INTERNATIONAL JOURNAL OF INNOVATIVE RESEARCH & DEVELOPMENT

ISSN 2278 – 0211 (Online)

The Three Movements in the Management of Lands and Natural Resources in Ghana: From the Crown Lands Bill of 1897 to the Land Act of 2020

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Abstract:
This paper examines the three movements that characterize the ownership and management of lands and natural resources in Ghana since the start of British colonial rule. First, we explore the different stratagems employed by the colonial State in its attempt to introduce the failed Crown Lands Bill that sought to give it control over the locals' lands. Next, we turn the spotlight on the state-centric approach to ownership of lands and natural resources adopted by the post-independent State, particularizing the reasons for the new approach. Finally, we discuss the defining features of the current movement, whose seeds were sown at the close of the second movement but only germinated properly in 1992 with the birth of the Fourth Republic. The paper argues that an appreciation of the different shades that undergird these movements is a crucial step towards understanding the current land tenure system and creating the future we hope for as far as the ownership and management of lands and natural resources in Ghana are concerned.

Keywords: *Natural resources, ownership, British colonial rule, crown lands bill, post-independence, fourth republic, land tenure system, state control, resource governance*

1. Introduction

The law on ownership and management of lands and natural resources in Ghana has undergone three major movements since the introduction of British colonial rule in Ghana. The first movement started with the introduction of the Crown Lands Bill in 1897. The second was characterized by the State-led Acts of 1958, 1960 and 1962 and the attendant ideological, political and economic considerations behind those Acts. The last and current movement, which may be called a hybrid system of land ownership and management, began properly with the birth of the 1992 Constitution and carried through to the new Land Act of 2020. In the paragraphs succeeding therefrom, we travel back in time through these movements, identifying, isolating and reflecting on the nuances of each one of them.

2. Colonial Movement

Preceding the advent of colonial rule, Ghana, by extension Africa, practised only customary law "made up mostly of unwritten rules and customs, practices, usages, conventions and systems of the African people, designed by the African People to govern themselves and their peculiar relations." Under customary law, land, including mineral and other natural resources found beneath or on the surface of the land, belonged to the custodian of the land, who in many places was the chief, in a few others, the clan or family head, and in isolated cases, the Tendana or even an individual.

Ghana was not a unitary state organized politically into a single unit before the arrival of the colonialists. Rather, it consisted of many fragmented settlements bound more by their cultural beliefs and blood relations and dotted all over the territorial space now called Ghana than by politics. Therefore, in the absence of the State, there could be no question of state vesting power over lands and mineral resources management.

Fast forward, by the close of the 14th century, European states, driven by a common hunger for raw materials, social and political prestige, slave labour and new markets for their expanding industries, among other factors, began flocking to Ghana's coasts. The Portuguese were the first to arrive in Ghana and were soon followed by the Dutch, the Danes and the British. Following a series of confrontations among them for control of territory, the British became successful against the rest of the European powers, forcing them out and establishing the Gold Coast as a Crown colony in 1821 and later incorporating Danish and Dutch Gold Coast in 1850 and 1872, respectively. The final phase of incorporation was completed at the start of the 20th century with the defeat and incorporation of the Ashanti colony in 1902 and the creation thereof of a single constitutive political unit called the Gold Coast colony.

Upon arrival, the colonialists learned, much to their dismay, that the land tenure system in the Gold Coast was an extremely complex one and very different from the land tenure system back home in Britain. The complexity was primarily twofold:

- Land ownership was almost indivisible and unalienable. Alienation of land, for instance, could occur only under special circumstances such as to raise money to clear off debt incurred by the Stool or family. Since it could not be reasonably established or even anticipated that any Stool or family found itself in such a compelling circumstance as to warrant alienation of its land, it was obvious that the British's thirst for land was going to go unquenched.
- Secondly, land was granted against a tribute and reverted to its former owner when it ceased to be occupied. Unfortunately, the colonial government seemed to envisage perpetual rights over the lands they sought. Other difficulties were that a traditional ruler could not grant land without his councillors' prior assent and likewise, the head of a family could not sell it without the senior members' approval and
- Finally, the Gold Coasters clung to land for economic and sentimental reasons and its expropriation was, therefore, likely to generate tensions. It, thus, became clear at once to the colonial administration the difficulties that lay ahead in their quest for land for the many different purposes for which they had come.

Befuddled by the complexity of the land situation, the British administration deployed many different tactics, none of which proved tactful enough to help them circumvent the complexity. Under the circumstances, the less problematic choice was to use their jurisdictional powers to enact land legislation that would significantly give them power over the locals' lands. They claimed that these laws were meant to protect the concessionary and other related interests of the local landowners. However, the local elite, who knew too well the real intentions of this legislation, held onto their suspicions and would not be beclouded by such claims. They feared that in the long run, as had happened in other British Colonies, these laws were going to be used as the Trojan horse to execute the wholesale land expropriation project of the British and to facilitate the disintegration of their customary institutions. Under a misguided appraisal of the locals' reality as far as land tenure was concerned, the colonialists described 'Unoccupied lands,' sometimes 'ownerless lands,' as lands that were not put to beneficial use such as cultivation, inhabitation, water storage or any industrial purpose and therefore sought to grab as many of these so-called ownerless lands as they could. The idea was to bring an end to what they figured was a problem resulting from the ununiform nature of land holding by the indigenes and to restructure the land tenure system to match the British module where the Crown was the only landlady and everyone else her tenant.

Consequently, the colonial administration made an unsuccessful attempt at introducing a Bill—the Crown Lands Bill—the object of which was to cure the misdiagnosed mischief by vesting ownership of lands in the Crown. In furtherance of its object, the Bill did two things:

It granted the Governor superior power to take land from the locals for public purposes and the power to issue land certificates to them. In effect, the arrangement would alter the status of the locals from landowners to mere settlers, overlook the African inheritance system and infringe upon the land rights of the mullato community.

In response, the African elite masterminded mass protests against the Bill. Led by Mensah Sarbah and a cohort of lawyers, the resistance was strengthened by establishing the Aborigines Rights Protection Society (ARPS) in 1897, the same year the Bill was introduced. The ARPS first mounted opposition to the Bill at the Legislative Council, failing which they followed up with a delegation to Britain to petition the Crown against its passage. Ultimately, in 1898, the delegation succeeded in getting the Crown Lands Bill disallowed and the Gold Coasters were saved from alienating their lands to the British Colony as was done in other British colonies.

However, before the introduction of the Crown Lands Bill in 1897, two previous attempts had been made to pass two land bills—the Public Land Ordinance in 1876 and the Land Bill of 1894. The Public Land Ordinance sought to give the colonial government power to take native lands for public purposes and to make compensation for such lands except 'unoccupied lands.' It was flatly rejected by the locals. They argued that the Bill impaired their land rights and that untilled land, which the British described as unoccupied, was land allowed to fallow and taking away such lands would cause them untold hardship. Then came the Land Bill to essentially control the revenue flow and vest the minerals, forests and 'wastelands' in the Crown. 'Wasteland' was synonymous with 'unoccupied land.' It further proposed to maintain the powers of the chiefs to grant concessions but subject to the colonial government's approval. Again, the local folk saw through the veil and resisted this, too, arguing that it pruned the powers of traditional rulers, thus exacerbating further their fear of losing absolute control of their lands as had happened in other colonies.

The real intention behind the attempted introduction of all three bills remained unchanged throughout the whole period. It was to empower the Crown to expand control and increase its economic power by taking away ownership of the lands and the power to grant concessions from the natives, with a special focus on the minerals desperately needed to feed its rapidly evolving industries back in Europe. The response of the natives remained the same all through. The resentment was so fiercely resounding that it doused any optimism about the success of such moves even in the future. It became clear to the colonialists that they were not going to succeed regardless of the fact that they were adept at machinations and that they were no stumbling amateurs in the use of brute force for such purposes. Unable to withstand the tide, the matter of Crown vesting was altogether left to sleep, never to be awakened until the colonialists were sent packing in March 1957, bringing to a halt the first phase of the movement in land ownership and management in Ghana.

3. Post-Independence Movement from 1957 to 1966

After the long bumpy ride with the British in the driver's seat, political independence became no more an option that could be negotiated away under any circumstance or suppressed by any force. So it came to pass, sooner than some had forecasted, that in 1957, the Ghanaian people sent the colonial driver packing.

Like the ideological snowball in George Orwell's Animal Farm, Nkrumah went straight into the action with a concoction of what were thought to be great ideas to propel the newborn State to the paradise it had hoped to become. He quickly set up a Commission to look into "the terms under which [mineral and timber rights] are at present held with a view to determining the consistency of... [the] agreements with equity and with the present profitability of these industries; and the existence of all unexploited concessions and ascertain when the concessionaires propose to begin working therein" in February 1958, barely a year after the attainment of political independence from the Crown.

After an 11-month investigation, the Commission concluded its work and recommended, inter alia, the following:

- Government take[s] over mineral rights from the landowning communities on whose behalf grants had hitherto been made by their chiefs and other local leaders,
- Royalties to be paid by mining companies be calculated as a percentage of net profit (rather than be fixed amounts whose value diminished with time),
- Landowners be entitled to a percentage of mining royalties determined by law; (4) more stringent rules be developed to restrict the area over which a mineral right could be held and its duration,
- Power be given to a government body to terminate a mineral right held for an undue length of time without adequate activity by the grantee,
- Government investigate[s] the advisability of acquiring 51% of the shares in mining companies and
- Consideration be given to the advisability of establishing a state monopoly for the export of minerals.

That some of these recommendations struck a chord in the Government are evidenced by the enactment of three statutes in 1962, all relating to lands and natural resources.

The Minerals Act, 1962 (Act 126) vested ownership of minerals in "the President on behalf of the Republic and in trust for the People of Ghana," implemented the Commission's recommendations on tightening the area and duration limitation provisions relating to mineral rights and gave the President the power to demand the sale of minerals produced in Ghana to a state agency at a negotiated price determined by the High Court.

The Concessions Act, 1962 (Act 124) also provided for the establishment of a tribunal and empowered the Minister assigned the responsibility by the President to apply to same to determine a concession in respect of which the holder unreasonably refuses to vary a term which has "become oppressive by reason of a change in economic conditions," the holder "has lost the financial ability to develop" [it] or "the land specified.., has not been developed or used in accordance with the object for which the concession was granted during the eight years preceding the.., application of the Minister."

The Minerals Act and the Administration of Lands Act, 1962 (Act 123) also gave the substantial executive powers to decide upon the use and management of land such as is owned by a community presided over by a chief; land known as 'stool land.' Most large-scale mineral operations occur on Stool land. The Administration of Lands Act indeed required that payments in respect of Stool lands be made not directly to the representatives of the owning community but to the Minister who would allocate portions for "the maintenance of the.., traditional authority," "projects... for the benefit of the people of the area" and the local government bodies in the area. Together, this legislation marked a complete breakaway from the past and ushered in a new regime of State ownership and management of Stool lands and all minerals and other natural resources in the country.

Two old cases speak to the enforcement of this legal regime. The first is Republic v Kwadwo II. The Appellant appealed the decision of the High Court in favour of the Respondent, the Omanhene of Bekwai. By traditional practice, the Respondent was entitled to 'Asikano,' which is the money paid by stranger farmers in consideration for the transfer of land. The stranger farmer did not have any payment obligation to the Bekwaihene after the 'Asikano' had been paid. The respondent was convicted by the Circuit Court for the unlawful collection of revenue meant to be paid to the Lands Commission with respect to the Fahiakobo Stool lands under his jurisdiction. He was warned to stop this unlawful collection and receive only the 'Asikano' which by custom of the area he was entitled to receive, but he paid no heed and continued to receive almost every revenue, keeping it all for himself. He appealed his conviction and was acquitted by the High Court, warranting a further appeal to the Court of Appeal. The main issue set down by the court for determining the case was whether or not the Administration of Stool Lands revenues under Section 17 of Act 123 affected the Fahiakobo Stool lands. The said section 17 of Act 123 states in part as follows:

- All revenue from lands subject to this Act shall be collected by the Minister and for that purpose, all rights to receive and all remedies to recover that revenue shall vest in him and, subject to the exercise of any power of delegation conferred by this Act, no other person shall have power to give a good discharge for any liability in respect of the revenue or to exercise any such right or remedy.
- Revenue for the purposes of this Act includes all rents, dues, fees, royalties, revenues, levies, tributes and other payments, whether in the nature of income or capital, from or in connection with lands subject to this Act.

Section 18 of the Act adds that all sums collected by or transferred to the Minister under the Act ought to be paid into a Stool Lands Account subject to the provisions of the Act. We should note that 'Stool land' is defined in the interpretation section to include "land controlled by any person for the benefit of the subjects or members of a Stool, clan, company or community, as the case may be and all land in the Upper and Northern Regions other than land vested in the President and accordingly 'Stool' means the person exercising such control."

The court took the view that the management of Stool lands and the collection of money under the Act is the monopoly of the Secretariat of the Lands Commission through the Administrator of Stool Lands. It is not in dispute that Fahiakobo lands are Stool lands under the management of the Stool Lands Commission Secretariat, and it is only the Administrator of Stool Lands or his duly appointed agent who can lawfully collect revenue from stranger farmers on those

Stool lands. Thus, the collection of the revenue by the Respondent or his agents, which the Respondent does not deny, was unlawful.

The court's ruling thus affirmed section 17 of Act 123, giving further credence to the philosophy that drove the second movement that it is the business and interest of the State to control lands and the natural resources contained in them.

The second case is the Republic v Saffour II. Here, the Respondent, chief of Assin Bereku, had been accused of collecting various sums of money from persons to whom he granted portions of Assin Bereku Stool lands for farming on the grounds that such money was 'revenue' as contemplated by Act 123 and collectible only by the Minister. Receiving the money, therefore, without the authority of the Minister amounted to an offence for which the court was asked to convict the Appellant, a call the trial judge refused to accede to. The court concluded that "there was no offence committed by the accused for which he could be lawfully convicted." Against this backdrop, the Republic appealed to the Court of Appeal.

The only issue for determination by the appellate court bordered on whether or not the money received by the chief was the payment for grants and releases and would, as such, constitute revenue so properly called. The court held that payments in connection with the use of land are not in the same nature as payments in relation to grants and releases, adding that the money received by the chief was in relation to initial agreements for the release of the land by the chief and not the use of it by the grantee. Consequently, the money received by the chief did not qualify for admission into the definition of revenue as contemplated by the Act. Against this backdrop, the suit failed. Again, the case projects an image of the second movement where the State was seen to take center stage in the control and management of lands and natural resources.

Many reasons were adduced to rationalize the shift to Nkrumah's State ownership of land and resources, clustered here under a trilogy: political, ideological and economic reasons. We will soon see, however, that these factors are not mutually exclusive of one another.

3.1. Political

The political twist to this is quite interesting and it took its seeds from whence the struggle for self-government began. It was a struggle that incidentally saw its leadership start out united against the common enemy, colonialism, but later cut ties and broke into two fronts—the Convention People's Party (CPP) and the United Gold Coast Convention (UGCC). Since then, the two factions remained in perpetual suspicion of each other and viewed each other with open indignation. Eventually, it was Nkrumah's CPP that led the country through the final phases of her independence struggle. Though the independence struggle was over, the feud between the two parties never went away. Tensions peaked in 1964 when the UGCC and all opposition parties were dissolved by Nkrumah following the passage of the Constitution (Amendment) Act 1964 (Act 224) that turned Ghana into a one-party State. This notwithstanding, the political philosophy of the UGCC, as you would expect, continued in force and so did its leadership.

The other force of opposition mounted against Nkrumah came from the chiefs. The Asantehene, the Okyenhene and other powerful chiefs, mainly from the middle and Southern belts of the country, would not genuflect or throw their weight behind Nkrumah. These chiefs drew their wealth and influence mainly from the vast tracks of lands and minerals under their control. Records indicate that these chiefs used their wealth and influence to support the opposition, thereby strengthening the opposition forces against the Nkrumah government. Given the level of opposition he faced, it made political sense that Nkrumah sought to have the threat neutralized. In other words, Nkrumah's reaction was not unexpected as a necessary consequence of the exigencies of the political climate at the time. Therefore, a denial of the chiefs of the power and ownership of lands and minerals from which they obtained huge royalties meant a significant drop in their power and influence and their support for the opposition.

Recall the infamous Re Akoto and Seven Others case - it is the poster image of the struggle of Nkrumah with opposition forces. Even though the case is usually treated in the circles of constitutional law and human rights, we often forget that it also had everything to do with the control of lands and natural resources—power. Notable among those critical of Nkrumah's government were members of the National Liberal Movement, a movement that was heavily financed by cocoa farmers, some of whom were top members of this opposition front. One of their issues with the Nkrumah government was the high tax duty placed on cocoa and the low price of the cocoa and they requested an increase in the price of cocoa from 72 shillings to 150 shillings. They also fought for the introduction of a federal constitution as opposed to Nkrumah's choice of a unitary state. It was not surprising, therefore, that one of its top figures, Baffour Osei Akoto, the chief linguist to the Asantehene and a big cocoa farmer and financier of the movement, and seven others were arrested on the 10th and 11th of December 1959, which events set the stage for the Re Akoto case.

The facts of this case need no recounting here. Baffour Osei Akoto and seven of his associates were arrested and detained without trial in accordance with the orders of the President (then Governor-General), signed on his behalf by the Minister of Interior in respect of the Preventive Detention Act (PDA). This act bestowed upon the President the power to order the arrest and detention of persons behaving in a manner thought to be harmful to the security of the State for a period of up to five years. They applied to the High Court for a writ of habeas corpus and the application was turned down, necessitating an appeal to the Supreme Court. Unfortunately, the appeal was also thrown out for very strange reasons, which the court relied upon as it became sufficiently clearer with the passage of time.

It must not escape mention that the people arrested by Nkrumah's government through this special animal, the PDA, were mainly leaders of opposition movements who challenged his control. It is the argument of some people, an argument we subscribe to, that these arrests and detentions and the ultimate decision to vest large tracks of land which were held by the chiefs and farmers and more so all minerals in the State was a one-fell swoop intended to eliminate the

two-pronged problem of political opposition from the political actors and the threat that was posed by the land and natural resources owners—the chiefs and the farmers.

3.2. Economic

The second set of factors that drove the Nkrumah-led movement was the economic factor. The fact that nation-states are built with resources is indefeasible. It is even truer in the case of an infantile country such as Ghana, which was only starting her life under the unfortunate and undesirable circumstances of her emergence from colonial rule. Indeed, the need for cash and resources was further heightened by Nkrumah's ambition to build a new developmental state that would lead and finance a new continental unity movement to rival the East and the West.

As may have been noted earlier, many of the mineral-rich lands were in the hands of the chiefs, yet the chiefs were not prepared to let go of their lands and the minerals therein. Therefore, the State's power of legislation came in handy as a potent weapon in dealing decisively with this situation. For instance, section 1 of the Administration of Lands Act, 1962 (Act 123) empowered only the Minister to manage Stool lands and at the direction of the President, an action could be instituted or defence mounted or intervention made in any proceedings relating to any Stool land in the name of the Republic, on behalf of and to the exclusion of any Stool concerned, and compromises or settlements of any such proceedings made. By virtue of this power, the State became the recipient of all revenues accrued from Stool lands and all minerals found in them.

3.3. Ideological

The last in the trilogy of factors that powered the second movement in the law on lands and natural resources ownership and management is the ideological factor. Ghana gained independence at the height of the Cold War between the former Soviet Union and the United States of America. That war was itself ideologically induced. It was a struggle between the socialist East and the free and liberalist West. It was a struggle between communism and capitalism. Having earlier suffered untold pain and wreckage at the hands of the British, it came as no surprise that Ghana and other African countries that were coming out of the shackles of British colonial rule were more inclined toward the socialist East. Indeed, nearly the entire first crop of African leaders, from our own Nkrumah to Patrice Lumumba of Zaire, from Thomas Sankara of next-door Burkina Faso to Jomo Kenyata in the beautiful mountains of Kenya, were all raised inexorably socialist–sympathetic to the Soviet Union but hostile to the West.

Socialism prides itself on the social good. It is at variance with a module of land holding that encourages individual Stool ownership and, in some cases, individual ownership of both the land and minerals therein. While Nkrumah viewed cocoa, for instance, as national property, the large cocoa farmers, the majority of whom were from Ashanti and Akyem Abuakwa and who were financiers of the opposition, felt that the cocoa was private property and the State should have no control or interference in cocoa-related affairs.

The ideological argument ultimately turned on whether a unitary government or federal government was ideal for young Ghana. For Nkrumah, the unitary government was preferred as it would ensure an even spread of development across the country. This, we would later learn, was only a dress rehearsal towards a larger socialist objective of unifying Africa into a single political unit. The choice of a federalist government appeared not so ideal to him because the country was not evenly developed by the colonial administration and as if it conspired with nature, the mineral resources were equally unevenly shared. The northern territories and the trans-Volta Togoland, for instance, were miles behind their southern counterparts, partly in the natural distribution of mineral resources and partly in governmental development. The uneven development was an unintended legacy of the many years of colonial rule that cut the northern territories from the main and ruled them from the coasts.

The Federalist movement, led by the opposition, detested the unitary government for obvious reasons. The odds were in their favour since they controlled the greater chunk of the mineral-rich lands and had, by colonial design, received more development than the other parts of the country.

In the end, the country settled for Nkrumah's choice of a unitary government. The ideological warfare, however, did not go away immediately after the choice was made. It lingered on, making appearances in political discourses every now and then. One way to overcome this ideological warfare once and for all was to use the force of legislation, which only the State possessed, hence the state-led acts.

What was even more striking in all these shades was that the domino effect of this glut of political, economic and ideological undercurrents that pushed the land reforms of Nkrumah was felt throughout the continent. In other words, the fundamental premise of the State being the anchor and owner of resources resonated across post-independent Africa; of course, similar problems, similar leaders and similar actions.

4. Midway: the Third Movement

It is said that behind every man walks his weaknesses. Nkrumah was no different. Many were the achievements for which many kept faith in him and the policy direction he pursued, but equally, many were his shortcomings. Nkrumah's policies brought him into natural conflict with the chiefs who hitherto owned the lands, the opposition politicians and the capitalist West led by the United States, all of whom would later conspire against him, leading to his fall in 1966, and with him much of the socialist project across Africa. He would die a few years later.

One would have thought that the absence of Nkrumah meant a complete policy redirection in the land tenure system of the country. It was not to be. Though Nkrumah had left the mortal world, his policies never faded out of sight with his passing. Indeed, so enduring have they been that three score and six years now since his passing, their mystical effect is yet to recede from living memory. The system of state ownership of lands and natural resources that was brought

to being by Nkrumah was adopted with few modifications by succeeding administrations, including the military juntas who occasionally abandoned their traditional role as defenders of the polity against external aggressions and acquired for themselves a new role as active players in our political field.

Most significant among the modifications was the reversal of the State's ownership of Stool lands, which was predicated on a strong national desire to revert to the pre-independence status quo as far as Stool lands were concerned. The Attorney-General would later re-echo this desire in Nii Nortey Omaboe III v Attorney-General when he argued that "since 1969 the framers of our Constitutions consistently sought to depart from the pre-1969 law on stool lands ownership, and to vest all stool lands in the appropriate stools, as evidenced, for example, by the Memorandum on the Proposals for a Constitution for Ghana, 1968." Accordingly, the 1969 Constitution reversed the status quo by vesting all Stool lands in the appropriate Stools on behalf of and in trust for the subjects of the Stool. This was followed through in the same wording in article 190 (1) of the 1979 Constitution, which stated thus: "All stool lands in Ghana shall vest in the appropriate stool on behalf of, and in trust for, the subjects of the stool."

As regards the management, the Constitution provided for the establishment of a Stool Lands Account for each Stool or Skin into which all rents, dues, royalties, revenues or other payments, whether in the nature of income or capital, from any such Stool land were to be paid. Unfortunately, the same treatment was not extended to cover the minerals and other natural resources. Ever since the State acquired ownership rights over mineral resources through Nkrumah's reforms, it has refused to let go. At all times, minerals and other natural resources remained as property belonging to the State.

However, the status of public lands has not changed since the start of the second movement. Article 162 of the 1969 Constitution, later transposed into article 188 in the 1979 Constitution, vested all public lands in the President on behalf of and in trust for the people of Ghana, with the Lands Commission tasked with the management of all such lands and minerals. Public land is defined to include "any land which, immediately before the coming into force of this Constitution, was vested in the Government of Ghana in trust for, and on behalf of, the people of Ghana for the public service of Ghana, and any other land acquired in the public interest for the purposes of the Government of Ghana before, on or after that date." The interactions of these two Republican constitutions that followed the second movement, together with the existing acts and other legislation, created the conditions that would later fuel and shape the third movement.

5. The Third Movement

Following the bitter lessons from many years of commuting an epileptic political path, the country was set to retrace her missed steps back to the pathways of democratic governance by 1992. The 1992 Constitution not only birthed the Fourth Republic but significantly set the country en route to a marked paradigm shift in the legal regime regulating the ownership and management of land and mineral resources in the country. It is this shift we call the third and current movement of the law on lands and mineral resources ownership in Ghana.

The midwives of the 1992 Constitution had a choice to break away from the past and kiss it goodbye. They did not. Instead, they opted for what looks much like a hybrid system comprising strings of the old law represented by the complete State ownership of lands and minerals and those of the new law characterized by private and individual Stool owners being part beneficiaries and partakers in the ownership and management of the mineral resources. To help the discussion, we catalogue the various provisions in both the Constitution and the Land Act that reflect this hybrid system.

First, you will recall that earlier in 1962, under the Administration of Stool Lands Act, absolute responsibility for and authority over revenues realized from all mineral resources and Stool lands rested with the Minister with sanctions for contrary acts, as we saw earlier in the cases of Republic v Kwadwo II and Republic v Saffour II. As indicated earlier, immediately after the second movement came to a halt, some alterations were made to the law, the most significant being the devesting of Stool land in the State. Article 163 of the 1969 Constitution established a Lands Commission and clothed it with authority to superintend over public lands. 'Minister' as used in section 17 of Act 123 was tweaked in article 190 (2) of the 1979 Constitution to make way for its replacement with the Office of Administrator of Stool Lands. This was later adopted ipsisima verba in article 267 of the 1992 Constitution. This revision is seen by many as inconsequential as it merely replaces Minister with Office of Administrator of Stool Lands without further elaboration. However, the revenues obtained from the Stool lands were not taken from the State. The 1969 Constitution provided for the establishment of a Stool Lands Account for each Stool or Skin into which all rents, dues, royalties, revenues or other payments, whether in the nature of income or capital, from any such Stool land were to be paid. This was repeated in article 190 (2)(a) of the 1979 Constitution.

Under the current arrangement, Stool lands continue to vest in the appropriate Stools, further cementing the view that since 1969, the country has sought to depart from the pre-1969 law on Stool lands ownership and vest all Stool lands in the appropriate Stools. Additionally, by virtue of the decision in Nii Nortey Omaboe III v Attorney-General, a second layer of protection is provided for Stool lands as the effect of the decision is that upon the coming into force of the 1992 Constitution, there can be no vesting of Stool lands in the State. A third layer of protection now exists as the new Land Act has extended statutory blessing in section 268 (1) to cover the decision in the Nii Nortey Omaboe Case. Indeed, in the Nii Nortey Omaboe case, the Supreme Court, speaking through T.M. Ocran JSC, admonished the Lands Commission to collaborate with the pre-vesting owners in their management of the vested lands. It is, therefore, safe to say that ownership of Stool lands is effectively beyond the reach of the long arm of the State.

What is noteworthy, however, is that management of both the lands and the revenues accrued to the Stools is now a shared responsibility. That the Stool is the owner of its land is not to suggest that it can do as it pleases with the land. Such an intention is not envisaged. At all times, in the superior interest of the State, certain minimum standards must be

observed in the use of such lands. For instance, a Stool is not permitted to make a disposition or development of Stool land unless such disposition or development is certified by the Regional Lands Commission of the region in which the land is situated as being consistent with the development plan drawn up or approved by the planning authority for the area concerned. Again, under the Land Act, "an instrument that disposes of a stool, or skin, or clan or family land, or land owned by a group of persons, a corporate body or an individual does not have the effect of granting a right or title to or an interest in natural resources in, under or on the land." Additionally, a Stool cannot create an interest in or right over Stool land in Ghana, which vests in any person or body of persons a freehold interest, howsoever described.

The Land Act requires Stools, clans or families who own lands to establish a Customary Land Secretariat with technical and advisory services from both the Lands Commission and the Office of the Administrator of Stool Lands. The Secretariat collaborates with the Lands Commission and the Office of the Administrator of Stool Lands in performing such functions as keeping records of the customary interests and rights in land, transactions in respect of lands within the coverage of the Secretariat and preparing periodic accounts of all revenues received by it. A Lands Officer and Stool Lands Officer for a district is then obliged to keep a public register of Customary Lands Secretariats in the district and supervise their operations.

As regards the revenues accrued to a Stool, the Constitution provides the formulae for its disbursement as follows:

Ten percent of the revenue accruing from stool lands shall be paid to the office of the Administrator of Stool Lands to cover administrative expenses, and the remaining revenue shall be disbursed in the following proportions:

- Twenty-five percent to the stool through the traditional authority for the maintenance of the stool in keeping with its status,
- Twenty percent to the traditional authority and
- Fifty-five percent to the district assembly within the area of authority of which the stool lands are situated.

The Constitution and the Land Act thus contemplate a hybrid system in the use and management of Stool lands and their revenues. Through this hybridization, we see an attempt by the State to smuggle back some of the power it lost to the Stools.

You would have noticed from the discussion that the country has been making a snail-paced move away from State involvement in the ownership and management of land and mineral resources since the end of the second movement. The first major step in this direction was the reversal to the Stools of the ownership of Stool lands. Unfortunately, this was not followed through thoroughly as the State somehow remains actively involved in the management of the Stool lands and the revenues that accrue to them, as we have shown.

The second major step taken in this snail-paced movement was the devesting of the lands in the northern territories. Upon the declaration of the northern territories in 1902 as British Protectorate, all the lands in the northern part of the country became vested in the Crown. This presented a peculiar challenge for the political leadership after independence because unlike the other parts of the country where only portions of lands were vested in the Crown and subsequently in the State post-independence and the remaining lands continued to be owned by the appropriate Stools, clans, families or individuals, the story of the northern territories was quite different as all, not part, of their lands were state lands by virtue of the British declaration of those territories as Protectorate. Therefore, resentment by the northern folk post-independence at the continued vesting of all their lands in the State appeared proper as the situation was seen as discriminatory in some sense.

The framers of the 1992 Constitution had this as one of their first tasks to overcome. If they decided to devest only portions of the northern territories and revest same in the appropriate Skins, the issue they would immediately have to contend with was which portions they were going to consider without risking tensions with competing Skins and Tendanas. The other option would have been to simply do nothing and maintain the status quo. This, too, was sure to heighten the concerns about discrimination as was being alleged by many northern folks. Both options simply did not look good.

Caught in this witches' dance, the framers pursued the only way out, which was the complete and non-discriminatory devesting of all the land in the territory and revesting of same in the pre-vesting Skins or Tendanas. Credit, however, ought to be shared with the framers of the 1979 Constitution, whose ingenuity created the narrow way out that was later merely sampled by the makers of the 1992 Constitution without further expatriation. Article 188(3) of the 1979 Constitution provided as follows:

For the avoidance of doubt, it is hereby declared that all lands in the Northern and Upper Regions of Ghana, which immediately before the coming into force of this Constitution were vested in the Government of Ghana, are not public lands within the meaning of clauses (1) and (2) of this article.

Nevertheless, this choice also came under severe criticism, especially from the folk in the middle and southern quarters who argued that the same treatment needed to be extended to them regarding those portions of their lands that had previously been vested in the State. One such group was the people of Osu, who called for the devesting of the lands called the Osu Mantse Layout and the revesting of the same in the Osu Stool. They mounted a couple of actions that ended up at the Supreme Court in the famous case of Nii Nortey Omaboe III v Attorney-General.

The Osu Mantse Layout, which was the subject of a Deed of Exchange in 1930 between the Governor of the Gold Coast and the Osu Stool and its Elders, comprised three parcels of land described as First, Second and Third Schedules, with the First and Third Schedule lands incontrovertibly vested in the Osu Stool. Subsequently, when E.I. 10 was made on 18th September, 1964, the lands comprised in Schedules one and three alone were caught squarely by the Instrument. Upon the coming into force of the 1992 Constitution and the declaration of the northern territories as devested and revested in their appropriate Skins and Tendanas, the Plaintiffs sued in the High Court for a declaration that the Osu

Mantse Layout lapsed with the promulgation of the 1992 Constitution and consequently, the lands were devested. The action called for the interpretation of article 267 of the new Constitution and accordingly, the trial judge, Mrs. Justice F. Owusu Arhin, stayed proceedings and referred the case to the Supreme Court for the exercise of its exclusive interpretative powers under articles 2(1) and 130.

Premised on an alleged intent of the framers of the 1992 Constitution to reverse the vesting of their lands, the Plaintiffs submitted that in lieu of article 267(1) of the 1992 Constitution, E.I. 108 must be deemed to have lapsed. The said provision states: "All stool lands 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."

In a rather startling turn of events, the Attorney-General simply threw in the towel, plodding along the same lines as the Plaintiff regarding the legal effect of E.I. 108 upon the coming into force of the Constitution. We must say in passing that this twist becomes less surprising when one considers the fact that the Attorney-General, Mr. Ayikoi Otoo, was himself a native of Osu.

The court held that article 267(1) is not to operate retrospectively to devest the President or Government of all lands which were once Stool lands but had become vested in the President or Government. Its effect in subsequent years is that there can be no such thing as the vesting of Stool land in the State. The Land Act 2020 (Act 1036) broadens the scope of the application of this article to include family lands.

The Supreme Court also ruled, inter alia, that a number of land holdings are recognized by virtue of the combined effect of articles 267, 257 and 258 of the 1992 Constitution. First, Stool lands that had not been vested in the President or Government prior to 7th January, 1993, that is, those Stool lands properly envisaged under article 267(1), continue to be duly vested in their respective Stools in trust for the subjects of the Stool in accordance with customary law and usage. Article 267(2) of the same Constitution directly establishes the Office of the Administrator of Stool Lands, whose functions are undoubtedly those of management, revenue collection and disbursement and whose authority covers all Stool lands. The court, therefore, found neither inconsistency between 267(1) and (2) nor any absurdity in the constitutional arrangement, for as it explained, the vesting of title in one party may go side by side with management functions being lodged in another entity.

Secondly, lands that were once Stool lands but which had been vested in the President or Government without any devesting in favour of the original Stools by statute continue to be vested in the President until the State revokes them expressly by appropriate instruments and revests same back in the pre-vesting Stools. From article 258(1)(a), there are three basic categories of lands entrusted to the management of the Lands Commission on behalf of the Government of Ghana: public lands, lands vested in the President by the Constitution or by any other law and any lands vested in the Lands Commission itself. The distinction between public lands and lands vested in the President is seen in articles 257(2) and 258(1) (a). Article 257(1) vests all public lands in the President and both are held in trust for the people of Ghana. Both categories of land are expected to be managed by the Lands Commission. Therefore, the Osu Mantse Layout is under the Lands Commission and not the Office of Administrator of Stool Lands.

Finally, lands with no Stool origins or connections, such as family or individual lands, which become public lands by virtue of compulsory acquisition, fall under the management of the Lands Commission.

The creation of the Minerals Income Investment Fund (MIIF) pursuant to the Minerals Income Investment Fund Act, 2018 (Act 978) as amended is seen as the latest effort by the State to make amends. The Fund has a mandate to manage the equity interest of the Republic in mining companies and receive dividends from these equity interests, receive mineral royalties and other related income due to the Republic from mining and provide for the management and investment of these funds in a beneficial, accountable and sustainable manner and monetize Ghana's mineral wealth in a manner which would bring long term value to Ghana. The treatment of mineral revenue as being traditionally a part of Government's consolidated funds meant the absence of long-term assets to compensate for the depletion of finite mineral resources in the country.

It is also trite learning that the top-tier mining sector is dominated by a few multinational heavyweights, with a few local players largely pushed to the small-scale mining sector. The creation of the fund is recognized by the State as the need to get the people who are the true owners of the minerals actively involved in managing the minerals. It does not operate to deny the State of its exclusive right of ownership over minerals, but it is a good sign that at least the owner of the resources is being considered more now than before.

These attempts notwithstanding, there is still a significant amount of resentment against the State for its continued involvement in the management of Stool lands and revenues, for the State merely recognizes the Stools as the owners of the lands but is unable to resist the temptation to keep its eagle eye off their management. The resentment is even greater against the continued vesting of all minerals and other natural resources in the State. It is a seeming rebellion that hangs limply in the balance waiting to happen and the State must act quickly to avoid it.

6. Conclusion

From the discussion, one thing is clear: the shift to state ownership of lands and natural resources was a reactionary move as a direct consequence of the political climate at the time rather than the product of a deliberate, well-thought-through national policy backed by any credible data and a national consensus. It is thus unfortunate that we have remained stuck with it, unable to completely sever the umbilical cord of oneness with Nkrumah's past. While we remained resolved against any tinkering with Nkrumah's past, we conveniently forgot, or simply ignored, the most important question of whether or not the move to state ownership, with all the rationalization thrown at us in support of it, has truly served the intended purpose. The intention that fired the shift to State ownership may have been great, but posterity, nature's most reliable judge, has obviously proven beyond doubt that the shift has not helped the country much.

We argue that it is in the paramount interest of the State that it advances private ownership of not only lands but all minerals and other resources. This is in line with a modern progressive societal orientation where the State takes the seat of a coach and allows the private sector to do the actual playing. It is seen in education, where private individuals are allowed to go all the way, as seen in the health sector as well.

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