

**MINISTRY OF LANDS AND FORESTRY**

**GHANA**

**EMERGING LAND TENURE ISSUES**

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## **GHANA**

### **EMERGING LAND TENURE ISSUES**

#### **1.0 INTRODUCTION**

Ghana has a unique position in the political history of sub-Saharan Africa, being the first country south of the Sahara to attain independence. It also championed the struggle for independence and the political and economic emancipation of the rest of the countries on the continent in the 1960s. It has also been prominent in several of the mishaps of political instability on the continent. In the 1970s it became an example of an unstable political economy, dominated by coup d'états, insecurity, economic decline, corruption and mismanagement. In the last decade Ghana has again become a clear example of political stability, economic recovery, political and economic liberalization in the West Africa sub-region. Ghana shares these experiences with several other countries in the sub-region for which a conference of this nature is of utmost importance.

Land tenure issues and resource management are usually discussed and analysed within localised economies, being guided principally by local customs and tradition. However, the need to consider this in a sub-regional context is increasingly becoming important as several of the critical issues cut across borders and usually require collective action – rising population and its impact, pursuing similar economic development strategies, combating desertification, diminishing agricultural lands, land tenure dynamics and management, managing river basins, managing and controlling the activities of pastoralists and cattle rustlers, sub-regional transportation, movement of people, conflicts and refugees. The continent-wide political agenda of regional integration, ECOWAS protocols, the African Union and the New Partnership for African Development (NEPAD) in the face of frequent political conflicts and civil wars call for collective initiatives and responsibilities in tackling the many socio-economic problems in the sub-region.

This conference is therefore in order, appropriate and timely as the importance of land to national development and the role land resource has to play in poverty reduction cannot be overemphasised. There is a spatial dimension to all human activities as nothing takes place without taking a place. Land is the basic asset on which the wealth of most nations and Ghana in particular is built. It represents the main form of wealth accumulation and the principal source of economic and political power. It is the basic instrument of overall development policy, performing both an indirect facilitating role and a direct and active one. A well articulated land policy which takes on board broad regional issues can channel economic growth more intensely which can result in poverty alleviation. This means that policies regarding ownership, use, management, transfers, tenures, interests and rights in land and natural resources must be formulated within the broad socio-economic policies of a country. There is a basic competition among users of land – agriculture, forestry, mining, human settlement, infrastructure development, ecological sites, sanctuaries etc. The land

economy of the country must provide the appropriate socio-economic environment within the broader sub-regional framework for the management of such competition as it is critical to the survival of people and the performance of the economy.

It is necessary to appreciate the importance of land both as a natural resource and a marketable commodity. As a natural resource land must be managed on a sustained basis such that the needs of the present generation — good housing, farmlands, forest reserves, water resources, minerals, etc. are met without compromising the ability of future generation to meet their own needs. As a marketable commodity land must be traded in a well fashioned and regulated market environment that creates certainty and security for tenures and land rights and for the enforcement of contracts. Land also provides a more attractive form of investment in developing economies where alternatives in manufacturing and the service industry are both few and subject to great risks. The processes of allocating land for various uses, accessibility to land for development, security of tenure and the policies put in place to regulate the ownership, management, use and dealings in land therefore become important. A good land policy should reflect this and the behaviour of landowners is critical in achieving sustainable development.

The paper discusses land tenure, land rights and resource management in Ghana within the context of high population growth, economic development policies, gender, decentralisation, legal and institutional frameworks, critical emerging issues as well as current efforts at resolving any imbalances. The paper argues that integrating land issues into the broader national development agenda will involve among other things, a reversal of an undue weight of state control over land rights and tenures administration. Land ownership, land rights and tenures in Ghana are administered in a plural legal environment with customary laws and norms operating along side statutes. Customary lands form about 78 percent of the total land area in Ghana. Of the remaining 22 percent the state owns outright about 20 percent where only statute law is applied to land management and the remaining two percent is held in a dual relationship where the state takes over the management responsibility for the land while the customary owners retain the ownership of the land. The state has elaborate institutional and legal structures for the management of all these types of land which are discussed in the paper.

### **1.1 POPULATION, LAND TENURE AND RESOURCE MANAGEMENT**

The greatest challenge to resource management and land tenure is high population growth. Ghana's population as at the 2000 population census stands at 18.9 million which is an increase of 53.8 percent over the 1984 population figure of 12.3 million (Ghana Statistical Service (GSS), 2002). This represents an intercensal growth rate of 2.7 percent per annum. Whilst this rate is lower than the rate for the West Africa (2.9%) it is high in comparison to the rate for the world (2.0%) (GSS, 2002). The current population yields a density of 79.3 persons per km<sup>2</sup>. 43.8 percent of the

national population is urban, but there is wide regional variations, for example the urban population of the Greater Accra Region is 87.7 percent. Whilst this may pose no great pressure on land, the same cannot be said of pressure on resources or what the land can generate. For example the population density for the Greater Accra region is 895.5 persons/km<sup>2</sup>, indicating the pressures that can be placed on land resources and infrastructure. The population figure also obscures areas with over-concentration of people such as parts of the Upper East region where high population has led to excessive land fragmentation into sub-economic units.

### 1.2 LAND TENURE AND ECONOMIC DEVELOPMENT POLICIES

Past economic development plans have usually been silent on land issues, given that there was generally no pressure on land. The land issue was also considered as problematic, sensitive and generally too complex for discussion in programmes of that nature. Consequently, land tenure development, providing security of tenure and general land economy development did not feature much in economic development dialogues and documents, even though land tenure was always cited as one of the critical constraints facing agriculture (see for example the 1975/76-1979/80 Five-year development plan).

The colonial administration employed selective policy instrument for land resource management rather than developing an overall policy framework. The selected policies related mainly to timber and mining concessions and were meant to protect the interest of the concessionaires and the grantors. There were no policies relating to reforestation and replanting. Land policies were mainly related to expropriation (with compensation) and appropriation (without compensation) of land.

The Convention Peoples Party's ((CPP) – first post-independence government) economic and social policies were predicated upon the 'Big Push' paradigm of development orthodoxy (Aryeetey and Harrigan, 2000; Hutchful, 2002) prevailing at the time. The central feature was to build up a stock of capital through industrialisation to generate growth, within a centrally planned economy, the development of a welfare state and the proliferation of bureaucratic controls (Rimmer, 1992). The land policy of the regime was echoed by President Nkrumah when launching the seven-year development plan (1963/64 – 1969/70):

the State will be controlling on behalf of the community the dominant share of the economy. This would be accomplished without ever having to resort to such expedients as nationalisation, which if carried out with full compensation would only change the ownership of the means of production ..... and if carried out without such compensation, would inevitably incur such a large measure of hostility as to make our development plans very much more difficult to achieve (quoted from Larbi, 1995, 42).

To meet the land requirements of state contrived industrialisation drive the administration devised several instruments for controlling land ownership,

land transactions, land use and development. Even though it can be said that the immediate post independence government adopted socialist paradigm of economic development it never directly interfered with land ownership and private property development in the country. The regime however, enacted legislation to control virtually every aspect of land ownership, creation of tenures and the handling of land revenue. Larbi (1995) catalogues twenty-two intervention instruments that affect every aspect of land tenure, ownership, transfer, revenue, development, etc. The collective effect of these measures was to render land ownership by stools empty and devoid of any economic value to the owners as all the major incidents of ownership were taken over by the state.

The Ghana Vision 2020 document (the development plan of the National Democratic Congress (NDC) Government) had very little input on land tenure and this related to the lack of comprehensive policies on land use which had resulted in inappropriate uses of land and its effect on long-term economic potential of natural renewable resources, farming practices, extraction of timber and destructive logging techniques. It also noted that traditional land tenure generally inhibited contiguous urban development, limited negotiability of agricultural land which placed constraints on improved farming practices. Recommended actions included the establishment of comprehensive urban land use and settlement planning standards, including environmental issues. Nothing was provided in relation to tenure and land rights development.

The Ghana Poverty Reduction Strategy (GPRS) represents the development agenda for the current political administration under the New Patriotic Party (NPP). The aim of the Government is to create wealth by transforming the nature of the economy to achieve growth, accelerated poverty reduction and the protection of the vulnerable and excluded within a decentralised, democratic environment (GPRS, 2002). The document further states that the goal will be achieved by:

1. Ensuring sound economic management for accelerated growth.
2. Increasing production and promoting sustainable livelihoods.
3. Direct support for human development and the provision of basic services.
4. Providing special programmes in support of the vulnerable and excluded.
5. Ensuring good governance and increased capacity of the public sector.
6. The active involvement of the private sector as the main engine of growth and partner in nation building.

Based on the above the government has identified five core areas as priorities. These are:

- a. Infrastructure – principally the construction of roads, improving the development of ports and improving telecommunication.
- b. Modernised agriculture based on rural development. Under this it is proposed to reform land acquisition to ensure easier access and more efficient land ownership and titling processes.
- c. Enhanced social services particularly with regard to education and health services.

- d. Good governance aimed at ensuring the rule of law, respect for human rights and attainment of social justice and equity.
- e. Private sector development aimed at strengthening the private sector in an active way to ensure that it is capable of acting effectively as the engine of growth and poverty reduction.

The GPRS notes that reform of the land administration system is urgently required, as insecurity of tenure is endemic and has bearing upon both poverty reduction and economic growth. Failure to provide for the protection of land rights and prevention of abuse of traditional and institutional procedures places the poor, the illiterate and women at most risk. Insecurity of tenure ensures that promotion of the agricultural sector from near subsistence farming and a way of life into a dynamic entrepreneurial activity is inhibited if not prevented altogether. The document recognises the need to protect the rights of the poor, vulnerable and excluded whilst at the same time ensuring that land becomes a tradable asset. Land tenure reform must recognise a potential conflict in this and devise a mechanism for close monitoring to detect adverse effects on the poor for which safety nets may be required. The GPRS proposes the provisions of protection of land rights and prevention of abuse of traditional and institutional procedures.

An analysis of the prioritised areas of government indicates that the land issue has not been seriously factored into the national development agenda. Even though there are serious urban land problems, the land issue is considered explicitly in the national development agenda only in relation to agriculture and rural development indicating that the land problems are primarily that of rural land and not urban land problems. However, a high percentage of frustrations of the private sector in land acquisition and land development have to do with urban and peri-urban areas. Serious dislocations and landlessness are occurring in many peri-urban areas of the country creating tensions and conditions not conducive for private sector development. Urban and peri-urban land issues are fundamental to an effective private sector development as well as sustainable resource management.

## **2.0 LAND TENURE IN GHANA**

### **2.1 HISTORICAL BACKGROUND**

Land tenure denotes the system of landholding, which has evolved from the peculiar political and economic circumstances, cultural norms and religious practices of a people regarding land as a natural resource, its use and development. Implicit in this definition are the rules, regulations and institutional structures both customary and enacted legislations, which influence the holding and appropriation of land and its resources for socio-economic development.

Ghana as a country has a peculiar land tenure system. It is a complex one which reflects the unique traditional political organizations, socio-cultural differences and attributes of the various tribes, clans and families who



through wars, conquests and assimilation of the conquered and early settlement came to acquire ownership of land. Differences in natural endowment between the southern and northern parts of the country, the advent of colonialism and the subsequent introduction of tree crop farming, the exploitation of timber and mineral resources to feed the factories of the western world have played no mean a role in influencing the land tenure system of the country.

Within the Ghanaian traditional context, the conception of land transcends the material realm. Land is considered as a spiritual entity, which determines the nature of ownership. According to Eye-Smith (1940) religious attachment to land forms the basis of land tenure and the ownership of the sea, lagoons, creeks, salt deposits etc. among the Adas, the Volta-side Ewes and other tribes of the Gold Coast (see also Kyerematen, 1971).

With highly centralized states, where unique traditional political structures were in place, land and for that matter its ownership provided a strong unifying force for the organization and the existence of the people as a distinct group. Tribes, which were conquered, were annexed and assimilated into the existing social and cultural structures. Land in these areas, was considered as belonging to the entire community. In such centralised states (for example Ashanti, Akyem, Dagbon) the tenure system is based on chieftdom and allegiance to it. The chief with recognized elders who exercise jurisdictional authority also exercise proprietary authority on behalf on the entire community members or subjects. Land thus provided a strong force for political and social cohesion.

Due to geographical differences, the rainforest belt of the country witnessed gradual migration of farmers from less endowed areas to the cocoa growing areas especially Eastern, Ashanti, and Western Regions. The growth in the cocoa, mining and timber industries brought in its wake a new economy which affected land tenure. Migrant farmers started acquiring lands on share-cropping tenurial basis for farming. Others acquired large tracts of land through outright purchase (alienation holding), usually organised through group purchase. In the case of the mining and the timber industries, large acres of land were alienated on concession with the payment of annual rent and royalty.

## 2.2 INTERESTS IN LAND

In Ghana, there are different types of land tenure systems and land holdings, acquisition, use and disposal of land, which vary from region to region, and between ethnic communities. These interests held in land are either derived from Ghanaian customs and traditions or assimilated from English Common Law and Equity. Land administration in Ghana is thus governed by both customary practices and enacted legislation.

There are five recognised types of interests in land in Ghana. These are:

- (i) The Allodial Interest

- (ii) Customary Freehold
- (iii) Common Law Freehold
- (iv) Leasehold including subleases
- (v) Customary Tenancies

### **2.2.1 Allodial Interest**

It is the highest proprietary interest known to customary law, beyond which there is no superior title. It is sometimes referred to as the paramount or absolute title and has been likened to the freehold interest, as the concept is understood in English common law (CDD, 2002). Other lesser titles to or interest in or right over land are derived from the allodial interest.

Depending on the applicable customary law, the allodial interest in land is held originally by stools, skins, tendama, sub-stools, clans or families (CDD, 2002). It is a title that in some traditional areas in Ghana is acknowledged as being held in stools or skins only. In other traditional areas, sub-stools, sub-skins, clans as well as families hold it. The allodial title is vested in the head of the land owning group who manages it on behalf of the community with the consent and concurrence of the principal members of the community. Historically allodial title has been created or assumed through discovery or conquest and subsequent settlement thereon and use thereof by the stool/skin and family. This interest or title can be transferred from one owner to the other through:

- Purchase by another community or an individual.
- Gift to another community or an individual.

### **2.2.2 Customary freehold**

Also called the usufruct, it is an interest in land to which members or indigenes of the landowning community that holds the allodial interest in land are entitled as of right, according to the customary law of that community. It is an interest held as of right by members of such a community who acquire it by first cultivation or by allotment from the land owning group of which they are members. This interest, so long as it is held and exercised by an indigene, assumes indefinite duration and prevails against the whole world including the allodial titleholder. Any group, sub-group or individual member of a community owning the allodial title may acquire the customary freehold title or interest in land by exercising his or her inherent right to develop such vacant virgin communal land. The customary freehold includes the right to occupy and derive economic use from any portion of the communally owned land that has not been occupied previously by any member of the community. Thus the usufruct can cultivate, build or enjoy the use of the land in any manner he chooses, provided he does not invade the stool's and state's right to the minerals therein. Such rights are limited to the area occupied. Mere hunting by an indigene, however, does not appropriate customary freehold title. It is rather a derived right. Other derived rights include rights to water, rights to non-timber forest products and minerals.

These derived rights, also referred to as group rights, are distinct from customary freehold.

The customary freehold is freely transferable and the freeholder may dispose of his interest both inter vivos or by testamentary disposition to members of the community as he pleases. Transfers to persons outside the group, i.e. strangers may be done only by the holder of the customary freehold with the consent of the appropriate head and principal elders of the land owning community (CDD, 2002). This is due to the fact that such alienation to a stranger implies admitting an outsider to the ancestral heritage of the state, and extending birthright of citizenship.

A customary freehold is an interest held in perpetuity by the beneficial user; the only caveats being that the land must not be abandoned and the members' lineage must not become extinct. The allodial owner of the land has a reversionary interest in such land in the rare event of abandonment or the extinction of the beneficial user's lineage.

### **2.2.3 Common law freehold**

It is an interest in land that arises out of a grant in the nature of a freehold made by the holder of the allodial title by way of sale or gift. This is an interest in land, which is held for an indefinite period and is derived from the rules of common law. It is created only by express grant.

Previously, members of the stool or family or skin, which holds the allodial title, strangers (i.e. Ghanaian citizens outside the allodial title holding community) and foreigners alike could acquire common law freehold. However, in 1969 non-Ghanaians' rights to hold such interests were abolished and automatically slashed to a maximum 50-year lease term to be granted at any one time (1969 Constitution). The 1979 Constitution also abolished the grant of freehold rights in stool and skin lands to Ghanaians whether they are strangers or members of the land owning group. This presupposes that from 1979 such rights emanating from stool and skin lands can no longer be granted in the country. Common law freeholds can, however, emanate from family lands.

### **2.2.4 Leaseholds**

These are rights granted to a person to occupy and use land for a specified term subject to certain agreed covenants and the payment of an agreed rent. The holder of the allodial title, customary freehold or common law freehold may grant a lease in respect of land over which he/she has not already granted. Sub-leases may be further granted by leaseholders.

### **2.2.5 Lesser Interests**

Customary Tenancies - Holders of an allodial title, customary freehold or common law freehold may also create various lesser interests under customary law. These are usually share-cropping contractual arrangement by which a tenant farmer gives a specified portion of the produce of the farm to the landlord at each harvest time. The two best known of such tenancies are

the 'abunu' (the produce is shared 50:50) and 'abusa' (one-third to the land owner and two-thirds to the farmer). There are other forms of customary tenancies in which the consideration for the grant is not the sharing of farm produce but monetary payments, for example, periodic rents. In addition to these interests certain rights recognized by law also exist in land in Ghana. Examples are easements, profits a prendre, restrictive covenants, reversions and common law licenses. All these terminologies, though importations from English common law, describe lesser interests in customary law for which local phraseology have been lost in usage over the years.

### **2.2.6 The State's Right of Eminent Domain**

The state through its power of eminent domain can acquire any land in the country over which any of the interests described above is held. Interests assumed through statutory acquisitions could best be described as common law freehold in case of complete takeover (compulsory acquisition) or leasehold for a definite term.

## **2.3 CATEGORIES OF LANDS IN GHANA AND THEIR MANAGEMENT**

Arising from the various interests described above and using ownership and control and management as basis, land in Ghana may be classified broadly into public and customary lands.

### **2.3.1 Public land**

Public land can be grouped into two, state land and vested land.

**(a) State Land** - refers to land that the Government has compulsorily acquired for a specified public purpose or in the general public interest by the lawful exercise of its constitutional or statutory power of eminent domain. Such lands are vested in the President and held in trust by the State for the people of Ghana. All previous interests are extinguished and persons who previously held recognizable interests in such lands are entitled by law to compensation either monetary or replacement with land of equivalent value. The 1992 Constitution makes provision for the payment of prompt, fair and adequate compensation where the government exercises its powers of eminent domain. Laws governing the compulsory acquisition of land by the government include Article 20 of the 1992 Constitution, Administration of Lands Act 1962, Act 123, the State Lands Act 1962, Act 125, the Land Statutory Wayleaves Act 1963, Act 186 and regulations made under these statutes.

The Lands Commission administers state lands on behalf of the President.

**(b) Vested Lands** - is a unique situation brought about by statutory intervention where the landowner retains the customary land ownership but the management of the land is taken over by the State in trust for the owners. The management responsibilities cover legal, e.g. prosecution, financial, e.g. rent assessment, collection, disbursement and estate management eg physical planning and its enforcement and administration of

the property. Legislations governing vested lands are the Administration of Lands Act, 1962 (Act 123). Similar to state lands, vested lands are administered by the Lands Commission, as a government agency, on behalf of the customary owner.

### **2.3.2 Customary Land**

Within this category are stool, skin, clan and family lands. These, which constitute about 80% (including vested lands) of land holding in the country, have a common trait of communal ownership and are guided by the following customary tenets:

- ❖ Ownership is inter-generational
- ❖ Land is held in trust by the head of the community for the entire members of the community, clan or family in the belief that land is owned by the dead, living and those yet unborn.
- ❖ Allodial title to the land resides in the community, clan or family and it is non transferable.

Stool land as defined by Article 295(1) of the 1992 Constitution ' includes any land or interest in or right over any land controlled by a stool, skin, the head of a particular community or the captain of a company, for the benefit of the subjects of that Stool or the members of that particular community or company'. The constitution stipulates that such land 'shall vest in the appropriate stool on behalf of and in trust for the subjects of the stool in accordance with customary law and usage'.

Stool lands are predominant in areas of the country which have a strong centralized political system as exists in most parts of the Akan areas in the southern and some areas in the northern parts of the country. In these areas traditional authority is inexplicably linked to landownership and the stool holds the allodial title in land. The stool, which is regarded as an immortal entity, represents the spiritual and physical embodiment of the people. The occupant of the stool holds land on behalf of and in trust for the entire subjects of the stool. The constitution regards such occupants as 'fiduciaries charged with the obligation to discharge their functions for the benefit respectively of the people of Ghana, of the stool, skin or family concerned and are accountable in this regard' (Article 36(8) of 1992 Constitution).

#### ***(a) Stool and Skin Lands***

Stool and Skin lands are subject to extensive regulation, pursuant to Article 267 of the 1992 Constitution, the Administration of Lands Act, 1962 Act 123 and the Office of the Administrator of Stool Lands Act, 1994 Act 481.

- ❖ Any grant to a non-member of the land owning stool/skin requires the concurrence of the Lands Commission
- ❖ All revenue in respect of stool/skin lands whether in the nature of capital or periodic payments including rents, royalties, etc must be paid to the Office of the Administrator of Stool Lands

- ❖ No freeholds can be granted of such lands, including customary freeholds.

### ***(b) Family Lands***

Scattered all over Ghana are a number of traditional groups, which do not recognize a stool, or a skin as a symbol of communal land ownership. In these areas the allodial ownership vests in the clan or family. This system of tenure is predominant in the Volta Region and some traditional areas on the Central, Eastern, and Greater -Accra, Northern, Upper East and Upper West Regions of Ghana.

The head of the clan /family is in no less a fiduciary position as stipulated in the 1992 Constitution. Family lands, implicitly inferred by the 1992 Constitution as private property, are devoid of extensive government regulatory mechanisms compared to stool or skin lands. Family lands together with individual lands are about 35% of the total lands in customary ownership.

### ***(c) Individual Lands***

Individual lands constitute grants emanating from common law freeholds.

The problems associated with these tenures are discussed later.

## **2.4 LAND TENURE AND GENDER**

Land legislation and policies in Ghana appear to be gender neutral. However, they tend to affect women adversely in their implementation because of women's peculiar socio-economic position and the cultural context in which they are applied (Dowuona-Hammond, 2001). Even though recent policies and drive towards women empowerment have been canvassed by successive governments, traditional norms appear to be one of the entrenched obstacles to access and control over land resources. To a large extent, access and control to productive resources are determined by male-centred kinship institutions that have evolved out of patriarchal ideologies. Thus whether women are located in patrilineal or matrilineal cultures it is the men in their families who more or less preside over the allocation of resources owned by the family (Aryeetey, 2002). This general observation however, varies from one traditional community to the other and is embedded deeply in the customs and norms of the communities. There is also a wide variation in women access and control over land resources in urban and rural areas. In urban areas where access to land is determined more by market forces traditional norms and customs break down and there are virtually no restrictions on women access to land. No law exist to prevent women from purchasing or renting land if they have the money to do so.

In rural areas however, financial empowerment is the primary limitation that hinders women from breaking away from the traditional stranglehold. Thus even though except for some limited traditional areas gender systems generally guarantee rights of access to resources, but it is giving control and

ownership of those resources which create problems and perpetuate gender inequality (Aryeetey, 2002). To obtain land for agricultural purposes women, like men, have traditionally depended on their families to allocate plots to them. Aryeetey (2002) however reports that there are indications that the quality of land allocated to women is often worse than that of men, underscoring women's weaker bargaining position vis-à-vis men in land allocation. Women generally have to look to their husbands or to their own families for farmland, although matrilineal lineages are able to inherit land from a wider range of relation. However, security of women's land use rights is not necessarily assured. One traditional channel for women to own land is by gift – from families, or spouses and all such transfers have to be formally witnessed to be sealed. Women have rights of disposal over such lands.

### **2.5 RIGHTS TO COMMON RESOURCES**

Customary land ownership recognises rights of the members of the land owning community to the community's common resources. These include water, durbar/funeral grounds, grazing grounds, non-timber forest products (NTFP) etc. Usage and control is based on customary rules which in the past provided sound basis for the sustainable management of such resources. However, growing population of both people and animals, diminishing supply of land, inter and intra regional migration and urbanisation have contributed to dwindling reserves of such resources and are posing tremendous challenges to the management of the common resource. The continued supply of the common resources on a sustained basis is under constant threat due to the absence of any statutory framework for their management.

## **3.0 LEGAL AND INSTITUTIONAL FRAMEWORKS FOR LAND ADMINISTRATION**

### **3.1 LEGAL FRAMEWORK**

The legal framework for land administration has developed from colonial times over the years in piecemeal and in an ad hoc manner, in response to specific issues or political dictates. Currently there are over 86 legal instruments on the statute books some overlapping and others conflicting. These laws operate along side customary laws in the country, creating a plural legal environment for land administration. The 1992 Constitution reinforces the legal-pluralism framework. Article 267 (1) says that all stool lands shall vest in the appropriate stool on behalf of and in trust for the subjects of the stool in accordance with customary law and usage. This implies that the indigenous owners take all management decisions and exercise the powers that go with ownership – the right to own, sell, receive payment, manage, decide on who is allocated a plot, terms, conditions and price for a particular grant, etc. Yet Article 267 (2) sets up the Office of the Administrator of Stool Lands (OASL) and charges the office with the collection and disbursements of all stool land revenues, defined to include all rents, dues, royalties, revenues or other payments whether in the nature of income or capital from stool lands. The implication is that even though indigenous owners have the capacity to manage their lands and enter into contracts they do not have the capacity to collect the moneys they negotiate for. This drives all the payments made to the indigenous owners into

the extra-legal framework because they become illegal when paid to the landowners. The Constitution (Article 267(6)) even prescribes the formula for the disbursement of the moneys so collected. Based on the formula only 22.5 percent of the price money is to be paid to the landowners whilst as much as 59.5 percent is retained by the state. The remaining 18 percent is paid to the traditional council (which is only an association of heads of traditional groups) where the land is situated.

Article 267(3) also provides that there shall be no disposition or development of any stool land unless the Regional Lands Commission of the region in which the land is situated has certified that the disposition or development is consistent with the development plan drawn up or approved by the planning authority for the area concerned. This implies that where the Lands Commission is unable to give the requisite certification then any disposition by the indigenous owners is invalid, pushing all such grants into illegality with its consequent development.

Again Article 267(5) prohibits the grant of freeholds in any stool lands however so described. It is not too clear what the full implications of this clause is, especially the extent to which it affects land rights of subjects of the landowning communities and other customary freeholders. But if the meaning of the clause is to be taken at face value then all customary freeholders of stool lands and 'strangers' (absolute purchasers or renters) are being turned into tenants of the chiefs as landlords.

The framework in general provides for intervention in the following areas, among others.

1. Control over creation of proprietary rights in land without taking land. This included management of stool lands by the state, validation of stool land transactions and subsequently prohibition of freehold grants of stool lands.
2. Control over creation of proprietary rights by taking land, through compulsory acquisition, occupation and use of land on the orders of the President, vesting of the management rights of the land in government in trust.
3. Control over revenue accruing from land ownership without taking land. The state collects and disburses revenue accruing from stool lands including agricultural rents on behalf of the landowners, as the government thinks fit without any input from the owners.

The problems posed by the existing legal framework are discussed later.

### **3.2 INSTITUTIONAL FRAMEWORK**

The institutional arrangements for land tenure in Ghana can be broadly classified as public and private.

#### **3.2.1 Public Institutions**

By public is meant the Government land agencies which collaborate to manage all state acquired and vested lands and enforces regulations regarding the administration of customary lands. The institutional



arrangements for land administration are shared among six (6) public agencies under the Ministries of Land and Forestry, and Environment and Science. The mandates and functions of these agencies are attached as Appendix I.

### **3.2.2 Private Institutions**

The private institutions comprise the customary landowners (Chiefs and Family Heads) and individuals who may possess land, with sizes ranging from 0.1 or less to several hectares, and Non-Governmental Organisations (NGOs).

In the case of the management of customary lands, the authorised 'representatives' of the people, are either the chiefs or the family/clan heads. There are areas in some parts of the country where 'traditional priests' (Tendama and to a lesser extent the wulomei) are the 'authorised representatives' of the people. They have the right to manage the land on behalf of their people, with the consent and concurrence of the principal members of the land owning community (council of elders).

The Council often arrives at a decision through consensus building and in some instances, the Chief/Head may give specific instructions to be implemented by the council. The councils have procedures through which allocation of land is made, in order to forestall any disputes or multiple sales as well as for the management of common resources. A few customary landowners have well established land secretariats that mediate the process of land allocation, documentation and record keeping. Capacity is however, low and the secretariats are without any real estate professionals engaged in the process. A major drawback of this system is that the council of elders comprise mainly of male members with little representation of women and the youth. This has at times ignited protests from the youth calling for accountability from the council for the proceeds from the land. A re-organisation of these institutions into systems that are participatory and accountable to community membership should be encouraged.

### **3.3 NON-GOVERNMENTAL ORGANISATIONS (NGOs) IN LAND ADMINISTRATION**

The presence of NGOs in the land sector was virtually nil, until a few years ago when a couple of organisations showed interest in this sector. Two such organisations are 'Land for Life' and 'Care International'. Compared to the activities of NGOs in other sectors of the economy this situation is not too surprising due to the perception that land tenure issues are too complex and too difficult to handle and activities do not achieve readily visible results. The current operations of the two NGOs are discussed below.

#### **3.3.1 Care International**

A major concern of land users, especially, migrant farmers is the absence of security of tenure to their farm lands. This denies farmers access to the full benefits of the resources on their land and compels them to engage in activities that are detrimental to sustainable natural resource management and reduces the flow of resources available to all. It further prevents farmers

from investing in sustainable land use management practices. The combination of land tenure issues with other competing interests for natural resources which are not well coordinated means the natural resource base which forms the backbone of the country's economy as well as the main source of livelihood for a large number of people is at great risk.

Government policies in the past have excluded farmers from benefit sharing schemes from valuable forest resources. Forest resources nurtured to maturity by the farmers are harvested by companies without any direct benefit to the farmers. Uncultivated land is taken away by the landowners and resold. The only security for migrant farmers is therefore to clear the uncultivated land for farming (cultivated land is not taken back for reallocation by the landowner). Farmers would be enthusiastic about maintaining the forest as well as nurturing and planting timber trees on their farms if they are assured of security of ownership or access to the benefits.

The economic value of timber and forest products far outweighs that of cultivated agriculture. In the long term the potential exists for realising this value through community rights to the benefits and management of the resource leading to incentives for sustainable management. With a comprehensive understanding of the various perspectives and how these relate to natural resources, based on sound research, and combined with the backing of appropriate policy and technical solutions, there exists the possibility to reconcile the various stakeholder interests and promote a situation for sustainable natural resource management. In this regard, farmers would be interested in controlling access to the resources on their farms. Farmers would gain increased economic opportunities through benefits from community based natural resource management, small scale community based forest enterprise (timber & NTFPs) involving domestic and commercial use of logging residues and non-timber species.

CARE International has been facilitating key stakeholders in forest resources to analyse their interests, rights, responsibilities and commitments needed to increase the flow of benefits from sustainable forest resource management and equity in benefit sharing. This is to enable an understanding among different stakeholders of the real benefits possible from forest resources and raise motivation for them to strengthen relationships, organise together and negotiate for improved access to benefits. This involves addressing security of land and tree tenure and agreeing on land use management guidelines for forest and farm areas, community agreements on the use and management of specific resources with clear rules, regulations and procedures.

In this direction, CARE has been piloting community-based land administration systems with the objective of facilitating land owners and land users to arrive at transparent local agreements which are beneficial to both parties and provide security of tenure to land users and creates incentives for them to invest in sustainable land use practices. Through partnerships with CBOs and local NGOs, communities and land users are being made aware of government policies on land and natural resource use and management. Their

capacities are being built to analyse the policies and provide feedback on the implications of the policies and advice on areas needing review. A major objective of CARE in this regard is to contribute to the development of an effective network of Ghanaian Civil Society institutions to represent, coordinate and advocate for the land and natural resources concerns and rights of poor rural families at local, regional and national level.

### **3.3.2 Land For Life**

Land for Life is committed to the eradicating of the causes of insecurity in land acquisition and tenure to facilitate accelerated national development. Its main objectives are

- ❖ To pursue programmes and activities that would ensure secure title and a smooth transfer of title to land for accelerated sustainable national development.
- ❖ To educate and provide advisory services to provide individuals and institutions on procedures for obtaining secure title to land.
- ❖ To facilitate the creation of a forum at the local level for the adoption of consultative and consensus building processes and structures for resolving inter/intra stool clan/family and individual disputes relating to land acquisition and boundary conflicts.
- ❖ To help build the capacity of the trustees/custodians of stool/family lands to make them accountable to the beneficiaries through education, training and other initiatives in sustainable land resource management.
- ❖ To promote networking and sharing of experience among land related organisations locally, elsewhere on the African continent, particularly West African sub-region and internationally with a view to benefiting from best country practices in land administration, adjudication and management.

The NGO is currently engaged in assisting landowners at Oyibi (a peri-urban settlement close to Accra) to demarcate its boundaries, establishing a land secretariat to assist in the management of the community's land and to keep accurate records of its land grants.

### **3.4 DECENTRALISATION, LAND TENURE AND LAND ADMINISTRATION**

Decentralisation of political administration is one of the cardinal institutional development at the moment in Ghana. Administratively the country is divided into ten regions which have been further sub-divided into 110 districts, municipal and metropolitan assemblies as the local authorities. They are charged with responsibility for the overall development of their districts, and for the improvement and management of human settlements and the environment (Kasanga, 2002). The functions of the assemblies include ensuring the preparation and submission of development plans and budgets, the formulation of programmes and strategies, support for productive activity and social development in the districts, the removal of any obstacles to initiative and development, the provision of municipal works and services. Decentralisation is governed by the Local Government Act, 1993 (Act 462). The Act empowers the Assemblies to acquire land for site and services

development, investment and development purposes, even though the provision is rarely used.

Whilst the assemblies handle many development issues at the local level, land administration and tenure issues are still handled by central government agencies, with the exception of land use planning, development control and forest resource management. There is little coordination between the assemblies and the central government agencies on land administration, apart from the preparation of valuation list for property rating by the Land Valuation Board. The assemblies lack capacity in land administration matters. These create problems at the local level as all land transactions have to be submitted to regional offices before they can be processed.

### **3.5 ENFORCEMENT**

Enforcement refers to the structures and institutions put in place for enforcing regulations relating to tenure administration as well as for seeking redress for breaches of contract and other issues of dispute and the costs associated with them. Apart from established institutions for dispute resolution such as the courts, structures for enforcement are interlinked with the institutional structures for land administration. The customary institutions normally form the first focal point for enforcement of terms and conditions associated with grants of land from that sector and for resolving conflicts and disputes.

The courts are the main public institutions for resolving disputes but the process is characterised by long delays. It is estimated that there are more than 60,000 land cases pending in the courts throughout the country at various levels of the court system.

Recent efforts at reducing the number of land cases that end up in court and the long delays has been the development of alternative dispute resolution mechanisms at all institutional levels involved in land administration. Capacity however remains low.

## **4.0 CRITICAL EMERGING TENURE ISSUES**

Emanating from the discussion so far can be assembled the following as the main critical emerging land tenure issues.

### **4.1 Plural legal environment**

A plural legal environment for land administration which creates conflicts sometimes between customary principles and practices and statutes.

### **4.2 General indiscipline in the land market**

This is characterised by a high spate of land encroachments, multiple sale of residential parcels, unapproved development schemes, haphazard development, leading to environmental problems, disputes, conflicts and endless litigation.

#### 4.3 Absence of a national database on land ownership

There is no national database on land ownership. This coupled with undetermined boundaries of customary lands and a lack of reliable maps and plans, result in the use of unapproved, old or inaccurate maps, leading to land conflicts and litigation among stools, skins and other land owning groups. There is no doubt at all that the custodians of customary lands know in general where their boundaries lie but since these boundaries have not been demarcated on the ground so much confusion arise when demand for land increases near the boundaries. There are so many land disputes in the country but when each is studied critically it will be realised that it eventually goes down to the boundaries between the major land owning groups – between Dagbon and Gonja, between Akyem and Ashanti, between Asokore and Effiduase, etc.

The absence of national database is also reflected in a lack of documentation on various rights and interests in land - a basic shortcoming of customary tenure. The history of the original acquisition of land has not been documented. They are passed on by oral tradition. Transmission of information is highly dependent on the human factor. Due to the fact that memory fades and people die vital information is lost when it is not transmitted timeously. The biggest problem lies in the fact that in the transmission of the information, there could be subjectivity in its reportage.

#### 4.4 Chieftaincy disputes

Chieftaincy disputes affect customary ownership and disposition of stool and skin lands. A registrar at one of the Traditional Councils once indicated that about 70 percent of chieftaincy disputes has land issues – disposition of the land and accountability for the proceeds from the land – as one of the core reasons for preferring destoolment charges. This creates uncertainty regarding the right person to deal with for land. Sometimes some of the decisions on chieftaincy disputes also create problems for land administration. Where for example, after a chief has reigned for some time, his nomination, election and enstoolment is declared null and void *ab initio* without any consequential provisions on the acts the chief might have performed, including land dispositions whilst he was a chief. This leaves grantees of the destooled chief without any security of tenure and usually they have to re-negotiate for the land afresh. Sometimes where the land is not developed it is re-granted to another person without taking into cognisance the acts of the destooled chief.

#### 4.5 Fragmentation

Large group of customary land holders which were formerly one entity have been fragmented into several land holding groups which have no one central control. Stool lands are being fragmented and described as family lands. This results from the fact that the state has regulations for stools lands but has not put in place similar regulations for family lands.

#### 4.6 Distribution of Stool/Skin Land Revenue

There is inequitable distribution of stool/skin land revenue in favour of the state rather than the landowners as provided in Article 267(6) of the 1992 Constitution, creating a lot of poverty among the landowners. Under this provision the stool/skin landowners are entitled to only 22.5% of the total revenue. The state takes 59.5% and the traditional council 18%.

#### 4.7 Compulsory Land Acquisition

Compulsory acquisition by the State of large tracts of land which have not been fully utilised and for which payment of compensation has not been made for a considerable length of time, sometimes decades. The reasons may be attributed to a basic flaw in the acquisition process that does not make the payment of compensation a condition for the acquisition and lack of funds to effect payment.

#### 4.8 Insecurity of Tenure

A large number of oral agricultural tenancies not supported by any proper documentation, creating inadequate security of land tenure for migrant farmers, and leading to disputes between the farmers and the land owners regarding the exact terms of a particular grant.

Tenant farmers in particular are bedevilled with the plight of insecurity of title to lands customarily acquired from land owners/chiefs. Some are:

- ❖ High incidence of litigation on the demise of either parties due to unwritten nature of tenancy agreement and absence of boundary demarcations.
- ❖ Most successors of landowners try to impose new terms and conditions on the tenant farmer.
- ❖ Alienation holders with documents (freeholds) are sometimes challenged and invited by successors for renegotiation.
- ❖ Landowners dispute the capacity of a successor to a demised tenant farmer.
- ❖ Conflicts arise when a tenant farmer allocates uncultivated land to others for commercial purposes etc.
- ❖ Tenant/settler farmers face threats of ejection, conflict and untimely abrogation of tenancy agreements.

#### 4.9 Accessibility to Land

Difficult accessibility to land for agricultural, industrial, commercial and residential development purposes due to conflicting claims to ownership and insecurity of access to common resources such as grazing land and NTFPs.

#### 4.10 Weak Land Administration System

A weak land administration system characterised by lack of comprehensive land policy framework, fragmented institutions for land administration, reliance on numerous (quantitatively) but inadequate (qualitatively) and out-dated legislation, lack of adequate functional and coordinated geographic information systems and networks, as well as of transparent guidelines, slow disposal of land cases by the courts, poor capacity and capability to initiate

and coordinate policy actions, let alone resolve contradictory policies and policy actions among various land delivery agencies.

There is lack of consultation, coordination and cooperation among land development agencies, resulting sometimes in overlapping and duplication of functions and efforts.

#### 4.11 Lack of consultation with customary landowners

There is lack of consultation with customary landowners in decision-making for land allocation, acquisition, management, utilisation and development, which has generated disputes between the state and the private land owning groups and within communities. The experience in the past has been the use of state structures to dominate the administration of land ownership, land rights, tenures and land development to the detriment of customary owners and adequate support and protection of customary practices.

#### 4.12 Management of common land resources

Management of common land resources is done at the community level. Apart from community norms and rules there are no national rules regulating access to and use of the common resources. This at times creates problems between herders and crop farmers, particularly from transhumance pastoralists who come from outside the country.

### **5.0 GOVERNMENT INITIATIVES**

Until 1999 land had been managed through various legal instruments, customary practices, judicial pronouncements and cabinet decisions. There are more than 86 legal instruments affecting access to land and land management, forestry and wildlife, water management, pollution control, human settlements and land administration institutions. In addition there are about 80 subsidiary legislations. This approach to land management did not provide an overall direction for policy development and therefore did not provide a basis for monitoring, evaluation and change where necessary. Land management was done on *ad hoc* basis as decisions and some of the statutes were enacted to deal with specific land-related problems at a particular time.

#### 5.1 THE NATIONAL LAND POLICY

A National Land Policy to provide direction for land management in the country and to address some of the problems discussed above was launched in June 1999.

##### **5.1.1 The Policy Formulation Process - A Participatory Approach**

The policy formulation process started with the receipt by government in March 1994 of the Final Report of the Law Reform Commission, which started work on Proposals for the Reform of Land Law in 1973. The report was referred to the Ministry of Lands and Forestry (MLF) to study and advice on how the reforms proposed in the report could be advanced.

The Ministry then commissioned various experts and committees to study the Report (of the Law Reform Commission) and other relevant existing research data. A Land Policy Committee was set up to review the various enactment, documentation and customary practices relating to land administration and to come out with policy options for consideration by the Ministry. Members of the Committee were drawn from various institutions including the National House of Chiefs, the Ministry of Environment Science and Technology, the Universities, the National Development Planning Commission, the Council for Scientific and Industrial Research, Ministry of Agriculture, the Ministry of Lands and Forestry, the Lands Commission, Land Valuation Board, the Land Title Registry and the Survey Department.

A working draft interim policy document was submitted to the ministry in September 1995. It was circulated extensively among various stakeholders and individuals with specialised knowledge in land administration for their study and comments.

A consultant was subsequently commissioned to collate the views and comments and to travel throughout the country to test various concepts against accepted traditional and cultural practices.

An inter-ministerial committee was then set up to review the consultant's report. A revised draft policy document was then prepared which was discussed at a national land policy workshop in April 1997. Participants were drawn from all identifiable stakeholders in land ownership, land use, land management and environmental management. Over 120 participants attended. A multidisciplinary approach was adopted to review the draft policy document. The workshop resulted in further revisions to the policy document. The final draft policy document was presented to Cabinet in December 1997 for consideration and approval.

Cabinet then organised a day's seminar in May 1998 to deliberate on the policy provisions. At this seminar experts on land tenure and land use were invited to provide inputs and comments on the draft policy document. The consensus at the seminar was that the document was a workable one but needed further revision. The revisions were made and the proposals received final government approval in January 1999 and the policy document was launched in June 1999.

### **5.1.2 Aim of the Land Policy**

According to the policy document, the aim of the land policy is to seek the judicious use of the nation's land and all its natural resources by all sections of the Ghanaian society in support of various socio-economic activities undertaken in accordance with sustainable resource management principles, and in maintaining viable ecosystems. The Land Policy seeks to provide the necessary framework for addressing the above problems and constraints *'to ensure equity in the allocation and holding to maintain a stable environment for the country's sustainable social and economic development'*. The long-term goal of the government's land policy is to stimulate economic



development, reduce poverty, promote social stability by improving security of tenure, and simplifying the process of accessing land which would make it fair, transparent and efficient and to develop an efficient land market.

### **5.1.3 Objectives of the Policy**

The Land Policy document lists the following as the policy objectives.

1. Ensuring that Ghana's international boundaries are maintained at all times and cross border activities are managed jointly.
2. Ensuring that shared water bodies are utilised to the mutual benefit of all stakeholder countries.
3. Ensuring that every socio-economic activity is consistent with sound land use through sustainable land use planning in the long-term national interest.
4. Facilitating equitable access to and security of tenure of land based on registered titles.
5. Protecting the rights of landowners and their descendants from becoming landless or tenants on their own lands.
6. Ensuring the payment, within reasonable time, of fair and adequate compensation for land acquired by government from stool, skin or traditional council, clan, family and individuals.
7. Instilling order and discipline into the land market to curb the incidence of land encroachment, unapproved development schemes, multiple or illegal land sales, land speculation and other forms of land racketeering.
8. Minimising and eliminating where possible, the sources of protracted land boundary disputes, conflicts and litigations in order to bring their associated economic costs and socio-political upheavals under control.
9. Creating and maintaining effective institutional capacity and capability at the national, regional district and where appropriate, community levels for land service delivery.
10. Promoting community participation and public awareness at all levels in sustainable land management and development practices to ensure the highest and best use of land, and thereby guaranteeing optimum returns to land.
11. Promoting research into all aspects of land ownership, tenure and the operations of the land market and the land development process.
12. Ensuring continuous education of the general public on land matters.

The policy document identifies the key issues discussed in section 4 of this paper and proposes various actions for dealing with them.

### **5.2 THE LAND ADMINISTRATION PROGRAM**

A Land Administration Program has been developed as the Government of Ghana's initiative to implement the policy actions recommended in the National Land Policy to improve upon land administration in the country to support socio-economic development, and to deal generally with the issues discussed above.

The Program is a long-term commitment by the Government of Ghana to reduce poverty and enhance economic/social growth by improving security of tenure, simplifying the process of acquiring land by the populace, developing the land market and fostering prudent land management by establishing an efficient system of land administration, both State and customary, based on clear, coherent and consistent policies and laws supported by appropriate institutional structures.

In consideration of the complexity of the issues, it has been estimated that it will take at least 15 years to complete the implementation of the Program. Based on international experience and given that Ghana has a very complex hierarchy of interests in land, it is considered prudent that Program be implemented in three five-year phases. There are many stakeholders and the emphasis of the first phase will be a range of actions that seek to confirm policy detail within the framework of the National Land Policy and pilot activity that would seek to build consensus and develop efficient, cost-effective and field proven methodologies that can be used to scale up activity under subsequent phases of the Program.

### **5.2.1 Social Assessment Studies**

Three separate social assessment studies were conducted as a prelude to the preparation of the project. These were conducted by the World Bank, DFID and Hatch Associates, the project consultants in collaboration with key staff of the Ministry. Key issues that were flagged in these assessments include inadequate participation and consultation with indigenous experts and land owners, traditional authorities suspicious of the motives for the programme (was it to tax them further?), inability to enforce existing laws, lack of resources for efficient work delivery in the public sector agencies and serious corruption in the land sector.

### **5.2.2 Project Objectives & Components**

While keeping the overall objectives of the long-term program in perspective, the first five years aims at developing a sustainable land administration system that is fair, efficient, decentralized, cost effective and capable of enhancing land tenure security. The project is thus divided into four components to achieve the stated objectives as follows:

#### **Component I: Harmonious Policy and Legislative Framework for Sustainable Land Administration**

- ❖ Validation inventory of all acquired State land through field survey and to determine outstanding compensation
- ❖ Development of a strategy on land disputes, identifying causes of disputes and alternative methods to resolve land disputes outside the courts
- ❖ Establishment of Land Courts in regional capitals to expedite resolution of land cases
- ❖ Revisions of laws and regulations for an effective and efficient land administration, including land use planning and valuation
- ❖ Policy studies

### **Component II: Institutional Reform & Development**

- ❖ Restructuring of public land sector agencies
- ❖ Decentralising and strengthening land administration services to the local level (districts)
- ❖ Strengthening customary land secretariats
- ❖ Strengthening private sector land institutions and
- ❖ Strengthening land administration and management institutions

### **Component III: Improving Land Titling, Registration, Valuation and Information**

#### Systems

- ❖ Development of cadastre & land information systems
- ❖ Cadastral mapping
- ❖ Establishment of model land titling and registration offices
- ❖ Improvement of deeds and title registration
- ❖ Revised land valuation and land fees collection system
- ❖ Pilot projects in demarcation and registration of allodial boundaries
- ❖ Pilot systematic land titling and registration

### **Component IV: Project Management, Monitoring & Evaluation**

- ❖ Project co-ordination & management
- ❖ Human resources development
- ❖ Community outreach and public relations and
- ❖ Monitoring , evaluation and impact assessment

#### **5.2.3 Project Funding**

The first phase of the program (LAP-I) is estimated to cost US\$54.19 million and is funded by the Government of Ghana and its development partners. The World Bank is providing US\$20.5 million. Other development partners contributing to the project are the Canadian International Development Agency (CIDA) – US\$1 million, the German Technical Cooperation (GTZ) – US\$2.4 million, KfW – US\$6 million, the Nordic Development Fund (NDF) – US\$7 million and the Departement for International Development (DFID) – US\$9 million. The first phase of the program (LAP-1) is for five years, commencing in 2004 and ending in 2008.

The project has a major sub-component dealing with strengthening of the customary Land Secretariats. Since these institutions are mainly private, the level of assistance expected to be received by them, has been the subject of debate. Even if they are purely regarded as such, their activities underpin land administration and land delivery in Ghana, and they will continue to play such important role for a long time to come. It is therefore essential to lay the foundation for clearer and more cohesive development of customary land administration. It is expected that, the project would work directly with customary land authorities to help them improve and develop customary land management. Land holding rules and transparent procedures for allocation of land would be developed to minimise multiple land allocations. Simple land use planning methods of the customary lands will also be developed to

minimise unauthorised development and provide effective land use control in the community. Lessons learnt from pilot activities of NGOs will be fed into the ongoing LAP process and as well as to the NGO network to provide the basis for informed advocacy on land policy in the country.

It is expected that through the project activities, the customary authorities would work more closely with the public land sector agencies to develop procedures that are simple and less expensive for customary landholders and administrators, leading to a smooth interface with the formal registration process.

#### **5.2.4 Implementing Arrangements**

The program will be implemented by the Ministry of Lands & Forestry as the lead agency with the collaboration of the Ministries of Justice, Local Government & Rural Development, Environment & Science, Information and the Judiciary.

### **6.0 CONCLUSION**

Land issues are now occupying a high profile on the national development agenda as it is recognised that land has a critical role to play in economic growth, development and poverty reduction. The issues discussed in the paper pose serious challenges in dealing with them. Land tenure reforms are necessarily political as land is the basic asset for wealth creation in the country. The Land Administration Program provides opportunities for engineering the necessary reforms. The program enjoys support from highest political authority, including parliament but since the stakes are high the approach to adopt is 'hasten but slow'.

**ANNEX 1: MANDATE OF PUBLIC LAND SECTOR AGENCIES**

<b>OFFICE OF THE ADMINISTRATOR OF STOOL LANDS</b>	<b>LANDS COMMISSION</b>	<b>SURVEY DEPARTMENT</b>	<b>LAND TITLE REGISTRY</b>	<b>LAND VALUATION BOARD</b>	<b>TOWN &amp; COUNTRY PLANNING DEPARTMENT</b>
<p>To collect stool land revenue and disburse same to the beneficiaries as stipulated in Article 267 (2) of the 1992 constitution and the Office of the Administrator of Stool Lands Act 1994. Act 481 while ensuring proper accountability</p>	<p>The Commission is mandated under Act 483 of 1994 to:</p> <ul style="list-style-type: none"> <li>▪ Manage all public lands and to administer all records on public lands in the country</li> <li>▪ Grant concurrence to all stool lands transactions.</li> <li>▪ Advice government and other land holding entities on land administration functions.</li> </ul>	<p>Mapping agency assigned the statutory responsibility of planning, supervision and execution of all land surveys as well as the production of maps, plans and maps substitutes required for the socio-economic development of Ghana.</p>	<p>To register, compile and maintain all titles to land and interests in land (PNDCL 152, 1986)</p>	<p>To provide valuation services to the government of Ghana and Public sector for statutory and non-statutory purposes.</p>	<p>The Town and Country Planning Department was established under the Town and Country Planning Ordinance, CAP 84 of 1945 to promote orderly and efficient management of all human settlements in Ghana.</p>

## **BIBLIOGRAPHY**

ACQUAYE, E. AND ASIAMA, S. O. (1986), 'Land Policies for Housing Development for Low-Income Groups in Africa', *Land Development Studies*, **3**, 127-143.

ANTWI, A. (1995), *An Economic Perspective of Land Policy Implementation in a Developing Economy: The Case of Accra Ghana*, Our Common Estates Series, London, Royal Institution of Chartered Surveyors.

ANTWI, A. Y. (2000), 'Urban Land Markets in Sub-Saharan Africa: a Quantitative Study of Accra, Ghana' (unpublished PhD thesis), Edinburgh, Napier University.

ANTWI, A. (2002), *A Study of Informal Urban Land Transactions in Accra, Ghana*, Our Common Estate Series, London, Royal Institution of Chartered Surveyors.

ARYEETEY, E.B. (2002), Behind the Norms: Women's Access to Land in Ghana, In Toulmin, C. Delville, P.H., Traoré, S. (Eds), *The Dynamics of Resource Tenure in West Africa*, Oxford, James Currey/IIED/GRET.

ARYEETEY, E. AND HARRIGAN, J. (2000), 'Macroeconomic & sectoral developments since 1970', in Aryeetey, E., Harrigan, J. and Nissanke, M.(eds), *Economic Reforms in Ghana: The Miracle and the Mirage*, Oxford, James Currey.

ASANTE, S.K.B. (1975), *Property Law and Social Goals in Ghana: 1844-1966*, Accra, Ghana Universities Press.

ASIAMA, S. O. (1984), 'The land factor in housing for low income urban settlers', *Third World Planning Review*, **6**, 171-184.

ASIAMA, S. O. (1990), 'Land for housing the urban poor in Africa: some policy options', in P. Amis and P. Lloyd (eds), *Housing Africa's Urban Poor*, Manchester, Manchester University Press.

BENTSI-ENCHILL, K. (1964), *Ghana Land Law: an Exposition, Analysis and Critique*, London, Sweet & Maxwell.

BROBBY, K.W. (1991), 'Customary tenure and locus standi in compensation claims in Ghana', *Journal of Property Valuation & Investment*, **9**, 313-322.

BRUCE, J.W. (1986), *Land Tenure Issues in Project Design and Strategies for Agricultural Development in Sub-Saharan Africa* (Land Tenure Center Paper 128), Madison, University of Wisconsin Press.

CENTRE FOR DEMOCRATIC DEVELOPMENT (CDD), (2002), *Organisational Study of Land Sector Agencies*, Unpublished Report, Accra, Ministry of Lands and Forestry.

*CONSTITUTION OF THE REPUBLIC OF GHANA* (1969), Accra, Assembly Press.

*CONSTITUTION OF THE REPUBLIC OF GHANA* (1979), Accra, Assembly Press.

*CONSTITUTION OF THE REPUBLIC OF GHANA* (1992), Accra, Assembly Press.

DOWUONA-HAMMOND, C. (2003), *State Land Management Regime: Impact on Land Rights of Women and the Poor in Ghana*, Accra, GTZ Legal Pluralism and Gender Project (Land Law Focal Area).

EYE-SMITH, S. J. (1940), Comments on Government Sociologist's Report, Accra.

FIRMIN-SELLERS, K. (1996), *The Transformation of Property Rights in the Gold Coast*, New York, Cambridge University Press.

GHANA: FIVE-YEAR DEVELOPMENT PLAN 1975/76-1979/80, (1977), Accra, Ministry of Economic Planning.

GHANA POVERTY REDUCTION STRATEGY: AGENDA FOR GROWTH AND PROSPERITY, (2003), Government of Ghana, Accra, National Development Planning Commission.

GHANA STATISTICAL SERVICE (GSS), (2002), *2000 Population and Housing Census: Summary of Final Results*, Accra.

GHANA VISION 2020: THE FIRST STEP (1995), Government of Ghana, Accra, National Development Planning Commission.

GOUGH, V.K. AND YANKSON, P.W.K. (1997), *Continuity and Change in Peri-urban Accra: Socio-economic and Environmental Consequences of Urbanisation*, (Final Report to the Danish Council for Development Research).

HUTCHFUL, E. (2002), *Ghana's Adjustment Experience: The Paradox of Reform*, United Nations Research Institute for Social Development, Geneva.

IIED (1999), *Land Tenure and Resource Access in West Africa: Issues and Opportunities for the Next Twenty Five Years*, London, International Institute for Environment and Development.

KASANGA, K. (2002), Land Tenure, Resource Access & Decentralisation in Ghana, In Toulmin, C. Delville, P.H., Traoré, S. (Eds), *The Dynamics of Resource Tenure in West Africa*, Oxford, James Currey/IIED/GRET.

KASANGA, R.K., COCHRANE, J., KING, R. AND ROTH, M. (1996), *Land Markets and Legal Contradictions in the Peri-urban Area of Accra Ghana: Informant Interviews and Secondary Data Investigations*, (LTC Research Paper 127), Wisconsin-Madison, Land Tenure Center.

KYEREMATEN, A. A. Y. (1971), *Inter-state Boundary Litigation in Ashanti*, African Social Research Documents, Vol. 4, Cambridge, University of Cambridge.

LAND ADMINISTRATION PROJECT: PROJECT APPRAISAL DOCUMENT, (2003), Washington D.C., The World Bank.

LARBI, W. O. (1994), 'Urban land policies and delivery of developable land in Ghana', (unpublished PhD Thesis), Reading, University of Reading.

LARBI, W. O. (1995), *The Urban Land Development Process and Urban Land Policies in Ghana*, Our Common Estate Series, London, Royal Institution of Chartered Surveyors.

LARBI, W. O. (1996), 'Spatial planning and urban fragmentation in Accra', *Third World Planning Review*, **18**, 193-215.

LAW REFORM COMMISSION (1978), 'Report on land law' (Report prepared for the Ministry of Justice), Accra.

MAXWELL, D., LARBI W.O., LAMPTEY, G.M., ZAKARIAH, S. AND ARMAH-KLEMESU, M. (1999), 'Farming in the shadow of the city: changes in land rights and livelihoods in Peri-urban Accra', *Third World Planning Review*, **21**, 373 – 391.

MINISTRY OF LANDS AND FORESTRY (MLF), (2002), 'Land administration project: design and implementation plan', Accra.

*NATIONAL LAND POLICY OF GHANA (NLP)* (1999), Accra, Ministry of Lands and Forestry.

OLLENNU, N. A. (1962), *Principles of Customary Land Law in Ghana*, London, Sweet & Maxwell.

PLATTEAU, J. (2000), 'Does Africa need land reform?' in C. Toulmin and J. F. Quan (eds), *Evolving Land Rights, Policy and Tenure in Africa*, London, DFID/IIED/INR.

QUAN, J. (2000), 'Land tenure, economic growth and poverty in sub-Saharan Africa', in C. Toulmin and J. F. Quan (eds), *Evolving Land Rights, Policy and Tenure in Africa*, London, DFID/IIED/INR.

RIMMER, D. (1992), *Staying Poor: Ghana's Political Economy, 1950-1990*, Oxford, Pergamon Press.

TIPPLE, A.G. AND OWUSU, S.E. (1994), *Transformations in Kumasi, Ghana, as a Housing Supply Mechanism: a Preliminary Study*, Centre for Architectural Research and Development Overseas, University of Newcastle Upon Tyne.

TOULMIN, C. AND QUAN, J.F. (eds), (2000), *Evolving Land Rights, Policy and Tenure in Africa*, London, DFID/IIED/INR.



## **ANNEX 2: PREPARATION TEAM**

The 'Ghana – Emerging Land Tenure Issues' paper was prepared through a consultative process of major identified stakeholders. The request to prepare a country paper was received late (June ending) but the group held weekly meetings throughout the month of July where the issues were thoroughly debated and agreed upon. This paper is result of the consultative meeting. Mr Laurent Sedogo of CILSS attended the consultative meeting on 17<sup>th</sup> July 2003 and contributed immensely to the discussions.

The consultative group was made up of the following:

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2. Michael Amoah	Tenant Farmers Association
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4. Charles Sagoe	Ghana Institution of Surveyors
5. Albert Katako	CARE International (NGO)
6. Stephen Osei-Amakye	Environmental Protection Agency
7. Kwese Bentsi-Enchill	Land Valuation Board
8. Conrad Asiedu	Land Title Registry
9. S.K George	Land for Life (NGO)
10. Mabel Yemidi	Lands Commission
11. Kwesi Dautey	Office of the Administrator of Stool Lands
12. K. Opong Nkrumah	Institute of Land Management & Development
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14. Kumordzi-Ablo Mark	Land for Life (NGO)
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