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CONTRACT UNDER CUSTOMARY LAW AND TENANCY

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Abstract

This paper examines the intersection between contracts under customary law and tenancy in Ghana, exploring the challenges and opportunities in achieving sustainable development within the country. Adopting a doctrinal and case study approach, the research utilizes content analysis of relevant case law and statutes to collect data. The paper argues that significant challenges exist in the implementation and enforcement of contracts under customary law, especially in relation to tenancy agreements, where conflicts over contract terms frequently arise. These challenges are often due to the variability in customary law practices and the lack of a formal legal framework.

However, the study also highlights several opportunities, such as the recognition of customary land tenure systems, the increasing use of alternative dispute resolution mechanisms, and the promotion of public participation in decision-making processes. Based on these arguments, the paper concludes that there is a need for a more coordinated and integrated approach to the regulation of contracts under customary law and tenancy in Ghana. The study recommends adopting a holistic approach that aligns customary practices with statutory law to improve enforcement, reduce conflicts, and contribute to sustainable development.

Keywords: *Contract, Customary Law, Development, Conflict, Agreement, Tenancy, Interest and dispute*

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INTRODUCTION

Overview of Research

Customary law contracts and tenancy agreements are essential to Ghana's land and housing policies. Much of Ghana's land tenure systems are still governed by customary law, which is ingrained in the country's traditions and cultural customs. This is especially true in rural and semi-urban areas. Customary land tenure, in which usage rights and land ownership are overseen by traditional leaders (chiefs or family heads), continues to be a crucial component of Ghana's socio-legal structure, impacting the distribution of land and the formation of tenancy agreements.

The confluence of tenancy and customary law contracts, albeit significant, poses a number of difficulties, especially with regard to enforcement. Due to customary law's intrinsic flexibility and informality, contracts may not always be made and enforced consistently.

These customary practices often clash with statutory laws, creating legal uncertainties and potential disputes, especially when parties attempt to enforce tenancy agreements through the formal legal system.

When tenancy agreements under customary law are not legally documented or comply with statutory requirements, the difference between customary practices and statutory law is made clear. Tenants and landowners have become embroiled in problems as a result, usually centered on questions of land ownership, rent hikes, eviction procedures, and tenancy interpretation. The fact that customary law varies throughout tribes and regions might make enforcing these agreements much more difficult.

Although the current legal system acknowledges the importance of customary law, it frequently finds it difficult to balance these customs with legislative requirements, which leads to uncertainty and disagreements.

This paper seeks to examine the challenges associated with contracts under customary law and tenancy in Ghana, identifying both the issues of implementation and enforcement, and exploring the opportunities that exist to harmonize these systems for sustainable development.

Objectives of the study

The primary objectives of this study are:

1. To investigate the challenges in the Implementation and Enforcement of Contracts under Customary Law in Relation to Tenancy
2. To explore the opportunities for Integrating Customary Law with Statutory Law to Enhance Legal Certainty and Promote Sustainable Development

Background of the study

Customary law refers to "the rules of law which by custom are applicable to particular communities in Ghana[1]." According to this view, customary law varies based on the specific community in question and does not have universal applicability. Ghanaian customary law is primarily oral, which is one of its key characteristics. Over time, however, a number of writers have attempted to put Ghana's customary laws into writing. Customary land law is that part of customary law that relates to land. It is the basic land law of Ghana[2]. Kotey adds though that particularly in the rural areas, custom and practice is what governs the acquisition of, right to and transmission of land and interest therein and not the English common law or statutory law approaches, hence customary land law remains very relevant[3].

Customary law is developed from the customs, values, and cultural practices of communities and is passed down through generations, in contrast to statutory law, which is institutionalized by legislation and judicial decisions. There are particular difficulties arising from this difference between the two legal systems, particularly with regard to land control and tenancy agreements.

About 80% of Ghana's land is governed by customary law, especially in rural and semi-urban areas where customary land tenure systems are prevalent[4]. In these systems, traditional authorities, such as chiefs, family heads, or clan leaders, hold land in trust and manage it for the benefit of the community[5]. These authorities are in charge of assigning land to people or families, monitoring tenancy agreements, and settling potential conflicts. Customary land tenure's adaptability and community-based structure provide some informality in land transactions, which can be both a benefit and a drawback.

The documentation and enforcement of land and tenancy agreements are two significant areas where customary law and statute law diverge. Written agreements, precise legal processes, and conformity to statutory guidelines for ownership, leasing, and tenancy rights are all mandated by statute law. In contrast, customary law frequently uses oral agreements, customary rites, and the family head's or chief's authority to validate land transactions. In customary law, the absence of formal recording can lead to ambiguity and disagreements, especially when problems emerge when these agreements are contested in court.

In addition, the administration of land use and tenancy agreements depends heavily on the function of traditional authorities under customary law. In addition to allocating land, chiefs and family leaders also decide on rent, set the conditions of tenancy agreements, and, occasionally, mediate conflicts[6]. This system can cause disputes, particularly when decisions made by traditional authorities are at odds with legal requirements or when customary land is sold or leased to outsiders without the community's approval. However, it does represent the communal character of land ownership in many parts of Ghana.

This paper examines these dynamics, focusing on how the differences between customary and statutory law affect the enforcement of tenancy contracts, the challenges that arise from these differences, and the potential for harmonizing the two systems to promote legal certainty and sustainable development.

[1] Ghana Constitution, 1992, art. 11(3)

[2] Woodman G.R (1996). Customary Land Law in the Ghanaian Courts. Accra, Ghana Universities Press, at preface

[3] Kotey N.A. (1995), Land Tenure and Tree Tenure and Rural Development Forestry in Northern Ghana, UGLJ 102-132

[4] Josiah-Aryeh, N.A. Customary Law's Unsteady Stride Forward [1996-97] UGLJ 157-168; Some of these prominent writers are John Mensah Sarbah, Gordon Woodman, Allot N.A., Kwamina Bentsi-Enchill, A.K.P. Kludze, Nii Amaa Ollenu.

[5] Bentsi- Enchill K. Do African Systems of Land Tenure Require A Special Terminology?(1965) 9 JAL, 114

[6] Ibid

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Structure of the research

This paper is structured into four main sections, each addressing different aspects of contracts under customary law and tenancy in Ghana. The structure is as follows:

Section 2: Challenges in the Implementation and Enforcement of Contracts under Customary Law

The main difficulties in putting into practice and upholding customary law-governed tenancy agreements will be discussed in this section. The study will investigate many topics like the absence of official records, discrepancies in regional customs, the function of customary authority, and contradictions between customary and legislative law. The challenges of enforcing these contracts within the legal system will be demonstrated by an analysis of certain statutes and case law.

Section 3: Opportunities for Improving the System

This section of the paper will examine ways to improve the legal system that governs tenancy and contracts under customary law. In order to establish a more unified system, it will concentrate on merging customary practices with statutory law. The use of alternative dispute resolution (ADR) procedures, such arbitration and mediation, to settle disputes more quickly will also be covered in this section. Furthermore, the examination will encompass the significance of public engagement and the acknowledgement of customary land tenure systems as vital instruments in advancing legal clarity and sustainable development.

Section 4: Conclusions and Recommendations

The study's main conclusions will be outlined in this last section, along with a more planned and comprehensive strategy for handling tenancy and customary law contracts. Legal changes, strengthened enforcement strategies, and the implementation of alternative dispute resolution (ADR) procedures are among the suggestions made to lessen conflict and increase the sustainability of property and housing agreements in Ghana.

Customary law overview Ghana

The types of land ownerships in Ghana are:

1. Allodial or paramount title (interest)
2. Sub Paramount title (interest)
3. Usufructuary/Customary freehold interest
4. Tenancies
5. Licences
6. Pledges

The word "allodial" comes from the German word "olod" or "allod," which implies complete property. From this word, the mediaeval Latin word "allodium" (allodium) was formed, signifying an interest owned by no one, an absolute or original heritage. The allodial title, which cannot be revoked or terminated, is the maximum amount of interest or title that can be retained. The occupant of the stool, who is typically the chief, serves as the trustee or caretaker, indicating that the group as a whole has this interest in the land[7].

In Akan states like Ashanti and Akyem, the land effectively belongs to the state or the entire community, which is typically represented by the stool or its occupant[8]. Accordingly, Bentsi-Enchil states that ownership of the land is vested in the state. State ownership is one of the two main types of allodial ownership[9].

This indicates that the land belongs to the entire community or is connected to the paramount stool and because of this, the fundamental rule in these regions is that the supreme chief alone, with the approval and cooperation of his leading elders and councilors, may transfer allodial title to land inside such a state. The Ewes, Ga Adangbe, and some regions of Northern Ghana are accustomed to the second type of allodial land ownership. Families, in their opinion, have allodial right to land that is distinct from stool lands[10]. The head of the family holds these lands in trust for the family members. In these countries, family members must agree and approve to any transaction before it can be considered.

In addition to the two primary types of allodial ownership mentioned above, the courts have determined that this type of ownership can be vested in both people and subordinates. The contested land in Nyasemhwe v. Afibiyesan [1977] DLCA1374 belonged to the plaintiff's forefathers and was passed down to him from his uncle upon his death. He gave Busumpra permission to cultivate the land, but he did not specify the kind of license or how long it would last. After Busumpra passed away and filed a complaint with the chief, the defendants, who were his relatives, trespassed on the property. It was decided that the allodial title to the contested land belongs to the plaintiff. However, since he is not in exclusive possession of the land having permitted Busumpra to make a farm thereon; and since the late Busumpra's usufructuary interest in the farm is now vested in possession of the defendants, his successors, the plaintiff's action for damages for trespass is misconceived.

Acquisition of allodial titles

The community can obtain the allodial title to land in a number of ways. In Ohimen v. Agyei, Ollennu J. determined that there are four primary methods for obtaining the allodial. Danquah proposed two further methods of acquisition: regaining title through reversion from a grantee and foreclosure following a pledge or mortgage[11]. The only original mode seems to be discovery followed by colonization.

1) Conquest and subsequent settlement and cultivation by subjects of the stool.

In Nii Ago Sai v Nii Kpobi Tetteh Tsuru III[12] The court held that it is trite law that both conquest and settlement were legitimate customary means of acquiring an allodial title.

2) Abandonment

A piece of land is considered abandoned if the owner was uncooperative, effectively and willingly left the property for a number of years with no plans to return, or died intestate and left

[7] Da Rocha, Lodoh (1999). Ghana Land Law and Conveyancing, 2nd ed, p.7. Land Title Registration Law, 1986 (PNDCL 152), s. 19

[8] Bentsi- Enchill K. Do African Systems of Land Tenure Require A Special Terminology?(1965) 9 JAL, 114

[9] Da Rocha, Lodoh (1999). Ghana Land Law and Conveyancing, 2nd ed, p.7. Land Title Registration Law, 1986 (PNDCL 152), s. 19

[10] Da Rocha, Lodoh (1999). Ghana Land Law and Conveyancing, 2nd ed, p.7. Land Title Registration Law, 1986 (PNDCL 152), s. 19

[11] Ohimen v Agyei (1957) 2 WALR 275.

[12] Nii Ago Sai v Nii Kpobi Tetteh Tsuru III J4/21/2008

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no heir. According to Mensah v. Asamoah (1975) 1GLR 225 CA, there must be a purpose to abandon and the fact of abandonment must coexist with the intention; the stranger's simple absence or death was insufficient to qualify as abandonment.

3) Conquest

In Owusu v Manche of Labadi (1933) 1 WACA 278, the court recognized conquest as a mode of ousting the allodial. It further held that long and uninterrupted user of land by subjects of the stool is not of itself sufficient to oust the title of the stool.

4) Compulsory acquisition

In a forced purchase, the allodial title is terminated. Vesting, however, does not negate the allodial title. In Osei v. Nana Hyeaman II It was decided in Nana Hyeaman II v. Osei [1982-83] GLR 495-501 that the president's concessions on stool lands do not negate the stool's inalienable property rights. As the allodial proprietors of stool lands, the President's legislative rights should be interpreted as existing alongside the stools' powers.

Usufructuary Interest

In Roman law, usufruct was the right of using and enjoying property belonging to another person provided the substance of the property remained unimpaired or unchanged[13]. In Roman law, a usufruct was not capable of being alienated. In addition, the Roman usufruct did not survive the life of the usufructuary. On the other hand, the Ghanaian usufruct is inheritable, alienable and potentially perpetual[14]. The usufruct was described as a burden on the allodial title. According to this view, the usufruct is not another species of ownership in itself but consisted of perpetual rights of beneficial user or land, which now co-exist with the allodial title.

Acquisition of the usufructuary Interest

It can be acquired in four (4) ways.

1. Discovery of vacant land by pioneers of a stool.

As a general rule, when the subjects of a stool discover unoccupied land, and subsequently settle thereon and reduce into occupation, the stool acquires the allodial title and the subjects acquire the usufruct.

2. Implied grant from a stool.

Subjects of a stool have an inherent right to a usufruct in any unoccupied portion of stool land and the fact of the occupation and cultivation by a subject was all that was required to establish a usufruct.

3. Express grant from a stool.

Such grants were usual in the case of urban lands where some supervision of the allocation of plots was necessary for the purpose of orderly development and equitable allocation of communal lands. How Usufructuary Interest would be lost

1. Abandonment
2. When the usufructuary denies the title of his grantors.
3. Failure of successors.
4. By consent of the usufructuary.

[13] Hossain, A. (2022). Customary Land Tenure and the Quest for Legal Recognition in Ghana: Challenges and Opportunities. Journal of African Law, 66(1), 87-109.

[14] Ibid

Customary Tenancies

These are interests that can be created by the holders of the allodial title or usufructuary interests. Customary tenancies vary widely from seasonal hiring and renting of land to the sharing of farm produce and even farmland itself. They are used to describe "procedures whereby someone who controls rights of access and use over a plot of farmland, in his own name or that of his close family group, grants such rights of use to a third party, on a non-permanent basis and in accordance with specific rules".

Forms of Tenancies

Share Tenancy

It is a form of landlord-tenant relation at customary law. This is because it is founded on contract between the land owner and the tenant. It is extensively used in agriculture (commercial farming) and inland fishing (Lower Volta). There are various forms with the most popular being: Abusa (breaking into three (3) or 2:1 or 1/3) Abusa (breaking into two (2) or 1:1 or ½)

The custom of Abusa is that in exchange for the permission to cultivate the land, the tenant will pay to his landlord 1/3 of the profit made by him[15]. Under this system, the cost of making the farm is in the first instance, born by the landlord and the farmer tenant is then placed in charge of the farm to maintain and improve it. As the landowner does not contribute to the cost of making the farm, he then gets half (1/2) of the farm

How tenancy can be lost

Share tenancy is of potentially perpetual duration since it is heritable unless circumstances result in the determination of the tenancy. It can be terminated:

1) Where there is abandonment;
2) Where there is adverse claim by the tenants against the landlord;
3) Where there is a breach of a term especially where the term is a condition;
4) Failure of a successor.
5) When the farm falls into ruin, either by natural causes (e.g., devastation by swollen shoot disease) or through neglect by the tenant.

Contract under customary law tenancy in Ghana

Under Article 11(1) (e) of the 1992 Constitution of Ghana, the laws of Ghana comprise inter alia, the common law. In Article 11(2) and (3) of the same Constitution, the common law of Ghana encompasses the received English law, the rules generally known as the doctrines of equity and the rules of customary law including those determined by the Superior Court of Judicature. Then we are further told 'customary law' means the rules of law which by custom are applicable to particular communities in Ghana. Let us now turn to Ewe customary law.

The Ewe customary law is part of the laws of Ghana as discussed supra. Professor A.K.P. Kludze (2012) EWE LAW OF PROPERTY page 1, has given us a detailed description of the geographical location, history and the people. Suffice it to say that they occupy present day Volta Region, parts of Southern Togo and Benin, parts of Yoruba land in Nigeria and can be found mostly along the coastal areas all along the African littoral.

The Ewe customary law has evolved over a long period of time and if we are borrow from the history of linguistic development, it

[15] Kofi v Sesu (1948) D.C

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is more than a thousand years old. Kludze says on page 32 of his book that we cannot speak of Ewe customary law as corpus juris but rather we should say Ewe customary laws. Respectfully, we disagree with the very learned author. If we say Akan customary law as evidenced by the pioneering works of Dr.

Joseph Boakye Danquah(1928) Akan Law and Constitution and Rattray(1932) Ashanti Law, as corpus juris, then I am also persuaded that there is a corpus juris known as Ewe customary law.

It is trite knowledge the law of contract is simply that branch of the law which governs the effort to achieve and carry out voluntary agreement - see page 1 of Christine Dowuona- Hammond (2016) The Law of Contract in Ghana. Another learned author, Sir Frederick Pollock (1902) defines contract as a promise or set of promises which the law will enforce - Principles of Contract: A Treatise on the General Principles Concerning the Validity of Agreements in the Law of England. The common law has long emphasized that a contract is a bargain between two or more people that hinge on performance of obligations freely agreed and for which "something" is given in return. A bare agreement without nothing given in return or promised is not enforceable as a contract - see the cases of Bolton v Madden (1873) L.R.Q.B 55-56; Gore v Van der Lann[1967] 2 QB 31, 42; Argy Trading Development Co. Ltd v Lapid Developments Ltd [1977] 1 W.L.R 444.

It is also pertinent to note that customary law knows no writing and this is supported by section 3 of the Conveyancing Act 1973, NRCD 175 (now repealed by section 282 of the Lands Act 2020, Act 1036). See Artides 270 - 277 of the 1992 Constitution, has recognized the institution of chieftaincy an integral part of governance in this country. There are other enactments which uphold the customary law of particular communities such as Marriages Act 1884-1985 Part 1; Mortgages (Amendment) Act 1979, AFRCD 37 which has converted customary pledges into a mortgage; customary adoption under the Children's (Amendment) Act 2016, Act 876. Unwritten customary law has nevertheless found its way into our Constitution and statutes and are very much part of the sociocultural and even political fabric of our nation life.

Contract under Ewe customary law takes many forms - domestic life, marriage, leadership, commercial activities, employment, land or property transactions, inheritance and others aspects of the socio-cultural and political environment. The most important criteria to determine the nature of a contract under Ewe customary is to look for oral agreement between the contracting parties, intention to enter into legal relations, whether or not there is consideration, consensus ad idem (meeting of minds), capacity of the parties and the conduct of the parties. Our discussion will focus on these thematic areas.

In domestic life, there is a presumption that the parties do not intend to enter into legal relations. Offering financial assistance to a family member or friend in need, looking after an orphan, gifts from a father to his children, caring for an aging mother, giving out cooked food as charity to the poor are just a few instances. Despite this presumption, if there is evidence to the contrary, then the presumption can be rebutted- see Coward v Motor Insurers Bureau [1963] 1 Q.B. 259.In this suit, a widow brought an action against the insurers of a motor bicycle; her husband was negligently killed in an accident. The husband had been a pillon rider and there was an arrangement that he would ride pillon and pay a weekly sum. The court held that this arrangement was not intended to create legal relations as the two were friends.

Again, in the domestic setting between husband and wife, there is no intention to create legal relations such that an agreement between them will be enforceable at law. In Balfour v Balfour [1919] 2 K.B. 571**,** the wife alleged her husband had promised to pay her £30 a month as maintenance during the time they were forced to live apart as a result of work in a different country. The wife took the matter to court to enforce same but it was held that there was no intention to create legal relations.

This holding can only be valid in a period of amity. On the contrary, in a period of divorce, separation or impending marriage break down, any agreement in that direction creates legal relations -Merrit v Merrit [1970] 2 All E.R 760.

Law on leases under the new lands Act (Act 1036)

The Land Act under section 50 has introduced several implied covenants which were lacking under the old regime and as a result of which unconscionable judgments were delivered as the Courts were bereft of the jurisdiction of implying covenants into an agreement which are not implied covenants and the parties had not made them express covenants. In the case of *In Re Mireku& Tettey (d'ced); Mireku & Others v Tettey & Others*[16] where the lessee had developed the building on the land but there was no express renewal clause, the courts following the law held that a renewal clause is an express covenant and where the parties fail to provide for it and the lease expires, the lessee had to vacate the land and the building developed by that lessee to the lessor and cannot demand for the cost of the building.

The current position is that where a lease is made in respect of a bare land for residential, farming of perennial crops, or a commercial or industrial property and the lessee is an indigene, there shall be automatic renewal of the lease after its effluxion for the same duration[17]. Where the lessee is not an indigene of the area where the land is situated, and there is no express provision to the contrary there shall be an implied term for the lease for its renewal[18]. There shall be an automatic renewal for public lands granted by the Republic on terms agreed upon by the parties unless the lease is in respect of a commercial property or where the lease is required for redevelopment[19]. The position for a lease granted by a Ghanaian to non- Ghanaian is that where there is no renewal clause in the express covenant, there shall not be an automatic renewal of same[20].

Another implied covenant under the Act is the authority given to an allodial owner to take over land in the possession of an usufructuary title holder upon payment of prompt, fair and adequate compensation of not less than forty percent of its value or where possible provide an alternative land where the land is required for expansion of a town or settlement and will serve the communal interest of the beneficiaries of the allodial interest holder[21].

[16] *Re Mireku& Tettey (d'ced); Mireku & Others v Tettey & Others* [2012] 1 SCGLR 520.

[17] Section 50 (9) of the Land Act, (Act 1036).

[18] Section 50 (11) of the Land Act, (Act 1036).

[19] Section 50 (11) and (12) of the Land Act, (Act 1036).

[20] Section 50 (17) and (18) of the Land Act, (Act 1036).

[21] Section 50 (21) and (22) of the Land Act, (Act 1036).

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The introduction of the new lands Act (Act 1036) made the following thematic changes; changes made to customary land law by the Land Act; changes made to common law; effect given to constitutional provisions; protection of land by the use of unlawful means; improvements on implied covenants; criminalization of conduct of public officers; acquisition and protection of public lands; use of the Alternative Dispute Resolution Act, Act 792 to resolve disputes emanating under the Land Act; and criminalization of persons who encroach unto public lands.

This study therefore tries to explore the impact of the new lands Act on leases in Ghana

Challenges in Contract under Customary Law and Tenancy in Ghana

1. Inconsistencies and Variability in Customary Law

The main difficulty associated with contracts under Ghanaian customary law is their heterogeneity and lack of consistency among various locations. Because customary law is not codified, different communities have different customs and norms governing contracts, especially tenancy agreements. Confusion and legal uncertainty result from things like what one area may deem a valid tenancy agreement being insufficient or incomplete in another[22]. Tenancy contracts are difficult to enforce because customary law is not always clearly interpreted by the courts.

2. Lack of Formal Documentation

Under customary law, tenancy agreements are frequently oral and informal, which presents serious difficulties in the event of disagreements. Without written contracts, it can be challenging to prove the terms of an agreement in court because neither party's duties are clearly documented. Tenancy rights and lease term issues are frequently caused by this absence of official documentation. Even though they are accepted by customary law, oral agreements frequently fall short of the statutory courts' threshold for admissibility.

3. Conflict Between Customary and Statutory Law

The inconsistencies between statutory tenancy legislation and customary land tenure systems present another significant difficulty. Rent control legislation and eviction procedures, among other legislative requirements pertaining to tenancy agreements, are more aggressively implemented in urban areas but customary practices—which might not impose formal written contracts or abide by statutory rent limits—often clash with these statutory restrictions. This discrepancy can cause difficulty, particularly in rural-to-urban settings where the society still adheres to traditional standards but statutory laws begin to take precedence.

4. Role of Chiefs and Traditional Authorities

Under customary law, chiefs and other traditional authorities are essential to the management of land. They are in charge of dividing up land, establishing conditions for leases, and settling conflicts. They may, however, make arbitrary choices that go against the letter of the law. Without official documentation, chiefs may lease or distribute land, which could cause future conflicts over land rights, especially if these arrangements are contested in court. Furthermore, their involvement in tenancy agreements might not always be consistent with fairness ideals, particularly if the chief unilaterally imposes stipulations regarding land usage or rent without sufficient consultation.

5. Dispute Resolution Challenges

Customary law dispute resolution can be challenging since traditional dispute settlement processes frequently lack formal appeal procedures, openness, and uniformity. In contrast to statutory courts, which follow the standards of evidence and court decisions, traditional systems can depend on customs or the judgment of elders and chiefs. Tenants who seek remedy may encounter challenges because statutory courts may not necessarily uphold or enforce outcomes rendered through customary dispute settlement. Additionally, because customary law lacks defined legal remedies, renters are exposed to capricious rulings that might not be consistent with statutory safeguards.

Opportunities for Improvement in Customary Law and Tenancy

1. Recognition of Customary Land Tenure Systems

The official acknowledgment of customary land tenure systems by Ghanaian law may result in significant changes to the administration of tenancy agreements. By acknowledging the validity of customary land rights, the government can create a framework that allows for the formalization of customary practices. This recognition may lead to the creation of formal agreements that specify the terms of tenancy, increasing legal clarity and reducing conflict. Additionally, this type of recognition could encourage traditional leaders to take part in land management, ensuring that their customs are respected while also bringing them into line with the law.

2. Alternative Dispute Resolution (ADR)

There are encouraging options for settling conflicts resulting from customary law tenancy agreements because to the growing use of Alternative Dispute Resolution (ADR) procedures. In rural communities, where traditional dispute resolution techniques might not have formal procedures, mediation and arbitration are especially effective. ADR procedures enable parties to settle disputes quickly and peacefully, frequently producing resolutions that adhere to both legal and customary norms. ADR can also lessen the strain on established judicial systems by encouraging speedier outcomes and cutting down on the expenses related to drawn-out litigation.

3. Public Participation and Stakeholder Engagement

To achieve equitable results, it is essential to include communities and stakeholders in decision-making processes pertaining to customary land tenure and tenancy. By ensuring that local residents' opinions are heard, public engagement may advance accountability and openness in land governance. Discussions concerning land rules and tenancy agreements involving traditional authorities, community leaders, and renters can result in more broadly acceptable and culturally appropriate solutions. In addition to strengthening the legality of land tenure systems, this cooperative approach gives community members a sense of ownership, which is crucial for sustainable development.

Contract under Customary Law and Tenancy in Ghana: Intersection, Legal and Policy Issues, Challenges, and Opportunities

The nexus of tenancy and customary law in Ghana creates a distinct legal environment that is full of potential and difficulties.

[22] See Mensah v Mensah [1998] SCGLR 350 for the court's recognition of the difficulty in enforcing unwritten customary laws across varying jurisdictions.

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In many rural and semi-urban areas, land tenure and tenancy arrangements are governed by customary law, which is primarily unwritten and varies greatly around the nation. This results in a complicated interaction with statutory law, which aims to enforce rights and responsibilities in tenancy agreements and standardize legal processes. This section looks at how these two areas cross, assessing the opportunities and barriers for reform while emphasizing the legal and policy concerns that come up.

In Ghana, customary law is ingrained in the traditions and cultures of many different ethnic groups, reflecting their social structures and beliefs[23]. In addition to land tenure, it regulates inheritance, familial ties, and civic duties. Customary land tenure systems frequently entail collective ownership, and traditional leaders are essential in dividing up land and settling conflicts[24]. The legal arrangement between landlords and tenants concerning the use of land or property, on the other hand, is known as tenancy in Ghana. Either statute law or customary law may regulate tenancy; the latter is more common in cities. Through the Rent Act of 1963 (Act 220), statutory law gives tenancy agreements a codified framework that outlines each party's rights and obligations.

A number of legal and policy concerns are brought up by the relationship between tenancy and customary law. First of all, it may be challenging to enforce rights and obligations under customary tenancy agreements since they may not be formally recognized by statute law[25]. Customary agreements frequently result in disagreements that are difficult to settle in court because they lack written documentation and regular operating processes. Second, especially in cities where statutory law is more rigorously implemented, disputes may emerge between statutory provisions and customary practices. Both landlords and tenants experience legal ambiguity and uncertainty as a result. Thirdly, under customary law, traditional leaders like chiefs are crucial in overseeing land tenure. Occasionally, their choices run counter to legal requirements, which can result in disagreements over tenancy agreements and land rights. Finally, because customary practices vary and agreements are informal, tenants may find it difficult to grasp their rights and responsibilities under customary law. This ambiguity may lead to misuse and exploitation.

In Ghana, the problems at the nexus of tenancy and customary law are complex. One major issue is the inconsistent character of customary law, which causes regional variations in practices due to its non-codified status and because of this, it is challenging to enforce contracts consistently, which leads to disputes and misunderstandings between tenancy agreement parties. Due to the absence of official conflict resolution procedures under customary law, tenants may find it difficult to seek legal recourse, which presents another difficulty[26]. The road to justice may be made more difficult by the absence of consistency and transparency in traditional dispute resolution procedures.

Another significant issue is the under appreciation of customary rights. The rights of people operating under customary law may be compromised by the marginalization of customary land tenure systems in favor of statutory frameworks, which could result in land tenure instability and possible displacement. Furthermore, it might be difficult to prove the conditions of lease agreements in court when there is a lack of documentation in accordance with customary law. The resolution process is made more difficult by the arguments and misunderstandings that are fostered by this oral tradition.

Despite these obstacles, the area where tenancy and customary law meet offers a lot of room for development. One of the most promising approaches to bringing these two systems into harmony is legal reform and codification. A single framework that recognizes the legitimacy of customary agreements and guarantees their enforceability could be established by comprehensive legal reforms. Tenancy agreements could have a firmer legal foundation if a comprehensive Land Bill were introduced, for example, to resolve discrepancies between statutory regulations and customary practices.

Additionally, improving legal clarity for both landlords and tenants depends on the acceptance of customary tenancy. The government can make it easier to register customary lands and give tenancy agreements a firm legal foundation by legally acknowledging these agreements. An opportunity to advance more equitable and easily accessible dispute resolution is also presented by the expanding use of alternative dispute resolution (ADR) procedures in settling disagreements involving customary tenancy agreements. Parties can settle disputes more quickly and amicably by using procedures like arbitration and mediation.

Another essential component of strengthening the relationship between tenancy and customary law is public participation. Fair agreements are promoted and transparency is fostered when local communities are involved in land governance and decision-making processes. More equitable results can result from making sure that the opinions of people who are directly impacted by land policy are taken into account. Lastly, educating people about the rights and obligations of renters under customary law can empower them and lessen exploitation. A more informed public can result from educational programs that assist close the gap between legal requirements and customary practices.

In conclusion, there are opportunities and challenges at the nexus between tenancy in Ghana and contracts under customary law. There is a lot of room for reform that acknowledges the value of customary practices within a single legal framework, even while conflicts and inconsistencies between statutory and customary rules lead to legal uncertainties. Ghana can endeavor to create a more sustainable and equitable land tenure system that benefits all parties involved by encouraging public participation, expanding access to justice, and advancing legal legitimacy.

Impact of the new lands act on conflicts that arises out of land ownership

In order to guarantee that land tenure in Ghana is administered and managed properly and efficiently, the Land Act, 2020 (Act 1036) went into effect with the purpose of repealing outdated land laws and further consolidating and updating the current land laws. In order to satisfy the demands of the day, the Act also modified some common law and customary land law concepts regarding land tenure that had become out of date[27].

[23] Da Rocha, Lodoh (1999). Ghana Land Law and Conveyancing, 2nd ed, p.7. Land Title Registration Law, 1986 (PNDCL 152), s. 19

[24] Ibid

[25] Ibid

[26] Ibid

[27] Land Act, 2020 (Act 1036).

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The Land Act, 2020 (Act 1036) aimed to address more land-related issues in order to guarantee that the constitutional requirements pertaining to land tenure are implemented.[28].

Public officials who use their positions to commit land fraud are also prohibited by the Land Act, 2020 (Act 1036), as are those who alienate lands, use people illegally to safeguard their land interests, or permit others to use them illegally to exert control over lands[29].

In addition to ensuring that those in adverse possession of public lands do not get any interest by waiver, acquiescence, prescription, or limitation, the Act aims to ensure that those who trespass onto government or public property face legal consequences[30].

Fifth, to authorize the filing of a lawsuit against a trespasser whose identity cannot be determined, as well as to request and get an interlocutory injunction to safeguard the property against development and encroachment[31].

The sixth reason is to give the transferor implied covenants to handle things like property jointly acquired by spouses during marriage, conveyances without renewal clauses after they expire, the right granted to an allodial holder to acquire land for the expansion of a town or settlement, and to serve the community interest of that allodial owner's beneficiaries within the land covered by the allodial title holder upon paying the usufruct owner a reasonable amount of money[32].

Lastly, the implementation of electronic conveyancing for the transfer of a land interest or right[33].

Conclusion

The complex relationship between customary law and tenancy in Ghana has been examined in this study, which has shown both important obstacles and encouraging possibilities. The use of oral contracts complicates enforcement and raises the possibility of conflicts, while inconsistent and variable customary law causes confusion for both landlords and tenants, according to key results. The need for better coherence and clarity in the legal frameworks controlling land tenure is further highlighted by the inconsistencies that exist between statutory restrictions and customary practices. The environment is made even more complex by the power of traditional leaders and the shortcomings of conventional dispute resolution procedures, indicating the urgent need for reform.

This study has important ramifications for theory, policy, and practice that go beyond simple scholarly discussion. The results emphasize the need for a more comprehensive strategy for land governance that upholds customs while guaranteeing everyone's legal security. When creating rules and regulations to improve the efficacy of tenancy agreements and dispute resolution procedures, policymakers must take these difficulties into account.

Empirical studies that go deeper into the real-world experiences of landlords and renters within the context of customary law might be beneficial for future research. Examining how well alternative dispute resolution (ADR) procedures work in real-world situations may yield more information about possible system enhancements. Furthermore, Ghana may learn a lot from comparisons with other jurisdictions that successfully combine statute and customary law.

To improve the legal and regulatory framework for Contract under Customary Law and Tenancy in Ghana, the following recommendations are proposed for policymakers and practitioners:

1. Legal Codification: To improve enforcement procedures and provide a more transparent legal environment, attempts should be made to codify elements of customary law that are pertinent to tenancy agreements.
2. Public Awareness Campaigns: People can be empowered in land transactions by starting public awareness initiatives to inform communities about their rights and responsibilities under statutory and customary laws.
3. Strengthening Traditional Authorities: A more unified approach to land governance can be promoted by empowering traditional leaders with resources and training, which can aid in bridging the gap between statutory and customary systems.
4. Integrating ADR Mechanisms: Tenancy disputes can be promptly and effectively resolved while upholding customs by increasing the use of alternative dispute resolution procedures.
5. Policy Reforms: Formulating comprehensive policies that recognize and integrate customary land tenure systems with statutory regulations will enhance legal certainty and promote sustainable development.

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