



PROMOTING GOOD CORPORATE GOVERNANCE IN THE LANDS COMMISSION OF GHANA

Abdulai, A.

Department of Estate, University for Development Studies, Tamale, Ghana.

*Corresponding Author's Email: aakibul@uds.edu.gh

Abstract

The search for an efficient land administration regime in Ghana has assumed prominence in recent times. Interventions including the National Land Policy 1999 and the Land Administration Project have sought to ensure that the management and regulation of land for various uses and transactions is done in a professional manner underpinned by a good governance architecture. However, the Lands Commission, which is the lead agency for the management of lands in the country is itself challenged in terms of good corporate governance. This paper reveals a defect in the Commission's composition which is the fundamental basis of the governance challenges that have contributed to its inability to assert its authority and perform its functions appropriately. The Lands Commission suffers from poor balance of executive and non-executive directors in addition to political appointee domination.

Keywords: Land Administration; Corporate Governance; and Fiduciaries

Introduction

Ghana has an elaborate institutional architecture for land administration. This has evolved from a customary perspective predating colonisation. Colonisation came along with a shift in the motive for land administration. Thus, the post-independence land administration regime struggles to merge the motivations of the customary and modern motivations for land management.

Presently, the country has a Lands Commission as the lead land administration agency with four technical divisions- Survey and Mapping Division; Land Registration Division; Land Valuation Division; and Public and Vested Lands Management Division. Other land sector agencies include the Office of the Administrator of Stool Lands and the Town and Country Planning Department (Land Use and Spatial Planning Authority). The Lands Commission coordinates the land administration towards the achievement of the following objectives: Promote the judicious use of land by the society and ensure that land use is in accordance with sustainable management principles and the maintenance of a sound eco-system; and ensure that land development is effected in conformity with the nation's development goals. In the exercise of its mandate to achieve the above stated objectives, the Commission is required by way of consent and concurrence to ensure that "there shall be no disposition or development of any stool land unless the Regional Lands Commission

of the region in which the land is situated has certified that the disposition or development is consistent with the development plan drawn up or approved by the planning authority for the area concerned." It is instructive from the objectives that, the Lands Commission is strategically positioned to advise on, and regulate land management in the country. In this light, it has the responsibility to provide leadership in resolving the various land administration challenges in Ghana. These include Section 4 of the Lands Commission Act 2008, (Act 767) Article 267 (3) of the 1992 Constitution of Ghana

'general indiscipline in the land market characterised by the current spate of land encroachments, multiple sales of residential parcels, unapproved development schemes, haphazard development, etc., leading to environmental problems, disputes, conflicts and endless litigation.'

- *'compulsory acquisition by government of large tracts of lands, which have not been utilised and or for which payment of compensation has been delayed. By this policy, landowners have been left almost landless, denied their source of livelihood and have become tenants on their own lands, giving rise to poverty and disputes between the state and the stools, as well as within the private land sector.'*

- *'weak land administration system characterised by lack of comprehensive land policy framework, reliance on inadequate and outdated legislation, lack of adequate functional and co-ordinated*

geographic information systems and networks, as well as the transparent guidelines, poor capacity and capability to initiate and coordinate policy actions, let alone resolve contradictory policies and policy actions among various land delivery agencies'(Ministry of Lands, 1999).

Prior to the Land Administration Project, the Land Sector Agencies in operation were the Lands Commission Secretariat, Survey Department, Land Registry, Land Valuation Board, Land Title Registry and the Office of the Administrator of Stool Lands all operating as independent departments under the Ministry of Lands, Mines and Natural Resources (Karikari, 2006).

In a move to sanitise the sector, the Land Administration Project (LAP-1) was initiated in 2003 to respond to the challenges identified in the 1999 Land Policy to ensure the creation of an effective land sector in the country for accelerated economic growth. The mid-term review report of the intervention issued in August 2006 enumerated successes chalked by the project including government's approval for legislative and institutional reforms, capacity training in project planning and implementation and sensitisation on gender issues for staff of the various Land Sector Agencies (Ministry of Lands, 2006).

Subsequent to the reforms, the various land sector agencies except the Office of the Administrator of Stool Lands and the Town and Country Planning Department were merged into the new Lands Commission. Thus, the merged departments have become divisions of a unified Lands Commission to provide a one-stop-shop and eliminate client shopping as well as duplication of functions from the divisions. Refreshingly, the Land Governance Assessment Framework (LGAF) asserted that 'attempts by Ghana at improving land governance have achieved modest results under LAP-1.' Its findings, 'however indicate that a lot remains to be done if Ghana is to become an example of best practice in land governance in Africa' (Bugri, 2012).

The failure of the LAP to address the challenges facing the land sector was bemoaned by the Minister of Lands and Natural Resources in March 2018 when he observed that 'there are disturbing challenges such as multiple sales of lands, delays in accessing land services, missing files at the Lands Commission, "rent seeking behavior among staff" and unauthorized personnel still hanging around the precincts of the Commission indulging in illegal deals' (Ghana News Agency, March 2, 2018). It was also noted that these challenges in the land sector have persisted because of the flagrant disregard for laws and regulations governing the land sector (Selase et al, 2015) and are a threat to the country's investment drive (Citinewsroom, March 21, 2019).

The foregoing corroborates the argument that, the Lands

Commission with the constitutional responsibility to manage the administration of land in the country, has itself been found to be entangled in the wanton disregard for laws and regulations (Government of Ghana, 2012). This assertion also supports the public perception that the Lands Commission is synonymous with corruption (Bugri, 2012). This has further been corroborated by a recent survey jointly conducted by the Ghana Statistical Service (GSS), the Commission for Human Rights and Administrative Justice (CHRAJ) and the United Nations Office on Drugs and Crime (UNODC) (Ghana Statistical Service, 2022). The survey dubbed the 2021 Ghana Integrity of Public Services Survey (GIPSS) and titled, "Corruption in Ghana – people' experiences and views" ranked the Ghana Police Service, the Immigration Service, Custom Officers of the Ghana Revenue Authority and the Lands Commission as the top four corruption institutions (Ghana Statistical Service, 2022). The survey further revealed that the Lands Commission tops the list of corrupt institutions in terms of quantum of average bribe size in Ghanaian Cedis received by individual officers. The average highest cash bribe of GH¢1,669 was paid to officers of the Lands Commission. This was followed by GH¢1,208 received by prosecutors, judges or magistrates and GH¢950 by the Ghana Immigration Service Officers (Ghana Statistical Service, 2022). This image of the Lands Commission is not surprising because it is instructively noted that there is a high degree of political interference in the operations of the Commission to the extent that its professional advice has largely being ignored by the government (Government of Ghana, 2012). Such is the nature of the Commission expected to spearhead reforms in the land sector. It therefore means that despite the intervention of the Land Administration Project, there is a further need for policy and legislative reforms for the restoration of professionalism and public trust in the Commission.

Indeed, the government recognises the need for deeper reforms. Nonetheless, it is the view of government that the solution will come from staff re-orientation to eliminate the deficiencies within the current system (Government of Ghana, 2012). But this is conversely far from the solution because it would not eliminate the political capture of the Commission which is the foundation of the indiscipline and unprofessional orientation of the staff. It will not also eliminate stashing away of the numerous technical reports and memoranda from dedicated officers of the Commission by government executives.

Nevertheless, the Commission has embarked on a drive for sensitization and re-orientation of its staff on how to achieve the mandate of the Commission (Myjoynoline,

March, 12, 2019). While the exercise is heart-warming, because there is an admission of a problem needing attention, the approach as stated before is problematic. Rather than staff re-orientation, the major problem resulting in the challenges in the land sector is a weak corporate governance framework at the Lands Commission. This weakness has resulted in increasing indiscipline, unethical and unprofessional conduct in the Commission. Therefore, rather than staff re-orientation, the governance structure of the Commission is more in need of reform to wean it off political manipulation.

Objectives

The main objective of this article is to contribute to the discourse on land administration in Ghana by examining the evolution of land administration in the country for the purpose of informed advocacy for policy and legislative reforms. It traces the motivations of various regimes and evaluates the current system for policy reforms. The specific objectives are to:

- i) assess the evolution of Ghana's land administration system from the pre-colonial to the current regime
- ii) evaluate the effectiveness and policy implications of the current regime
- iii) make recommendations for reforms.

Methodology

The paper adopts a historical approach to ensure a chronological evaluation of the evolution of land administration in the country. It uncovers three phases of land administration: the early phase which covers the pre-independence era; the middle phase spanning over the early post-independence attempts at handling the subject; and the third phase being the current evolving attempt of consolidating experiences with the benefit of hindsight. An exploratory literature review covered primary and secondary legislation and other relevant documents. Former and incumbent Chairmen and Executive Secretaries, and senior staff of the Lands Commission at the Headquarters and in some Regional Offices were purposely selected and interviewed using problem-centred interview and expert survey techniques. The findings were qualitatively analysed.

Results

Early Phase: Land Administration before Independence

The Ghanaian economy prior to colonization of the country was largely agrarian (Constitution Review Commission, 2011). Land ownership was regarded as the pivot of communal sustenance, such that the chiefs of central states were both the juridical and proprietary authorities over the use and management of land resources for and

on behalf of the people (Ministry of Lands, 2003). In communities without central chiefdoms especially in some parts of northern Ghana, Land Priests (Tendambas) exercised the proprietor right of land allocations (Campion and Acheampong, 2014). The exploitation of gold and other minerals was therefore regulated by only customary law (Constitution Review Commission, 2011). A member of a land-owning community could use and develop virgin lands, and by so doing, acquire the customary freehold of such land except that, such rights do not operate to extinguish the exclusive title of the stool/skin or Land Priests to derived rights to minerals found in the land (Ministry of Lands, 2013). In this context Stool/Skin refers to the symbol of authority in the appropriate Ghanaian context. While the chiefs in the southern part of the country largely sit on stools, their counterparts in the north largely sit on skins of various animals as a signification of their authority. Stool/Skin lands therefore refer to 'any land or interest in, or right over, any land controlled by a Stool or Skin' for the benefit of the members/subjects of that Stool/Skin.

Subsequent to the enactment of the British Settlement Act and the Foreign Jurisdiction Act in the then Gold Coast in 1843, Colonial rule introduced policy and regulation in land and mineral management. Consequently, a State Land acquisition policy was tailored towards expropriation of land with the payment of compensation or appropriation without compensation (Ministry of Lands, 2013). This was vigorously pursued and by 1900, the colonial government had 'vested all waste lands, forests and minerals in the Crown' (Constitution Review Commission, 2011). Consequently, the right of the Stool/Skin/Earth Priest to grant land concessions was now subject to the approval of the Governor (Oracle, 2019). This was followed by a colonial mineral policy (Constitution Review Commission, 2011) which introduced a legal governance framework to ensure security of tenure for mineral operations and the accrual of duties and taxes to the government was unhindered (Tsikata, 1997).

Middle Phase: Early Post-Independence

In the early post-colonial era, the state policy for revenue maximisation from land continued. Thus, the Crown's right to property in Ghana was reposed in the President by the State Property and Contracts Act, 1960 and became vested in the President for and on behalf of the people of Ghana. Prior to that, the Stool Lands Act and the Akim Abuakwa (Stool Revenue) Act were enacted, vesting the interest of the lands of Ashante and Akim Abuakwa both in the South of the country in the President, while the community retained the beneficial inter-

est. The power to vest land in the state for and on behalf of the people was in 1959, extended countrywide by the enactment of the Stool Lands (Validation of Legislation) Act (No. 30). The power of eminent domain of the President in relation to the regulation of such vested lands was later elaborated in the Stool Lands Act 1960 (Act 27). In 1962, the lands in the North of the country were similarly vested in the President. By this development, State Property and Contracts Act, 1960 (CA 6) s.1 Stool Lands Act 1958 (No. 58) Akim Abuakwa (Stool Revenue) Act, 1958 (No. 78) State Lands Act 1962 (Act 123)

‘Public and vested lands country wide became state property, subject to administration by the government’s land machinery – the erstwhile Lands Department – the fore runner of the Lands Commission. The Lands Department also processed and executed deeds and instruments in respect of land, minerals and timber concessions on behalf of Government.’ It was during this time, that political activists subdued the technical officials of the Lands Department and abused processes such that the Lands Department became inefficient in the administration of lands in the country (Kasanga and Kotey, 2001). The Lands Department was subsequently replaced by the Lands Commission, structured and operated as an agency of the Ministry of Lands and Natural Resources (Constitution Review Commission, 2011). For its functions, it was provided that

‘The Lands Commission shall hold and manage to the exclusion of any other person or authority any land or minerals vested in the President by this Constitution or any other law or vested in the Commission by any law or acquired by the Government and shall have such other functions in relation thereto, as may be prescribed by or under an Act of Parliament.’

However, the ills associated with the predecessor Lands Department were soon found in the new Lands Commission (Kasanga and Kotey, 2001). The 1979 Constitution therefore sought to cure the deficiency by providing more powers for the Commission and placed it directly under the Office of the President to shield it from abuse (Kasanga and Kotey, 2001). It was therefore provided that ‘the Lands Commission shall be subject only to the Constitution and shall not be subject to the direction or control of any other person or authority.’¹⁰

Nevertheless, the functions of the Commission as already indicated in the preceding paragraph remained the same as provided for in the 1969 Constitution.

In contrast to the 1969 Constitution, the 1979 Constitution introduced the novel establishment of a Fisheries Commission, a Forestry Commission and other Natural Resource Commissions as Parliament may determine. It is

significant to note that until then the management of mineral resources was also under the ambit of the Lands Commission. This, no doubt made the oversight of the Commission broad and could significantly be a major source of the inefficiency associated with delivery of its mandate.

Instructively, the governance arrangements of the Commission showed a positive resolve by the Executive to avoid political interference in its operations. In this light, membership of the Commission included

Article 189 (5) of the 1979 Constitution of Ghana
Article 191 of the 1979 Constitution of Ghana

- A) a chairman, who shall be a person who is not a Minister of State or a Deputy Minister,
- B) a representative of the National House of Chiefs;
- C) a representative of the Ghana Bar Association;
- D) a representative of the Ghana Institution of Surveyors; and
- E) not less than nine other members one each of whom shall at least come from each region of Ghana.

Whereas the 1979 Constitution attempted to ring-fence the Commission from political manipulation, it inevitably brought it under the direct control of the Presidency and therefore the Executive. It is important to note that, aside the institutional representatives from the Ghana Bar Association and the Ghana Institution of surveyors who were professionals, there was no requirement for professional or academic qualification relevant to the functions of the Commission for the chairman and other members, except for such persons to meet the criteria to be elected as a member of Parliament. Whilst this was problematic enough, it was compounded by the non-representation of the employees of the Commission on the governing board. Intuitively, a Commission made up of only non-executive membership, majority of whom were not expressly required to be knowledgeable in the enterprise of the Commission would suffer information deficit for effective decision making.

Also, the membership of the Commission was for a four-year term from the date of appointment and could be revoked by the President if a member was found to be unable ‘to perform the functions of his office or for any other sufficient cause or for stated misbehaviour.’ Perhaps, the provision could be the root of political manipulation in the Commission. Its recent manifestation was observed in 2017 immediately after the assumption into office of the new government following the December 2016 Presidential and Parliamentary elections. The Executive Secretary of the Lands Commission was relieved of his duty on January 24, 2017 for the simple reason that he was appointed by the previous government. In a dramatic turn of events, he was reinstated on January 26,

2017 following some introspection upon political pressure (The Herald, February 20 2017). Even at that, the President would not have him a minute more in office on the expiration of his term. Thus, he was directed to hand over in June 2018 to the Minister of Lands and Natural Resources and proceed on leave prior to the end of his term on July 14, 2018 (Ghanaweb June 20, 2018). Article 189 (3) of the 1979 Constitution of Ghana
Emphasis mine
Article 189 (4) of the 1979 Constitution of Ghana

The Current Phase

Lands Commission Act 1994 (Act 483)

The 1992 Constitution provided assurance of independence from political manipulation for the Lands Commission. The subsequent Act, the Lands Commission Act 1994 (Act 483) provided for a Lands Commission very similar to that provided for in the 1979 Constitution. Its function was limited to the management of public and vested lands while the Survey Department, the Land Valuation Board and the Land Title Registry also operated as separate departments independent of each other. The Commission is required to play a co-ordination role therefore would

“in co-ordination with the relevant public agencies and governmental bodies, perform the following functions -

(a) on behalf of the Government, manage public lands and any lands vested in the President by this Constitution or by any other law or any lands vested in the Commission;

(b) advise the Government, local authorities and traditional authorities on the policy framework for the development of particular areas of Ghana to ensure that the development of individual pieces of land is co-ordinated with the relevant development plan for the area concerned;

(c) formulate and submit to government recommendations on national policy with respect to land use and capability;

(d) advise on, and assist in the execution of, a comprehensive programme for the registration of title to land throughout Ghana.”

It is worth noting that the 1992 Constitution also carried along the mandate of the Lands Commission to give or refuse consent or concurrence in land transactions. The Commission by this combination of functions is therefore engulfed with the dual mandates of an advisory agency of the government and, a regulator of the administration of lands in the country.

This dual role of the Commission is challenging because, insofar as the government draws its mandate from the electorate through campaign manifestos, it would shy

away from professional and technical advice that will appear to create disquiet between it and the electorate. And to ensure that the Commission can be manipulated by the Executive, the Act provided that the Commission may be directed to ‘perform such other functions as the Minister responsible for Lands and Natural Resources may assign’. The Commission was also constrained in the performance of its functions by the ability of the Executive to further pull strings on it by way of giving “general directions in writing to the Lands Commission on matters of policy’ for which it must comply.”

Nuances of Executive influence in the Commission resonates in the composition of its membership both at the Regional and National levels of the Commission.

The Regional Lands Commissions comprised of the following members appointed by the Minister of Lands and Forestry:

Section 2(1) e of the Lands Commission Act 1994, (Act 483)

Section 2(2) of the Lands Commission Act 1994, (Act 483)

A) a Chairman who is neither a Minister nor a Deputy Minister;

B) a representative of each of these bodies nominated by the body concerned –

the Regional House of Chiefs;

each district Assembly within the region; and

the Department responsible for Town and Country Planning;

C) nominee of the Ghana Bar Association practicing in the region;

D) nominee of the Ghana Institution of Surveyors practicing in the region;

E) nominee of the National Association of Farmers and Fishermen; and

the Regional Lands Officer

At the outset, it is essential to note that the Regional Chairman per the provision was required to be a person who was not a member of the Executive perhaps to shield the Commission from Executive and political interference. Nonetheless, the regional chairmen have always been known to be active politicians belonging to the ruling government. Also, the nominees from the district assemblies were equally government appointees as they were nominated from among the government appointees of the Metropolitan, Municipal and District Assemblies. Instructively, only the institutional representatives could safely be seen as independent non-executive directors. Curiously, the Regional Lands Officer (RLO) was the only executive director on the Commission. While this was an improvement over the arrangements in the 1979 Constitution, it also did not still

satisfy the requirements of good corporate governance. The reason is simple. All the non-executive directors relied on information from the executive directors for decision making. Instinctively, the assumption was that the Regional Lands Officer who represented the Chief Executive of the Commission at that level could provide all the required information. Such a disposition was however arguable because the Regional Lands Commission had heads of department who handled specific aspects of the Commission's functions albeit reporting to the RLO but who could provide detailed information concerning their departments in addition to the management view of the latter.

Furthermore, for the purpose of illustration, the Northern Regional Lands Commission was dominated by as many as Seventeen (17) politically appointed representatives one each from the Metropolitan, Municipal and District Assemblies, nominated from among the government appointees on these Assemblies. The institutional members were only five (5). The effect was a twenty-two (22) non-executive member Board of Commissioners with one executive director, the Regional Lands Officer (RLO). Obviously, the Commission under such an arrangement was an extension of the Executive arm of government and was not expected to look at issues beyond the political lenses.

The categorization of the composition of the Commission for the national level was not different. How would such a Commission be expected to be efficient to resolve the myriad of problems confronting the land sector? Whereas this structure was for a Lands Commission which did not include the other land sector agencies, it is imperative to analyze the current Lands Commission under the successor Act, the Lands Commission Act 2008 for an understanding of changes that have occurred for good governance in the quest for efficient client based market oriented land administration as desired by the Land Administration Project.

Lands Commission Act 2008 (Act 767)

Even though it may sound repetitive, it is critically important to note that before the passage of the Lands Commission Act 2008 (Act 767) which is the successor of the Lands Commission Act 1994 (Act 483), the Lands Commission existed independent of the Survey Department, the Land Valuation Board, the Lands Registry and the Land Title Registry. Under the new Act 767, these allied land sector agencies have been dissolved and merged into a newly constituted Lands Commission. The various functions of the hitherto segmented departments have now been merged in the single Lands Commission. The objectives of the Commission are therefore an at-

tempt to provide a holistic and unitary oversight for land administration. These objectives are (a) promote the judicious use of land by the society and ensure that land use is in accordance with sustainable management principles and the maintenance of a sound eco-system; and (b) ensure that land development is effected in conformity with the nation's development goals.' The achievement of these objectives requires a concerted effort towards galvanising the various competencies of the constituent divisions. The following paragraphs assesses the administration and governance of this new Lands Commission. See section 40 of Lands Commission Act 2008 (Act 767) Section 4 of Lands Commission Act 2008 (Act 767)

The Administration (The Lands Commission Secretariat)

The current divisions of the Commission are the Survey and Mapping Division (SMD), the Land Registration Division (LRD), the Land Valuation Division (LVD) and the Public and Vested Lands Management Division (PVLMD). Each division is headed by a Director in charge of the day-to-day operations and responsible to the Executive Secretary who is the Chief Executive officer of the Commission. Instructively, the Directors of the Divisions provide both administrative and technical leadership for their respective divisions. It is the duty of the Executive Secretary to ensure overall discipline and administration. The Executive Secretary is also supported by two Deputies within a Secretariat.

As was the case in the former Commission, the Regional Lands Commissions are administered by Regional Lands Officers acting per the directions of the Executive Secretary. In contrast to the former arrangement however, the regional heads of the four divisional directorates report to the Regional Lands Officer as their immediate supervisor but are responsible to the divisional directors at the national commission.

In terms of filling of vacancies, it is worth noting that the most senior person from each division is appointed Director to replace the incumbent in the case of a vacancy. Executive Secretaries, even though must have deep knowledge in land management and administration, could come from outside the hierarchy of the Commission. Thus, the Executive Secretary naturally depends on the cooperation and support of the divisional directors for the technical and administrative management of the Commission.

Section 19 of Lands Commission Act 2008 (Act 767)

Section 28 of Lands Commission Act 2008 (Act 767)

Section 24 of Lands Commission Act 2008 (Act 767)

Section 26 of Lands Commission Act 2008 (Act 767)

Section 27 of Lands Commission Act 2008 (Act 767)

Section 25 of Lands Commission Act 2008 (Act 767)

Section 31 of Lands Commission Act 2008 (Act 767)

Composition of the Lands Commission (Governing Board)

The Regional Lands Commissions are composed of the following members appointed by the Minister of Lands:

- the chairman who shall not be a Minister or a Deputy Minister,
- one representative of, and nominated by, the Regional House of Chiefs,
- each District Assembly within the Region, and the department responsible for town and country planning,
- one nominee of the Ghana Bar Association practicing in the region,
- one nominee of the Ghana Institution of Surveyors practicing in the Region,
- one nominee of the National Association of Farmers and Fishermen in the Region, and
- the Regional Lands Officer.

In sync, the National Lands Commission is also composed of the following constituents appointed by the President:

- ⇒ the Chairman, who shall not be a Minister of a Deputy Minister;
- ⇒ one representative of, and nominated by the National House of Chiefs;
- ⇒ the Ghana Bar Association;
- ⇒ the Ghana Institution of Surveyors;
- ⇒ each Regional Lands Commission;
- ⇒ the Department Responsible for town and country planning;
- ⇒ the National Association of Farmers and Fishermen;
- ⇒ the Environmental Protection Agency; and
- ⇒ The Executive Secretary of the Commission.

It is worth noting that the composition of the membership of both the Regional and national Commissions under the previous Act has been maintained in this new Act.

Situating the Lands Commission within Good Governance Principles

According to the Food and Agriculture Organisation (FAO) of the United Nations (UN),

“Governance is the process of governing. It is the way in which society is managed and how the competing priorities and interests of different groups are reconciled. It includes the formal institutions of government but also informal arrangements. Governance is concerned with the processes by which citizens participate in decision-making, how government is accountable to its citizens

and how society obliges its members to observe its rules and laws” (FAO, 2007).

The definition alludes to formal institutions and informal arrangements which are situated within a corporate sphere. It is therefore necessary to align the definitional lens to corporate governance which is understood to mean

“the system by which companies are directed and controlled. Boards of directors are responsible for the governance of their companies.

The shareholders’ role in governance is to appoint the directors and the auditors and to satisfy themselves that an appropriate governance structure is in place. The responsibilities of the board include setting the company’s strategic aims, providing the leadership to put them into effect, supervising the management of the business and reporting to shareholders on their stewardship” (Cadbury, 1992).

Thus, it is enlightening from the foregoing that, the Lands Commission of Ghana is the vehicle through which ‘competing priorities and interests’ on the utilisation of land is managed. Its composition and structure is therefore important as it provides an indicative measure of the involvement of relevant stakeholders in participatory decision making to ensure transparent and accountable land management in Ghana.

As a corporate entity, the Lands Commission is required to operate, taking cognisance of the principles of corporate governance. Innately, this was the premise for the market focused reforms of the Commission by the Land Administration Project (Karikari, 2006). Arguably, the Commission would promote satisfactory client service hinged on good corporate governance practices. This far, it is fundamentally necessary to understand the roles of the Lands Commission Secretariat which constitutes the administrative and operational employees of the Commission, and the Lands Commission, which is the governing Board of Directors to provide insight into the application of good corporate governance principles for the achievement of its objectives.

Recognising the Lands Commission as an analogous Board of Directors operating within a unitary board structure, it is trite that its ‘executive and non-executive directors share responsibility for both the direction and control of the ‘entity’ (Higgs, 2003). It also follows that the Executive and non-executive directors require reliable information about the company to be effectively accountable to the shareholders (Cadbury, 1992).

Under ‘the directive principles of state policy’, the 1992 Constitution provides that

“the State shall recognise that ownership and possession of land carry a social obligation to serve the larger com-

munity and, in particular, the State shall recognise that the managers of public, stool, skin and family lands are fiduciaries charged with the obligation to discharge their functions for the benefit respectively of the people of Ghana, of the stool, skin, or family concerned and are accountable as fiduciaries in this regard.

See section 1(2) of the Lands Commission Act 2008 (Act 767)

Article 36 (8) of the 1992 Constitution of Ghana .

Accordingly, the shareholders of the land sector in Ghana include the Government of Ghana acting by the President, and the allodial interest holders represented by chiefs, earth priests, clan heads and family heads. By way of shareholdership, the government holds about 20% of land in the country generally referred to as public and vested lands as described in article 257 (2) of the 1992 Constitution of Ghana. The remaining 80% of the lands, more generally known as customary lands are under the shareholdership of the constituency of Stools/Skins/Land Priests and clans/family heads. Consequently, the composition of the Lands Commission should appreciate this and include the various fiduciaries as shareholders. While it may be argued that the Stools/Skins are represented on the Commission per the nomination of the National House of Chiefs, that representation is unbalanced and skewed, insofar as it excludes Earth Priests, heads of land-owning Clans and families.

The current membership of the Commission is as though, all customary lands are under the ambit of chiefs. This position has resulted in information deficit on the governing Lands Commission because of the obvious inability of representatives of the House of Chiefs to address issues concerning, and relating to lands falling under the ambit of earth priests, clans and families. In this regard, the spirit of the Constitution may have been breached insofar as the membership of the Lands Commission does not include all the fiduciaries recognised by the former. In the light of the foregoing, it is also the case that a constitutional inconsistency may have been occasioned because the composition of the Lands Commission as provided for in the constitution is inconsistent with the Directive Principles of State Policy in the same Constitution. And to the extent that the directive Principles of State Policy are entrenched provisions and the basis for which the President reports to Parliament on the state of the nation, it is clear that the inconsistency can easily be cured through an amendment of the composition of the Lands Commission to give true meaning to the constitutional spirit of inclusive and collective governance in the land sector.

Interestingly, while fiduciaries as discussed above are not accommodated on the Commission, non-fiduciaries,

Farmers and Fishermen who are derivative rights groups have found representative space. Perhaps, this space could have been better filled by the national and regional directors of the ministries of Agriculture and Fisheries who are career technocrats, and better placed to represent the wider group of dispersed farmers and fishermen.

Also, the national and regional heads of the Environmental Protection Agency and the Forestry Commission should be part of the Commission at the respective regional and national commissions as cognate members. These representations would serve as anchors between derivative user groups and the land owners as well as providing policy insight for the achievement of sustainable land use goals.

Poor Balance of Executive and Non-Executive Directors on the Lands Commission

At the regional level of the Commission, (see Table 2), the government is over represented with a majority of twenty-eight (28) persons. The National House of Chiefs and Public Interest institutions are in the minority with a total of five (5) persons. All these collectively are properly categorised as non-executive directors since they are not in the employ of the Lands Commission. The only executive director on the Board is the Executive Secretary of the Commission.

Apart from its inadequacy with regards to the balance of land ownership in the country, the composition of the Lands Commission equally falls short of a fundamental corporate governance rule of thumb which states that an effective Board of Directors is one made up of a combination of executive directors, with their intimate knowledge of the business, and of outside, non-executive directors, who can bring a broader view to the company's activities, under a chairman who accepts the duties and responsibilities which the post entails (Cadbury, 1992).

It is further asserted that 'there should be a strong presence on the board of both executive and non-executive directors (Financial Reporting Council, 2008). Thus, the Lands Commission should be represented by other officers in addition to the Executive Secretary. These should be the Directors of the operational divisions of the Commission who would bring on board timely and relevant information for decision making. By its current composition, non-executive directors dominate the Regional Lands Commission with 33 persons (97%) of the board. And only 5 of the 33 persons (15%) representing the institutions, are independent non-executive. At the National Lands Commission as indicated in Table 3, the National Chairman and the Regional Chairmen are 17 in

number, representing more than 70% of the 24-member Commission. The situation makes decision making very difficult because such a one-sided dominated board will more usually vote in one direction- in this case, the ruling party whose government is the appointing authority. Intuitively, when a question is put, professional judgment will be overshadowed and subdued.

The Lands Commission and the Factor of State Capture

In principle, by adhering to good governance, the Lands Commission will surmount most, if not all of the challenges in the land market. This is because of the fact that “the avoidance of corruption is one obvious aspect of good governance” (FAO, 2007). The tag of corruption hanging around the Commission is perpetuating because of state capture. The FAO asserts that:

State capture is corruption on a grand scale. It illegally or inappropriately transfers economic resources from the state to private interests. The state can be “captured” by individuals, families, clans, groups or commercial companies. Those who capture the state are able to direct government policy for their own benefit. This can include the passing of laws and regulations, civil and criminal court decisions, favourable tax and customs treatment and the corrupt mishandling of funds. Land administration can be used to serve the interests of those in control, for example, by:

the illegal transfer of state lands and common lands into private possession of those in control or their allies; favourable decisions to change land use that cannot be justified on objective grounds; and unjust compensation for those whose land is expropriated (FAO, 2007).

Undoubtedly, the current composition of the Lands Commission smacks of state capture because all the members appointed by the President and Minister of Lands are political appointees as confirmed by the Government White Paper on the Constitution Review Commission’s Report that “Persons appointed by the President or a Minister of State as members of Statutory Boards and Corporations” are “classified as political appointees who should hold office at the pleasure of the President and whose tenure should end with that of each presidency” (White Paper, June 2012). It is surprisingly difficult to comprehend why a Commission that has oversight for an important resource as land should be dominated by political appointees most of whom invariably have no expertise in land management.

Qualification and Expertise of Commissioners

The problematic composition of the Commission not-

withstanding, the qualifications of the National Chairman and Regional Chairmen is also a challenge to good governance. As noted earlier, directors are required to be knowledgeable in the enterprise of the business entity. This will enable them avail their expertise for the growth and development of the organisation. In contrast to this fundamental principle, it is quite intriguing to note that national and regional chairmen of the Lands Commission are only required not to be Ministers or Deputy Ministers and must be persons to be qualified to be members of parliament. This is inadequate and contrasts with the requirement for Board membership of other Commissions requiring the employment of expertise in their management. One such Commission is the National Labour Commission which requires that “a person is qualified to be appointed a member of the Commission if that person ‘(a) does not hold office in a political party; and (b) has knowledge and expertise in labour relations and management, except that in the case of the chairperson, the person shall also be knowledgeable in industrial law.’ It is unequivocally stated that political office holders are not entertained in the Labour Commission. This is not the case of the Lands Commission.

Sections 8,9 & 11 of Lands Commission Act 2008 (Act 767)

Section 137 of the National Labour Act 2003 (Act 651)

Conclusion

Ghana since 1999 has embarked on a journey in search of solution for various challenges confronting the administration of the land sector. Reforms that have evolved, have made some modest improvements over the subject matter of land administration and governance. Whereas pre-1999 reforms took cognizance of the composition of the lead agency, the Lands Commission as contributing to the many challenges, post-1999 reforms have overlooked this very important area of governance. This paper has traced the evolution of the Lands Commission, exposing the nuances that over the years have tended to influence its structure.

Following from the discussion, there is an urgent need for legislative reforms in the governance structure of the Lands Commission. Recognising that governance is a process, it is only natural that an evolving institution such as the Lands Commission should apply itself to the fundamental principles and trends of corporate governance. In that light, the following suggestions are proffered for reforms to bring the Lands Commission abreast with best governance practices and inclusion of the relevant stakeholders for a balanced and effective oversight for land administration in the country.

National and regional chairmen of the Commission should be required to have relevant experience in land management and administration and should at the time of appointment, not have held any political party office. Such appointees who wish to hold political office during their tenure should be required to resign from the Lands Commission.

The representations on the Regional Lands Commission should be reviewed to eliminate the political domination so that the representatives of the Regional House of Chiefs and the district assemblies in the region should be replaced with representatives of each Traditional Council / Earth Priests/Land Owning Clans.

The operational directors of the National Lands Commission (Survey and mapping Division, Land Registration Division, Land Valuation Division and Public and Vested Lands Management Division), and in the same vein, the regional heads of the operational divisions of the commission should be made members of the National and Regional Lands Commissions respectively to provide for effective executive directorship.

The Lands Commission should also include the National and Regional Directors of Agriculture and Fisheries, the Forestry Commission, and the Environmental Protection Agency.

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