Developing Country Studies
ISSN 2224-607X (Paper) ISSN 2225-0565 (Online)
Vol.4, No.11, 2014

Assessing the Appeal of Traditional Dispute Resolution Methods in Land Dispute Management: Cases from the Upper West Region

Dominic Tuobesaane Paaga[1*],Gordon Dandeebo[2]
1. Department of African and General Studies, University for Development Studies, P.O. Box 520, Wa, Ghana
2.Department of Social, Political and Historical Studies, University for Development Studies, P.O. Box 520, Wa Ghana
*E-mail of the corresponding author: dpaaga@uds.edu.gh

Abstract
Land disputes have become a common phenomenon throughout Ghana. Though land reforms are currently being implemented (through the Land Administration Project) as a remedy to the number of issues that militate against the effective use of land, little or no attention is paid to how to effectively manage land disputes. Traditional authorities are major stakeholders in land administration, yet they remain excluded from the formal processes of managing land related disputes. With over 80% of all land in Ghana under their control, one wonders why their judicial role in the administration of justice is confined to adjudication in chieftaincy matters only. The study sets out to examine the relevance of traditional authorities and traditional dispute resolution methods in land dispute management in the Upper West Region of Ghana. Key informant interviews were conducted with traditional authorities (chiefs, tendamba) and officials from some state land sector agencies. Focus group discussions and interviews were held with land user groups and selected individual land users respectively. Data was analysed thematically.The study shows that in all the three areas, traditional authorities are involved in land dispute settlements owing to their position as the legitimate custodians of land. Settlement outcomes from these dispute resolution processes are also readily accepted by parties. Thus, given their proven resilience and adaptability to changing socio-cultural as well as political conditions, a formal recognition and inclusion of traditional authorities in justice administration can therefore reduce, if not eliminate, the number of land disputes currently overwhelming the law courts and hindering land use.
Keywords: Land dispute, traditional dispute resolution, Wa, Wechau, Lambussie

1. Introduction

Increasingly, the literature on sustainable rural development emphasizes the importance of ensuring tenure security in land holdings (Wehrmannn, 2008; Duncan and Brants, 2004; Berry, 1997; Lastarria-Cornhiel, 1997), which accordingly will result in increased agricultural production and general investments in land. This argument basically underlines Ghana's Land Administration Project which has been under implementation since 2003. A factor often overlooked in this discourse of ensuring tenure security, however, is the management of land disputes.

In a number of sub-Saharan African countries land disputes have resulted in violent conflicts that have devastated communities, livelihoods and relations. In the Darfur of the Sudan for example, the struggle over land has been identified as one of the root causes of the conflict currently raging on (International Commission of inquiry report, 2004; Wehrmann, 2008). In 2000, disaffection over land redistribution in Zimbabwe which favoured commercial white farmers during colonial rule led to government-backed land seizures by black squatters with little regard to due process. Other violent communal clashes involving farmers, pastoralists, and nomads over rights to land and land resources across the continent are well documented (Tsikata and Seini, 2004; Tonah, 2007; Wehrmann, 2008).

In Ghana, studies show that land disputes are a common phenomenon, especially in peri-urban areas, involving individuals, traditional authorities, communities and state institutions (Tsikata and Seini, 2004; Wehrmann, 2008; Ubink, 2006; Ayee *et al*, not dated). In recent times too, the use of land-guards to protect interests in land, particularly in the cities, has resulted in violent confrontations between different claimants to land. The case of the Upper West Region is not different. Land disputes characterise land relations in the Upper West Region. Contestations over boundaries and disputed claims to control rights over land largely characterise relations between land users. Between January 2008 and September 2009 for example, the Lands Commission in the Upper West Region received 81 complaints and petitions from individuals and communities over disputed claims to land. Some of these petitions include:

- A petition from the Kperisi traditional leaders disputing ownership claims by a rival community (Guli) to a piece of land;
- A petition over a boundary dispute between the Tendamba of Bihee and Sing;
- Contestations between the Sombole family of Bamahu and the Banja family of Kabanye over a piece of land

in the Wa area; and
- A petition from the Bunder and Ngumo family against the Catholic Church over ownership of a piece of land in Hamile.

Generally, the scale of these disputes shows that for a majority of groups seeking to redress injustices or inequalities in land distribution and use, conflict is an inherent feature of their struggle for change, and the means that can provide the leverage needed to assert their claims. The protracted nature of some of these land disputes is also an indication of an apparent defect in the existing arrangement for redressing grievances over land rights. In Ghana, dispute settlement - including land dispute settlement – has become the preserve of the law courts. This is because the law courts are constitutionally endowed with the power to apply all the rules of law recognized in Ghana, whether customary, common law or statute (Crook, 2004). Though the majority of land disputes occur in the customary land sector, traditional authorities and traditional modes of dispute settlement have largely been relegated, even though their existence is guaranteed by constitutional provisions. Their functions are confined to religious and cultural observances in their respective communities, and to arbitrating in minor infractions. This is in spite of a backdrop of a dominant socio-political role played by traditional authorities at various times in Ghana's history (see for example Evans-Pritchard, 1940; Gluckman, 1955; Tait, 1958).

The peculiarities of customary land ownership and use, however, presuppose that the managers of customary lands (traditional authorities) be involved in managing disputes that arise from land use. The situation appears to be compounded in the Upper West Region by the fact that whilst knowledge of customary land ownership patterns has been shown to be pertinent to any efforts at managing land disputes (Kirby, 2005; Smock, 1997), the custodians of these norms on land ownership, namely, the *tendamba* have been excluded first from the management of land due to the lack of state recognition of their "office" and role in customary land management; and secondly, dispute resolution processes involving the chiefs and *tendamba* as third parties have no legal backing.

The range of customary practices that confer title of ownership of land among the major groups of the Region, and indeed most parts of northern Ghana, have been misconceived since colonial times. These practices have been observed to differ significantly from what pertains in the southern part of Ghana (see Kasanga and Kotey, 2001; Kunbuor, 2002; Kunbuor, 2009). The most important of these practices is the ritualistic act of pacifying the *earthgod* which is carried out only by the *tendamba*, the traditional custodians of the land (Kunbuor, 2002). As Kunbuor (2002) observes, under the principle of judicial precedence a replication of existing superior courts' pronouncements on what constitutes customary land ownership could have dire consequences for land relations in most parts of the Upper West region where the practice of pacifying the *earthgod* constitutes an important act of land ownership; which practice is not found in southern Ghana. Thus, traditional authorities in the Region may still have relevant roles to play in land dispute management, not least because they represent a repertoire of knowledge on the range of customary land ownership patterns in the Region. According to DISCAP (2002), chiefs and *tendamba* still hold significant authority at the local level and generally represent the highest levels of social control in their communities in Northern Ghana.

The study therefore seeks to examine the relevance of traditional authorities and traditional modes of dispute resolution in land dispute management in the region. It examines the nature of land disputes recorded in the study area and the various traditional modes of dispute resolution approaches used in the management of land disputes. The study also assesses the opinions of stakeholders on the relevance of these traditional approaches as mediums for managing land disputes.

2. Methodology

The study adopts the descriptive design. This is because issues over land ownership are often laden with socio-cultural connotations of identity and power. Individuals' attachment to land is not only explained by economic considerations, but also by these socio-cultural connotations. Thus, the descriptive design is deemed suitable for this study since it basically aims at sampling the views of various stakeholders on the relevance of traditional authorities and traditional modes of dispute resolution in land dispute management.

The target population for the study was traditional authorities, the state land management institutions as well as land user groups. The traditional authorities and the state land management institutions formed key informants for the research. The traditional authorities and the user groups were purposively selected from three traditional areas in the Region; namely Wa, Lambussie and Wechau. Unstructured interviews were conducted with the traditional authorities and officials of the state land management institutions. Focus group discussions were held with the land user groups, in addition to interviews conducted with some individual land users purposively selected for their involvement in land disputes.

3. Results and discussions

3.1 Nature of land disputes in the Upper West Region

Classification of conflict is often based on the social dimension of conflict. According to Wehrmann (2008), one possibility of classification that conflict research offers in this regard is the distinction according to the social level at which a conflict takes place; namely intrapersonal, interpersonal, intra-societal or inter-societal levels. While in the case of land conflicts the intra-personal level can be ignored, the other three levels are very useful for the purpose of classifying the land disputes that occur in the study areas. The purpose of this classification is to assess the suitability of traditional methods of dispute resolution to the kinds of land disputes recorded in these areas.

Land disputes in the study areas are predominantly between individuals, often over boundaries, proprietorship, and occasionally over inheritance rights. These disputes tend to occur between family members, that is, between family heads and other individual members of the family over land dispositions; between family members over inheritance rights; and between different family heads over original boundaries between their lands. According to the Sokpayiri *tendana*, changes in land ownership in Wa (that is, from community or clan lands to individual family lands) largely account for the number of family disputes in that area. On occasions too, these interpersonal land disputes occur between the customary trustees (family heads or *tendamba*), on the one hand, and prospective developers on the other over multiple dispositions; and also between prospective developers over encroachment.

A number of land disputes also occurred at the intra-societal level, that is, within the same community. This was reported only in Wa. These land disputes involve rival clans, and the issues involved in such disputes are not limited to land use rights of the various groups involved in the dispute, but are more over status/identity in the community. Examples of such disputes are:

- The land dispute in Piisi between supposed "indigenes" and "settlers/strangers";
- The Kabanye – Daanaayiri dispute between two rival clans in Wa;
- And the land dispute between Mangu-Kambali and Mangu-Kokoyiri over Mangu lands in Wa.

At the inter-societal level, such disputes tend to be over boundaries and proprietary rights between rival communities. Examples of such disputes include:

- The Tanina and Sing boundary dispute (Wa);
- The dispute between Lambussie and Billow over proprietary rights over a piece of land;
- The dispute between Karni and Kulcani, also over proprietary rights over a piece of land.

In addition to these broad categories of land disputes, another useful dimension to these conflicts is the level and rate of violence. Generally, the rate of violence that accompanies the reported cases is low. Except in a few instances where violence was reported, most land disputes tend to be non-violent in the study areas. A possible explanation to this is that the rate of commercialization of land is generally low in the study areas. As such, the tensions that usually accompany land dispositions are largely absent. This is also helped by the fact that land is still relatively abundant in these areas. The few instances of violent land disputes are:

- The Piisi incident where the community market was reportedly burnt;
- The Tanina and Sing dispute where the violence left one person dead;
- The dispute between Billow and Lambussie where police presence was required to forestall further skirmishes;

Issues of identity and power were observed to underlie these disputes. In all the three areas, it was observed that control over land serves to reinforce group status/identity. In a sense, the violence that accompanies these disputes is largely due to the social connotations of the terms "settlers/strangers" as opposed to "indigenes".

The classification above indicates that the types of land disputes that occur in the study areas are well within the jurisdiction of traditional authorities. In addition to indicating the kinds of parties involved in these disputes, the classification also gives an indication of the underlying causes of these disputes which include disagreements over settlement histories and original terms of land disposition and ownership, all of which can be resolved through the judicious application of traditional dispute resolution methods.

3.2. Traditional methods of dispute resolution in the study areas

As Dzivenu (2008; p.2) rightly notes, "every society...has its own methods, procedures, or mechanisms for dealing with or resolving disputes". In African traditional societies these mechanisms have been observed to use both local socio-political actors and traditional community based judicial and control structures in managing and/or resolving conflicts (Dzivenu, 2008; Kirby, 2005). In all the three study areas, indigenous mechanisms exist for managing land disputes, and traditional authority structures (namely family heads, chiefs and *tendamba*) serve as the mediums for these mechanisms. This section discusses the indigenous dispute resolution mechanisms in the study areas.

3.2.1 Rituals

A common mechanism for managing land disputes in all the three areas is the use of rituals. Though the particular ritualistic activities vary from place to place, their significations are basically the same: the *Earthgod* is the ultimate decider of the truth in land disputes, and would punish offenders accordingly. This is informed by

the traditional notion that land is a spiritual entity – designated as *tengbama* (in Wa and Wechau) and *Vene* (in Lambussie). The tendamba who are traditionally the custodians of land in these areas are the only ones who can perform such rituals.

In Lambussie, the ritual involves the pegging of a staff on the disputed land in the presence of the disputing parties. Responding to a question on how land disputes are resolved in his area the *tortina* (tendana) of Lambussie said, "there is a local way of doing it. We call it *gadaa*. This ritual involves the pegging of a branch of the ebony tree (gadaa) on the disputed land, which is done by the tendamba. If you do not own the land you are claiming as yours and this ritual is performed, it is believed it brings death."

In both Wa and Wechau, the rituals involve the slaughtering of a fowl on the disputed land in the presence of the parties in the dispute. According to the Wechau Naa's representative, in the event of a land dispute in Wechau "rituals are performed to ascertain the real owners of land. A fowl is slaughtered in the presence of the disputing parties and the defaulting party will face some consequences".

A common belief about such rituals is that they portend grave consequences for defaulters in land disputes, and sometimes extend to other family members of the defaulting party. According to the Sokpayiri tendana, the consequence of defaulting is death, and sometimes the defaulter's entire lineage is wiped out along with him, as he put it: "when the fowl is slaughtered and you are found to be the liar, your entire gate [lineage] will perish". Similar consequences are believed to await defaulters and their families in Lambussie: "once the tendamba peg the staff on the disputed land, you the defaulting party and your family will be dying through that".

The consequences of defaulting in these rituals are not irreversible. Reversing the consequences will require an admission of guilt on the part of the defaulter, and followed by the performance of some rites to pacify the Earth god:

> *When the defaulters come to agree that what they were claiming is not right, the tendamba will then settle the land to the rightful owners. It is only then that the deaths will stop. The tendamba have some rituals they perform to pacify the earth in order to stop the deaths.*

While these rituals may still have some relevance to adherents of the traditional African religion, urbanization and the penetrating influences of foreign religions (Christianity and Islam mainly) have the tendency of rendering these ritualistic observances unattractive to the majority of land users. This is especially so in urban areas where the effect of such influences on traditional norms and belief systems is often great. As Awedoba (2010) observes, many adherents of Christianity and Islam no longer credit the earth with any spiritual powers as was of old. As a result, the sanctity of the *tendamba* is no longer held in the same high esteem as reported in various ethnographical reports (see for example Rattray, 1932; Fortes, 1940; Kirby, 2005). This observation is borne out by the situation in Wa. In Wa, a relatively more urbanised area with a predominantly Muslim population, parties in land disputes decline to use these rituals to settle disputes, as was observed by the Sokpayiri tendana: "these days we don't perform these rituals. Disputing parties don't go to the bush to settle the dispute. When you ask them, they say 'I'm a Muslim'".

The corrupting influence of money has also been blamed for the dip in the reputation of the *tendamba*, and consequently their sanctity. In the words of the Wa Naa:

> *Here in Wa, we have so many tendamba but not all of them will willingly agree to go through these rites, though they are always having conflicts among themselves. You find that some are not ready to use the traditional methods to settle their cases. May be it could be that they don't believe in the rituals, they are not genuine tendamba.*

Thus, as in most cases requiring the voluntary submission of people to a dispute resolution process, the use of rituals is losing relevance in Wa as people often have an excuse for doubting the credibility of these personages.

In Lambussie and Wechau, however, rituals are still an essential land dispute management mechanism. This is likely due to the rural nature of these areas where traditional norms and beliefs still regulate social behaviour. In the dispute cited by the Lambussie Kuoro involving the rival communities of Karni and Kulcani, one faction to the dispute (the people of Kulcani) resorted to the *gadaa* to settle the land dispute, though they immediately revoked it on the intervention of the traditional council.

3.2.2 Arbitration

Arbitration processes are also initiated to resolve land disputes in the study areas. The process of arbitration begins with the voluntary submission of land disputes to either the *tendamba* or chiefs who are mostly the arbitrators in such processes. Customary laws and norms on land ownership and use in these areas serve as the basis for deciding the settlement of land disputes that are brought for arbitration. Land disputes between family heads, clans and sometimes *tendamba* are mostly the disputes that are settled through these processes in the three areas.

During the arbitration process contending parties typically do not address each other and interruptions are not allowed while the parties state their case. The deposition of statements is followed by an open deliberation process, which comprises listening and cross-examining witnesses by the arbitrators. After the statements of the disputing parties are reviewed, the arbitrator (that is, the chief or tendana) and his council of elders pronounce

the judgment. If the judgment enjoys unanimous consensus it is delivered on the spot.

The Lambussie Kuoro briefly outlined the arbitration process in Lambussie as follows:

> *You refer land disputes to the traditional council. Or if it is something that is beyond their discipline, the traditional council refers it to the tendamba who are the original owners of the land. If the dispute is referred to the traditional council, they summon a meeting. They invite you the disputants. You all appear before the traditional council and tell your side of the problem. Then the traditional council or the chief and his elders find a solution.*

The arbitration processes are similar to modern judicial processes; the only difference being the kind of justice dispensed at the end of the process. The arbitration processes are based on the restorative principle which allows both victims and the offenders to actively participate in defining the dispute and the resolution of that dispute.

The advantages that this system of dispute resolution offers over the adjudication process of the law court were reported to include the following. Firstly, procedures in the traditional court are simple. As a result, most disputes are settled at a single day's sitting with a verdict announced on the same day. In addition to the fact that the procedure is expeditious, it is also cheap.

Another fundamental importance of the arbitration processes is their over-riding concern for maintaining relationships between disputants. In many cases, the primary concern of the process is not to be vindictive or punitive unless circumstances necessarily mandate such a solution. The primary purpose of this process is to promote harmony and reconciliation between parties. The ultimate aim is the restoration of social equilibrium which had been disturbed by the land dispute. The arbitrators work to ensure that parties thereafter continue to live and relate to each other as good neighbors, friends and relatives even after the dispute.

A major problem with the arbitration processes, as was noted during the field study, is that decisions arrived at are more likely to be flouted by parties. The *tendamba* who traditionally are the custodians of land and arbitrators in land disputes have, in recent times, been rendered powerless first by the apparent statutory relegation of their traditional roles and secondly by the predominance of the law courts in dispute settlement. In the words of the Sokpayiri tendana:

> *People can even flout the orders of the tendana and what can he do? If you take a matter to court and the court gives an order or gives a verdict, the tendana dare not contravene it. So even the fact that the tendana hasn't got powers behind him to enforce decisions from the arbitration process makes it difficult for him to be very effective*.

Enforcement of final decisions from the arbitration is thus largely dependent on the willingness of parties to abide by the decisions arrived at, at the end of the arbitration process. Here again, a noticeable difference was observed among the study areas.

In Wechau and Lambussie, arbitration by traditional authorities is still an effective mechanism for land dispute resolution, and the *tendamba* still play a major role in these arbitration processes. According to the Lambussie Kuoro, when the traditional council (made up of the paramount chief, his council of elders and his divisional chiefs) fails to resolve land disputes that are brought for arbitration, such disputes are referred to the *tendamba*. In the words of the Lambussie Kuoro: "if the land dispute is something that is beyond their discipline, the traditional council also refers it to the tendamba who are the original owners of the land in the area".

In Wa, land disputes are seldom referred to traditional authorities for arbitration. Where they are, such arbitration processes are initiated in the chief's court. This is partly because the *tendamba* themselves are often the ones involved in these land disputes. Secondly their traditional judicial role in land dispute settlement appears to have been overshadowed by the court (the High court) in Wa. In the words of the Sokpayiri tendana: "traditional methods have been pushed aside. We're now relying on the court. Even families send themselves to court".

3.2.3 Negotiation

Perhaps the most common and effective indigenous conflict resolution mechanism that is widely used in the three study areas is negotiation. Negotiation simply is the process in which parties to a dispute meet to reach a mutually acceptable solution. It was noted that negotiated settlements are preferred in disputes involving prospective developers and landowners. Often such disputes revolve around issues of double/multiple disposition of land, and encroachment. Given the relative abundance of land in the three study areas, it is easy for landowners to compensate prospective developers with new allocations. Usually, such compensations are accepted by the prospective developers and the disputes are resolved. For example, in the survey among land users who reported there had been a dispute over their lands, eight out of the 21 said the disputes over their lands were resolved through negotiation, with all eight asserting that they were satisfied with the process.

In Wechau, such negotiated settlements were reported to be common. In the words of the Wechau Naa's representative:

> *When they grant someone a place to build and he goes to meet another person encroaching on his land, he comes to report to the chief and the tendana who in turn invite the persons who were witnesses to the allocation to come and help mediate. Since the place is not developed, the one who was encroaching on the other's land is then granted a different place*.

3.2.4 Mediation

The use of mediation as a mechanism for resolving land disputes is only common in Wa. Land disputes that are resolved through these processes are those involving the *tendamba* themselves. This was observed as an innovation by the tendamba as an alternative to court adjudication. The third parties in these cases are often the land sector agencies, especially the Lands Commission. According to the Sokpayiri tendana, the role of these agencies in the mediation process is largely advisory:

> *When we have misunderstanding we go to them. They help by advising us. If you and I are disputing over land, and we cannot come out with a solution, we see the land officer who will advise all of us*.

This was corroborated by the response of the official from the Lands Commission: "For the few times that tendamba and family heads have brought some of their disputes to the Lands Commission for our pieces of advice, we have been able to help solve some".

4. Relevance of traditional authorities in land dispute management

4.1 Perceptions of key informants

The study revealed that generally traditional authorities are still an important medium for settling land disputes. Among the key informants (Traditional Authorities and representatives of the land sector agencies and the High Court), the role of traditional authorities in land dispute management is still relevant. This favourable assessment by the key informants is informed by the role that traditional authorities play in land administration in the study areas.

As the custodians of land in the study areas traditional authorities are considered key stakeholders in land dispute management, their involvement in land dispute management - as is generally conceived by the key informants - will not only ensure the amicable settlement of these disputes, but will also continue to foster cordial relations among land users; given that the traditional arbitration processes are devoid of tension that is characteristic of court litigations.

According to the High Court registrar, traditional authorities are a relevant medium for land dispute management "because most of the lands are vested in them. Besides they have control over their subjects such that they can ensure equity in the settlement of land disputes." A similar reason was also given by the head of the Regional Town and Country Planning Department: "Traditional Authorities act as custodians of land and control about 80% of the lands. They are important institutions recognised by the 1992 Constitution and the Chieftaincy Act".

According to the official from the Lands Commission, the relevance of the role of traditional authorities in land dispute management derives from their demonstrated ability to settle a number of land disputes on their own. In addition, their role in validating land grants makes them an indispensable part of any processes initiated for land dispute settlement. In his words, traditional authorities are relevant mediums for land dispute settlement given "the fact that sometimes they on their own mediate when there is a problem. Also, they still have to consent to all land grants to make them valid".

By their custodial role in land administration the traditional authorities feel entitled to a role in land dispute management. Though they acknowledge that in recent times their judicial role has eroded largely in favour of the courts, they maintain that since land ownership is within the purview of custom, they are the appropriate quarters to refer any dispute over land ownership and/or use. The opinion of the Wechau Naa's representative was rather strong on this:

> *Traditional authorities play a very big role in land dispute management. Before land is acquired the chief must be consulted, and he is an arbitrator in land disputes. Without chieftaincy there will be chaos in our societies. Chiefs are the pillars of peace of our society. They are the custodians of our culture and traditions. Traditional setups have traditional methods to resolve disputes. They have ways of proving who the real land owners are. Traditional dispute resolution methods should therefore be preferred instead of using the law court.*

According to the Wa Naa, traditional authorities are an important medium for land dispute management because "traditional authorities understand customary systems of the area better. Their subjects appreciate their role in dispute management". Citing his role in the settlement of a dispute between the two rival clans of Kpaguri and Nakore in Wa, the Wa Naa asserted that some disputes are even sometimes referred by the Court to traditional authorities for settlement. Accordingly, their demonstrated ability to settle such disputes means their role is still relevant. On the other hand, the traditional authorities contend that referring disputes over land ownership to the courts for settlement engenders dishonesty, with the potential of protracting these disputes since the courts are often unable to determine the rightful owners of land.

4.2 Perceptions of land users

The opinions of land users provide compelling evidence on the relevance of the role of traditional authorities as mediums for land dispute settlement. This is because as land users they are the beneficiaries of any mechanism

for land dispute settlement. Their assessment of the performance of traditional authorities in land dispute management is therefore central to the whole discourse on what methods are effective and efficient for land dispute management.

Among land users who reported that there had been a dispute over their lands, 88.1% reported that the disputes were resolved through traditional arbitration or negotiation, compared to approximately 12% who reported that their disputes were settled through adjudication in the law court.

Table 1: Land users' choice of dispute resolution

	Freq.	%
Court	5	11.9
Traditional methods	37	88.1
Total	42	100

More importantly, the majority of land users who preferred the use of traditional resolution methods consider themselves as 'strangers/settlers' in these areas (see Table 2).

Table 2: Land users' Status and choice of dispute resolution method

Status	Court		Traditional methods	
	Freq.	%	Freq.	%
Indigene	0	0	11	26.2
Stranger/settler	5	11.9	26	61.9

Traditional authorities and traditional dispute resolution processes are often accused of being biased against such categories of people as women, the youth and strangers (Odametey, 2007). According to Odametey, under customary systems all are not equal, with strangers being generally disadvantaged. This accordingly results in mistrust, sometimes, of the traditional institutions and processes of dispute resolution. The results on Table 2, however, show that on the contrary minority groups such as "strangers" in the study areas prefer the traditional dispute resolution methods. Out of a total of 31 land users who indicated that they are "strangers" in their respective areas, 26 of them (representing approximately 61.9%) indicated their preference for traditional dispute resolution processes.

The choice of traditional dispute resolution methods among the land users is informed by a number of reasons (see **Box 1** for a summary of responses of land users). An important observation that can be made from these reasons is the flexible nature of traditional dispute resolution methods. Procedures for settling disputes do not follow rigidly laid down rules or regulations as is the case in the law court. Accordingly, as one land user in Wa remarks, traditional resolution process is preferred because he "found it easier dealing with the two brothers" who both claimed to be allodial title holders to a piece of land.

Acceptance of dispute resolution outcomes by parties in a dispute is a strong indication of the effectiveness of a dispute resolution mechanism. Where disputants are dissatisfied with the outcome of a resolution process, chances are the dispute will become protracted and degenerate into violent confrontations. Factors that could influence the acceptance of a resolution outcome include the legitimacy of the dispute resolution institution/entity, and the fairness of the process. The legitimacy of any institution or entity derives from the readiness of parties in a dispute to recognise or acknowledge its third party role in the dispute.

Generally, traditional authorities are recognised as legitimate 'owners' of land and the custodians of peace and social order in the three study areas. Thus, their place in these areas endears respect and confidence from their citizens, and their demonstrated ability in resolving other forms of disputes in the society makes them more suitable mediums for land dispute resolution. Given their knowledge in customary land holdings in their areas, traditional authorities are better placed to resolve disputes that arise over land use and ownership. Settlement outcomes also stand a chance of being readily accepted by parties in a dispute.

Thus, the readiness of land users to refer land disputes to traditional resolution demonstrates the relevance of the role of traditional authorities in land dispute management in the three study areas. A survey among the land users who preferred traditional dispute resolution processes revealed that land users were satisfied with the outcome and none of the land disputes involving these users was referred to the law court for settlement.

Box 1: Land users' assessment of traditional dispute resolution

- It is the easiest way of solving problems and also to promote peace among family members.
- I chose this method to prevent waste of energy, time and financial resources.
- The court usually delays in passing judgement on land cases.
- Traditional authorities are very relevant in land dispute management because the traditional authorities know the land tenure system of their localities more than the courts and other institutions.
- Land disputes are usually traditional in character and therefore demand that traditional modes of dispute resolution be used.
- Traditional authorities are capable of resolving land disputes amicably. Land disputes should not even appear in court.
- Certain issues cannot be solved through courts. Human relationship is very necessary. Traditional authorities continue to maintain this bond among their citizens.

A major drawback of the traditional dispute resolution methods, however, is their inability to ensure compliance with the outcomes of the resolution processes. Traditional authorities do not have the legal backing to enforce outcomes arrived at during these processes. Enforcement of final decisions from the arbitration is thus largely dependent on the willingness of parties to abide by the decisions arrived at, at the end of the process. Thus, concerns with the ability to enforce resolution outcomes influenced the choice of the law courts by 11.9% of the land users (see **Table 2**). Thus, the decision to resort to the courts is informed by land users' need to ensure the enforcement of settlement outcomes rather than by any lapses in these traditional mechanisms.

5. Conclusion

As in many parts of the world, indigenous people in the study areas have a very special relation to their land. For them, land is more than an economic or productive asset. It represents home, binds together past, present and future, and constitutes their spiritual base. Land being such a complex issue for them, disputes over it have to be settled in a more comprehensive manner. Customary conflict resolution is therefore especially appropriate for dealing with these land disputes, as long as the conflicts are within its jurisdiction.

Customary conflict resolution, as a form of arbitration, has a strong conciliatory character. This makes it different from litigation. In other words, it includes elements of both: there is both a 'binding' third party decision at the end as in litigation, and there is a strong focus on the re-establishment of harmony. As opposed to modern arbitration, the arbitrators in customary resolution are not chosen, but are defined by their position in the communities. The arbitrators' (generally a panel of exclusively chiefs and their council of elders, or tendamba) main objective in conflict resolution is to re-establish harmony between parties.

The customary conflict resolution processes in the study areas have a number of particular additional strengths. First of all, they are generally credited with high legitimacy by the communities and therefore represent a good or even better alternative to the state justice system – especially in the face of proven inefficiencies on the part of the law courts to settle land disputes (Kasanga and Kotey, 2001). Secondly, these processes are also very inclusive and participatory. Finally, the costs are very low, making customary conflict resolution easily accessible.

Thus, the findings of this study show that traditional authorities and traditional modes of dispute resolution are still relevant in the study areas, particularly so among the rural communities where allegiance to lineage and other social ties are given greater premium. Given their proven resilience and adaptability to changing socio-cultural as well as political conditions, traditional authorities and traditional dispute resolution systems should be incorporated into the formal conflict resolution methods in order to deal effectively with land disputes. Out of court conflict resolution mechanisms, especially the use of the various traditional or local arbitration institutions, should be promoted and strengthened. In this regard, court mandated arbitrations should be introduced for land dispute resolution, especially in land disputes requiring the interpretation of customary norms or laws. Also, traditional or arbitration courts of chiefs should be recognised as part of the judicial system within the meaning of the constitutional provision that "such lower courts or tribunals as parliament may by law establish" (see Article 126 (1) (b) of the 1992 Constitution). But these should be subject to regulation by the courts.

References

Awedoba, A. K. (2010). "Living in the age of conflict: Exploring the role of indigenous solutions in conflict management/resolution in Northern Ghana". In S. B. Kendie (Ed.), *Conflict management and peace building for poverty reduction*. Tamale: GILLBT Press.

Ayee, J. R. A., Frempong, A. K. D., Asante, R. & Boafo-Arthur, K. (No Date). *Local context of conflicts and Peace building: Local power struggles, conflict and conflict resolution in Ghana. The causes, dynamics*

and policy implications of land related conflicts in the Greater Accra and Eastern Regions of Ghana. Accessed from:
www.ascleiden.nl/pdf/CDPghanareport1revisedOsaghae.pdf. 14/7/2009.

Berry, S. (1997). Tomatoes, land and hearsay: Property and history in Asante in the time of structural adjustment. In *World Development.* Vol.25, No. 8. Elsevier Science Ltd. Pp. 1225-1241.

Crook, R. C. (2004). Access to justice and land disputes in Ghana's state Courts: The litigants' perspective. *Journal of Legal Pluralism*. No.50, pp. 1-28.

DISCAP Discussion Paper (2002). *Conflict in Northern Ghana: A long-standing challenge for poverty reduction initiatives*. Accessed from:
discap.org/Publications/Conflict%20&%20Conflict%20resolution.pdf. 22/03/2010

Duncan, B. A. & Brants, C. (2004). *Access to and control over land from a gender perspective. A study conducted in the Volta Region of Ghana.* Accessed from:
ftp://ftp.fao.org/docrep/fao/007/ae501e/ae501e.zip. 14/7/2009.

Dzivenu, S. (2008). "The politics of inclusion and exclusion of traditional authorities in Africa: chiefs and justice administration in Botswana and Ghana." In *Political Perspectives,* Vol. 2 (1). University of Edinburgh.

Evans-Pritchard, E. E. (1940). "The Nuer of the Southern Sudan". In M. Fortes and E. E. Evans-Pritchard (Eds.) *African Political Systems*. London: Oxford University Press, pp. 272-296.

Felati, S. A. (2006). "Theories of social conflict". In S. G. Best (Ed.), *Peace and conflict studies in West Africa.* Spectrum Books Ltd, Ibadan, Nigeria. Pp.35-60.

Gluckman, M. (1955). *The Judicial Process among the Barotse of Northern Rhodesia*. Manchester University Press. Manchester.

International Commission of Inquiry (2004). *Report on Darfur to the United Nations Secretary-General*.

Kasanga, K. & N. A. Kotey (2001). *Land management in Ghana: Building on tradition and modernity.* Accessed from:
www.elds.org/vfile/upload/1/document/0708/DOC5021.pdf. 7/7/2009

Kirby, J. P. (2005). "The earth cult and the ecology of peace building in Northern Ghana". In Millar, D., Kendie, S. B., Apusigah, A. A. and Haverkort, B. (eds): *African knowledges and sciences: Understanding and supporting the ways of knowing in sub-Saharan Africa.* Barneveld, the Netherlands. Pp. 129-161.

Kunbuor, B. (2002). '"Customary Law of the Dagara" of Northern Ghana: Indigenous Rules or a Social Construction'. *Journal of Dagaare Studies, Vol 2.* Pp.1-21.

Kunbuor, B. (2009). *Law and decentralized development in Northern Ghana*. Agape Printing Press. Accra, Ghana.

Lastarria-Cornhiel, S. (1997). "Impact of privatization on gender and property rights in Africa". *World development.* Vol. 25. Number 8. Elsevier Science limited. Pp.1317-1333.

Odametey, C. (2007). The Regulation of Land Disputes: Promoting the Option of Alternative Dispute Resolution Mechanisms: The Case of Ghana. Unpublished Master's Thesis. Cited in Wehrmannn, B. (2008): *Land conflicts: A practical guide to dealing with land disputes.* Deutsche Gesellschaft für, Eschborn, Germany. Accessed from:
www.gtz.de/de/dokumente/gtz2008-en-land-conflicts.pdf. 14/7/2009.

Smock, D. R. (1997). *Creative approaches to managing conflict in Africa: Findings from USIP-funded projects*. United States Institute of Peace, Washington.

Tait, D. (1958). "Territorial Pattern and Lineage System of Konkomba". In Middleton, J. and D. Tait (eds.): *Tribes without Rules*. Routledge and Kegan Paul, London.

Tonah, S. (2007). "Managing farmer-herder conflicts in the middle Volta Basin of Ghana". In Tonah, S. (ed), (2007): *Ethnicity, conflict and consensus in Ghana.* Woeli publishing services, Accra, Ghana. Pp. 240-260.

Tsikata, D. and Seini, W. (2004): *Identities, Inequalities and Conflicts in Ghana.* CRISE Working Paper 5. Accessed from:
www.crise.ox.ac.uk/pubs/workingpaper5.pdf. 2/4/2009.

Lands Commission. *Complains and Petitions General*, vol. 2, File No. UW/R 12. Upper West Regional Office, Wa.

Wehrmannn, B. (2008). *Land conflicts: A practical guide to dealing with land disputes.* Deutsche Gesellschaft für, Eschborn, Germany. Accessed from:
www.gtz.de/de/dokumente/gtz2008-en-land-conflicts.pdf. 14/7/2009.

The IISTE is a pioneer in the Open-Access hosting service and academic event management. The aim of the firm is Accelerating Global Knowledge Sharing.

More information about the firm can be found on the homepage:
http://www.iiste.org

CALL FOR JOURNAL PAPERS

There are more than 30 peer-reviewed academic journals hosted under the hosting platform.

Prospective authors of journals can find the submission instruction on the following page: http://www.iiste.org/journals/ All the journals articles are available online to the readers all over the world without financial, legal, or technical barriers other than those inseparable from gaining access to the internet itself. Paper version of the journals is also available upon request of readers and authors.

MORE RESOURCES

Book publication information: http://www.iiste.org/book/

IISTE Knowledge Sharing Partners

EBSCO, Index Copernicus, Ulrich's Periodicals Directory, JournalTOCS, PKP Open Archives Harvester, Bielefeld Academic Search Engine, Elektronische Zeitschriftenbibliothek EZB, Open J-Gate, OCLC WorldCat, Universe Digtial Library , NewJour, Google Scholar