincy problems coupled with litigation between and among land owning groups, vesting has not totally solved the problem but has ensured that the peace of the area is maintained (negative peace).

b. Orderly Development

Vesting orders have ensured that townships have been managed with some degree of success through the preparation of well thought-out development schemes approved by the appropriate governmental agencies. This does not only guide development within the particular towns and its environs but also ensures that new sections of the town have been developed in accordance with the layouts. Sunyani, Koforidua, Bolgatanga and parts of Tamale are evidence of this success. This may be due to the ability of the Commission to police its estates thereby ensuring that development is in accordance with the scheme.

SITUATION AFTER DE-VESTING OF THE NORTHERN LANDS

The Northern Lands vested during the colonial era were subsequently de-vested by the 1992 Constitution. Following the de-vesting however, a number of issues have emerged notably;

1. Capacity to manage lands

History has it that the colonial masters believed then that the northern territories did not have competent people capable of handling matters relating to land and for that matter to make way for proper and orderly development, they thought it wise to vest all lands in the crown.

Years after de-vesting, the various traditional authorities are still grappling with this fundamental problem leading to the incidence of double allocation,

acquisition of large tracts of skin land with the potential of rendering subjects landless. Also, it became very apparent that the chiefs, together with their secretaries do not have a good understanding of the workings of the land market and for that matter are not able to derive maximum benefit from the lands they superintend over.

2. Exclusion of village/caretaker chiefs

Irrespective of the specific governance structure in any traditional area, all allodial title holders hold the land in trust for their subjects in accordance with customary law and practice. In Dagbon, the allodial title lies with the Ya-Na, the overlord who holds it in trust for his subjects. Under the Ya-Na, there the various divisions headed by chiefs appointed by the Ya-Na. Under the divisional chiefs are the sub-divisional chiefs and caretaker chief/village chiefs.

Since the de-vesting became operative, there have been difficulties at various levels aside those which existed before the de-vesting. According to Nyari (1995) lands in the Tamale urban area had since the 1950s been managed by the Lands Department with little influence from the traditional land owners on account of the vesting of lands. In the process the only point of contact between the traditional institutions and the state machinery have been the divisional and sub-divisional chiefs. Even in those cases, this was purely consultative in nature. The village chiefs therefore had very little say in matters of land administration. Thus in 1979, when the control was reverted to the traditional rulers, the divisional and sub-divisional chiefs sought, by various means to exclude the village chiefs contrary to customary practices. This was met with the resistance and has been the source of some of the land administration problems in the metropolis.

3. Misconceptions about the De-vesting

The de-vesting of the lands has created the impression in the minds of the chiefs and people that it included state acquired lands. It is thus not uncommon to find chiefs demarcating plots of land in between state bungalows on designated state acquired land for onward sale to unsuspecting members of the public. One area which has constantly suffered this fate is the Watherson Residential Area (within the immediate environs of the Regional Coordinating Council).

Again, it is observed that the de-vesting orders did not make provision for the protection of already encumbered lands as well as lands upon which government had its buildings or installation since it did not see the need at that time. These have now become the targets for harassment by chiefs.

THE WAY FORWARD

In arriving at a position, the researcher interviewed hundred and five persons who understood what vesting and de-vesting meant with its implications as shown in the table below.

Category	Number
Regional Heads - PVLMD	10
MMDCEs	20
Regional Lands Officers	5
Lands Admin. Officers	25
Lecturers	15
Planners	15
Teachers	10
Registrars to Paramount Chiefs	5
Total	105

Questions posed ranged from the contribution of vesting on good land management and administration to their position on whether it was necessary for vested lands to be de-vested with justifications.

Interestingly, everyone (100%) agreed that vesting ensured orderly development with particular reference to Sunyani, Koforidua and parts of Tamale (figure 1). The multi-million dollar question which was whether the lands so vested should be de-vested generated a mixed reaction. A considerable proportion of respondents (60%) were of the opinion that the status quo should not only be maintained but government should take steps to nationalize all lands in Ghana to ensure prudent management adding that de-vesting will lead to indiscriminate alienation by chiefs.

A smaller proportion of respondents (11%) agreed that the lands so vested should be returned since the chiefs can manage their own affairs (figure 1). Even this segment believes (as expressed in an interview with

Secretary to the Gulkpegu Paramountcy) that proper education and capacity should have been provided prior to de-vesting). Close to one-third of respondents (29%) took a middle ground, stating for those areas where vesting was still relevant, measures should be put in place to strengthen them and for those which the purpose had been defeated, it should be de-vested but with certain condition precedent (figure 1). This particular segment believed that the grant of concurrence by the Lands Commission could be used as a powerful tool to regulate how chiefs alienated de vested lands.

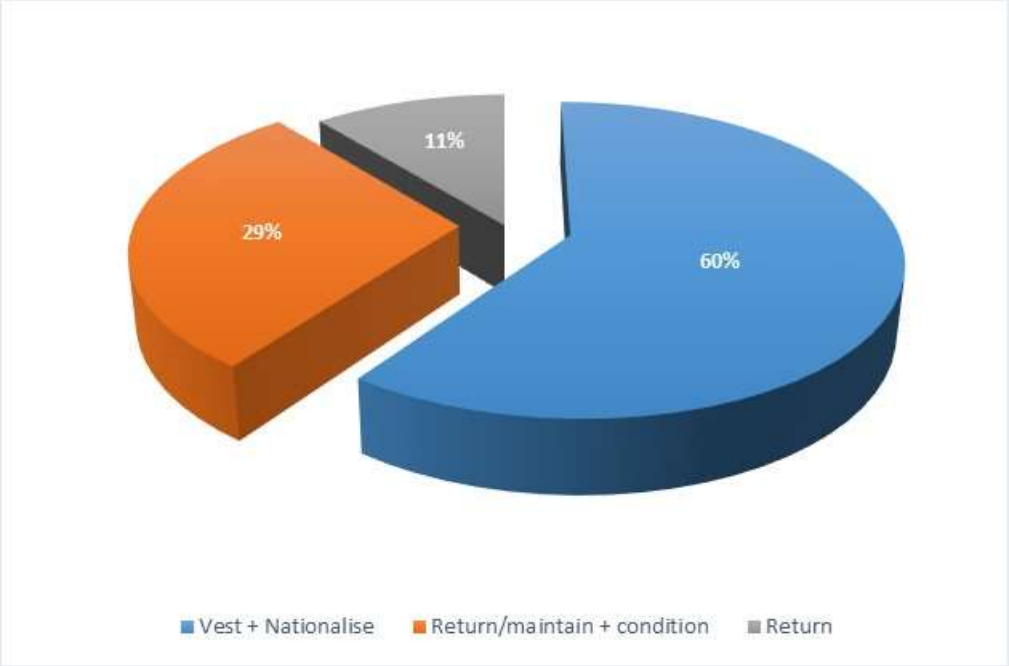

Figure 1: Respondents position on whether to de-vest lands.

CONCLUSION

Having examined the reasons, shortcomings and potentials of vesting in Ghana, it is submitted that areas where the purpose of vesting no longer hold should on the basis of fairness and equity be de-vested as quickly as possible but the following should be conditions precedent;

1. The Lands Commission, should with support from the Land Administration Project (LAP) build the capacities of the stools to enable them manage the lands so de-vested properly.
2. Steps should be taken as quickly as possible to acquire lands where the state has its properties but has not formally acquired due to the vesting.
3. The traditional authorities should be educated to enable them appreciate the need to properly plan their lands before alienating in order to realize the full potential of the land as well as ensuring orderly development.
4. Protection of the marginalized and vulnerable in society in relation to land ie women, widows, poor etc.

Secondly, for areas where it is still relevant for the status quo to be maintained (in order to maintain the peace, protect lives and property etc), it is recommended that;

1. The rights of the usufruct should be given due recognition especially in the allocation of vested land.
2. The Lands Commission should ensure that the process of allocating vested lands is more transparent than it currently is.
3. Since the only revenue accruing to the stool is by way of ground rent, the Office of Administrator of Stool Lands should ensure that these are collected and distributed in a timely manner.

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