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# Issues and Options for Improved Land Sector Governance in Ghana

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Application of the Land  
Governance Assessment  
Framework

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**Synthesis Report  
2013  
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## Contents

<b>1</b>	<b>Introduction.....</b>	<b>3</b>
<b>2</b>	<b>LGAF Methodology .....</b>	<b>4</b>
<b>3</b>	<b>Overview of Land Policy Issues in Ghana .....</b>	<b>5</b>
3.1	General Data and Information.....	5
3.1.1	Economy and geography.....	5
3.1.2	Governance system .....	5
3.2	Land Issues and Land Policy .....	5
3.2.1	Tenure typology .....	5
3.2.2	History and current status of land policies.....	7
3.2.3	Formal and informal land management institutions.....	8
<b>4</b>	<b>Assessment of Land Governance.....</b>	<b>11</b>
4.1	Legal and institutional framework .....	11
4.1.1	Continuum of rights .....	11
4.1.2	Enforcement of rights.....	11
4.1.3	Mechanisms for recognition of rights .....	13
4.1.4	Restrictions on rights .....	14
4.1.5	Clarity of institutional mandates .....	14
4.1.6	Equity and nondiscrimination .....	15
4.2	Land use planning, taxation, and management .....	16
4.2.1	Transparency of restrictions.....	16
4.2.2	Efficiency in planning process.....	17
4.2.3	Speed and predictability .....	18
4.2.4	Transparency of valuations .....	18
4.2.5	Tax collection efficiency.....	19
4.3	Management of Public Land.....	19
4.3.1	Identification of public land.....	19
4.3.2	Justification of expropriation .....	21
4.3.3	Transparency of expropriation procedures.....	22
4.3.4	Allocation of public land.....	23
4.4	Public provision of land information .....	24

4.4.1	Completeness .....	24
4.4.2	Reliability.....	25
4.4.3	Cost-effectiveness, accessibility, and sustainability .....	25
4.4.4	Transparency of service costs .....	25
4.5	Dispute resolution and conflict management.....	26
4.5.1	Assignment of Responsibility for Dispute Resolution.....	26
4.5.2	Pending conflict level.....	28
4.5.3	Large-scale Land Acquisition .....	28
<b>5</b>	<b>Policy Priorities .....</b>	<b>31</b>
5.1	Institutional and legal framework for land governance .....	31
5.2	Land use planning and taxation .....	31
5.3	Public land management .....	32
5.4	Public provision of land information .....	32
5.5	Dispute resolution and conflict management.....	32
5.6	Large scale land acquisitions .....	33
<b>6</b>	<b>Conclusion .....</b>	<b>34</b>

# 1 Introduction

Given the agrarian nature of Ghana's economy, land continues to be the main source of livelihood for the majority of its people. Governance of this key resource faces numerous challenges. These challenges are generally long-standing in nature, while at the same time evolving in character and intensity in view of new economic, demographic, and environmental pressures on land. Mining and increasing interest in Ghana's potential for large-scale commercial agriculture are two such sources of pressure. Rapid urban growth is another pressure point, both in terms of its implications for adjoining rural land and for the increasingly urgent land use and management problems that afflict Ghana's cities themselves.

Thus, over an eleven-month period in 2011, the Land Governance Assessment Framework (LGAF) was deployed by a team of Ghanaian experts in order to develop a more comprehensive understanding of the challenges facing land governance in Ghana, and to identify concrete opportunities to address those challenges. This chapter synthesizes and summarizes the key findings of the LGAF process and outlines proposals for moving forward. The next section explains the methodology of the LGAF, while the third section provides background information on Ghana and key issues in its land governance. The fourth section presents the results of the Ghana LGAF panel discussions and validation meetings. Part five offers recommendations for prioritizing land policy improvements, and the final section concludes.

## 2 LGAF Methodology

The Land Governance Assessment Framework (LGAF) is a diagnostic tool that is implemented in a collaborative manner at the local level in order to benchmark land governance. This process helps to establish a consensus and priority actions on (i) gaps in existing evidence; (ii) areas for regulatory or institutional change, piloting of new approaches, and interventions to improve land governance on a broader scale; and (iii) criteria to assess the effectiveness of these measures. LGAF helps put in place a structure and process to systematically track progress in improving land governance over time.

The core version of the LGAF consists of 21 Land Governance Indicators (LGIs) covering 80 dimensions of land governance, grouped into five broad thematic areas:

1. Legal and institutional framework (LGI 1-6)
2. Land use planning, management, and taxation (LGI 7-11)
3. Management of public land (LGI 12-15)
4. Public provision of land information (LGI 16-19)
5. Dispute resolution and conflict management (LGI 20-21)

The LGAF also allows the inclusion of optional thematic modules that may be relevant to a specific country context. The Ghanaian LGAF process included a module on large-scale land acquisition (LSLA), which contains 16 additional parameters. Each LGAF dimension is rated on a scale from A to D, with scoring options based on international best practice.

The LGAF process was led by a Country Coordinator and a team of three additional expert investigators with specialties in land economy, land use planning, public land management, and land administration. Following LGAF guidelines, in July and August 2011 the Ghana team conducted eight meetings at the regional level to share their findings with panels of five to seven experts, including representatives from each of the divisions of the Lands Commission; the Town and Country Planning Department; District, Municipal, and Metropolitan Assemblies; and the Office of the Administrator of Stool Lands (OASL). Additional panelists included prominent academics in land issues, private practitioners, media professionals, non-governmental organizations representatives, civil society representatives, and members of Customary Land Secretariats. Panel members were asked for their own preliminary ratings for the LGIs, which were then discussed until the panel achieved consensus in the scoring of each dimension.

The assessment scores and findings of these panel workshops were validated at a national workshop in Kumasi in November 2011. Finally, a concluding policy dialogue meeting was held in Accra in February 2012 to discuss the policy recommendations of the LGAF study with key policy decision-makers at the national level for consensus on the policy recommendations made and strategies for their implementation within the framework of the second phase of the Land Administration Project.

## **3 Overview of Land Policy Issues in Ghana**

### **3.1 General Data and Information**

#### **3.1.1 Economy and geography**

Ghana has a population of around 24 million people, approximately one-third of whom reside in urban areas. The country is ethnically diverse, with over one hundred dialects spoken. Ghana is one of the most prosperous nations in sub-Saharan Africa. GDP in 2012 stood at almost US\$ 41 billion, with a per capita GNI US\$ 1,550.<sup>1</sup> In 2006, 28.5% of the population lived below the national poverty line.

Agriculture is the backbone of Ghana's economy. It contributes about 36% of GDP and employs approximately 70% of the rural population. The country is estimated to have 23 million hectares of land area, of which 57% is cultivable. However, there are considerable regional variations both in the nature of Ghana's land-base and the type of agricultural systems and population densities it supports, from the humid cocoa growing regions of the south west to the semi-arid savannah zones of the north. The country also has significant reserves of gold, petroleum, and natural gas.

#### **3.1.2 Governance system**

Ghana gained independence from Britain in 1957. It was the first independent country south of the Sahara, and since independence, political power has changed between military and civilian regimes. There have been six successive national elections since the return to multi-party democracy in 1992. The government has three branches: the executive, led by the president and the Council of State; a unicameral parliament, with representatives from 275 single-member constituencies; and the judiciary, of which the highest court is the Supreme Court. The nation is divided into ten administrative regions, which are further sub-divided into 216 metropolitan, municipal, and district assemblies.

## **3.2 Land Issues and Land Policy**

### **3.2.1 Tenure typology**

Across the wide spectrum of varied customary and state land systems, Ghanaian law groups interests in land into a number of broad categories, derived from both Ghanaian customary and English common law sources. Five general types of land tenure exist in Ghana: allodial title, customary freehold, common law freehold, leasehold, and customary tenancies.<sup>2</sup> Annex 1: Tenure Typology further summarizes these tenure categories.

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<sup>1</sup> World Bank World Development Indicators, 2012.

<sup>2</sup> da Rocha and Lodoh (1995), Ollennu (1962), and Asante (1975). It should be emphasized that given the pre-eminence of customary tenure, the specific attributes of each of these interests may vary significantly from area to area, depending on the customary systems within which they are embedded. In addition, all of these interests are

**Allodial title.** Allodial title – essentially, absolute ownership – is the highest interest capable of being held in land and is the title from which all other interests, customary or common law, derive. In some traditional areas, allodial title is vested in the community, presided over by a traditional authority symbolized by ‘stools’ or ‘skins.’ In others areas, it may be held by clans, families, and (in limited cases) individuals. With respect to public land, the allodial title is vested in the state. Allodial title carries with it freedom to dispose of the land subject to the laws of the land. Hence allodial title is transferable, in the absence of any law to the contrary.<sup>3</sup> In practice, however, there are significant limitations on transfer in the customary context, since allodial title is usually vested in the community. Definitions of a community may range from a small group of people to whole tribes and townships, and may comprise the living, the dead, and those yet unborn. Hence, transactions in land generally involve transfers of the derivative interests described below.

**Customary freehold.** This is an interest in land held by subgroups and individuals who are members of the community in which the allodial interest is vested. Customary freehold may be acquired either implicitly through the occupation and use of vacant land in the community or explicitly through a grant from the community. Customary freeholds are held for infinite duration, and may be transferred to the successors of the rights holders.

**Common law freehold.** Common law freehold is an express grant of land rights in accordance with the rules of common law. Its incidence is not widespread; in fact, Article 267 (5) of the Constitution forbids common law freehold of stool land. In effect, this restriction limits the transfer of common law freehold to foreigners.

**Leasehold.** Although the origins of leases are in common law, leases may be granted from allodial title, customary freehold, or common law freehold. Leases are created for specific durations; 99-year leases are the most common. Subleases are also permitted, except where expressly prohibited by covenant.

**Customary tenancies.** Customary tenancies are forms of sharecropping agreements between freeholders or lessees of farmland and tenant-farmers. They may apply to land held under any form of tenure: allodial, customary, or common law. Typically, a tenant-farmer agrees to give the landowner or landlord a specified portion of the farm produce in exchange for the use of the land and possibly other farm inputs. Common sharing arrangements are ratios of 1:2 (known as *abusa* in Akan-speaking communities) and 1:1 (known as *abunu*). In some contractual agreements, tenant-farmers may provide money or share the farm/land itself.<sup>4</sup>

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capable of co-existing in the same parcel of land, making the estimation of tenure typology areas and populations difficult.

<sup>3</sup> da Rocha and Lodoh 1995

<sup>4</sup> Ruf 2009

### 3.2.2 History and current status of land policies

The distinguishing features of land tenure in Ghana are the clear legal recognition given to customary tenure under Ghanaian law and the extent to which lands are still governed under customary control. Currently, over 80% of land is considered customarily owned. Most of the rest is held by the state as the result of compulsory acquisition over the years.

The historical origins of customary tenure vary by region, rooted in the dual system of land administration of the British colonial government. The then-Northern Territories (now comprising the Upper East, Upper West and Northern Region) were administered as public lands, while lands in the rest of the country were managed under traditional political authority.<sup>5</sup> This situation persisted into the post-colonial era, until the Constitution of 1979 proclaimed the “divesting” of northern lands from the state and their re-vesting in local traditional owners. This decision was reaffirmed in the 1992 Constitution, which held that all lands in the Northern, Upper East and Upper West regions of Ghana were no longer public lands.

The history of land use planning in Ghana similarly dates back to the colonial era. The current Town and Country Planning Act (Cap 84) was adopted in 1945. The Act created Town and Country Planning Boards and declared all regional capitals and a good number of towns as statutory planning areas, which meant that no use decision could be carried out without prior approval from the appropriate Town Planning Authority.

The 1992 Constitution further set forth land rights and responsibilities with provisions that confirm the legal status of customary rights, establish the fiduciary responsibilities of traditional authorities over land under their control, circumscribe the government’s power of compulsory acquisition, and deal with a range of other land-related matters.

However, it was not until the end of the 1990s that a comprehensive national policy framework was put in place. The National Land Policy of 1999 was the result of a multi-year process of debate and research, involving the identification and analysis of the major problems affecting land and the mapping out of policy commitments to address them. Many of the constraints and obstacles identified in the 1999 document are still an issue (see LGAF findings), including indeterminate boundaries of stool/skin lands, compulsory acquisition of large tracts of land by the government, inadequate tenure security, and a weak land administration system. In response to these challenges, the policy established numerous key objectives, which include but are not limited to facilitating equitable access to land; ensuring fair and timely compensation for expropriated lands; curbing speculation, encroachment, and racketeering; and building institutional capacity for land service delivery. The policy also underscored the need to promote community participation in and public awareness of sustainable land management.

From 2003 to 2011, with the support of donors, Ghana implemented Phase 1 of the Land Administration Project (LAP I), which was intended as a vehicle for the attainment of the objectives of the national land policy. LAP I comprised four component areas:

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<sup>5</sup> Agbosu 1980

- Harmonization of the land policy and regulatory framework for sustainable land administration
- Institutional reform and development
- Improvements in land titling, registration, valuation, and information systems
- Project management, monitoring, and evaluation

Achievements under LAP I include the passage of the Lands Commission Act, 2008 which restructured the land sector agencies, the establishment of and support for 37 Customary Land Secretariats, pilot demarcations of customary land boundaries, and the commencement of inventories of state lands. In September 2011, LAP II was launched to build upon and expand the successes of LAP I in the areas of the legal framework, decentralization and service delivery, maps and spatial data, and human resource development.

### **3.2.3 Formal and informal land management institutions**

Framing Ghana's response to these challenges is a complex and often unclear institutional structure involving multiple agencies and authorities who hold some responsibility for land management and administration. This structure is located within a pluralistic land law framework that, while notable among African countries for the strong legal recognition it gives to customary land rights, is increasingly recognized as in need of modernization to improve the coherence of land administration and to protect land rights against new sources of vulnerability.

#### ***Customary Land Management Institutions***

The nature of customary land rights varies significantly across the country,<sup>6</sup> although discussions of customary ownership in Ghana often refer to three broad categories of customary land arrangements: skin land in the north,<sup>7</sup> stool land in the center and south, and family land in scattered locations around the south and east.<sup>8</sup> A stool means the seat of a chief of an indigenous group or community, which represents the source of authority of the chief. It is a symbol of unity and its responsibilities devolve upon its living representatives: the chief and his councilors (elders). Land owned by such a group or community is referred to as "stool" land.<sup>9</sup> Across much of the north, land ownership is referred to as vesting in the "skin" as the symbol of traditional authority. In parts of the south and east, customary authority may be located within smaller family units, as in the case of the Ewe, for example.

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<sup>6</sup> Different levels of urbanization account for some of the differences in customary tenure practices between north and south Ghana. Traditional land tenure practices in the north generally discourage the sale of land, while in the more urbanized south, customary practices have evolved to reflect a growing acceptance of land as a saleable commodity. However, it is often difficult to make reliable generalizations about customary land relations across different communities, sometimes even within relatively small geographic areas.

<sup>7</sup> In broad terms, Northern, Upper East, and Upper West Regions share similar ethnic, cultural, and ecological conditions, and a predominantly patrilineal inheritance system. Here, a mixture of chiefs and tendamba (earth-priests) occupy the apex of the corporate tenure group and exercise land governance responsibilities in a fiduciary capacity (Bugri, 2007).

<sup>8</sup> In regions popularly referred to as the "south", matrilineal land inheritance patterns are more common, although here as well patrilineal inheritance is practiced by some groups, such as the Ga in the Greater Accra Region and Ewe of the Volta. In different parts of the south, land ownership may vest in "stools" as the symbol of a traditional authority presiding over a relatively large area of land (see Asante-Ansong, 1978; Kom, 1979; Asante, 1975).

<sup>9</sup> National Land Policy, Ministry of Lands and Forestry, 1999

The concept of customary land secretariats (CLS) has long been pursued by some land owning authorities, including the Ashantene and the GbaweKwetei family land secretariats. The potential benefit of rolling out CLS to other communities was a central focus of the 1999 National Land Policy. As a result, Government of Ghana has been promoting the establishment of CLS under LAP, which aims to help interested traditional authorities build capacity to develop transparent and accountable land management systems.

Under LAP I, CLS were established and/or strengthened in 37 stool, skin, and family areas. The CLS have taken various forms, reflecting differences in the characteristics of land relationships in each community and differing levels of interest and initiative from participating traditional authorities. In some instances, CLS has aimed for the systematic demarcation and mapping of individual customary parcels and the development of land records tailored to reflect the specific configuration of rights under local customary law. It has aspired to the appointment of a permanent staff to serve as a first point of entry for outsiders interested in exploring investment opportunities, and to assist landholders with transactions and with the necessary paperwork should they choose to go one step further and record their rights in the Land Registry or Lands Commission (for purposes of securing bank loans, for example). In other cases, CLS has taken a more modest form, sometimes consisting of little more than an incomplete list of landholders on an Excel spreadsheet. In still other instances, CLS pilots have failed to gain traction at all.

At the moment, CLS are in essence experiments in “private” intra-community land management; they have no formal recognition under law, although it is expected that the Lands Bill being drafted with support from LAP II will provide some sort of flexible legal framework going forward. Further support to existing and new secretariats is envisaged under LAP II, under the leadership of the Office of the Administrator of Stool Lands (OASL).

### ***Formal Land Management Institutions***

At the national level, the land sector previously suffered from a proliferation of agencies with overlapping mandates. In addition, there was a lack of clarity about the relationships amongst various formal land agencies, as well as between state agencies and customary institutions. Thus streamlining and rationalizing formal land sector institutions have been major focuses of the government’s efforts to implement the National Land Policy.

With support from LAP I, the Lands Commission Act of 2008 brought together four land sector agencies – namely, the Survey Department, Land Valuation Board, Land Title Registration, and the Public and Vested Lands – under the umbrella of the National Lands Commission. The Commission is responsible for providing concurrence (or approval) to the disposition of stool, skin, and private lands, provided the development is consistent with the approved planning schemes of the area. In addition, the Commission is mandated to advise the government, local authorities, and traditional authorities on land policy. Institutional reform at the central level has also been accompanied by a focus on decentralization of services, with the establishment of Regional Lands Commissions in all ten regions of the country.

There are two additional key land sector agencies that were not included in the reorganized and expanded Lands Commission. One, the Office of the Administrator of Stool Lands (OASL), is responsible for collecting and distributing rents, royalties, compensation, and other payments on

behalf of stool/skin lands, in accordance with the 1992 Constitution. The second, the Town and Country Planning Department under the Ministry of Environment and Science, is responsible for land use-planning and development.

## 4 Assessment of Land Governance

### 4.1 Legal and institutional framework

#### 4.1.1 Continuum of rights

Recognition of a Continuum of Rights							
LGI	#	Indicator	A	B	C	D	
1	i	Land tenure rights recognition in rural areas	■				
1	ii	Land tenure rights recognition in urban areas	■				
1	iii	Rural group rights recognition	■				
1	iv	Urban group rights recognition in informal areas		■			
1	v	Opportunities for tenure individualization		■			

Recognition of land tenure rights in both rural and urban areas is high in Ghana, as both are enshrined in the Constitution and the National Land Policy document of 1999. Likewise, based on corporate law, cooperative societies may be formed in both rural and urban areas, and these groups may gain rights over land as corporate entities, e.g. farmers' cooperative societies.

Conversely, the land rights of squatters in urban areas are not formally recognized. There have been numerous attempts to evict such groups from informal settlements in the country, as occurred in the Sodom and Gomora settlement of Accra. Still, if squatters enjoy undisturbed possession of the land for 12 years, they can lay claims to legal ownership of the land, as noted in Section 4.1.3. Procedures for the formalization of tenure rights are available, but most members of the public are unaware of their existence. One restriction on the process of formalization involves perpetual usufruct rights, which cannot be formalized as such, but rather must be converted to a 99-year residential lease.

#### 4.1.2 Enforcement of rights

Enforcement of Rights							
LGI	#	Indicator	A	B	C	D	
2	i	Surveying/mapping and registration of claims on communal or indigenous land					■
2	ii	Registration of individually held properties in rural areas					■
2	iii	Registration of individually held properties in urban areas					■
2	iv	Women's rights are recognized in practice by the formal system (urban/rural)					■
2	v	Condominium regime that provides for appropriate management of common property			■		
2	vi	Compensation due to land use changes			■		

The boundaries of lands held under allodial title are often indeterminate, providing a growing source of tension in areas with increasing pressures on the land. Disputes over boundaries are reportedly increasing, which further affects the tenure security of those holding derivative rights

to the land in question. This creates confusion among lessees and outside investors regarding with whom they should be dealing. The National Land Policy identified demarcation of allodial boundaries as an essential step in rationalizing the management of customary land, and demarcation and mapping schemes were piloted under LAP I. However, these pilots had only limited success due to the high expense of survey procedures and apparently irresolvable disputes along some borders.

Likewise, despite the presence of both a deeds and title registration system, formal registration of rights is extremely thin, especially in rural areas. The deeds system caters largely to urban users engaged in transactions, as well as to commercial lessees of rural customary land. Title registration has thus far only been introduced on a sporadic basis in Accra and Kumasi. Various efforts to roll it out on a more widespread, systematic basis – most recently under LAP – have fallen far short of expectations. In rural areas, it has been the subject of only two small pilots. To date, only a few thousand parcels have been brought into the title registration system out of the possible 15,000,000 parcels of land in the country.

The vast majority of rural land rights are either subject to oral agreements or recorded ad hoc in unregistered documents. There has been virtually no documentation or formal registration of rights held by community members, including both allodial title and customary freehold. Most of the transfers of agricultural land that *have* been registered are leases issued to people from outside the community.

In urban areas, the documentation of land rights is more prevalent, though far from complete, particularly in informal settlements. While there is an absence of reliable data on the percentage of registered urban land parcels, there is sufficient evidence to conclude that under 50% of such parcels are registered (threshold for LGAF scoring) . On the one hand, urban land rights holders have an incentive to register their properties because of the prevalence of land disputes. On the other, the absence of site plans in peri-urban locations, the costs of registration, ignorance, and the fact that the rate of urbanization has outpaced planning have all operated to limit urban land registration, especially given the weak institutional capacity to deliver such services.

With respect to the participation of women in formal registration mechanisms, the Ministry of Justice (2003) reports that from a sample of 1440 title registrations between 1989-2002 in Accra, only 25% of registrations were done by women and less than 10% were done jointly by men and women. Similarly, in the case of Kumasi, an available sample data of 201 title registrations for 2008-2009 showed that only 23% were done by women and less than 6% were joint registrations. In the case of deeds registration, which is the more widespread, it is estimated that registrations by women account for less than 15% of the total. In aggregate terms, it is plausible to conclude that land registered to women either individually or jointly is less than 15% (LGAF scoring threshold).

In terms of common property, the panel noted that Ghana lacks any legislative framework for the management of condominiums. Condominiums are springing up in the capital city as the need for the economical use of space increases, necessitating the passage of legislation regulating common property.

Most of the situations in which land use changes result in the loss of rights occur in the conversion of agricultural land to residential use in peri-urban areas. In these cases, most usufruct farmers' land rights are lost to real estate and other project developers, with compensation that does not reflect market values. The chiefs in whose communities these conversions take place may simply employ their own land surveyors to demarcate the lands, prepare layouts, and choose to give a few plots as compensation to use rights holders. They then retain the bulk of the land to sell to developers. Such circumstances do not qualify as compulsory acquisition, and therefore legal provisions for adequate, fair, and prompt payment of compensation do not apply. In this respect, the chiefs act as though they hold proprietary land rights, when in fact they are only custodians of the land held for the enjoyment of the community. However, there is not yet sufficient political will to challenge such actions, because of the powerful positions of the chiefs in Ghana.

### 4.1.3 Mechanisms for recognition of rights

<b>Mechanisms for Recognition of Rights</b>						
<b>LGI</b>	<b>#</b>	<b>Indicator</b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
3	i	Use of non-documentary forms of evidence to recognize rights				
3	ii	Formal recognition of long-term, unchallenged possession				
3	iii	First-time registration on demand is not restricted by inability to pay formal fees				
3	iv	First-time registration does not entail significant informal fees				
3	v	Formalization of residential housing is feasible and affordable				
3	vi	Efficient and transparent process to formally recognize long-term unchallenged possession				

Non-documentary forms of evidence may be used under the Statutory Declarations Act of 1971. When a relevant declaration is made in accordance with the Act, it must be published in the media with a 30-day period for registering objections. In the absence of any objections, compensation is payable to the claimants of such rights. Likewise, allocation notes of land from chiefs, rent demand notices, and receipts of earlier payments of ground rents are all considered acceptable pieces of evidence for compensation claims.

Ghanaian law does provide for the recognition of unchallenged possession of land for a period of 12 or more years through the formal court system. However, this process is entirely alien to customary law. Moreover, it is not easy to initiate or to succeed in a claim. Even in cases where possession of the land is challenged and evictions are subsequently effected, the government may end up paying some form of compensation to those affected, primarily for political rather than legal reasons. For example, evictees might threaten to vote against the party in power during the subsequent election. Other times, compensation is paid on humanitarian grounds.

The fees and costs incurred in sporadic registration include those for the title transfer form, the property value assessment, the submission of the application, the publication of the transaction, and the issuance of the title certificate. For the typical urban property, these fees do not exceed 2% of the property value. The fees for deeds registration are similar. Informal fees may also be incurred, particularly where clients attempt to facilitate the processing of their documents. Even

payments of formal fees are not always receipted, raising questions about possible revenue leakages. Indeed, public perception holds that the land sector agencies in Ghana are corrupt.

Despite growth in unplanned areas, especially in the urban and peri-urban parts of the country, there are hardly any corresponding attempts to formalize informal housing. Few individuals attempt to formalize their property possession and acquire documentation. Those that do are mostly people who require documents for purposes such as bank loans. Formalization is easier in rural areas than urban because of the need for the provision of services and amenities in rapidly urbanizing areas. In addition, most people in need of regularization regard the rules for doing so as unclear.

#### 4.1.4 Restrictions on rights

Restrictions on Rights						
LGI	#	Indicator	A	B	C	D
4	i	Restrictions on urban land use, ownership, and transferability		■		
4	ii	Restrictions on rural land use, ownership, and transferability		■		

Land use restrictions on zoning and ownership are justified on the basis of public interests, even if they risk being seen as interventions in the land market (as in the case of the provision of public goods). The requirement that citizens pay ground rents is justified on the basis of landlord-tenant relationships. The provision of 50-year leases for foreign investors is reasonable, and the restriction on common law freehold for foreigners (which applies in both rural and urban areas) is justified by national sovereignty.

In rural areas, certain restrictions exist but enforcement is weak. Although rent and price restrictions interfere with the free market, they may be somewhat justified as safeguards for the vulnerable in society, such as women and the poor. Similarly, restrictions on land use planning are justified on the basis of orderly development.

#### 4.1.5 Clarity of institutional mandates

Clarity of Mandates						
LGI	#	Indicator	A	B	C	D
5	i	Separation of policy formulation, implementation, and arbitration roles		■		
5	ii	Differentiated mandates across institutions			■	
5	iii	Differentiated responsibilities across levels of government		■		
5	iv	Information sharing across institutions		■		

Despite the achievements of LAP I in streamlining formal land management institutions noted above, the expected benefits of agency consolidation have been slow to materialize. In practice, consolidation has not fully eliminated institutional divides, turf battles, and functional roadblocks between previously separate entities. Thus consolidation will continue to be the focus of government initiatives under LAP II.

Beyond these internal tensions, a number of overlaps in mandate persist. For example, both the Town and Country Planning Department and the District Assemblies have been assigned a planning function, and both the Lands Commission and OASL are engaged to some degree in revenue collection. Moreover, it remains the case that public land agencies frequently enjoy public mistrust, suffer from capacity constraints, and offer slow service delivery.

Responsibilities between the different levels of government are clear, but minor overlaps still occur, often involving political interference in performance of functions such as compulsory acquisition, control of development, and land taxation.

Complicating the discussion of institutional arrangements in the land sector is the continued pre-eminence of allodial ownership. For many Ghanaians, particularly in rural areas, the most important and relevant institution in terms of land relations is the traditional authority itself, in the form of the chief, traditional councils, land allocation committees, and the like. Given that the locus for many land allocation and land management decisions remain at the traditional authority, and given concerns about the accessibility, cost, and relevance of state land sector agencies for many segments of the customary land sector, increasing attention has been directed in recent years to strengthening community-based land institutions.

#### 4.1.6 Equity and nondiscrimination

<b>Equity and Non-Discrimination in the Decision-Making Process</b>						
<b>LGI</b>	<b>#</b>	<b>Indicator</b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
6	i	Clear land policy developed in a participatory manner				
6	ii	Meaningful incorporation of equity goals				
6	iii	Cost of implementing policy is estimated, matched with benefits, and adequately resourced				
6	iv	Regular public reports indicating progress in policy implementation				

As previously noted, the National Land Policy document was the product of wide ranging consultations between government and all the major stakeholders in land, particularly the traditional authorities. Moreover, facilitating equitable access to land is the second policy guideline of the National Land Policy, and progress in many of the sub-areas related to this guideline was made under LAP I. Yet, the panel noted, monitoring and evaluation of these activities was not done in any meaningful way. Capacity to deliver is still a problem within the land services sector, and enforcement of policies is yet to be achieved. For example, the panel found that contractual arrangements for tenant farmers still leave much to be desired, especially within the cocoa industry. Similarly, women and other vulnerable segments of the population still find it difficult to access land in many parts of Ghana.

Policy implementation is generally inadequately resourced. Land sector agencies still have immanent capacity weaknesses as a result of insufficient budgets. Even where costing of land policies does occur and land sector agencies do submit these budgets, funding allocations are not adequate.

The various land sector agencies do submit quarterly and annual reports to the headquarters of the Lands Commission and the sector ministry in Accra. However, the process of reporting often involves delays. Moreover, the panel felt that analysis to capture progress in policy implementation and to institute remedial measures is weak. Despite the progress achieved under LAP, including the workings of both the Land Sector Technical Committee and the Land Policy Steering Committee to track progress, certain land sector problems have persisted and in some cases worsened, as in the case of migrant or tenant farmers in the cocoa industry.

## 4.2 Land use planning, taxation, and management

### 4.2.1 Transparency of restrictions

Transparency of Land Use						
LGI	#	Indicator	A	B	C	D
7	i	Urban land use plans and changes to these are based on public input		■		
7	ii	Rural land use plans and changes to these are based on public input				■
7	iii	Public capture of benefits arising from changes in permitted land use			■	
7	iv	Speed of land use change		■		

The panel observed that within its current legal and institutional framework, planning continues to be a top down process, and it has been argued that inattention to incorporating meaningful public participation into the process has been a significant contributor to the disconnect between planning and realities on the ground. Planning is accompanied by virtually no public hearings, even in urban communities. In the rural areas, public input in developing or amending land use plans has typically been non-existent.

Currently the mechanisms to allow the public to capture significant share from changing land use (e.g. betterment taxes, levies for infrastructure, property tax) are neither used nor applied transparently. The amended Planning Ordinance of 1945 (Cap. 84) provides the legal basis for betterment levies. In practice, however, there is virtually no collection of betterment levies, except in the event of compulsory acquisition, in which case the levy may be applied as a set-off to reduce the amount of compensation the government must pay. Instead, many assemblies depend primarily on property taxes, among the sources of revenue that are based on land. Still, the fact that most property cadastres are not updated or do not exist implies low revenues for the Metropolitan, Municipal, and District Assemblies (MMDAs). Likewise, fungibility of funds tends to be high, thus denying the public the potential gains from permitted land use changes. The draft planning law makes some attempt to correct this situation through the inclusion of procedures for the capture of betterment charges and for permitting land uses to be used for the collective good.

Land use change occurs rather rapidly, in part due to weak regulations that allow for development with or without services. The growth of the service sector and rapid urbanization have caused the demand for commercial and residential spaces to increase in urban centres. Industrial land use, by contrast, has not seen much growth in demand. Based on interviews with professional planners, the panel estimated that more than 70% of commercial developments are

transferred to their destined use within 3 years, with a slightly longer timeframe for residential developments in most locations. Still, the rapidity of property development in Ghana is slowed by low incomes and access to financing, especially for residential development. Land use changes are also rather slow in rural districts relative to municipal and metropolitan areas.

#### 4.2.2 Efficiency in planning process

Efficiency of Land Use Planning						
LGI	#	Indicator	A	B	C	D
8	i	Process for planned urban development in the largest city				
8	ii	Process for planned urban development in the next 4 largest cities				
8	iii	Ability of urban planning to cope with urban growth				
8	iv	Plot size adherence				
8	v	Use plans for specific land classes (forest, pastures, etc.) are in line with use				

The LGAF panel noted that the fast pace of urbanization and capacity weaknesses in planning institutions have kept development constantly ahead of the planning process. This is partly due to insufficient planning personnel: a land use planning and management project report identified a shortfall of 451 of key personnel out of the total of 837 required, and reported that as many as 120 Town Planning and Assistant Town Planning Officers and 92 Senior Town Planning Officers were not at post in the various offices.<sup>10</sup> The problems associated with this shortage of staff have been exacerbated by a lack of base maps (either in hard copies or digital form), the lack of archives, the deterioration of existing hard copies of maps, and a shortage of vehicles.

At the plan management level, major challenges include the lack of clear land rights, the lack of legal provision for newly emerging land uses, the existence of multiple permitting agencies, applications that fall short of standards, incorrect site plans, proposed uses that are incompatible with zoning regulations, and a high incidence of conversion, invasion, and succession. Weak enforcement systems make it attractive for land use development to precede planning and land sales, because planning authorities are unable to keep pace with the demand and pressure to plan. Some chiefs have met this increased demand for land by engaging surveyors who are not trained to prepare planning schemes and layouts. Such surveyors often draw up plans that lack all ancillary services that come along with such schemes. Most state and vested lands follow the approved process of planning, servicing-building, and occupation, whereas development on stool lands remains mostly unapproved.<sup>11</sup>

The standard plot size is 100ft x 120 ft. However, due to pressure on urban land, in practice plot sizes are variable. People may even buy plots that are half the standard size, if inadequate land is available at their budget level. This situation holds generally across all urban cities.

Most rural lands have some areas set aside for forest and wildlife reserves. However, encroachments on these lands may occur. In addition, lands acquired compulsorily by the

<sup>10</sup> LUPMP 2008

<sup>11</sup> Gough and Yankson 2000

government that are not being put to their intended uses are sometimes used by local people as their sources of livelihoods. Thus the panel estimated that more than 50% of lands set aside for specific purposes are being put to non-specified uses.

### 4.2.3 Speed and predictability

<b>Speed and Predictability</b>						
<b>LGI</b>	<b>#</b>	<b>Indicator</b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
9	i	Requirements for building permits are affordable/transparent				
9	ii	Time to get building permit				

The problematic operation of the building permit process reflects the general dysfunction of planning processes in Ghana. Despite a legal requirement that building permits are to be issued within three months, the LGAF panel observed that most permits without application irregularities typically required nine months or more, although there is no hard data to confirm the general validity of this observation. The requirement that property must be registered before building permits are issued contributes to the lag between developments and planning, and weakens the incentives of landholders to apply for permits in the first place. Rent seeking behavior among staff responsible for issuing building permits, as well as inefficiencies in the Statutory Planning Committee and other relevant bodies, further exacerbate these issues.

### 4.2.4 Transparency of valuations

<b>Transparency of Valuation</b>						
<b>LGI</b>	<b>#</b>	<b>Indicator</b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
10	i	Clear process of property valuation				
10	ii	Public availability of valuation rolls				

The Local Government Act stipulates that the Depreciated Replacement Cost (DCR) should be the basis of valuation for property rating. Although this establishes a clear process of property valuation, in practice depreciation is applied in a discretionary manner. Furthermore, while market prices reflect the value of property, the DCR is primarily based on cost, which frequently diverges from market price and value.

It is a policy for District Assemblies to make valuation rolls publicly available. However, a general lack of willingness among land institutions to make information publicly available – coupled with public ignorance of the right to such information – make non-provision of information the norm rather than the exception. Media publications regarding the availability of valuation rolls for inspection at the District assemblies are rare. Even when such notifications are published, the high level of illiteracy makes this information inaccessible for portions of the population.

#### 4.2.5 Tax collection efficiency

Tax collection efficiency						
LGI	#	Indicator	A	B	C	D
11	i	Property tax exemptions justified				
11	ii	Completeness of tax roll				
11	iii	Assessed property taxes are collected				
11	iv	Taxes higher than cost of collection				

The panel noted that certain property tax exemptions seem justified on equity or efficiency grounds, such as exemptions applied under the Free Zones Board. However, the justification for exempting churches and cemeteries was less straightforward, as these institutions accumulate significant revenues. The panel also judged that the implementation of such exemptions may also be discretionary.

Most property owners are not included in the tax roll because of the generally poor state of property identification systems within the District Assemblies. Even in Accra, it is not always possible to easily identify property owners and deliver mail by hand. The collection of property taxes in rural areas is almost non-existent because the majority of the properties are not suitable for assessment.

In addition, structures for tax collection and a culture of property tax payment are generally absent. The valuation rolls of District Assemblies are prepared and updated infrequently, partly due to cost and partly to lack of will within District Assemblies. Most District Assemblies rely almost exclusively on Central Government funding through the Common Fund for District Assemblies, leaving them unmotivated to generate internally their own sources of revenues for local development.

Where property rate collection does occur, it remains bedeviled by poor returns from rate collectors employed by the District Assemblies. This has led to an emerging trend of revenue collection outsourcing by some of the District Assemblies keenly interested in internal revenue mobilization.

### 4.3 Management of Public Land

#### 4.3.1 Identification of public land

Identification of Public Land						
LGI	#	Indicator	A	B	C	D
12	i	Public land ownership is justified and implemented at the appropriate level of government				
12	ii	Complete recording of publicly held land				
12	iii	Assignment of management responsibility for public land				
12	iv	Resources available to comply with responsibilities				

12	v	Inventory of public land is accessible to the public			
12	vi	Key information on land concessions is accessible to the public			

Public land in Ghana comprises land that the state has acquired through compulsory acquisition, as well as vested land of which the state has assumed control. The panel understood the justification of compulsory acquisition as in the public interest when done for the provision of public goods, for example. Still, the government has engaged in the excessive use of compulsory acquisition, as discussed below, resulting in landlessness and tenancy for the original owners. For vested lands, the panel felt that vesting the legal interest in the President and the state was justified. The current policy direction leans toward divestment; however, the panel argued that divestment should occur on a case-by-case basis, as blanket divesting could lead to the emergence of land conflicts. For example, in the Brong Ahafo Region, divestment may risk inflaming tensions that already exist among traditional authorities over claims to land vested in their jurisdictions.

As noted above, public land constitutes approximately 20% of the total land area. However, information concerning the extent and location of state holdings remains incomplete and in some cases inaccurate. The panel estimated that less than 30% of public land has been clearly identified on the ground or on maps. A pilot inventory of state land in the Central Region was conducted under LAP I. In the inventory sample of 713 presumed government sites, only 138 were found to have records confirming that they were state lands. This sample is expected to be indicative of state land inventories in the rest of the country.

Information about acquired land is often missing or inaccurate, contributing to confusion about the extent and location of state land. The current inventory of public lands needs to be completed before its information can be made publicly available. The panel expected that access to this information will only be limited for selected types of data, such as financial terms. Additional information on acquisitions and vesting orders is available from the Executive Instruments, as well as from relevant site plans. However, many of these records remain missing, improperly completed, or poorly kept, especially those from the first decades of independence.

Key information on land concessions is only partially publicly available. Site plans specify only the ownership, use, location, and size of the plots identified on them. The financial terms of land transactions and the value of the land parcels are not included.

It is the sole responsibility of the Lands Commission to manage both compulsorily acquired and vested lands. Its mandate is clear under the Constitution and the Lands Commission Act, 2008 Act 767. However, the roles of other public institutions – including the Town and Country Planning Departments and District, Municipal, and Metropolitan Assemblies – have functional overlap, especially regarding the control of development. Resources for public land management include both government budget allocations and internally generated funds; yet the panel felt that these resources are severely limited. The resources injected into land sector agencies under LAP I have assisted in revamping the Lands Commission, and the panel noted the need for LAP II to build upon these achievements.

### 4.3.2 Justification of expropriation

Incidence of Expropriation						
LGI	#	Indicator	A	B	C	D
13	i	Transfer of expropriated land to private interests				
13	ii	Speed of use of expropriated land				

In the first three decades of independence, successive Ghanaian governments pursued an aggressive campaign of land acquisition, a continuance of a trend well underway at the end of the colonial period. Over 100,000 hectares of land were acquired. The largest expanses of acquired land were intended to support agricultural schemes and forestry operations. Substantial amounts of land were targeted for hydroelectric, residential, and other development uses. As both the National Land Policy document and the LGAF panel noted, the government used its power of compulsory acquisition excessively during this period, often failing to use the acquired lands for their intended purposes and failing to pay adequate compensation to expropriated parties.

Acquired land has been particularly susceptible to encroachment or continued occupation by existing residents due to delays in government taking possession of the land and putting it to use. Acquisitions have frequently been unaccompanied by any strategic planning or budgeting for the eventual use of the land, contributing to the incidence of non-use or misuse once land has been transferred to the state. Some land has been diverted from the intended public use to private development, an action facilitated by the pre-1992 Constitution standard that Government could acquire land “for any purpose which in the opinion of the Government would be for the benefit of the country as a whole.”

Recently, the practice of compulsory acquisition in Ghana has improved, although problems remain. The 1992 Constitution includes tighter provisions concerning public purposes, requires clearer justification for acquisition, and provides a pre-emption right for former owners in the event land is not used for its intended public purpose. The State now has a duty to indicate explicitly the specific use or uses to which the land is to be put before the acquisition becomes valid. Should there arise a diversion of use, the original owners have a legal basis to mount a challenge in the courts to seek the return of the land to them under a right of pre-emption. This, the panel noted, has cut down considerably on the diversion of expropriated land to private purposes. Likewise, the completion of a state land inventory is expected to help inform the process of selective returning of unused land and the negotiation of outstanding compensation amounts.

As the government has become more aware of the problems of compulsory acquisition and non-payment of compensation, it has been considerably more cautious in deploying its power of eminent domain. Moreover, any government agency asking for land now has a duty to have sufficient funds available for the payment of compensation. Nevertheless, the panel expressed the concern that lands acquired compulsorily are still not always transferred to their destined uses in a timely manner due to a lack of resources to pay compensation and execute projects.

### 4.3.3 Transparency of expropriation procedures

Transparency of Procedures						
LGI	#	Indicator	A	B	C	D
14	i	Compensation for expropriation of ownership			■	
14	ii	Compensation for expropriation of all rights			■	
14	iii	Promptness of compensation				■
14	iv	Independent and accessible avenues for appeal against expropriation			■	
14	v	Appealing expropriation is time-bounded				■

The 1992 Constitution requires that expropriated owners receive fair, adequate, and prompt payment of compensation. Additional legal statutes require lump sum compensation to claimants in cases of the “acquisition” of stool lands, or the payment of annual compensation under the Administration of Lands Act, which depends on the degree of social benefit inherent in the acquisition.

Moreover, where the compulsory acquisition of land involves the displacement of any inhabitants, the state is required to resettle them on suitable alternative land with regard to their economic wellbeing. Although infrequent, such cases do occur, and the maintenance of the socioeconomic status of affected populations is not always achievable. This was the case in the recent Bui Dam Project in the Brong-Ahafo Region, in which smallholder farmers were displaced for a hydroelectric project.

Legally, the application of principles of compensation for compulsory acquisition should not differ between registered and unregistered interests. In practice, however, the former are more often compensated than the latter, meaning that unregistered interests are frequently at a disadvantage.

It is estimated that compensation has not yet been paid for nearly 80% of all land acquired in the post-independence period, resulting in hundreds of cases being lodged in court.<sup>12</sup> The government itself lacks information on outstanding payments, although data is being compiled through the ongoing inventory of public lands. The National Land Policy found that the total sums are large, and in some cases overdue payments date back to the 1970s.

Ghanaian law contains contradictions regarding the appropriate avenue for appeals against expropriation. Although the State Property and Contracts Act of 1960 directs appeals to the Chief Lands Officer and the High Court, the LGAF panel determined that the former is not a credible and independent avenue for appeal. The High Court is the only sufficiently independent body for appeal; however, this avenue is infrequently pursued as a result of a high degree of ignorance on the part of land rights holders, the large backlog of cases at the High Court, and lengthy litigation periods. Indeed, the panel estimated that a first instance decision has been reached for less than 30% of the complaints about expropriation lodged during the last 3 years.

<sup>12</sup> Larbi et al. 2004

#### 4.3.4 Allocation of public land

Transparent Processes for Divestiture						
LGI	#	Indicator	A	B	C	D
15	i	Openness of public land transactions				
15	ii	Collection of payments for public leases				
15	iii	Modalities of lease/sale of public land				

Although there are no data available on public land transactions, the lack of transparency of such transactions is widely acknowledged. Recent media revelations have indicated that members of the Lands Commissions shared public land among themselves virtually for free, before reselling these lands at market prices to others. The panel gauged that the situation is similar for both compulsorily acquired land that remains unused and vested lands throughout the country.

Relevant fees and rents are exacted only when individuals appear at the Commission to carry out land deals or transactions. There have been only a few cases in which a land institution has sent notice demanding the payment of rents on public lands leased out to private individuals. Apart from the lack of capacity of land institutions to collect these revenues effectively, there may be resistance to the payment of fees by long-term lessees on public land. Most landowners in Ghana see themselves as absolute owners and do not understand why ground rents should be paid; this mindset might be spreading among lessees as well.

The National Land Policy indicates that subsidies for government land should be removed, and that land should be sold on a first-come, first-served basis with one plot per person. Yet the panel observed that these guidelines merely exist on paper. Public lands are often sold at well-below market value for political reasons, and the process lacks transparency. Because government land holdings are small in comparison to land held by the customary sector, the government typically plays the role of facilitator in providing land access to investors.

Ghanaian law also includes important regulatory provisions regarding transactions involving customary land rights. The Provisional National Defence Council Law 42 of 1982, for example, stipulates that land transactions involving cash or in-kind transfers must be approved by the Lands Commission, which has the power to regulate the size and duration of transfers as well as assess their fairness. According to the 1992 Constitution, Regional Land Commissions are mandated to regulate land transactions in their areas of jurisdiction to ensure consistency with local development objectives. Furthermore, the Office of Administrator of Stool Lands Act, 1994 requires paramount chiefs to establish stool land accounts for the deposit of all payments of land revenues for sharing under a determined formula by the state. The extent to which these provisions are actually implemented is uncertain. It is widely acknowledged, for example, that numerous transactions in customary land are concluded without knowledge of or direct involvement of the Lands Commission.

## 4.4 Public provision of land information

### 4.4.1 Completeness

Completeness of Registry Information						
LGI	#	Indicator	A	B	C	D
16	i	Mapping of registry records		■		
16	ii	Relevant private encumbrances	■			
16	iii	Relevant public restrictions			■	
16	iv	Searchability of the registry			■	
16	v	Accessibility of registry records	■			
16	vi	Timely response to requests		■		

Ghana has a dual system of land registration, with both deeds and titles. A deeds registry has been in place since colonial times and is governed by the Land Registry Act of 1962. Deeds registry offices have recently been established in all regions, having been previously restricted to Accra and Kumasi. The title registration system was introduced in 1986 under the Land Title Registration Law, which intended ultimately to replace the deeds system with a system of conclusive titling backed by a state guarantee. The Act was widely touted as a solution for inaccuracies, duplication, and fraud in the deeds system. Interestingly, the Act identified a full spectrum of customary tenures as registrable interests, explicitly providing a mechanism by which customary rights of all types could be formally documented and registered by the state.

Public access to land information is first and foremost constrained by the large gaps in the documentary record concerning land rights noted above; only a relatively small percentage of landholdings in the country are represented in either the Title Registration or Deeds Registration System. Where information concerning ownership, value, use, and location is documented in one form or another, it may often be found in the various divisions of the Lands Commissions devoted land registration, valuation, public land management, and survey and mapping. Most maps, however, are found in the Town and Country Planning Department, which is outside the Lands Commission. While documentary information for customary land rights may exist in the CLS, more frequently only the parties to the transaction hold such documentation. In many cases, information about rights is simply retained at the community level in oral form.

The most often recorded private encumbrances are mortgages and some exceptions and reservations in the leasing of parts of property. These are consistently recorded in the various land commissions. In terms of public restrictions, the main ones recorded are forest and wildlife reserves. However, these are not recorded consistently, and the records are not up to date in most of the Regional Lands Commissions where such public reserves exist. Similarly, in most urban communities, road reservations are frequently encroached upon for various commercial purposes.

Where land information is documented, the bulk of it is stored in hard copy in files, which are not freely accessible to other institutions. Even within an institution, the records room may be out of bounds to some staff of the organization for various reasons. Registry information in all the lands registry offices in the country can only be searched by parcel or plot number, not by

name. Still, most information is available upon written request, with the payment of relevant fees, which are to a large extent reasonable. Most searches are completed within a week.

#### 4.4.2 Reliability

Reliability of Registry Records						
LGI	#	Indicator	A	B	C	D
17	i	Registry focus on client satisfaction				
17	ii	Cadastral/registry info up-to-date				

The Lands Commission has a service charter that establishes service standards for Ghana's land institutions, including guidelines on the time and cost of service delivery. In practice, however, noncompliance with these standards remains high. Rent seeking behavior implies that published fees are misleading, and both timeliness and service quality suffer for those who are unable to pay informal fees. There is also a bias toward service provision in urban areas over rural and peri-urban areas, perhaps as a consequence of demand.

Most updates of the registry occur when prospective property owners make searches or execute assignments in the course of conducting transactions on registered properties. However, transactions that are not conducted through the registry are not captured. The Lands Commission estimates that between 70 and 90% of ownership information is updated.

#### 4.4.3 Cost-effectiveness, accessibility, and sustainability

Cost Effectiveness, Accessibility, and Sustainability						
LGI	#	Indicator	A	B	C	D
18	i	Cost of registering a property transfer				
18	ii	Financial sustainability of registry				
18	iii	Capital investment in the system to record rights				

The main sources of revenue for the land registries of the Lands Commission are ground rents, stamp duties, and capital gains taxes. The panel estimated that the cost of registering a property transfer is between 2 and 5% of the property value. Although the registry collects additional revenue from a variety of service fees – including registration, searches, preparation of leases, etc. – the total fees collected cover less than half of the operating costs of the registry. Moreover, the capital investment by LAP in Ghana's land agencies is insufficient to ensure their financial sustainability. The system still needs a variety of technical equipment, vehicles, and other inputs to deliver services effectively.

#### 4.4.4 Transparency of service costs

Transparency of Service Costs						
LGI	#	Indicator	A	B	C	D
19	i	Schedule of fees for services is public				
19	ii	Informal payments discouraged				

A clear schedule of fees is publicly accessible and is visibly posted in most, though not all, land institutions. However, receipts for fees collected are not consistently issued across all land agencies, resulting in revenue leakages in the system.

Although land management institutions fall within the purview of the civil service, the implementation of the civil service code of ethics is the exception rather than the rule. Instead, the panel felt that mechanisms to deal with illegal staff behavior depend largely on the personal management style of the head of each land agency.

## 4.5 Dispute resolution and conflict management

### 4.5.1 Assignment of Responsibility for Dispute Resolution

Assignment of Responsibility for Dispute Resolution						
LGI	#	Indicator	A	B	C	D
20	i	Accessibility of conflict resolution mechanisms		■		
20	ii	Informal or community based dispute resolution	■			
20	iii	Forum shopping		■		
20	iv	Possibility of appeals			■	

Population growth, cash crop led marketization, extensive migration, and rapid urbanization have all contributed to increased competition, land scarcity, and increasingly politicized conflict over land.<sup>13</sup> Land conflicts and disputes can be categorized according to the following typology:

- Boundary conflicts usually between different stools/skins or between individuals;
- Disputes between chiefs and individual farmers over the rapid conversion of farmland into residential plots , often without consultation and adequate compensation;
- Inter-family and intra-family disputes over family land boundaries, the division of plots and proceeds from land sales, and the right to use certain parcels of land;
- Disputes between chiefs and local people over land allocation practices and the lack of transparency and accountability in land transactions;
- Conflicts arising from non-payment, delayed or inadequate payment of compensation for government compulsorily acquired lands;
- Disputes over multiple claims to compensation claims;
- Disputes between government institutions and subjects of particular stools/skins over sale of lands compulsorily acquired in the public interest to private individuals or corporate bodies for development;
- Disputes between private individuals land developers and stools, skins, families or individuals;
- Conflicts in vested land areas between traditional authorities and public land agencies over control of land allocation functions and receipts of land revenues;
- Conflicts over who receives land hitherto compulsorily acquired by government and now returned to original owners;

<sup>13</sup> IIED, 1999

- Disputes over ownership of resettlement lands.<sup>14</sup>

A related issue in urban areas, especially Accra, is the phenomenon of land guards, people who are hired by property holders to protect their interests in land. These guards are normally armed and may harass others with claims to the land.

Formal mechanisms for dispute resolution include the Supreme Court, the Court of Appeal, the High Court, the Regional Tribunals, and the lower courts. Special Land courts and Fast Track Courts are also available. The Magistrates' Courts are currently able to hear land cases with a value equivalent to 5000 new Ghana cedis.<sup>15</sup> Nonetheless, the LGAF panel observed that there were substantial difficulties in access to justice using the formal system, because of a deficit of first instance courts and magistrates and judges at the local level, system backlogs, and costs.

In rural communities, a number of local alternatives to the formal system are available, including chiefs' court system, clan and family heads, CLS, local leaders and assembly members, etc. These institutions were noted to have varying degree of effectiveness depending on the type of case, the value of the issue in contention, and the configuration of the parties. Overall, the LGAF panel noted that the chiefs' court systems remain effective in many areas, especially where traditional values and norms are still widely respected. Likewise, piloting of ADR mechanisms within CLS under LAP has shown considerable promise.

Individual cases cannot legally be pursued in both formal and informal systems in parallel. Still, the interplay between formal and informal systems is complex. Both types of institutions deal with largely similar cases, with some key exceptions. Significantly for land related matters, cases relating to the chieftaincy are only reluctantly sent to the judiciary, and are much more likely to be subjected to the dispute resolution mechanisms of the National and Regional Houses of Chiefs. In some contexts, the effectiveness of ADR mechanisms may be lower if parties to the dispute, especially the losing ones, choose to ignore local decisions and seek recourse in the formal system.

Moreover, the role and perceived legitimacy of local mechanisms show signs of shifting over time, as customary relationships – particularly with respect to land rights – respond to market pressures and an increasing tendency of traditional leaders to act as owners or landlords rather than as fiduciaries. Thus supporting effective and legitimate local dispute resolution should not automatically be equated with supporting idealized customary institutions. There is considerable appetite within rural communities for locally-based mechanisms, but not necessarily mechanisms that are controlled by traditional elites or that necessarily abide by long-established local norms of justice that may increasingly be questioned or distorted.<sup>16</sup>

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<sup>14</sup> Wehrmann, 2005; Ayee et al., 2011

<sup>15</sup> Crook 2004

<sup>16</sup> Crook, 2004

#### 4.5.2 Pending conflict level

Low Level of Pending Conflicts						
LGI	#	Indicator	A	B	C	D
21	i	Conflict resolution in the formal legal system				
21	ii	Speed of conflict resolution in the formal system				
21	iii	Long-standing conflicts (unresolved cases older than 5 years)				

There is little available data on the share of land affected by pending conflict in the country, although there is some information concerning the extent to which court cases in Ghana concern land. From 1997 to 2002, land cases consistently accounted for an average of 45% of total cases in the Kumasi High Court, despite increases in the total number of cases.<sup>17</sup> These figures are consistent with the finding that land cases represented 40% of total annual cases in Accra.<sup>18</sup> The huge backlog of land cases in the formal court system has prompted increasing calls for intensifying the use of alternative dispute resolution (ADR) mechanisms.

Conflict resolution in the formal system proceeds at a slow pace. Data from the High Court of Kumasi show that the percentage of land cases settled in a given year are extremely low, ranging from 1.5% in 1997, to 4.5% in 2000, and only 0.6% in 2002.<sup>19</sup> In light of this and other evidence, the panel deduced that long-standing disputes probably exceed 20% of land disputes, given the low capacity of the formal court system to deal with cases in a timely manner.

#### 4.5.3 Large-scale Land Acquisition

Large-scale Acquisition of Land Rights						
LGI	#	Indicator	A	B	C	D
PLI	1	Most forest land is mapped and rights are registered				
PLI	2	Conflicts generated by land acquisition and how these are addressed				
PLI	3	Land use restrictions on rural land parcels can generally be identified				
PLI	4	Public institutions in land acquisition operate in a clear and consistent manner				
PLI	5	Incentives for investors are clear, transparent, and consistent				
PLI	6	Benefit sharing mechanisms for investments in agriculture				
PLI	7	There are direct and transparent negotiations between right holders and investors				
PLI	8	Information required from investors to assess projects on public/community land				
PLI	9	Information provided for cases of land acquisition on public/community land				
PLI	10	Contractual provisions on benefits and risks sharing regarding				

<sup>17</sup> Crook 2004

<sup>18</sup> Ministry of Justice 2003; Kotey 2004.

<sup>19</sup> Crook 2004

		acquisition of land				
PLI	11	Duration of procedure to obtain approval for a project				
PLI	12	Social requirements for large scale investments in agriculture				
PLI	13	Environmental requirements for large scale investments in agriculture				
PLI	14	Procedures for economically, environmentally, and socially beneficial investments				
PLI	15	Compliance with safeguards related to investment in agriculture				
PLI	16	Procedures to complain if agricultural investors do not comply with requirements				

Along with a number of other countries in Africa, agricultural land in Ghana has increasingly been the focus of commercial investor interest in recent years, particularly in the aftermath of the food price spike in 2008 and in response to the evolving global market in biofuels. Ghana has attracted considerable attention from both multinationals and local companies. Over 20 companies from countries like Brazil, Italy, Norway, Israel, China, Germany, The Netherlands, Belgium, and India are currently developing investments in Ghana, mainly for the cultivation of jatropha, on vast acres of lands in the Volta, Brong Ahafo, Ashanti, Eastern and Northern Regions of Ghana.<sup>20</sup>

While comprehensive data on the scale of land acquisitions in the country is still lacking, about 500,000 ha of land were acquired between 2004 and 2009 for agricultural investments registered with the Ghana Free Zones Board.<sup>21</sup> Schoneveld et al (2010) also documented land acquisitions for biofuels projects in Ghana amounting to over one million hectares, though much of this had not been formalised with government agencies.

To a large extent, issues already raised earlier in this chapter play a prominent role in Ghana's capacity to deal with the challenges of large-scale agricultural investments. There is often a lack of clarity concerning who has allocative power over land targeted for investment. Given the complexity of customary tenure in Ghana, as well as the great variety in the rules and structures that are found across the country, identifying the locus of allocative authority is not always an easy task for outsiders. Investors have been known to observe that it can be hard to tell "who we're supposed to deal with." This may be exacerbated by conflicting claims to the same land by neighboring landowning groups, given the frequent lack of clearly defined boundaries between traditional areas.

The full range of rights and uses to land may not be apparent and could be vulnerable. Concern about the neglect of local land rights is a key reason for public criticism of some large-scale investments. Avoiding such neglect requires a clear recognition of the wide range of rights and uses that might be present on a given piece of land. Yet as noted earlier, the complex array of customary rights that may exist beneath the level of allodial ownership are generally not documented or ambiguously documented, and only a small fraction of such interests are

<sup>20</sup> CICOL, 2008

<sup>21</sup> Cotula et al, 2009

registered in state land agencies. As a result, land of interest to investors may often be perceived to be “empty” or “marginal.”

Transactions between chiefs and investors are often characterized by a lack of transparency. As noted earlier, increasingly there are signs that chiefs have begun to conceive of their role as that of landowners in their own right, with subjects in essence reduced to lessees, especially in peri-urban areas and areas of high investment potential. There are reports of chiefs striking secret deals with outside investors, in essence engaging in the privatization and sale of areas that by custom were considered common forest, water, or grazing resources, or alienating land that was fallow or reserved for future generations.

Large-scale land acquisition also suffers from incomplete or unreliable information about state land. While state-owned agricultural land may appear to be a logical focus of investment activity, much of such land remains affected by earlier compulsory acquisition procedures that were not completed properly, or for which compensation was not fully paid. Moreover, many abandoned state farms have been occupied by local communities for many years.

In addition to these overarching land governance concerns, the LGAF process also drew attention to a number of issues of more specific relevance to the phenomenon of large-scale acquisition. Panel members noted, for example, that mechanisms for allowing local communities to obtain benefits from investment are not clearly spelled out. Although the Lands Commission has a concurrence role for leases on traditionally owned land, there are no protocols guiding the process of negotiation or the substantive content of agreements, leaving these to be worked out on a case-by-case basis between the investor and the community. This plays into the problem noted above of chiefs negotiating privately. It also results in agreements in which the interests of local communities are poorly or ambiguously defined and subject to being dishonored in practice. The panel noted a clear need for the establishment of standards and guidelines for traditional authorities to apply in negotiations with investors, which would ensure that livelihood and other concerns of the relevant community are taken into account and protected.

The panel also noted that social and environmental safeguards are generally insufficiently robust and that there is no clear process by which affected members of a local community can lodge complaints if an investor fails to live up to safeguard-related responsibilities. In addition, while foreign investors are required to supply information concerning the company background and other matters, and much of this information is in principle publically accessible, the panel concluded that the information routinely required by the Ghana Investment Promotion Commission (GIPC) is insufficient to assess the viability of proposed projects, or to determine the benefits that such project may bring.

## **5 Policy Priorities**

The national technical validation workshop resulted in a number of policy recommendations, which were then discussed in February 2012 at a policy dialogue meeting in Accra. The policy dialogue focused on areas for policy reform and means of policy implementation under LAP II. It also proposed next steps to provide sustainability to the LGAF process, including mechanisms or indicators for monitoring progress and filling the data gaps identified in the land sector. A summary of these policy priorities and next steps is below; further details are found in **Annex 2**.

### **5.1 Institutional and legal framework for land governance**

In the context of the institutional and legal reforms so far undertaken, current priority areas include the need to ensure that customary norms and values are reflected in the process of institutional and legal reforms; that functional overlaps between and/or amongst land services delivery agencies are streamlined; and that capacity weaknesses are addressed at both the local and national levels. To this end, further action is required in passing the lands bill, the land use planning bill, and their legislative instruments, including the instrument for the current Lands Commission Act, 2008 (Act 767). It was emphasized that the lands bill should be passed with provisions that establishment and operations of the CLS legal.

In addition, the panel regarded the documentation of land rights, especially usufructuary interests and women's land rights, as critical. This will improve upon the clarity of land rights and the provision of gender-disaggregated information for planning, valuation, and taxation purposes. Likewise, such information and documentation of rights will provide a basis for improving tenure security.

For these priority actions to be undertaken effectively, the general perception of the Lands Commission and other land sector agencies as being corrupt needs to be addressed. Likewise, the level of coordination and collaboration between the Lands Commission and the Land Administration Project must be improved upon for efficient and effective service delivery to clients and stakeholders.

### **5.2 Land use planning and taxation**

A weak and ineffective planning system characterized by haphazard development and in need of restructuring was underscored. Accordingly, it was agreed that the current Town and Country Planning Department should be restructured into a Town and Country Planning Authority that would be well-resourced and would possess the required capacity to undertake strategic planning. This is especially critical for regions that are attracting investments and developing quickly, such as the Western Region, where there is a growing oil and gas industry. However, there was no agreement on the best way to enforce development control legislation. For example, while the use of provisional land titles was favoured by town planners, the Lands Commission insisted on proven titles to land before development can take place. Still, for existing unauthorised developments, there was consensus that regulations should be devised and

publicised to ensure enforcement, including for emerging condominium developments. Improving revenue generation through land taxation also emerged as an important policy priority. District, municipal, and metropolitan assemblies should be encouraged to improve tax collection as a source of internally generated revenue for development.

### **5.3 Public land management**

The cumulative effects of compulsory land acquisition by both colonial and post-independence governments have come to impede the present government's ability to deal with both the monetary consequences of compulsory acquisition and the question of equity. It has therefore become necessary for the government to return some compulsorily acquired lands to their original owners, especially in situations where compensation has not been paid and in which the original owners have become landless or tenants on their own lands. Continuation of the inventory of state land that was started under LAP I should be a high priority, in order to document the extent of such lands and the outstanding amounts of compensation due. In addition, key priorities include the formulation of policies on compulsory land acquisition, on the vesting or divesting of land, and on the issue of land guards.

### **5.4 Public provision of land information**

Illiteracy and in some cases societal status can serve as constraints on public access to land information. Accordingly, the panel recommended the use of advertisements, drama programmes, and jingles on radio and television in local languages to increase the accessibility of land information. Similarly, information should be disseminated through the print media and through sensitization in places like churches and mosques in order to reach the vast majority of Ghanaians.

### **5.5 Dispute resolution and conflict management**

The scale and diversity of land disputes is alarmingly high, and this is set to worsen with the increasing scarcity of land and growing levels of urbanization, commerce, migration, and demographic changes. Other factors that compound the land disputes situation include the lack of clarity and demarcation of land rights and the challenge of integrating the customary and statutory land rights regimes without risking confrontation between the regimes. In tackling these priority areas, the use of alternative dispute resolution (ADR) mechanisms was encouraged under LAP, with the CLS and traditional authorities collaborating and coordinating in dispute resolution.

## **5.6 Large scale land acquisitions**

The implications of large-scale land acquisitions for the livelihoods of local populations dispossessed of their land remain a key priority. There is an acute need for guidelines for large scale land acquisitions, given that most companies engaged in these large-scale land acquisitions have foreign origins, that deals reached with traditional authorities lack transparency, and that the operations of the companies often do not include environmental safeguards. Already, the Lands Commission has responded positively in this regard, formulating guidelines to reflect the responsible agricultural investment (RAI) principles of the FAO and other development partners. These guidelines are now in operation at all the Regional Lands Commissions. However, their initial application raises important questions about the practicalities and operationalization of these guidelines. Therefore, their periodic review is recommended.

## 6 Conclusion

Key findings from the LGAF include the immanent capacity weaknesses in the land sector, as well as legislative inconsistencies and lack of comprehensiveness in the legal framework. Likewise, the sector suffers from weak linkages across institutions and a weak planning system that is reactive rather than proactive in addressing development control problems. Similarly, the formal judicial system is overburdened in delivering justice in land-related disputes. Land sector agencies are widely perceived as corrupt, and large-scale land acquisitions are seen to undermine the land rights of local communities and their livelihood sustainability.

Thus the policy recommendations made include: designing and implementing human resource development, harmonizing statutory and customary laws on land in forthcoming legislation, improving coordination among land sector agencies, re-structuring and resourcing the Town and Country Planning Department, increasing the use of alternative dispute resolution mechanisms with the assistance of CLS, implementing a code of ethics for land sector agencies, introducing a reward system for exemplary staff conduct, and publishing of guidelines for large-scale land acquisition in the country.

Due to the prevalence of customary land governance in the country, it is evident that the CLSs should be subjected to further research to map out their developmental process. On the basis of such research, CLSs may emerge as an important nucleus in the structure of land governance in Ghana. Additionally, LAP II should address data gaps in land disputes, the need for an inventory of public land, the recording of customary land rights, the need for increased land revenues, and the need for greater transparency in land transactions.

Given this list of policy priorities for LAP II, there is a need for the proper monitoring and evaluation of targets for achievement. Rather than leaving this to LAP officials as an internal exercise or using Interim Support Missions with limited representation to benchmark and monitor progress under LAP II, some sort of watchdog responsibility over LAP II could be established by the Civil Society Coalition of Land (CICOL), the Ghana Institution of Surveyors, Ghana Institute of Planners, and the Ghana Bar Association, with facilitation by the World Bank. These organisations could inform officials of their concerns and suggest remedial measures as necessary. Still, potential challenges such as disagreements among members would need to be carefully identified and managed to avoid becoming counter-productive. Finally, these professional bodies and academic institutions could be conduits for the dissemination of the findings of this study at various platforms, in order to sustain government commitment to improving land governance in Ghana.

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## Annex 1: Tenure Typology for Ghana

Tenure	Area & Population	Characteristics (legality, recording, transfer)	Overlap with other Rights	Current Issues
<b>Rural Sector</b>				
a) <b>Government/State Land</b>	Area: 3% of 47708 sq km which is total estimate of public land (20% of total of 238540) = <b>1431sq km.</b> Population: Average population density of 120 per sq km x 1431 = <b>171,720</b>	Legal recognition: The allodial title is legally recognized under the Constitution of the Republic of Ghana and the national land policy of 1999 and is vested in the President on behalf of the people of Ghana in state land. Registration/recording: The Lands Commission grants leases of state land to applicants and these are registrable under deeds or title registration. Transferability: Grantees can transfer their interests to others in accordance with the conditions of the grants made to them.	Customary freehold Common law freehold Leasehold Customary tenancies	<ul style="list-style-type: none"> <li>▪ The national land policy recognizes that compulsory acquisition by government of large tracts of lands which have not been utilized and for which payment of compensation is not made or delayed; resulting in landlessness and livelihood deprivation of people, poverty and land disputes.</li> <li>▪ It is now the case that some of these lands are being returned to their original owners.</li> <li>▪ A policy direction for compulsory acquisition and compensation is needed.</li> <li>▪ Generally, registration of interests acquired in state land in a rural area is more likely than in other tenure typologies in the rural area.</li> </ul>
b) <b>Stool/Skin Land Vested</b>	Area: 2% of 47708 sq km which is total estimate of public land (20% of total of 238540) = <b>954sq km.</b> Population: Average population density of 120 per sq km x 954 = <b>114,480</b>	Legal recognition: The Lands Commission is the legally mandated body for the management of vested land and it accordingly grants leases to applicants for vested land. Registration/recording: In stool land vested areas grants made by the Lands Commission are registrable as deeds or titles as appropriate. Transferability: Grantees can transfer their interests in accordance with their grant conditions.	Leasehold Customary tenancies	<ul style="list-style-type: none"> <li>▪ The divesting of skin lands under the 1979 Constitution and re-emphasized in the 1992 Constitution is source of inspiration for other traditional authorities to demand the divesting of their lands.</li> <li>▪ The current problems of management of vested lands is adding to the voice of those demanding divesting of their lands</li> <li>▪ A national policy on vesting is urgently required to address the complex question of vesting or divesting</li> <li>▪ Less likelihood of registration of interests acquired than in state land.</li> </ul>

<p><b>c) Stool/Skin Land</b></p>	<p>Area: 50% of 190832 sq km which is total estimate of customary land (80% of total of 238540) = <b>95,416 sqkm.</b>  Population:  Average population density of 120 per sq km x 95,416 = <b>11,449,920</b></p>	<p>Legal recognition: Stool or skin lands are a legally recognized source of tenure under the 1992 Constitution and the national land policy of 1999; with traditional authorities as custodians of the allodial title to such lands.  Registration/recording: The various interests which co-exist in stool or skin land are registrable subject to the limitations of the law as detailed above.  Transferability: The various interests in stool or skin land are also transferable subject to the limitations of the law as explained earlier.</p>	<p>Customary freehold  Common law freehold  Leasehold  Customary tenancies</p>	<ul style="list-style-type: none"> <li>▪ Constitutional limitation on the creation of the common law freehold.</li> <li>▪ Customary freeholds are registrable as of now only in the form of leases of 99 years for residential purposes.</li> <li>▪ Allodial boundaries of stool or skin lands are poorly demarcated, resulting stool/skin land boundary disputes.</li> <li>▪ Few interest holders register their interest.</li> <li>▪ Allocation of large tracts of land for the promotion of land-based investments.</li> </ul>
<p><b>d) Family/Individual Land</b></p>	<p>Area: 7% of 190 832 sq km which is total estimate of public land (80% of total of 238540) = <b>13,358sq km.</b>  Population:  Average population density of 120 per sq km x 13,358 = <b>1,602,960</b></p>	<p>Legal recognition: Family /individual lands are legally recognized under the 1992 Constitution and the national land policy of 1999 subject to the limitations imposed and family heads regarded as the corporate heads of tenure.  Registration/recording: Interests in this tenure typology are by the Lands Commission but without their consent and concurrence as in the case of dealings in stool or skin land.  Transferability: Interests are transferable subject to the limitations of the law.</p>	<p>Lease  Sub lease  Customary tenancies</p>	<ul style="list-style-type: none"> <li>▪ The justification of customary freeholders having to obtain leases for 99 years on their lands when their customary freeholds are for all practical purposes perpetual.</li> <li>▪ Accountability of land revenues in the case of family lands requires a redefinition of the term stool/skin to include clans and families to ensure broader societal interests are met.</li> <li>▪ Few register their interests in the rural areas.</li> </ul>

<p><b>e) Communal Lands</b></p>	<p>Area: 3% of 190,832 sq km which is total estimate of public land (80% of total of 238540) = <b>5 725 sq km.</b>  Population:  Average population density of 120 per sq km x 5725 = <b>687,000</b></p>	<p>Legal recognition: Communal lands have a long origin in customary tenure and are legally recognized as such. The draft lands bill has however made comprehensive provisions towards the management of communal lands in a more streamlined manner within customary areas and with the assistance of customary land secretariats.  Registration/recording: To be recorded in customary land secretariats acting as local land registries.  Transferability: Uncertain as these are communal property.</p>	<p>-</p>	<ul style="list-style-type: none"> <li>▪ In most communal lands, it is difficult enforcing the rules that govern their management as currently practiced and the intervention by the draft lands bill may provide the way forward in the effective management of communal property to avoid degradation, especially most grazing lands in the rural north of the country.</li> </ul>
<p><b>Urban Sector</b></p>				
<p><b>a) Government/State land</b></p>	<p>Area: 13% of 47708 sq km which is total estimate of public land (20% of total of 238540) = <b>6,202sq km.</b>  Population:  Average population density of 250 per sq km x 6,202 = <b>1,550,500</b></p>	<p>Legal recognition: The allodial title is legally recognized under the Constitution of the Republic of Ghana and the national land policy of 1999 and is vested in the President on behalf of the people of Ghana in state land.  Registration/recording: The Lands Commission grants leases of state land to applicants and these are registrable as deeds or title registration.  Transferability: Grantees can transfer their interests to others in accordance with the conditions of the grants made to them.</p>	<p>Customary freehold  Common law freehold  Leasehold  Customary tenancies</p>	<ul style="list-style-type: none"> <li>▪ These are the most sought after lands in urban areas due to improved security of tenure when grants are made from government/state lands.</li> <li>▪ Inequities in the allocation of state lands in urban areas exist and the urban elite and cronies of politicians appear favoured in access to such lands.</li> </ul>

<p><b>b) Stool/Skin land vested</b></p>	<p>Area: 2% of 47708 sq km which is total estimate of public land (20% of total of 238540) = <b>954sq km.</b></p> <p>Population: Average population density of 250 per sq km x 954 = <b>238,500</b></p>	<p>Legal recognition: The Lands Commission is the legally mandated body for the management of vested land and it accordingly grants leases to applicants for vested land.</p> <p>Registration/recording: In stool land vested areas grants made by the Lands Commission are registrable as deeds or titles as appropriate.</p> <p>Transferability: Grantees can transfer their interests in accordance with their grant conditions.</p>	<p>Leasehold Customary tenancies</p>	<ul style="list-style-type: none"> <li>▪ The divesting of skin lands under the 1979 Constitution and re-emphasized in the 1992 Constitution is source of inspiration for other traditional authorities to demand the divesting of their lands.</li> <li>▪ The current problems of management of vested lands is adding to the voice of those demanding divesting of their lands</li> <li>▪ A national policy on vesting is urgently required to address the complex question of vesting or divesting.</li> <li>▪ The above problems are so grave in the urban vested areas, especially the brongAhafo region that an explosive land conflict is imminent.</li> </ul>
<p><b>c) Stool/Skin Land</b></p>	<p>Area: 15% of 190832 sq km which is total estimate of customary land (80% of total of 238540) = <b>28,625sq km.</b></p> <p>Population: Average population density of 250 per sq km x 28,625 = <b>7,156,250</b></p>	<p>Legal recognition: Stool or skin lands are a legally recognized source of tenure under the 1992 Constitution and the national land policy of 1999; with traditional authorities as custodians of the allodial title to such lands.</p> <p>Registration/recording: The various interests which co-exist in stool or skin land are registrable subject to the limitations of the law as detailed above.</p> <p>Transferability: The various interests in stool or skin land are also transferable subject to the limitations of the law as explained earlier.</p>	<p>Leasehold Customary tenancies</p>	<ul style="list-style-type: none"> <li>▪ Constitutional limitation on the creation of the common law freehold.</li> <li>▪ Customary freeholds are registrable as of now only in the form of leases of 99 years for residential purposes.</li> <li>▪ Allodial boundaries of stool or skin lands are poorly demarcated, resulting stool/skin land boundary disputes.</li> <li>▪ Regularisation of development in some urban areas urgent</li> <li>▪ Families and stool struggle for control over land</li> <li>▪ The problem of private benefit from land sales by chiefs is high in urban areas.</li> <li>▪ Many interest holders register their interest to improve on their tenure security.</li> </ul>

<p><b>d) Family/Individual lands</b></p>	<p>Area: 4% of 190832 sq km which is total estimate of customary land (80% of total of 238540) = <b>7,633 sq km.</b></p> <p>Population: Average population density of 250 per sq km x 7,633 = <b>1,908,250</b></p>	<p>Legal recognition: Family /individual lands are legally recognized under the 1992 Constitution and the national land policy of 1999 subject to the limitations imposed and family heads regarded as the corporate heads of tenure.</p> <p>Registration/recording: Interests in this tenure typology are by the Lands Commission but without their consent and concurrence as in the case of dealings in stool or skin land.</p> <p>Transferability: Interests are transferable subject to the limitations of the law.</p>	<p>Lease Sub lease Customary tenancies</p>	<ul style="list-style-type: none"> <li>▪ The justification of customary freeholders having to obtain leases for 99 years on their lands when their customary freeholds are for all practical purposes perpetual.</li> <li>▪ Accountability of land revenues in the case of family lands requires a redefinition of the term stool/skin to include clans and families to ensure broader societal interests are met.</li> <li>▪ Limited to a few traditional areas, particularly the Volta and Greater Accra Regions.</li> </ul>
<p><b>e) Communal Lands</b></p>	<p>Area: 1% of 190832 sq km which is total estimate of customary land (80% of total of 238540) = <b>1 908 sq km.</b></p> <p>Population: Average population density of 250 per sq km x 1908 = <b>477,000</b></p>	<p>Legal recognition: Communal lands have a long origin in customary tenure and are legally recognized as such. The draft lands bill has however made comprehensive provisions towards the management of communal lands in a more streamlined manner within customary areas and with the assistance of customary land secretariats.</p> <p>Registration/recording: To be recorded in customary land secretariats acting as local land registries.</p> <p>Transferability: Uncertain as these are communal property.</p>	<p>-</p>	<ul style="list-style-type: none"> <li>▪ Communal lands in the context of urban areas are state lands taken over by immigrants for the development of squatter settlements. This normally takes place where there is unoccupied state land and over time, their long stay of 12 years or more could result in valid title in accordance with the statute of limitations.</li> </ul>

## Annex 2 – Policy Recommendations

POLICY ISSUE	LGAF PROPOSED ACTION	AGREED ACTION AT POLICY DIALOGUE	MONITORING INDICATORS
<b>LEGAL AND INSTITUTIONAL FRAMEWORK</b>			
<ul style="list-style-type: none"> <li>• The legal and institutional reform process does not reflect the norms, values and traditions of the various ethnic groups in the country.</li> <li>• Customary Land Secretariats (CLS) lack legal framework needed to function as decentralized land governance structures performing important land functions.</li> <li>• Land functions of Ministerial, Department and Agency levels overlap and need streamlining. District Assemblies and Town and Country Planning Departments still have “an autonomy safeguarding mentality” of their functions which does not contribute to harmonious articulation of land governance roles.</li> <li>• Land speculation produces land scarcity in the case of many peri-urban fringes as agricultural lands are taken and left undeveloped for enhanced market values to be reaped by speculators over time.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Forthcoming Land Act to envisage harmonization of land laws.</li> <li>▪ Legal basis for CLS enshrined in forthcoming Lands Act.</li> <li>▪ Gradual scaling up of CLS from current 37 to 100</li> <li>▪ Draft Lands Bill approved including revisions and proposed solutions to overlapping functions of OASL and Lands Commission.</li> <li>▪ Land Use Planning Bill must deal with horizontal overlapping, particularly in the case of development control functions of District Assemblies and the Town and Country Planning Department.</li> <li>▪ Provide for the review and formulation of appropriate fees for land services delivery and particularly fees on land acquired for speculative purposes and left undeveloped in many peri-urban fringes of the country as envisaged under Component 1 of LAP 2.</li> <li>▪ Establish mechanisms for the collection of these fees to improve equity in land distribution and land revenue generation.</li> </ul>	<ul style="list-style-type: none"> <li>▪ <i>Overlap with respect to mandate over land use planning will be addressed in upcoming legislation</i></li> <li>▪ <i>No agreement on whether a separate legal framework in the nature of an Act for CLS is the best way forward for consolidation, but current provisions in the lands bill provide legal basis for CLS</i></li> <li>▪ <i>LAP-2 will upscale CLS to 50 – demand led approach to promote ownership/ commitment</i></li> <li>▪ <i>Tailor made capacity development of CLS required; informed by ongoing evaluation of 19 CLS</i></li> <li>▪ <i>Clarify responsibility for capacity development and oversight of CLS (Lands commission)</i></li> <li>▪ <i>LAP-2 will provide for review of fee structure</i></li> </ul>	<ul style="list-style-type: none"> <li>○ Legal instruments (laws, by-laws, directives) harmonizing entrenched in local values and traditions are in place</li> <li>○ Legal framework for CLS completed</li> <li>○ Increase in number of CLS operational</li> <li>○ Increase in number of public officials trained in efficient and effective client service delivery</li> <li>○ Number of workshops and dissemination activities carried out</li> <li>○ Decreased land speculation in peri-urban areas.</li> </ul>
<b>PUBLIC LAND MANAGEMENT</b>			
<ul style="list-style-type: none"> <li>• Most interests in land are not registered and therefore are kept unknown. Leasehold is the only interest commonly registered as a deed or title. In practice, difficulties exist in the registration of the other interests in land. CLS started recording of some, especially the usufructuary interests and customary tenancies (as part of the tasks of Component 2 of LAP 1). These customary land secretariats serve as local sources of</li> </ul>	<ul style="list-style-type: none"> <li>▪ Based on recent experience, develop simplified mechanisms for deeds registration of the customary usufruct as a means to improving on security of tenure.</li> <li>▪ Target programmes for increased women’s land rights registration.</li> <li>▪ Provide support to CLSs to embark on public sensitization to facilitate implementation at the local level as</li> </ul>	<ul style="list-style-type: none"> <li>▪ <i>Retry piloting of customary usufruct recordation in collaboration with engaged traditional authorities (via OASL) in at least two (2) pilot areas</i></li> <li>▪ <i>Property rates are already part of common fund sharing formula. DA should follow procedures for setting property rates, but education of DA required.</i></li> <li>▪ <i>Address overall Human resources</i></li> </ul>	<ul style="list-style-type: none"> <li>○ N° of deeds registered including usufructuary title to land.</li> <li>○ N° of households satisfied with the level of generation and judicious application of revenues by District Assemblies, increased equity in land valuation and</li> </ul>

<p>records of people's claims to land but may not necessarily follow formal legal processes of deeds or title registration.</p> <ul style="list-style-type: none"> <li>Public perception of land institutions as corrupt is high.</li> <li>Arbitrariness in the application of the rate impost in rating valuation by district assemblies leading to unfairness in rateable values. The district assemblies have little incentives to improve valuation methods and increase land tax collection</li> <li>Compulsory land acquisition and vesting of land have negative effects on livelihoods of indigenes.</li> <li>The phenomenon of land guards a hindrance to good public land management.</li> </ul>	<p>attempted under LAP 1 but discontinued due to opposition from some Chiefs.</p> <ul style="list-style-type: none"> <li>Reform the Common Fund Sharing Formula to include rewards to district assemblies that perform and meet set targets of internal revenue generation from property rates.</li> <li>Improve upon the image of the land institutions as corrupt by enhancing service delivery without rent-seeking behavior through refresher courses on client service training as started by the Millennium Development Authority for the staff of the Lands Commission.</li> <li>Policy on compulsory land acquisition and vesting/devesting developed and the principle of prompt, adequate and fair compensation implemented effectively.</li> <li>Inventory of public lands to be completed as envisaged under LAP-2.</li> <li>Policy and appropriate legislation to control land guards developed.</li> </ul>	<p><i>strategy of Lands commission ( availability, skills, competence, attitude; productivity and client responsiveness), requiring human resource development plan and implementation of same;LAP-2 can provide support on request</i></p> <ul style="list-style-type: none"> <li><i>LAP-2 supports inventory of public land, involving CLS</i></li> <li><i>Continue approach LAP-1 in LAP 2 to promote women's land rights' registration (LAP-1: 30% titles/ deeds in name of women);</i></li> <li><i>analyse and address challenges for women's' land rights related to inheritance and ensure passage of spousal rights to property bill.</i></li> <li><i>Engage CLS in sensitization on women's' rights</i></li> <li><i>More collaboration between the Lands Commission and the LAP to facilitate task executions in land governance and periodic meetings between these two bodies suggested.</i></li> <li><i>Policy frameworks for compulsory acquisition, vesting and devesting as well as land guards developed.</i></li> </ul>	<p>increased consistency of land valuations.</p> <ul style="list-style-type: none"> <li>Reduced perception of land institutions as corrupt.</li> <li>Increased women registration of land rights.</li> <li>Fewer cases of compulsory acquisition and all cases of compulsory acquisition backed with available money to pay in an escrow account before acquisition takes place.</li> <li>Reduced incidence of land guards in urban and peri-urban Ghana</li> </ul>
<b>LAND USE PLANNING, MANAGEMENT AND TAXATION</b>			
<ul style="list-style-type: none"> <li>The planning system in Ghana is weak and as a result, urbanization processes create a series of problems such as uncontrolled growth of urban areas in the nature of urban sprawls. The planning system has been unable to cope with the uncontrolled urbanization process. This compromises the future sustainability of cities and their relationship with the rural areas.</li> <li>In the capital city, as a result of the need of a better use of space, condominiums are being put in place spontaneously without any policy or legal guideline thus creating potential conflicts.</li> </ul>	<ul style="list-style-type: none"> <li>Improve upon the delivery of planning services as a means to ensuring that future development conforms to planning legislation in the country as envisaged under Component 3 of LAP 2 for both individual and group land rights holders.</li> <li>Undertake and promote the large scale regularization of unauthorized developments where appropriate in urban and peri-urban communities.</li> <li>Put in place a policy on the development of condominiums based in the experience underway in the national capital.</li> </ul>	<ul style="list-style-type: none"> <li><i>Implementation component 3 of LAP 2</i></li> <li><i>Town and country planning <u>authority</u> will be established to guide strategic planning, implementation is with district assembly</i></li> <li><i>Fast track Strategic planning for regions where investments are expanding fast (e.g. western region)</i></li> <li>No agreement on best way forward to</li> </ul>	<ul style="list-style-type: none"> <li>No of urban areas with development control practice effective increased.</li> <li>No of urban group land rights holders titles regularised increased.</li> <li>Law to regulate condominium used developed.</li> <li>Constitutional review of Common Fund Formula</li> </ul>

<ul style="list-style-type: none"> <li>Revenues obtained from land-related services for vesting –devesting lands are distributed according a formula constitutionally established. (OASL retains 10% to itself for administrative services rendered; and of the remainder treated as 100% gives the District Assemblies (55%); the Stool/Skin (25%) and the Traditional Council (20%). This is inconvenient because the revenue application is unfair, there is lack of accountability and transparency.</li> </ul>	<ul style="list-style-type: none"> <li>Prepare design study to include mass valuation methodologies for the revision of valuation rolls.</li> <li>Review the Common Fund Sharing Formula by including rewards to district assemblies that perform and meet set targets of internal revenue generation from property rates.</li> <li>Improve upon the delivery of planning services as a means to ensuring that future development conforms to planning legislation in the country as envisaged under Component 3 of LAP 2 for both individual and group land rights holders.</li> <li>Proactive planning rather than ad hoc and reactive planning.</li> </ul>	<p>enforce development control legislation, for example, use of provisional title to land favoured by town planners, while Lands Commission insists on proven title to land before development can take place. However, on existing unauthorised developments, consensus was that regulations are made and publicised to ensure enforcement.</p> <ul style="list-style-type: none"> <li><i>Increase capacity Town and country planning department/ DA; training of more planners (KNUST) and recruitment</i></li> <li><i>Need for law on condominium for the country but existing ones currently registered as strata titles by the Land Title Registry</i></li> </ul>	<ul style="list-style-type: none"> <li>Land agencies better funded</li> <li>Percentage of urban communities working toward becoming sustainable cities increased.</li> <li>Reduction in days to obtain development permits and decreased number of informal developments</li> </ul>
<b>DISPUTE RESOLUTION</b>			
<ul style="list-style-type: none"> <li>Boundary delimitation of communal lands has been initiated at pilot project level and important experience has been accumulated. Completing boundary delimitation is necessary to reduce conflicts.</li> <li>Courts are overwhelmed with numerous cases and under-resourced to equal the challenge of justice delivery in a timely manner.</li> </ul>	<ul style="list-style-type: none"> <li>Scale up pilot projects for surveying and demarcation of communal land boundaries, from current 10 to 30, building upon lessons learnt under LAP 1.</li> <li>Facilitate the adoption of local level dispute resolution mechanisms to help reduce the backlog of land cases in the courts as complementary to the special land courts established under LAP 1 and ensure that CLSs play a key role in the resolution of land disputes in their areas of jurisdiction by improving on their efficiency and enforcement of decisions made.</li> </ul>	<ul style="list-style-type: none"> <li><i>Evaluate results LAP-1 and prepare proposal for LAP-2</i></li> <li><i>LAP 2 to support local level dispute resolution mechanisms in 10 traditional authority areas on a pilot basis, centered around effective CLS areas.</i></li> <li><i>LAP 2 supports consolidation and effectiveness of CLS</i></li> </ul>	<ul style="list-style-type: none"> <li>N° of communities surveyed and registered.</li> <li>Reduction of boundary conflicts.</li> <li>Increased confidence in people’s participation in local level disputes</li> <li>Overall reduction of conflicts that are land-related.</li> </ul>
<b>PUBLIC PROVISION OF INFORMATION</b>			
<ul style="list-style-type: none"> <li>Large sections of the population do not participate in land administration services (either as providers and users of information) due the large illiterate rate.</li> <li>Access to information on land dependant on status and recognition rather than being a public service to be delivered.</li> </ul>	<ul style="list-style-type: none"> <li>Facilitate the recording and keeping of land information and the accessibility of land information by the public through the use of advertisements, drama programmes and jingles on radio and television in local languages and sensitization in</li> </ul>	<ul style="list-style-type: none"> <li><i>Publicity to and enforcement of the code of ethics that guides the conduct of staff of the land sector agencies to serve as a deterrent to corrupt practices</i></li> <li><i>Institution of a district, regional and national reward system for staff who show exemplary service with integrity</i></li> </ul>	<ul style="list-style-type: none"> <li>The number of Customary Land Secretariats increased.</li> <li>Increased public awareness of CLS as an institution to obtain information on land resources.</li> </ul>

	<p>areas like churches and mosques as additional to the print media in reaching to the vast majority of Ghanaians.</p>	<ul style="list-style-type: none"> <li>○ <i>Post at vantage points in all offices of the land sector agencies schedules of fees for all services rendered and encourage clients to report cases of rent seeking behaviour by staff of the land sector agencies.</i></li> <li>○ <i>Increased automation of services and reduced staff-client interaction to the barest minimum.</i></li> <li>○ <i>For CLS – see areas above</i></li> </ul>	
<b>LARGE SCALE LAND ACQUISITION</b>			
<ul style="list-style-type: none"> <li>• There is need for comprehensive and clear guidelines and standards for investors to follow in large scale land acquisitions and often land deals with transnationals are conducted with chiefs as representatives of their communities but who only seek personal gains in the process of deals negotiation. This often leads to displacement of families from their lands and thereby sources of livelihoods.</li> <li>• Attractive corporate social responsibility packages of investor groups are promised communities, but these are often not delivered.</li> <li>• Environmental, social and economic impact assessments of large scale land acquisitions for investments are often not carried out and even where they are, monitoring and evaluation procedures and practices are inconsistent and ineffective in application.</li> </ul>	<ul style="list-style-type: none"> <li>▪ The Lands Commission in consultation with traditional authorities should as a matter of urgency draft rules and regulations for large scale land acquisitions for agricultural and other investments.</li> <li>▪ The Civil Society Coalition on Land (CICOL), the District Assemblies and Customary Land Secretariats should undertake periodic public education and sensitization of communities on their land rights and how these can be protected.</li> <li>▪ The Ghana Investment Promotion Centre (GIPC) and the Environmental Protection Agency (EPA) need collaborate more on imposing standards and conditions for compliance by investors that will take into account the societal needs of the communities where investments are situated and these must be monitored and implemented.</li> <li>▪ The constitutional provision that government should not interfere with the chieftaincy institution must be reviewed to enable some level of interference especially where the land rights of communities are usurped by a chief for personal gains.</li> <li>▪ The Lands Commission should</li> </ul>	<ul style="list-style-type: none"> <li>○ Guidelines on LSLA process are developed for landowners by Lands commission and will be made public Mid February 2012</li> <li>○ Lands Commission proposes to put more emphasis on pre-contract phase (consultation with land users, contract negotiation)</li> <li>○ Lands commission to engage with GIPC and EPA to improve on compliance of investors to social, economic and environmental standards in legislations, guidelines or negotiated upon</li> <li>○ No agreement reached.</li> </ul>	<ul style="list-style-type: none"> <li>○ Guidelines and standards for large scale land acquisitions developed and implemented.</li> <li>○ Increased CSO and NGO activities in exposing improper land deals that tend to benefit only a minority few.</li> <li>○ Social, economic and environmental impact assessment of large scale land acquisitions for investments carried out and effectively enforced by the Environmental Protection Agency in collaboration with the Ghana Investment Promotion Centre.</li> </ul>

	<p>publicize the land transactions of transnational and other investors involving large scale land acquisitions for the public to evaluate how transparent and accountable and equitable these transactions are to both present and future generations.</p>	<ul style="list-style-type: none"><li>○ No agreement reached.</li></ul>	
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