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## NOTES AND NEWS

### COMMISSIONS OF ENQUIRY IN GHANA

Two important Commissions of Enquiry have been appointed in Ghana. The first is a Commission of Enquiry for the investigation of the land tenure system. It was appointed by the Commission of Enquiry (Investigation into Land Tenure System in Ghana) Instrument, 1967. E.I. 92, made 13th September, 1967. The Commission is under the chairmanship of Mr Justice F. K. Apaloo, of the Supreme Court of Ghana, and the other members are:—

Nene Lanimo Opata, Paramount Chief, Shai Traditional Area;  
Mr N. Y. B. Adade, Barrister-at Law;  
Professor S. Sey, University of Science and Technology, Kumasi;  
Mr K. E. De Graft-Johnson, University of Ghana; and  
Mr K. A. Sagoe, Deputy Chief Lands Officer (who is also appointed secretary of the Commission).

The terms of reference of the Commission are stated to be:—

3. "The terms of reference of the Commission are—
  - (a) to enquire into every aspect of Ghana land law, customary and otherwise, and into every aspect of land tenure in Ghana, with special reference to different forms of agricultural land holding, such as 'Abusa' and 'Abunu' systems, and their effect on agricultural productivity in Ghana,
  - (b) to enquire into the law of succession in Ghana with special reference to succession to land,
  - (c) to enquire into the system of land registration and of registration of an interest in land,
  - (d) to examine all aspects of land reforms bearing in mind the needs of agricultural development along modern lines,
  - (e) to enquire into any other matters connected with land which, in the opinion of the Commission ought in the public interest, to be investigated,
  - (f) to report its findings to the National Liberation Council, making such recommendations as it deems fit with a view to ensuring reasonable ease and clarity in the transfer of land and a rational and effective method and means of investigation of title to land."

The second Commission is the Commission of Enquiry into Brong-Ahafo lands and traditional affairs, appointed by E.I. 110, made 5th December, 1967. Its members are:—

Mr H. P. L. Bannerman, Barrister-at-Law (Chairman);  
 Mr E. N. Moore, Barrister-at-Law;  
 Nene Lanimo Opatá; and  
 Mr B. C. B. Nutsuga, retired civil servant.  
 Mr J. B. Lomotey, Senior Assistant Secretary, is appointed secretary of the Commission.

The Commission's terms of reference are:—

3. " The terms of reference of the Commission are—
- (a) to enquire into the following matters in respect of lands in the Ahafo area of the Brong-Ahafo Region and also in respect of the lands popularly referred to as the 'Kumasi islands' in the Brong area of the said Region:—
    - (i) in regard to land tenure, whether the land belongs to the local stools or to these and clan chiefs in Kumasi, or to the Asantehene alone as Asantehene or in his capacity as head of his family,
    - (ii) who is the proper grantor of interest in land in these areas,
    - (iii) as to traditional allegiance, whether the local chiefs owe allegiance to anybody outside the Region and, if so, what are their rights, privileges and duties arising from such allegiance,
    - (iv) if any Kumasi clan chief or the Asantehene owns any of the said lands, whether any of them exercises any authority in the Region in respect of his lands and whether any of them has any traditional privileges within the Region,
    - (v) whether the chiefs of the 'Kumasi islands' in the Region have or should have their own traditional councils and, if so, with what powers and also what further powers should be conferred on such councils and how are they to be represented in the Brong-Ahafo House of Chiefs. In this connection the rule that only paramount chiefs should sit in the Ashanti House of Chiefs should be examined having regard to the practice in the Volta, Northern and Upper Regions where non-paramount chiefs sit in the Houses of Chiefs,
    - (vi) what are the respective powers of the Brong-Ahafo House of Chiefs and the Ashanti House of Chiefs in relation to the 'Kumasi islands',
    - (vii) the existence of Teppa within the territorial area of Ahafo yet under the regional administration and under the Circuit and Magisterial jurisdiction of Ashanti notwithstanding the fact that similar facilities and arrangements are available in Sunyani; and
  - (b) to advise the National Liberation Council as to what steps should be taken to deal with any problems discovered by the Commission in the course of its enquiry and in particular with a view to bringing about harmony in the Brong-Ahafo Region and providing to the inhabitants of that Region unfettered opportunities for raising their standard of living and for participating more fully in the development of the Region as well as of Ghana as a whole."

The creation of these Commissions is interesting for several reasons. Firstly, the military government of Ghana has adopted the system of commissions as one of its major instruments in scrutinizing

what went on under the former régime and in deciding the pattern for the future. Secondly, the Apaloo Commission is only the latest in a series of government-sponsored schemes designed to investigate and improve the land law in Ghana: the Belfield Commission before the first World War, and the investigations made by the editor of this Journal and by Mr Pogucki, former Commissioner of Lands, were attempts to grapple with the problem of land law in Ghana. What is the problem? An outside observer might have thought that there was little problem, at least if one judges on economic grounds. The cocoa industry has flourished within the framework of an adapted customary land tenure, and mineral extraction and the development of industry have proceeded without too great difficulty. Most of the complaints have been on technical legal grounds, notably that the absence of any comprehensive system of registration of title fosters legal uncertainty and permits uncontrolled land litigation, often unrelated to the value of the land in dispute, to flourish. But some of these complaints have been exaggerated, remedies (such as registration of stool boundaries) have already been applied, and the possibility of land registration being successfully and economically introduced into the rural areas is somewhat dubious.

As to the succession law, one possible approach was sketched out by the White Paper on the Marriage, Divorce and Inheritance Bill, now in apparently permanent abeyance; while the substantive problems have already been investigated by the Commission under the presidency of Mr Justice Ollennu. Matrilineal systems of succession, and in particular the institution of corporate family property, have been the target of attack by some writers. Whether these require radical change in the light of the rapidly evolving social systems of Ghana is a moot question.

The emphasis on the development aspects of the enquiry is a welcome one, provided that the social and human aspects are not lost sight of. Also welcome is the uncommitted approach, which means that the Commission might well find the customary law systems superior in certain respects to the alien systems of land registration or individualized holdings and private conveyancing which might replace them.

As to Brong-Ahafo, this is merely the last chapter in an unhappy political story. Many of the controversies have centred round the land control powers of the local stools, hence the emphasis in the terms of reference on this aspect.

Perhaps the most important question to be answered is whether the Commission of Enquiry system is the most suitable method, not only for deciding policy for the future, but for the scientific investigation of the existing situation. This is a task which would, in the normal course of events, fall to research scholars. One hopes that full weight will be given to existing studies in this area, as well as to experience in other parts of Africa in guiding the development of customary land tenures along satisfactory human, economic and legal lines.