SECURING LAND RIGHTS UNDER THE
TENDAMBA/FAMILY CUSTOMARY SYSTEM OF
LAND TENURE. THE CASE OF WA MUNICIPALITY,
GHANA

Presented by
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The Next Decade of Land Policy in Africa: Ensuring
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Background to the study

• Land tenure systems in Ghana comprise
  – Public/statutory
  – customary

• Land tenure dynamics are context specific
  – Tendamba system
    • Patrilineal inheritance
Literature review

Globally:

• Security of land rights is about certainty, assurance of exerting rights, enforcement of these rights, degree of confidence by user (Ubink et al, 2009, UN-Habitat, 2008)

• It include legal and perceived rights of the possessor (Migot-Adholla and Bruce, 1994)

• A matter of both perception and relationship of trust (UN-Habitat, 2014)
In Ghana:


• Changing customary power relations (Wily and Hammond, 2001, Ubink et al 2009)
Literature review

International debates on ensuring security of land rights

• Land titling and registration (De Soto, 2000, Deininger, 2003)

• Customary land tenure guarantees land rights (Cotula et al., 2006, Atwood, 1990, Durand-Lasserre, 2006)

• “The new approach” (Ubink et al, 2009)
Contribution of current paper

• Use qualitative approach to show the state of tenure security under the Tendamba/family land tenure system
• Employ findings to promote tenure security in context specific tenurial system
• Propose policies for securing land rights within the tendamba tenurial regime
Data and methodology

• **3 Data sources** – Tendamba, Opinion leaders/settler farmers in tendamba communities, and PVLMD

• Focus Group Discussions

• Interview guide
Analysis of results and discussions

Duration and certainty of land rights (tendamba) perspective

• Five tendamba – first settlers with allodial/freehold interest
• Security threatened by breakdown in the extended family and communal ownership system
• Maternal relations acquiring customary freehold
Analysis of results and discussions

Duration and certainty of land rights (tenants) perspective

• Leasehold interest and customary tenancies
• Leaseholders who have registered have secured land rights
• Leaseholders with surviving witnesses (grantors)
• Customary tenancies secured to the extent that urban development has not gotten to their lands
Analysis of results and discussions

Protection of land rights – Land rights documentation

• Witnesses are under traditional oath not to testify falsely

• Land documentation through the Wa Central Customary Land Secretariat
## Analysis of results and discussions

### Number of land allocations recorded by the WCCLS

<table>
<thead>
<tr>
<th>Year</th>
<th>Male</th>
<th>Female</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008</td>
<td>32</td>
<td>5</td>
<td>37</td>
</tr>
<tr>
<td>2009</td>
<td>69</td>
<td>7</td>
<td>76</td>
</tr>
<tr>
<td>2010</td>
<td>64</td>
<td>9</td>
<td>73</td>
</tr>
<tr>
<td>2011</td>
<td>57</td>
<td>12</td>
<td>69</td>
</tr>
<tr>
<td>2012</td>
<td>84</td>
<td>14</td>
<td>98</td>
</tr>
<tr>
<td>213</td>
<td>64</td>
<td>21</td>
<td>85</td>
</tr>
<tr>
<td>June 2014</td>
<td>20</td>
<td>5</td>
<td>25</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>390</strong></td>
<td><strong>73</strong></td>
<td><strong>463</strong></td>
</tr>
</tbody>
</table>
Analysis of results and discussions

State-led land registration

• deeds registration handled by the Lands Commission (PVLMD)

• Customary Land Secretariats is a creation of policy and not backed by law

• Inadequate collaboration between WCCLs and PVLMD

• Fear of increases in cost of registration
Analysis of results and discussions

Statutory declaration of customary land ownership

• Tendamba not willing to do statutory declaration
  – Cost
  – Fear that their claims will be challenged by other contenders (confirms Cotula et al, 2006)
Analysis of results and discussions

Fear, suspicion and mistrust amongst tendamba

• Disunity amongst tendamba forming the WCCLSSs on

• Fear that tendamba forming the CLS will assume much more superior powers and monopoly of land ownership to the detriment of other extend family members
Analysis of results and discussions

Enforcement of land rights

• Traditional system - WCCLS and ADR
• Court system – aggrieved parties proceed to the court
# Analysis of results and discussions

## Number of land disputes brought to the WCCLS

<table>
<thead>
<tr>
<th>Year</th>
<th>Number</th>
<th>Resolved</th>
<th>Pending</th>
<th>Nature of disputes</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008</td>
<td>12</td>
<td>12</td>
<td>0</td>
<td>Double sales, trespassing,</td>
</tr>
<tr>
<td>2009</td>
<td>11</td>
<td>11</td>
<td>0</td>
<td>Double sales, boundary disputes</td>
</tr>
<tr>
<td>2010</td>
<td>7</td>
<td>5</td>
<td>2</td>
<td>Double sales, farmland encroachment</td>
</tr>
<tr>
<td>2011</td>
<td>5</td>
<td>5</td>
<td>0</td>
<td>Double sales</td>
</tr>
<tr>
<td>2012</td>
<td>7</td>
<td>7</td>
<td>0</td>
<td>Double sales</td>
</tr>
<tr>
<td>2013</td>
<td>12</td>
<td>10</td>
<td>2</td>
<td>Abuse fiduciary role, double sales, misinterpretation of plot information, trespassing</td>
</tr>
<tr>
<td>2014</td>
<td>9</td>
<td>6</td>
<td>3</td>
<td>Double sales and boundary disputes</td>
</tr>
</tbody>
</table>
Policy Issues

• Steady increase in the number of land allocations recorded by tendamba system: effective documentation of land rights

• Statutory declaration of tendamba lands is of utmost importance if customary land rights are to be secured
Policy Issues

• The system of verbal attestation/survival of witnesses of securing land rights of settler/tenants needs to be replaced/complimented with certification

• The tendamba /ADR system of disputes resolution should be encouraged and supported
Conclusions

• The security of customary tenure rights goes beyond the mere existence of witnesses/grantors

• Transparency and accountability eliminates suspicion and mistrust

• Land rights certification and registration are complimentary to tenure security