THE IMPACT OF GHANA'S DUAL LEGAL SYSTEMS ON LAND RIGHTS AND PLANNING

Issue 1

GLOBAL HEALTH EQUITY
research in translation

September 2019

I. INEQUITIES IN LEGAL SYSTEMS OF SUB-SAHARAN AFRICA: THE EXAMPLE OF GHANA.

Because land tenure[1] affects the food security, livelihood, and psychological wellbeing of vulnerable groups, it should be considered pertinent to their health and wellness.[2] Thus, one must understand unstable land tenure systems—including why they exist—to tackle ongoing health inequities.

The legal systems of former colonizers persist in many sub-Saharan countries, often operating in tandem with the country's "customary" legal systems that arise from and are applied to specific communities within a given state or region.[3] In their recent paper, **"Planning by (mis) rule of laws: The idiom and dilemma of planning within Ghana's dual legal land systems,"** Emmanuel Frimpong Boamah and coauthor Clifford Amoako analyze how one such dual legal system—that of the former British colonizer and Ghanaian customary law—impact land tenure and planning in contemporary Ghana.[4]

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The "idiom of planning" referenced in the paper's title is borrowed from the work of Ananya Roy, who characterized urbanization in India as a dysfunctional process with a characteristic set of factors, including deregulation, and a body of law so subject to interpretation that it provides scant predictability. Building upon Roy's work, Frimpong Boamah and Amoako conduct content analyses of land and planning laws and policies; evaluate documents obtained through targeted key word searches; and analyze focus group transcripts and stakeholder interviews compiled from Accra and Kumasi—both rapidly urbanizing cities of comparable populations.

The authors make two chief arguments about the idiom of planning in Ghana: 1) The state selectively applies—and fails to apply—statutory and customary laws to advance its own interests, including what it decides is "formal" or "legal" land use development; and 2) traditional authorities do the same: they apply and fail to apply customary and statutory laws on a selective, self-serving basis. (See Figure 1.)

For example, the authors note that the state can use statutory planning and land laws to enforce its eminent domain power[5] "for the public good," but it does not necessarily comply with those statutory planning and land laws that it does not find favorable. This can result in a number of adverse outcomes for the community: owners of seized land not being paid market rate—or not compensated at all—for their property; the seized property being sold to private developers; the land being used for purposes other than those used to justify the eminent domain proceedings, etc.

This ability of both state and non-state actors to selectively apply (and fail to apply) laws and regulations enables them to escalate accumulation and consolidation of authority on the part of those already powerful, while simultaneously contributing to the exploitation of vulnerable groups (e.g., the eviction of slum dwellers so that land can be "developed" for "public" use).

FIGURE 1: CONCEPTUAL MATRIX TO ILLUSTRATE MOMENTS THAT THE LAW CAN BE (MIS)USED BY STATUTORY AND CUSTOMARY AUTHORITIES TO AUTHORIZE OR UNAUTHORIZE LAND OWNERSHIP AND USE DECISIONS AND ACTIONS.

Source: Frimpong Boamah and Amoako, 2019.

		STATUTORY PLANNING AND LAND RULES	
		Misuse or nonuse	Comply (use properly)
CUSTOMARY LAND RULES	Misuse or ignore	Misrule of state and customary laws Misuse of both customary and state laws	Partial misrule of laws Misuse of customary laws and comply with state laws
	Comply (use properly)	Partial misrule of laws Comply with customary laws and misuse of state laws	Rule of state and customary laws Comply with both state and customary laws

II. PRACTICAL IMPLICATIONS FOR LAND PLANNING IN GHANA.

1. Land transactions and planning in Ghana are complicated by the country's dual legal systems; planning and land ownership decisions are shaped by multiple, intersecting, and sometimes contradictory laws and regulations.

2. Because of the possibility of selectively applying and ignoring existing statutory and customary laws, indiscriminately urging enforcement of laws and planning provisions is not helpful.

3. Ghanaian planners, in particular, must engage customary land owners in land use planning decisions.

4. Traditional authorities who hold land in trust for future generations must engage in meaningful conversation with policy makers about land ownership disputes.[6]

5. New lines of research must assess how the selective application of planning and land laws impact the poor and other vulnerable populations.

III. POLICY TAKEAWAYS

1. Planners and lawmakers in Ghana must reexamine statutory and customary laws that bear on land, and track exactly how they intersect with local, regional, and national planning practices and procedures.

2. Policymakers and planners need to revisit the designation of categories that apply to settlements (legal, illegal, authorized, and unauthorized) and consider who is authorized to decide which category applies, and to what end.

3. The legal justifications used by landowners and public entities to remove and evict slum dwellers must be questioned by lawmakers, policymakers and planners.

FOOTNOTES

1. Land tenure is a set of rules that governs property rights, including the rights to access, use, control, and transfer land.

2. See, for example, The Economic Commission for Africa, https://sustainabledevelopment.un.org/index.php?page=view&type=400&nr=465&menu=35 and "Do Women's Land Rights Promote Empowerment and Child Health in Nepal?" by Keera Allendorf in World Development, Volume 35, Issue 11, November 2007, Pages 1975-1988 https://doi.org/10.1016/j.worlddev.2006.12.005.

3. For example, the British "common law" system of judge-made decisional law was imposed on Ghana and Uganda during the United Kingdom's colonization and occupation of those countries. Likewise, colonizers from states with code-based civil law—those from France, Italy, and other European countries—imposed their legal systems upon the countries that they colonized.

4. Planning by (mis)rule of laws: The idiom and dilemma of planning within Ghana's dual legal land systems, Emmanuel Frimpong Boamah and Clifford Amoako. Environment and Planning C: Politics and Space 0(0) 1-19 (June 11, 2019); https://doi.org/10.1177/2399654419855400.

5. Eminent domain is a legal term that refers to the right of a government to claim privately-owned property for public use, with payment of compensation.

6. While property ownership for Ghanaian citizens is not barred by the Ghanaian Constitution of 1993, in practice only a tiny percentage of land in Ghana is "freehold," or owned outright. The vast majority of commercial, agricultural, and residential land is leased from clan leaders or the government. A lease term of 99 years is commonplace. See "Whose Land Is It Anyway? Navigating Ghana's Complex Land System," Texas A&M Law Review, January 2019, Volume 6, Issue 1 Article 15, available at https://scholarship.law.tamu.edu/cgi/viewcontent.cgi?article=1165&context=lawreview, accessed July 22, 2019.

ACKNOWLEDGEMENTS

This brief is extracted from research originally published in *Politics and Space*.

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RECOMMENDED CITATION:

Vahapoğlu, Lisa. The impact of Ghana's dual legal systems on land rights and planning. *Global Health Equity Research in Translation*. Eds. Frimpong Boamah, Kordas, and Raja. Community of Excellence in Global Health Equity, September 2019.

ORIGINAL RESEARCH:

Frimpong Boamah, E. and C. Amoako. 2019. Planning by (mis)rule of laws: The idiom and dilemma of planning within Ghana's dual legal land systems. *Environment and Planning C: Politics and Space*. 0(0): 1-19. https://journals.sagepub.com/doi/full/10.1177/2399654419855400

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