



GHANA LAND POLICY ACTION NODE

Policies that work 4 land

The Land Bill (Draft 3): Analysis and Policy Recommendations

Produced as part of the Land Access and Tenure Security Project (LATSIP)

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Executive Summary

This report analyses Ghana's Land Bill, Draft 3, and provides recommendations for how the Bill could more clearly and adequately accomplish its stated purpose and reflect the principles and mandates of the Constitution and National Land Policy. The authors have divided their analysis and recommendations into several key thematic areas, as follow. Appendix I contains a summary of all recommendations.

Additional Sections

Because the confluence of statutory and customary land law in Ghana is complex, and due to the purpose of the bill in streamlining legislation on land rights, it would be helpful to add three specific sections to the bill. The first would include scope and application of the Bill, as well as guiding values and principles. The second would describe the fundamental nature of land rights in Ghana. It could include a description of the primary categories of land rights, as well as a description of tenure types. The third would be an interpretation—or definitions—section.

Institutions

Reviewers make several recommendations to improve the institutional framework of the Land Bill. Drafters could strengthen reference in the Bill to relevant implementing institutions, in order to mitigate problems—such as lack of accountability and transparency—that result from overlapping institutional mandates. The Bill as drafted does not include provisions to ensure the accessibility of land-related services, such as limiting fees and making information on services publically available, which will be necessary to encourage use of those services and formalization of rights. The Bill also grants some land officials broad discretion and makes no allowances for independent oversight of the activities of land institutions and officials. Rights to appeal decisions on land, although included to some extent in the Bill, could be clarified and strengthened.

Customary Land Administration

While the Bill does contain a sub-part on customary land administration, the section is focused almost exclusively on Customary Land Secretariats and lacks supplementary information that could significantly improve the clarity of the customary land administration framework and facilitate harmonization with other land sector agencies and polices. A set of guiding principles could promote improved land administration by articulating agreed upon national expectations around customary land administration. The current draft of the Bill provides little or no guidance on the roles and responsibilities of state land sector agencies with respect to customary lands or the relationships between customary land authorities and the state actors.

The provisions related to the establishment of Customary Land Secretariats lack sufficient detail to guide their development. Additional information could be included on CLSs to clarify: (a) their nature and purpose; (b) the process and procedures for establishment; (c) structure and staffing of the CLSs, and (d) CLS functions and powers, specifically as they relate to collaboration and coordination with land sector agencies.

Compulsory Acquisition

The compulsory acquisition provisions of the bill should comport with and provide guidance for implementing Article 20 of the Constitution in a manner that minimizes the negative effects on the ordinary people whose interests in the land are affected by compulsory acquisition of property. Towards that end the Bill should provide a more precise definition of the term “public purpose” and consider limiting or providing stricter scrutiny of the State’s power to acquire lands for economic development. The Bill also fails to adequately clarify the constitutional requirements that the government must provide justification for the acquisition and make prompt payment of fair and adequate compensation.

With respect to the compulsory acquisition process, additional safeguards and protections are necessary to improve the processes for preliminary investigation, public hearings and consultations, and the adequacy of notice for interested parties in the land subject to acquisition. Reviewers recommend improvements such as: inclusion of provisions providing for legal and technical assistance to disadvantaged groups and individuals in the claims process; clearly identifying the rights and interests in land that may be compensated; identifying a process or mechanism for how compensation will be determined for such things as business loss, crop loss, use and access rights, etc.; requiring that all payments be made within a certain number of days of the award, after which the prevailing commercial interest rate will accrue; and assigning valuation functions and responsibilities to an independent body or commission that is separate and distinct from the Lands Commissions. On dispute resolution, the Bill does not adequately identify the types of issues that can be appealed within the compulsory acquisition process or provide basic procedures for how appeals will be conducted.

Vesting and Temporary Occupation of Land

The reviewers recommend that revisions be made to Section 280 to clarify the purpose and intent of this section and to make clear how the government occupation of land under this sub-part differs from compulsory acquisition. The Bill should establish processes and procedures for carrying out a temporary occupation of land under Section 280 so as to ensure that the rights and interests of communities and people affected by the occupation are protected to the same extent as under the compulsory acquisition process.

Registration

The Bill adopts a title registration approach to all formal registration of land in Ghana. However the Bill does not adequately provide for the national transition from a deeds registration system. In addition, safeguards are needed in the Bill to reduce the Registrar's discretion in some instances, and to ensure that registration services are made accessible and accountable to the public. In the Bill as currently drafted, several critical questions about registration (or recordation) of customary lands remain outstanding: In what circumstances must customary land rights be registered? In title registration districts, how exactly will usufructuary and similar rights be registered? What is the legal status of customarily recorded or registered rights (e.g. those rights recorded with Customary Land Secretariats) vis-à-vis formally registered rights? It will be important to clarify the answers to these questions in subsequent drafts of the Bill.

Gender Considerations

Although the language of the Land Bill is gender-neutral, it does not incorporate gender-based protections enshrined in the Ghanaian Constitution. In addition, the Bill does not contain explicit protections for women's rights on customary land, where customary rules typically discriminate against women's land rights. There is also no protection in the Bill for spousal property rights, leaving women vulnerable to the loss of land they shared with their spouses upon separation, divorce, or death of the husband.

On customary land, the Bill does not adequately address the question of who will be entitled to compensation for land that is compulsorily acquired by the State; without explicit protections for women, it is likely that they will be excluded from compensation due to gender-discrimination in customary rules of land ownership. Finally, the Bill does not include safeguards to address constraints to implementing land legislation on behalf of women, which can include less access to cash, lack of transportation, higher rates of illiteracy, and social/cultural norms that discourage women from accessing available services or pursuing enforcement of their rights through the courts.

1.0 Introduction

This report analyses Ghana's draft Land Bill (Draft 3, 2011). The paper was conducted by a team of legal specialists from Landesa, in conjunction with the Alliance for a Green Revolution in Africa (AGRA)'s¹ Ghana Land Policy Action Node (Node).² The Node is implementing a three-year Land Tenure and Security Improvement Project (LATSIP) for the primary purpose of improving land tenure security for small holder farmers, particularly women, in Ghana. This paper furthers the work of LATSIP. It was reviewed by other Node members and incorporates commentary and inputs from Ghanaian legal expert Sheila Minkah-Premo.³

Landesa is a U.S.-based international NGO that partners with governments of developing countries to improve the legal framework governing land, with the primary goal of improving land tenure security, especially for the rural poor. Landesa specialists have land property rights experience in over 50 nations throughout Africa, Asia, Latin America, the Mid-East, Eastern Europe and the former Soviet Union.

Landesa reviewers analyzed the Bill vis-à-vis key principles established in Ghana's Constitution and National Land Policy, and international best practices for land rights and governance. The stated objective of the draft Bill is to "revise and consolidate statutory laws on land, with the view to harmonizing land policies with existing customary laws to ensure sustainable land administration and management, effective land tenure and efficient surveying and mapping regime and provide for related matters." Pursuant to this objective, reviewers have also commented on the consistency and workability of the legislation, to the extent possible.⁴

While this paper draws broadly from international best practices on land rights and governance, the authors bring a perspective to this work that highlights the need for equitable and secure land rights for small farmers and (especially) for women. This perspective reflects the belief that land can be most productive when it is securely held by those who farm it.

¹ AGRA's primary policy goals are to improve food security in a minimum of 20 African countries, double household income for approximately 20 million smallholder farmers, and to help ensure that at least 30 countries are well-prepared for a Green Revolution by 2020 (AGRA 2010).

² Node members include a broad range of Ghanaian academic and policy experts in the land sector, representing Kwame Nkrumah University of Science and Technology, University of Ghana, National Lands Commission, OASL, COLANDEF, CICOL, Grassroot Sisterhood Foundation, and others. This report represents the views of the authors, and does not necessarily reflect the views of individual Node members or the institutions they represent.

³ Ms. Minkah-Premo is a senior legal practitioner and consultant from Ghana with a Masters Degree in Law (LL.M) and considerable experience in family law, land law and conveyancing. She was the Executive Secretary of the Ascertainment of Customary Law Project (2007 to 2011), a project of the National House of Chiefs and Law Reform Commission on customary law.

⁴ Given the scope of work for this paper, authors were not able to incorporate a comprehensive review of existing land laws to identify legislative gaps and areas of overlap with the Bill.

The paper analyzes the draft Bill in seven primary parts: (1) additional sections; (2) state institutions (land sector agencies); (3) customary land administration; (4) compulsory acquisition; (5) vesting and temporary occupation of land; (6) registration; and (7) gender concerns. A summary table of all recommendations is included in Appendix 1.

2.0 Additional Sections

The draft Bill begins abruptly with Part I on Land Tenure, without preliminary sections setting out the Bill's scope, application and guiding values, or defining the nature of land rights that exist in Ghana. Also, a section or part providing guidance as to how key terms are interpreted seems to be missing.

Adding sections to address these gaps will create more purposeful, focused and easily understandable legislation.

(a) Consider providing preliminary sections on the scope and application of the Bill, and providing guiding values and principles.

It may be helpful to add a preliminary section describing the scope and application of the Bill, and providing guiding values and principles which would be used in implementing and interpreting the law. These principles could be drawn from Ghana's Constitution and National Land Policy.

(b) Consider adding a new preliminary section describing the fundamental nature of land rights in Ghana.

This section would establish:

- (1) The categories of land recognized in Ghana (e.g., customary, public, quasi-public, vested stool lands, and private-freehold); and
- (2) The tenure types recognized in Ghana (e.g., within customary lands: allodial title, customary freehold, usufructuary, communal tenancies and communal rights).

The section would ideally set out the relationship among the land categories (e.g., are all categories equally recognized under the law?), and also between the land categories and tenure types (e.g., which tenure types fall within which categories?). The section would also describe, to the extent possible, the relationship between the tenure types. In this light, drafters might consider whether there are certain aspects of customary rights that could be framed in the law and, in particular, whether there are any protections that might be accorded to certain tenure types in the exercise of customary rights more broadly. The 1992 Constitution provides that the House of Chiefs undertakes to study, interpret and codify customary law,⁵ and

⁵ Article 272(b) of the 1992 Constitution assigns the authority to modify customary law to the National House of Chiefs. The article thus provides that the House of Chiefs "undertake the progressive study, interpretation and

reviewers do not suggest that the Bill seek to infringe on this authority. However best international practices in drafting land legislation, and in fact the express purpose of Ghana's draft Bill, would support attempts in the Bill to better describe the basic tenants and relationships of customary land rights (as they may be interpreted and applied by customary authorities). For example, it would be very useful—if at all possible—for the Bill to clarify the general customary legal position on a usufructuary rights holder's interests vis-à-vis a sale of the land by the allodial title holder.

Some of the information about fundamental land rights exists in different places throughout the draft Bill (including Secs. 1-7⁶ and Sec. 74), but would best be consolidated, expanded upon and presented in a preliminary section. Section 2 of the draft Bill currently provides that (subject to subsection 74(1)), “the bundle of rights and obligations that attach to any form of recognized tenure shall be determined by the applicable source of law which forms the basis of the tenure type.” As the stated purpose for the Land Bill, however, is to “revise and consolidate statutory laws on land,” it seems that where other statutory laws are the source of information on tenure types, this information should be brought explicitly into the Land Bill.⁷ Even when the source of this information on tenure types is common law or customary law, key attributes would ideally be summarized in the Land Bill, as stated above, for the sake of establishing a uniform national legal framework for Ghanaian land rights.

In short: where there is a description of a tenure type in any statutory law, it should be brought into the Land Bill. Where tenure types derive from common law, it would be best to describe key attributes of the common law right(s) in the Land Bill. Where tenure types derive from customary law, it might be possible to describe the general nature of the right(s), explicitly deferring to customary law for further definition.⁸

codification of customary law with a view to evolving, in appropriate cases, a unified system of rules of customary law, and compiling the customary laws and lines of succession applicable to each stool or skin..."

⁷ It is also important, of course, that the language on land rights or tenure types in the Bill align closely with the Constitution. Section 3(2) of the draft Bill appears, however, to be at odds with Article 267(5) of the Constitution, by prohibiting freehold interests in family land. Section 3(2) provides: “No interest in, or right over, any stool, skin, clan or family land in Ghana shall be created, which vests in any person or body of persons a freehold interest howsoever described.” This text is very similar to that used in Article 267(5) of the Constitution, which prohibits freehold interests in stool land. However Article 295(1) of the Constitution excludes family lands from the definition of stool lands. Also, the Supreme Court has held that the limitation on the grant of freehold interest in stool lands provided in Article 267(5) does not apply to and cannot be extended to grants in family lands. (*Republic v. Regional Lands Officer, Ho; Ex Parte Kludze* [1997-98] 1 GLR 1028, headnotes, holding (b).) Therefore the provision in Section 3(2) of the Bill appears to run counter to the Constitution.

⁸ Reviewers understand that the OASL is currently coordinating efforts with CLSs and other stakeholders to ascertain customary law in the CLS areas. A report of ascertainment will reportedly contain a validated table of the hierarchy of land rights in the area. Findings from this exercise could be quite useful to better identifying and defining the nature and characteristics of customary land law in the Land Bill.

(c) Provide an interpretation section.

Adding an interpretation/definitions section at the beginning or end of the Bill will be critical to ensuring a common understanding of the legislation, especially given the many terms of art unique to Ghanaian land law jurisprudence. Examples of such terms include: “clan land,” “family land,” “proprietor,” “registration,” “recording,” “skin,” “stool” and “vesting.” It will be particularly important to define the tenure types, including: “allodial title,” “common law freehold,” “usufructuary title,” “leasehold interest” and “customary tenancies.” While Article 295 of the 1992 Constitution contains some of the relevant definitions, such as those for “stool,” and “stool land,” these would best be repeated in the Land Bill for ease of reference, and in keeping with the stated purpose of the Bill, which is in part to consolidate statutory land laws.

Recommendations on Additional Sections:

- In a preliminary section, consider providing the scope and application of the law, as well as guiding values and principles, in order to support efforts to correctly interpret and implement the law over time.
- Add a new preliminary section introducing the fundamental nature of land rights in Ghana. This section would establish: (1) the categories of land recognized in Ghana; and (2) the tenure types recognized in Ghana. Ensure that any text in this section align closely with the Constitution (and to this end, correct Section 3(2) of the Bill, which contravenes the Constitution by providing that family land is not subject to freehold interests).
- Provide an interpretation section. Adding an interpretation/definitions section will be critical to ensuring a common understanding of the legislation, especially given the many terms of art unique to Ghanaian land law jurisprudence.

3.0 Institutions

3.1 The Land Bill Does Not Provide the Basic Institutional Land Governance Framework

An effective component of any legislation is to clearly identify the powers and functions of the state institutions responsible for the law’s implementation. The Bill as currently drafted cites the specific officials and institutions responsible for implementation of many provisions, notably those related to registration, but does not provide the overarching institutional structure for land governance. It would be useful for the draft Bill to provide some guidance as to the intended institutional structure, as overlapping mandates and lack of clarity with regard to the roles and responsibilities of state land sector institutions could significantly impede implementation of the bill following adoption. This type of section would be typically expected at the beginning of Part Two of the Bill [Land Administration and Management]. The section does not need to provide a complete listing of the functions of the responsible institutions, but

might provide at least a brief description and note any relevant legislation (e.g., the Lands Commission Act, 2008, in the case of the Lands Commission). To the extent that functions contained in the provisions of the Bill overlap with those contained in other pieces of legislation, the Bill should include cross-references. Doing so would help to harmonize and add coherency to Ghana's land legislation and policy as a whole, one of the primary stated aims of the draft Bill.

Recommendations:

- Consider including reference to the basic institutional framework at the beginning of Part Two.
- Include cross-references to relevant legislation throughout the Bill, wherever appropriate.

3.2 The Land Bill Does Not Include Provisions to Ensure Accessibility and Accountability of Land Services

The Land Bill seeks to "ensure sustainable land administration and management." In order to encourage formal recordation/registration of existing land rights and the use of formal channels for transactions, which are vital to the creation of a sustainable system, land administration and management services must be accessible to the general population, including vulnerable groups. Complex, costly and inadequate land administration structures can marginalize the poor or vulnerable by discouraging them from formalizing their rights.

An accessible land administration system should include the following types of services and systems (some of which are discussed in greater detail in the following sections):

- Public access to land records and land information at a cost that is reasonable to the average Ghanaian;
- The availability of land administration services at the most decentralized level feasible;
- Public information on the availability of land administration services and the benefits of their utilization; and
- Public posting/publication of all processes and fees associated with land-related services, in English and local languages to ensure understanding.

Recommendations:

- Include provisions in the Land Bill to improve accessibility of land administration services, including those listed above.

- Require periodic implementation of the Land Governance Assessment Framework, a diagnostic tool developed by the World Bank to provide governments with an objective assessment of land governance in their countries, in order to monitor progress.

3.2.1 The Bill Does Not Limit Fees Associated With Registration and Other Services

Cost is frequently cited as one of the primary constraints to land registration – it can create an insurmountable barrier for the poor, leading to unregistered transactions which can eventually compromise the integrity and effectiveness of land administration systems. Although informal fees drive up cost, formal fees are also an important factor. The cost of registration must be worth the benefit that comes with formalizing rights; if not, rights-holders are much more likely to participate in informal transactions. Formal fees should be kept low whenever possible in order to encourage recordation/formalization of rights and transactions and discourage informal transactions.

The Land Administration Project II has recognized the importance of this issue, as evidenced by the initiation of a review of all policies and legislation on fees and charges related to the land administration system in the country. A key objective of this review will be the recommendation of, “mechanisms to ensure that all land users (including women and other vulnerable groups) can afford access to land services, through a review of fee structures”(LAP 2, 2013). The Land Bill should institutionalize such mechanisms, in part by limiting land administration fees. If possible, the fees may be subsidized by the State in order to drive down the cost to the public. Although the Land Bill imposes a limit on the fee for late registration (Sec. 124), it does not put in place any limits on registration fees (Sec. 189), survey fees (Sec. 189), planning fees (Sec. 189), valuation fees in cases of compulsory acquisition (Sec. 244(5)) and fees charged by the CLSs for services to the public (Sec. 222).

Even where formal fees are minimized, there is a risk that informal fees will drive up the cost to such an extent that people abandon formal channels in favor of informal transactions. There are many fairly simple steps that can be taken to reduce corruption and limit informal costs associated with land administration. Requiring the posting of the official registration process and official fees prominently in land registration offices increases transparency and helps prevent individual officials from taking advantage of people’s lack of awareness to inflate fees. Also, it should be required that receipts be issued at the time payments, and this requirement should be well-posted. Public lists of registration applications – which could include only the plots to be registered, in the interest of individual privacy – can also serve to limit opportunities for corruption by increasing transparency. Finally, the creation of performance standards or codes of conduct for public officials has been shown to improve service-delivery in many countries.

Recommendations:

- Consider adding a provision stating that fees associated with services to the public should not exceed the cost of doing service.
- Require the posting of official procedures and fees in all offices that provide services to the public.
- Consider creating a code of conduct for state land sector officials who provide services to the public.

3.2.2 The Bill Would Grant Land Officials Broad Discretion

As written, the draft Bill grants land officials broad discretion in the exercise of their duties, which presents some risks. First, it increases the likelihood of corruption by providing opportunities for unethical actions on the part of officials. Second, it can cause inefficiencies in the system as a result of lack of technical capacity on the part of individual officials to appropriately exercise that discretion, leading to inconsistent implementation.

Ghana has a strong anti-corruption and accountability framework in place in the form of the Commission on Human Rights and Administrative Justice. The Commission is charged with investigation violations of human rights, including corruption on the part of public officials. The Land Bill does not currently reference the Commission or include provisions that make officials and institutions accountable for their actions.

There are several sections of the Land Bill that grant a high level of discretion to officials which should be revised in order to improve accountability. Sections 78 and 87 give the Director of the Land Registration Division broad discretion to eliminate entries in the land registry and registry map. Section 78(3) allows the Director to omit entries on the registration map that he “considers obsolete,” but does not define “obsolete” or require notification of persons who may be affected by the omission. Similarly, Section 87 gives the Director the authority to strike any entry in the land register that “has ceased to have any effect,” and to do so without notice requirements. Each of these sections should be revised to include requirements that affected persons be notified and given an opportunity to contest such decisions.

Other officials are also afforded broad discretion. Under Section 103(4), parcel boundaries are deemed fixed if marked on a plan verified by the Director of the Survey and Mapping Division. Although the rest of the section requires the Land Registrar to provide land rights holders with notice and an opportunity to be heard prior to the fixing of parcel boundaries, Section 103(4) appears to allow the Director to circumvent these requirements, creating opportunities for corruption. This provision may be a practical necessity for the sake of efficiency. The Director’s power should nevertheless be checked in some way, possibly by requiring public posting of all

maps and allowing rights-holders an opportunity to contest boundaries, even when fixed on maps verified by the Director.

Section 171(4) allows the Land Registrar to refuse to register a caveat if he deems it unnecessary, but does not provide guidance as to when a caveat may be deemed unnecessary. The provision should be revised to include guidance as to the appropriate grounds for refusal. The Registrar can also make changes to the land register; the Bill does not include a requirement that the affected rights-holders be notified or provided an opportunity to contest the change.

Section 220(5) of the Land Bill requires officers of the Customary Land Secretariat to comply with any directions regarding “the proper performance of duties” given by a regional or district lands officer. This provision is particularly overbroad, as it appears to give all lands officers the authority to direct the work of the Customary Land Secretariat.

Independent oversight can also limit corruption and improve service delivery by ensuring that officials and agencies are held accountable for their actions. The Land Bill does not currently include provisions for oversight of land administration and management activities.

Recommendations:

- Limit the discretion of public officials to the extent possible by including requirements that affected parties be given notice and an opportunity to contest the decisions of public officials.
- Require public posting of maps and development schemes, and develop a dispute resolution framework for the contestation of maps and schemes.
- Establish independent oversight of land administration agencies.
- Consider the creation of performance standards and codes of conduct for public officials.

3.3 Rights to Appeal Should Be Clarified and Strengthened Throughout the Bill

The Land Bill allows for appeals of decisions by land actors, but the current structure of the Bill obscures that right in some instances; the appeal right is often contained in a separate section from the one describing the contested decision. Section 190(1) allows for appeals to the High Court, “where the Director or the Land Registrar refuses to perform any act or duty required to be performed by this Act,” and “where a proprietor or other interested person is dissatisfied with a direction, decision or order of the Director or the Land Registrar in respect of an application,” but the powers of the Director and the Land Registrar are described much earlier in the Bill, under Sections 87 and 88. Section 211(6) essentially reiterates the right to appeal to the High Court in cases where the Registrar has refused to register a deed.

Section 190(2) allows for appeals to the High Court where a person is, “aggrieved by a decision of the Land Dispute Settlement Committee,” but provisions related to the establishment and functions of the Land Dispute Settlement Committees are contained in Sections 89 through 102. The person filing the appeal is charged with notifying the Land Registrar in writing of the appeal within 14 days of filing (Sec. 191).

Section 252 states, “any person who is aggrieved by the decision of the Commission may, within 30 days after the date thereof, appeal to the High Court against such decision or in the alternative may resort to the use of arbitration, mediation or any other acceptable dispute settlement procedure.” First, the section is unclear as to the types of decisions to which it refers. Although the surrounding sections deal with compensation for land to be compulsorily acquired by the state, there is nothing in the text of Section 252 to indicate that it applies only to decisions about compensation for compulsory acquisition. Second, 30 days is a very short window of time in which to lodge a claim. A review of other Ghanaian land laws reveals that the time frame for appeals is often longer.⁹ Third, the reference to “any other acceptable dispute resolution settlement procedure” is vague. The Bill should either include a description of the procedures that will be considered acceptable or, in the alternative, direct the Lands Commission or another agency to draft regulations or guidelines on the matter.

The right of appeal should be extended to other parts of the Land Bill. Section 103, discussed above, declares boundaries fixed when included in a plan verified by the Director of the Survey and Mapping Division, but does not include any right to notice or appeal of such determinations. Where no person has been able to make a successful claim to land located in a registration district, the Land Bill allows the State to become the beneficial holder of land, free of all encumbrances and conflicting claims, after twelve years. (Sec. 112(1)). Again, no right to appeal the conversion of the land to State ownership is made available in the Land Bill. This may have its basis in an existing statute of limitations; however, in cases where no actual notice occurs, this provision may allow the State to take control of land that is owned and in use by others. At minimum, claimants should be allowed to present evidence that they received no actual notice that the land had been registered as an interest held by the State, and, if their claim is accepted, be granted an opportunity to appeal the conversion to State ownership.

Recommendations:

- Clarify rights to appeal throughout the draft Bill, either through reorganization of relevant sections in the Bill or cross-references to appeal provisions throughout the Bill.

⁹ Under the Local Government Act, 1993, a person aggrieved by a decision or an action of a district planning authority is given 6 months to appeal (Sec. 57), while the Land Title Registration Act, 1986, does not limit the window of time for appeals (Sec. 131).

- Include guidance as to the appropriate grounds for appeal and the process that will be utilized in deciding cases.
- Increase the window of time for appeals to the extent possible.
- Allow for contestation and appeal of boundaries on maps verified by the Director of the Survey and Mapping Division.
- Revise Section 112 of the Bill to include a right of appeal where claimants received no actual notice.

4.0 Customary Land Administration

4.1 The Bill Does Not Present an Adequate Framework for Customary Land Administration

Unlike some other nations, Ghana does not have a law devoted exclusively to the administration and governance of customary lands. The introduction to the draft Bill (cover page) suggests, however, that one of the goals of the forthcoming legislation is to integrate customary land administration into the legal framework. (“An ACT to revise and consolidate statutory laws on land, with a view to harmonizing land policies with existing customary laws to ensure sustainable land administration and management . . .”) While the draft Bill does contain a sub-part on customary land administration, the section is focused almost exclusively on Customary Land Secretariats and lacks supplementary information that could significantly improve the clarity of the customary land administration framework and facilitate harmonization with other land sector agencies and polices. In providing additional information, the aim would not be to try to capture details of the various customary systems that operate in Ghana. Instead, it would be to include basic framework information that would facilitate clarity with respect to: (a) the categories of land subject to customary land administration; (b) guiding principles for customary land administration; (c) the roles and responsibilities of state land sector agencies in customary land administration; and (d) the responsibilities of customary authorities with regard to land.

(a) Clarify the categories of land that are subject to customary land administration.

Given the multiple categories of land that exist in Ghana, it may be useful to clarify the types of land that fall under customary ownership and administration (see related recommendations on Preliminary Sections, in 2.0 above). One approach that might be considered and that may be the simplest is to define those lands that are not customary (state lands, vested lands and private lands) and clarify that all other lands are within the customary sphere.

(b) Include guiding principles in the Bill for the management and administration of customary lands.

A set of guiding principles could promote improved land administration by articulating agreed upon national expectations around customary land administration.¹⁰ These guiding principles

¹⁰ Note: this section reiterates some of what is presented above in Section 2.0 on Preliminary Sections. Drafters may choose to present guiding principles at the beginning of the new draft Bill, rather than in the part on

could be derived from existing principles and objectives set out in the Constitution and/or the National Land Policy, or they could be developed through some other inclusive stakeholder process. Below are some examples of what these principles might include:

- Traditional authorities shall hold land in trust for the community and its future generations and are expected to distribute and dispose of lands in the interest of and with the consent of the community. (See Const. Art. 267).
- The principle of community participation in land management and land development at all levels, which is vital for sustainable urban and rural land development. (NLP Sec 3.1.).
- The principle of fair and equitable access to and distribution of land and security of tenure. (NLP Sec. 3.1).

(c) Clarify the roles and responsibilities of state land sector agencies and institutions with respect to customary lands.

The current draft of the Bill provides little or no guidance on the roles and responsibilities of state land sector agencies with respect to customary lands or the relationships between customary land authorities and the state actors. This lack of clarity in the law may cause a chilling effect on the effective and efficient implementation of key land administration functions that often require the cooperation of both customary authorities and state land sector actors. Without greater elucidation in the law, both government and customary authorities may lack the direction needed to carry out their roles and responsibilities around key land administration functions. Likewise, citizen compliance and confidence in the law will be jeopardized without some certainty around the framework governing customary land administration functions.

customary lands; reviewers have included a more detailed description of guiding principles here in order to emphasize their particular importance to customary lands.

As summarized in the text box to the right, laws such as the Office of the Administrator of Stool Lands Act (1994) and the Lands Commission Act (2008) provide some information on the role of state land sector actors with respect to customary lands. These could be consolidated and presented – or at least clearly referenced – in the forthcoming land legislation, and additional specific roles and responsibilities could be added. Therefore, it is recommended that sub-part six of the draft Bill be revised to include a section that provides the specific functions and powers of the state land sector agencies with respect to customary land management and administration. The state land sector agencies institutions that one would expect to find covered in this section would include, but not be limited to:

- The Office of the Administrator of Stools Lands;
- The Lands Commission and its decentralized offices;
- Office of Town and Country Planning; and
- District Assemblies.

For this section to be useful as a jurisdictional guide, it should articulate the specific roles and responsibilities of the state land sector agencies with respect to the following key land administration functions/issues:

- Registration, review and recording of leases and transactions on customary lands;
- Land use planning and the development of planning schemes;

Examples of Existing Legal Provisions Related to Customary Land Administration

Office of the Administrator of Stool Lands Act (1994)

- Collection and disbursement of rents derived from stool lands. OASL Act Secs. 2 and 8.
- The Administrator and the Regional Lands Commission shall consult with the stools and any other traditional authorities on matters relating to the administration and development of stool land and shall make available to them the relevant information and data. OASL Act Sec. 8.
- The Administrator shall co-ordinate with the Lands Commission and any other relevant public agencies, traditional authorities and stools in preparing a policy framework for the rational and productive development and management of stool lands. OASL Act Sec. 10.

Lands Commission Act (2008)

The Commission is charged with a number of functions that impact the management and administration of customary lands, including but not limited to:

- Advising and consulting with the stools and other traditional authorities in all matters relating to the administration and development of stool land and sharing all relevant information and data;
- Reviewing transactions and/or development of any stool land to certify that the disposition or development is consistent with the development plan drawn up or approved by the planning authority for the area concerned;
- Advising on, and assisting in the execution of, a comprehensive program for the registration of title to land as well as registration of deeds and instruments affecting land throughout the country;
- Facilitating the acquisition of land on behalf of the government;
- Minimizing or eliminating, where possible, the sources of protracted land boundary disputes, conflicts and litigations; and
- Promoting community participation and public awareness at all levels in sustainable land management and development practices.

Land Commission Act, Secs. 5, 7 and 10.

- Collection and distribution of rents;
- Large scale land acquisitions on customary land;
- Sharing of land information such as maps, surveys, recordations and registrations;
- Capacity development of customary authorities; and
- Government acquisition of customary lands.

(d) Clarify the responsibilities of customary authorities with regard to land.

Because customary authorities play an important role in land administration and management in Ghana, the drafters may wish to consider including a basic framework for their actions. This framework could outline the extent and limits of their powers and require them to comply with the Constitution and customary rules, as well as any codes of conduct issued by the Regional National House of Chiefs.¹¹ Such actions do not appear to exceed the bounds of the Constitution (see Art. 270).

Recommendations on Customary Land Administration:

- Revise the Bill to provide a basic framework for customary land administration that includes:
 - The categories of land that are subject to customary land administration;
 - Guiding principles for the management and administration of customary lands;
 - The specific functions and powers of the state land sector agencies with respect to customary land management and administration; and
 - The responsibilities of customary authorities in land management.
- Consider including a provision requiring customary authorities to comply with codes of conduct issued by the Regional or National House of Chiefs in land-related actions.

4.2 Customary Land Secretariats (Secs. 220-223)

4.2.1 The Bill Does Not Provide Necessary Background on the Nature and Purpose of CLSs

Section 220 launches directly into the functions of Customary Land Secretariats (CLSs) without providing any background on their nature and purpose. Given that CLSs are a relatively new concept, it is recommended that a purpose section be added.

4.2.2 Sec. 220 Requires “Customary Land Owning Groups” to “Establish” CLSs but Does Not Identify the Process or Procedures for How this Is Done

- The requirement that “customary land owning” groups establish a CLS is a new obligation that is being imposed under the proposed legislation. As a relatively new concept that has not previously been codified, one would expect to find some additional information in the legislation or, in the alternative, a requirement to adopt regulations that clarify the process or procedures for establishing a CLS. Some of the issues that would be helpful to clarify include but are not limited to:

¹¹ In-country reports indicate that the National House of Chiefs has recently published an official Code of Conduct, but the reviewers were unable to obtain a copy of the code for review at the time of this writing.

- Whether there are any formal requirements for the establishment of a CLS;
- Whether the state provides any assistance, be it financial or technical, for the establishment of a CLS;
- Whether there are guidelines that have been or will be developed to facilitate establishment and effective functioning of a CLS;
- Requirements for the management of revenues and funds by CLSs;
- The relationship of CLSs to state land sector actors;
- At what land-holding level CLSs must be established (E.g. Sub-chief? Divisional Chief? Paramount Chief?); and
- Whether there is a time period or deadline by which customary land owning groups must establish a CLS.

The Office of the Administrator of Stools Lands has developed a manual that addresses many of the key issues and requirements for establishing a CLS, including many of the issues identified above. It is recommended that this manual either be directly referenced in the legislation or in the alternative serve as the basis for detailed regulations on the CLS formulation process.

4.2.3 The Draft Bill Does Not Contain Any Information Related to the Structure and Staffing of the CLSs

Section 221 ostensibly provides information on the “Structure and Staffing of Customary Land Secretariats.” This section, however, identifies no requirements nor provides any guidance other than to say that a CLS may have a coordinator and staff as necessary for effective functioning. While it is certainly understandable for the State to want to provide significant flexibility to traditional authorities in establishing CLSs and to not impose unnecessarily on customary governance issues, some guidance on the structure and staffing of CLSs, even in the form of recommendations rather than requirements, could be extremely useful.

For example, are there particular experiences or skills that are highly recommended for staff members that would enhance their ability to effectively carry out CLS functions? Are there structures and/or requirements related to financial management that could improve transparency and reduce the likelihood of corruption? Should CLSs have an obligation to promote the representation of women on their staff (see Const. Art. 35(6)(b))? Must CLS staff members be compensated? And if so, where do these funds come from? The drafters might consider addressing these issues in the Bill as a means to improve the effective functioning of the CLSs.

4.2.4 Consider Additional Functions and Powers for CLSs

Sec. 220(2) provides a relatively comprehensive list of the functions and responsibilities of a Customary Land Secretariat. There are, however, several additional functions that the Land Administration Project and Office of the Administrator of Stools Lands have previously identified as responsibilities of the CLSs. Therefore, it is recommended that these additional functions be added to this list, including:

- Collaborate with state land sector agencies and District Assemblies in land use planning;

- Share land information with state land sector actors; and
- Serve as a source of land information for the public.

In addition to the above, the reviewers recommend that Section 220(2)(a) be revised to provide that a CLS shall: “record the rights and interests in land, *including farmland*, keep and maintain accurate and up-to date records of land transactions in the Customary Land Secretariat area.” (Emphasis added.)

The recordation of farmlands by Community Land Secretariats is still a concept in its infancy in Ghana. To make the practice attractive for rural communities and individual farmers, consideration should be given to modifying existing recordation practices so as to create a recordation process that is simple, not cost prohibitive, and easily accessible. This might include adopting lower fee structures and lowering survey accuracy requirements for farmland recordation. To assist CLSs in recording interests in farmlands, it is recommended that the legislation require the adoption of regulations that clarify the process for recording the rights to farmlands. In the alternative, the legislation could require OASL to adopt guidelines for recordation of farmlands.

4.2.5 Consider Additional Accountability Provisions for CLSs in the Draft Bill

The only accountability provision in the current draft of the Bill is the requirement that a CLS prepare a periodic account of all revenue received in accordance with Article 36(8) of the 1992 Constitution (see Sec. 220(2)(g)). To further protect the public interest, it is recommended that additional accountability provisions be included in the legislation, including requiring:

- The development of an annual report on the CLS’s activities, accomplishments and financial accounts. This report would be submitted to the OASL and/or Lands Commission for review but would also be made available for review by the general public;
- That all fees charged by a CLS for services be posted and made available to the public, and provided to clients in advance of any services rendered;
- That all revenues received by a CLS from any of the sources listed in Section 223 be kept in a separate account registered to the CLS; and
- That every CLS develop and submit to the OASL for approval a business plan that outlines systems and mechanisms for financial transparency and sustainability.¹²

4.2.6 Ensure that Fees Charged for CLS Services (Sec. 222) Are Reasonable

Section 222 grants CLSs the authority to charge and collect fees for services they render to the public. As discussed above in Section 3.2 of this paper, it is well established from experiences around the world that the public will not utilize land administration services if fees are unreasonable or if there is not a perceived benefit. At the same time, CLSs will be struggling to generate revenue and will be under pressure to maximize the fees that are charged. The legislation should attempt to address this conundrum by requiring that fees charged by CLSs be

¹² Under LAP2, OASL has retained consultants to facilitate the development of a business plan for CLSs. See, <http://www.ghanalap.gov.gh/index.php/procurement-news/281-lap-2-contract-award-2>.

reasonable and, as recommended above, require that all fees be posted and made available to the public.

While a provision has been made in Section 223 to allow for state funding of CLSs, the language is non-specific with respect to the amount that must be paid, providing only that “*a portion*” of the revenues paid to the District Assembly and land owning groups by the Office of Administrator of Stool Lands may be a source of funds. (Sec. 223(a) and (b)). Not only is the current language unclear as to the appropriate “portion” that must be paid, it also fails to address which institution makes this decision (OASL? The District Assembly? The land owning group?). A likely result of this lack of clarity in Section 223 is unpredictable and uneven funding of CLSs across different areas of the country and over time. It is recommended that Section 223 be revised to provide a clear formula for consistent levels of OASL support that will allow CLSs to carry out their basic functions.

Recommendations on Community Land Secretariats:

- Provide a purpose section that includes background information on the nature and purpose of CLSs;
- Revise the Bill to provide additional information on the process and procedures for establishing a CLS;
- Provide additional information related to the structure and staffing of the CLS, even if in the form of guidance as opposed to a requirement;
- Consider adding additional functions and powers for CLSs related to collaboration with land sector agencies and the sharing of information with the public and LSAs;
- Consider additional accountability provisions for CLSs, particularly related to finances management; and
- Ensure that fees charged for CLS services are reasonable and that CLSs have a sustainable source of funding. Drafters might consider including a specific state funding mandate or mechanism for CLSs in the Bill.

5.0 Compulsory Acquisition

5.1 Background Provisions from the Constitution and NLP

Compulsory acquisition is the power of the State to extinguish or acquire any title or other interest in land for a public purpose. Ghana’s Constitution allows for compulsory acquisition of property only where:

- (a) the taking of possession or acquisition is necessary in the interest of defense, public safety, public order, public morality, public health, town and country planning or the development or utilization of property in such a manner as to promote the public benefit; and
- (b) the necessity for the acquisition is clearly stated and is such as to provide reasonable justification for causing any hardship that may result to any person who has an interest in or right over the property.

(Const., Art. 20 (1).)

The Constitution further requires the prompt payment of fair and adequate compensation and a right of access to the courts for any person to appeal the determination of his interest or right and the amount of compensation to which he or she is entitled. (Const., Art. 20 (2).) Where the acquisition of land by the state involves the displacement of inhabitants, the Constitution further requires the resettlement of displaced inhabitants on suitable alternative land “with due regard for their economic well-being and social and cultural values.” (Id.)

The National Land Policy addresses compulsory acquisition in several sections, reiterating the fundamental principles found in the Constitution, including:

- Ensure the payment, within a reasonable amount of time, of fair and adequate compensation for land acquired by government from stool, skin, or traditional council, clan, family and individuals. (NLP at 3.3.)
- Compensation to be paid for land through compulsorily government acquisition will be fair and adequate and will be determined, among other things, through negotiations that take into consideration government’s investment in the area. (NLP at 4.2(e).)
- “No interest in or right over any land belonging to an individual, family, clan, stool or skin can be compulsorily acquired without payment, in reasonable time, of fair and adequate compensation.” (NLP at 4.3(d).)

5.2 The Power of the State to Acquire Land (Sec. 225)

(a) Consider providing a more precise definition of the term “public purpose” and limiting or providing stricter scrutiny of the State’s power to acquire lands for economic development.

Section 225 of the Bill identifies the authority of the state to compulsorily acquire property. As currently drafted the Bill would grant authority to the state to acquire lands for traditional “public purposes” such as “defense,” “public safety,” “public order,” “public health” and “planning,” but also for more wide-ranging, and less well-defined purposes such as “to secure the development . . . of land for a purpose . . . beneficial to the community” and “the economic well-being of the country.” While these latter provisions may be defensible under the language of the Constitution, they could potentially be used to justify almost any type of acquisition by the State.

An exercise in compulsory acquisition is more likely to be regarded as legitimate if land is taken for a purpose clearly identified in legislation. An exclusive list of purposes reduces ambiguity by providing a comprehensive, non-negotiable inventory beyond which the government may not compulsorily acquire land. The Land Act (2012) of Kenya provides a good example of such legislation and is set out below:

Definition of “Public Purposes” in the Land Act (2012) of Kenya

“public purposes” means the purposes of—

- (a) transportation including roads, canals, highways, railways, bridges, wharves and airports;
- (b) public buildings including schools, libraries, hospitals, factories, religious institutions and public housing;
- (c) public utilities for water, sewage, electricity, gas, communication, irrigation and drainage, dams and reservoirs;
- (d) public parks, playgrounds, gardens, sports facilities and cemeteries;
- (e) security and defence installations;
- (f) settlement of squatters, the poor and landless, and the internally displaced persons; and
- (g) any other analogous public purpose;

Land Act (Kenya), 2012, Sec. 2.

Another area that is particularly rife with controversy is the taking of lands by governments for economic development. This is particularly true when governments use open-ended authority to acquire land and then transfer the rights over the land to private investors/developers on the justification that such acquisition leads to economic development. To address this issue, the law could prescribe additional requirements that must be met and/or guidelines that must be followed when the government is acquiring lands for economic development and, more specifically, when the government intends to acquire land for private development. The guidelines should aim to ensure that there is a true public need for the land and that the public benefit outweighs the burden placed on land rights holders. Indeed, the Constitution would appear to require nothing less than this as it provides that land may only be taken compulsorily for development if: (a) it promotes the public benefit; (b) the necessity for the acquisition is clearly stated; and (c) reasonable justification for causing any hardship to persons with an interest in or right over the property has been provided. (Const., Art. 20 (1).)

Recommendations:

- Consider revising Section 225 to provide a more detailed definition of the term “public purpose.”

- Consider revising Section 225 so that proposals to acquire land for development undergo strict public scrutiny to ensure that there is a true public need for the land and that the public benefit outweighs the burden placed on land rights holders.

(b) Clarify that the State must justify the need for acquiring land.

The authority of the State to acquire land is premised on the constitutional requirement that the government provides the “necessity for the acquisition” and gives “reasonable justification” for any hardships caused to persons with an interest in the property being acquired.” Given that these are mandated prerequisites for government acquisition of land, they should be stated upfront in the section that lays out the state’s authority to acquire land. (Currently, Section 225 provides this overview of the state’s authority.) While Section 235 of the draft Bill attempts to satisfy this constitutional requirement by mandating that the government publish information in the Gazette that the land in question is required for a public purpose, this falls short of explaining the “necessity for the acquisition” and “reasonable justification” for any hardships as required by the Constitution.

Recommendation:

- Revise Section 225 so as to clarify that the government must provide information justifying the “necessity for the acquisition” and “reasonable justification” for any hardships caused to persons with an interest in the property being acquired.

(c) Clarify that the State must make “prompt payment of fair and adequate compensation.”

As noted above, the Constitution requires the State to make “prompt payment of fair and adequate compensation” when compulsorily acquiring lands. (Const., Art. 20(1).) This constitutional mandate, however, is not adequately incorporated into Section 225(2) of the draft Bill, which provides only that the State shall “pay such compensation therefor as may be agreed upon or determined under the provisions of this Act or any other law not inconsistent with the provisions of this Act.” To insure that both “prompt” and “fair and adequate” compensation is paid to claimants, drafters may want to consider requiring the establishment of an escrow account. The state institution requesting the acquisition would pay moneys into the escrow at the outset of the acquisition process. This would ensure that a minimal level of funding is available for compensation. As claims are resolved and valuations completed, compensation could be paid promptly from the escrow account, thus ensuring that there is not a long delay in the payment of claims.

Recommendations:

- Section 225 should be revised to specifically incorporate the constitutional mandate that the government make “prompt payment of fair and adequate compensation” when acquiring property.
- Consider requiring the establishment of an escrow account out of which claims could be paid.

(d) Clarify that the compulsory acquisition provisions of the Bill apply to customary lands.

It is assumed, but not made expressly clear, that the provisions related to compulsory acquisition set forth in the draft Bill apply to all lands in Ghana, including state acquisition of customary lands. Although the Constitution does not specifically identify customary lands in the provisions related to compulsory acquisition, it does provide that “No property of *any description or interest in or right over any property* shall be compulsorily taken possession of or acquired by the State unless . . .” (Emphasis Added.) The National Land Policy is more explicit in its inclusion of customary lands within the context of compulsory acquisition, noting that “No interest in or right over any land belonging to an individual, family, clan, stool or skin can be compulsorily acquired without payment, in reasonable time, of fair and adequate compensation.” (NLP at 4.3(d).)

Recommendation:

- The Land Bill should be revised in Section 225 to clarify that the compulsory acquisition provisions apply to customary lands.

5.3 The Process for Compulsorily Acquiring Land

Process is important within the context of compulsory acquisition because it helps ensure that government use of its acquisition power is efficient, fair and legitimate. (FAO 2009.) The compulsory acquisition process should be clearly defined in law so that all stakeholders involved have access to critical information related to their rights and responsibilities. As a matter of international best practice, the compulsorily acquisition process generally includes the following stages:

- *Planning and Publicity:* The purpose of the planning and publicity phase is for government to assess the need, location and impact of the project and to try to ensure that all persons affected by the project have relevant information about the project and the acquisition process.
- *Valuation, Claims and Payment:* This stage generally includes information pertaining to the notice of intent to acquire land, the submission of claims for compensation, the valuation process and the timing of payment of compensation.
- *Hearings/Appeals:* The appeals process clarifies the types of appeals that can be heard and the procedures for pursuing appeals.

As currently drafted, the Land Bill does not articulate a clear and coherent framework for how the compulsory acquisition process will work. For example, Sec. 239 of the Bill addresses the submission of claims for compensation by parties with an interest in land that is being acquired. This section, however, precedes the section that requires the government to serve notices on interested parties (Sec. 245), thus creating confusion. Likewise, Section 244 discusses awards of compensation by the Lands Commission; however, this section comes before the sections that detail how compensation is to be assessed. (Sects. 247 and 248). Where the Bill does provide process provisions, key information is often missing or is found in other unrelated provisions.

The remainder of this section of the paper identifies some key issues and recommendations within each of the three process stages identified above.

5.3.1 Planning and Publicity Stage:

(a) Expand the concept and scope of the preliminary investigation (Sec. 229).

Section 229 of the draft Bill contemplates a “preliminary investigation” in which the Lands Commission authorizes a survey and review to determine the suitability of the land to be acquired. While a site survey is one element of the acquisition planning process, it is a fairly limited tool to determine the appropriateness of a site for a public project. For this reason, international best practice typically embraces a more robust planning and preliminary investigation stage that includes:

- An examination and evaluation of alternative sites, with the goal being to identify a site that has the fewest overall human, economic and environmental impacts.
- An impact assessment developed with the assistance of affected communities that investigates the social, economic, and environmental impacts of the acquisition, and methods and mechanisms to mitigate identified impacts.
- A preliminary inventory of owners, occupants and anyone using or benefitting from the use of the land that is to be acquired. This inventory can utilize the idea of self-identification, but should also be based upon a set of established principles that prioritize social inclusion of all individuals and groups, with particular emphasis on the groups most vulnerable to exclusion, such as women and youth, across the affected community.
- Creation of a public outreach plan that identifies how communities and stakeholders can and will be involved throughout the acquisition process; and information on how and where communities and stakeholders can receive financial and technical support necessary to meaningfully participate in the process.

(b) Revise the draft Bill so that public hearings and consultations are focused on the exchange of information between the government and stakeholders.

Public meetings and hearings should be held to allow affected stakeholders the opportunity to learn more about an acquisition, provide input on a project and learn about the process and procedures for meaningfully participating in the acquisition and appellate process. While Section 231 of the draft Bill requires the government to conduct a public hearing and consultation with affected stakeholders prior to the acquisition of any land, it does not oblige the government to provide any information to stakeholders in advance of, or at, these hearings.

In order for the public consultations contemplated under Section 231 to be meaningful, the draft Bill should be revised to require that: (a) hearings and consultations be held at times and places that are convenient for affected persons, specifically including women; (b) key documents be available to the public, preferably in local languages, that describe the land to be acquired, the main features of the project, the projected impacts (e.g. the results of the preliminary investigation; (c) the process and procedures for public review and for submitting

claims for compensation be made available; and (d) information on the process for submitting oral and written comments on the project be made available.

(c) Notice requirements for compulsory acquisition do not provide sufficient protection for interested parties in the land subject to acquisition.

The purpose of notice requirements is to provide information to people affected by an acquisition so that they are aware of their rights. Effective notice provisions essentially answer four critical questions: (1) Who must be provided notice; (2) What information must affected stakeholders be provided with; (3) When must notice be served; and (4) How must notice be provided or served to affected individuals. The draft Bill does not provide a coherent framework for answering these four questions given that the notice provisions are spread across several different sections of the Bill and are missing key information that affects the legal protections afforded to interested parties in the land subject to acquisition.

To clarify and improve the notice provisions, Sections 230 and 241 could be combined into a single provision. The new section should utilize information in the existing provisions as well as the additional information provided below to answer each of the four questions raised above.

Who must be provided notice? Section 241 provides a list of those individuals that must be served and includes occupiers, registered proprietors, and generally, any person with an interest in the land. Identifying persons with such interests can be challenging. Therefore, the Bill should make clear that service should be performed as widely as possible and should be based upon a set of established principles that prioritize social inclusion of all individuals and groups across the affected community. Similarly, the Bill should better clarify that interested parties in land subject to compulsory acquisition include spouses and children.

What information must affected stakeholders be provided with? Neither Section 230 nor Section 241 provides clarification of the type of information that must be provided in the notice provisions. The failure to include this information significantly jeopardizes the ability of affected individuals to protect their legal rights and interests. Indeed, the current law on compulsory acquisition, the State Lands Act of 1962 (Act 125), provides a starting point for the type of information that should be included in the notice provisions. (See State Lands Act of 1962 (Act 125), Sec. 2.) Going further however, best practice dictates that notice provisions should (a) identify the lands to be acquired, (b) explain the purpose and justification of the acquisition, (c) clarify the rights of owners, occupants and other interested parties to appeal the basis of the acquisition and/or submit a claim for compensation, (d) clarify the timelines and other administrative requirements for submitting claims and (e) provide information on where and how parties can receive financial and/or technical assistance with their claims. It is recommended that the Bill be revised to prescribe the type of information that must be provided in the notice provisions.

When must notice be served? Neither Section 230 nor Section 241 provides any information on when affected individuals must receive notice. Generally, notice should be given as early as possible and it is common in many countries to provide at least 3-6 months' notice in order to

safeguard the rights of affected individuals. The draft Bill should be revised to include specific information on the timing of the notice requirements.

How must notice be provided or served to affected individuals? Under Section 230 sufficient notice may be served through: personal delivery; leaving notice at the last place of abode or business; leaving notice with the occupier of a property or his agent; affixing it to some prominent part of the land; serving notice to the appropriate corporate representative; and placing the notice in the Gazette and in a newspaper circulating in Ghana. While these provisions offer a good start, they could be improved by requiring that notice provisions: (a) be displayed in public areas near the land to be acquired; (b) be circulated in local newspapers, publications and radio programs; and (c) be provided in local languages.

Planning and Publicity Stage Recommendations:

- *Preliminary Investigation.* Expand the Concept and Scope of the Preliminary Investigation to require that alternative sites are analyzed; that the social, economic and environmental impacts of a project are reviewed; that an inventory of affected owners and occupants be developed; and that a public outreach plan be created.
- *Public Hearings and Consultations.* Revise the provisions related to public hearings and consultations to require that key information related to the project and the acquisition process be provided to the public, and require that the meetings be held at times and places that allow for participation by affected populations.
- *Notice.* Combine the two existing notice provisions into a single provision that fully addresses the questions of (1) Who must be provided notice; (2) What information must affected stakeholders be provided with; (3) When must notice be served; and (4) How must notice be provided or served to affected individuals.

5.3.2 Claims, Valuation, and Payment Stage

(a) The Bill should prescribe a date on which valuation will be determined.

Legislation should identify a definitive date at which the land will be valued. This is important because the value of land, especially land targeted for acquisition, can change rapidly. An equitable approach that would be fair to both claimants and the acquiring entity would be to link the valuation date to the publication of notice in Gazette. (Sec. 235.) Therefore, it is recommended that Section 235 be amended to clarify that the valuation date for claims shall be the date that the notice of acquisition was published in the Gazette.

(b) The claims process articulated in the draft Bill should commence upon service of notices as opposed to the date a declaration is published in the Gazette.

Section 239 sets out the process and procedures for interested claimants to submit claims to the Lands Commission. As currently drafted, the six month period for submitting claims commences from the date that the Commission publishes a declaration in the Gazette that the land is needed for a public purpose. (Sec. 239.) A more suitable date for commencing the claims deadline would be the date that notice is served on individuals. (See Secs. 230 and 241.) The

reason for this is that most people, and in particular rural farmers, are not likely to receive or be aware of information published in the Gazette. In contrast, service of individual notices (as well as local publication of notices) is far more likely to actually apprise people of their rights and the relevant deadlines for submitting claims.

(c) An equitable claims process should include provisions on the availability of legal and technical assistance to disadvantaged groups and individuals.

Navigating the compulsory acquisition process can be extremely challenging for the poor. This is especially true with respect to the claims and valuation process which require an understanding of legal processes and technical valuation issues. Many people and communities lack the skills and financial resources necessary to meaningfully participate and safeguard their rights within the compulsorily acquisition process. To address this challenge and assist the poor in protecting their rights the legislation should provide a means for affected people to access professionals with the technical skills necessary to assist them through the compulsorily acquisition process. This could be done by either having the acquiring agency directly provide independent lawyers, valuers and other professionals to affected individuals and communities or, as part of the compensation package, the government could provide funds up-front for affected individuals to retain the necessary professional assistance.

(d) The rights and interests in land that may be compensated are not expressly articulated in the Bill.

The Bill does not identify the rights and interests in land that may be compensated when land is compulsorily acquired. As a result, potential claimants may not be aware of types of losses that they may claim under the law. A non-exclusive list of the types of claims that are potentially compensable would greatly increase awareness and understanding of a claimant's rights. Such a list might include the following types of interests that are compensable:

- Value of the land
- Value of improvements
- Value of displaced business
- Costs of moving
- Legal and professional costs
- Present and future loss of crops
- Disturbance and disruption costs
- Loss of shared resources
- Injurious affection and severance

One of the challenges in addressing compensation issues is finding the right balance between what should be included in the law and what should be reserved for more detailed regulations. The Minerals and Mining Act of 2006 utilizes a format that could be replicated for the land legislation. The Minerals and Mining Act specifically articulates the rights and interests for which owners, occupiers and users will be compensated for loss. (Minerals and Mining Act of 2006, Sec. 74). However, the detailed process and procedures for determining compensation values is left to regulations. Similarly, the land legislation could articulate a list of compensable

interests, like the one above, and leave the rules for determining values for each of these interests to the regulations. If this approach is taken, however, it is recommended that the legislation specially mandate that regulations be adopted to address the compensation process.

Compulsory acquisition of customary lands poses special challenges and concerns. In particular, the various and unique tenure arrangements, as well as the wide-variety of individual and shared resource uses can make the identification of compensable interests and the valuation of those interests challenging. This is especially so for women, whose rights to land are often gained through a relationship with a community member (husband, father, child); yet, if women perform a lot of the agricultural labor (or at least predominantly use land to grow food for the family) they stand to bear the costs of loss of the benefit of use and could have fewer available options for addressing the loss (e.g. may not be as employable as labor, fewer options for acquiring other land, etc.).

Given that 80% of the lands in Ghana fall under customary ownership it is recommended that the Land Bill include a new section which specifically addresses how compensable interests on customary lands will be identified and valued. This process could be included as part of the preliminary investigation discussed above. A good resource for identifying the nature and scope of customary rights that may be compensable is the Asian Development Bank's Summary of the Handbook on Resettlement: A Guide to Good Practice (1998).¹³

(e) The Bill does not articulate a process for how compensation will be determined for such things as business loss, crop loss, use and access rights, etc.

While the Bill provides extensive information on how land will be valued (Sec. 247), it provides little to no information on how other compensable interests such as loss of business, loss of crops and loss of use and access rights (to name just a few) will be compensated. The legislation should identify a process and/or mechanisms for how these other compensable interests will be fairly and effectively be resolved. Inclusion of this information in the law, or perhaps more appropriately in a set of comprehensive regulations that address the multitude of compensable interests will promote transparency and ensure that compensation decisions on these matters are not determined arbitrarily but rather are based upon established criteria and mechanisms.

(f) The Bill relies on the acquiring agency (Lands Commission) to determine compensation rather than an independent uninterested entity.

Many countries have recognized that there is an inherent conflict of interest when the acquiring agency also serves as the valuer in the compulsory acquisition process. (FAO 2009.) To address this issue, some countries have adopted legislation that identifies independent commissions or agencies to conduct valuations. This approach is recognized as being much more impartial and transparent and has therefore been accepted as an international best practice. Therefore, it is recommended that the Land Bill be revised to assign valuation functions to an independent body or commission that is separate and distinct from the Lands Commissions.

¹³ Available at <http://www.adb.org/documents/summary-handbook-resettlement-guide-good-practice>.

(g) The Bill does not establish a specific time requirement by which the government must pay full compensation. Instead the Bill allows the government to take possession of the land prior to full payment.

Section 257 of the draft Bill provides that the government may take possession of any land “. . . of which an award has been made under Section (244).” Section 254 deals with the payment of compensation, and, significantly, does not set a timeframe for when the payment of compensation must be made after an award has been made. Thus, no bright-line exists to make it clear when the government must actually provide full or at least a substantial payment of the compensation award. Anecdotal evidence received by Landesa in field research conducted in the Northern Region in May 2013 suggested that the government often takes possession of land through adverse possession before payment is made and that in some cases it can take years for full payment to be received.

As noted above, the Constitution specifically requires “the *prompt* payment of fair and adequate compensation.” (Emphasis added.) Likewise, international best practice dictates that possession not be taken until all, or at least a substantial portion of the agreed upon compensation has been paid. (FAO 2009.) The reason for this is simple; once governments have taken possession of the land they need, the incentive for making payments quickly diminishes. To guarantee that the rights of claimants are respected and that compensation awards are paid promptly, the legislation should specifically require either: (1) that compensation be paid in full before possession, or (2) provide specific timelines for government to make payment, subject to strict penalties for non-compliance.

Section 253 addresses delays in the payment of compensation and provides that claimants may appeal to the High Court for the purpose of obtaining prompt payment. The section also provides that the High Court may add interest to the total compensation at a rate of five (5) percent per annum in cases where a claimant appeal has been upheld. The concern with this section is that claimants would not be entitled to interest on delayed payments unless they first appealed the matter to the High Court, which is both time-consuming and costly. A more equitable approach would *require* that all payments be made within a certain number of days of the award. Sixty (60) days might be an appropriate amount of time to allow the government to make payment. After the expiration of the allowable payment period (e.g. 60 days) interest would automatically begin to accrue on the award. In this way, all claimants that are aggrieved by delays in the payment of compensation would receive the benefit of the additional interest payment, as opposed to only those that have the resources to appeal to the High Court.

Another concern with Section 253 is related to the appropriate interest rate on unpaid awards. Rather than arbitrarily designate five (5) percent per annum as the interest rate that may be charged, it would be more equitable to tie the interest rate paid to the prevailing commercial rate of interests. Using the prevailing commercial rate will more accurately reflect the forgone cost to the claimant, and given that the commercial rates are typically higher than five percent, will serve as a deterrent against the government dragging out payment of the award.

(h) The draft Bill makes no provision for determining which members of the family will suffer loss, and which should be paid compensation. This is a potentially serious issue for family members (spouses, children) who are not “head of household.”

Within communities and households, the losses suffered as a result of a government taking of land can vary significantly. For example, if the land taken by the government is forestland used primarily for gathering forest products, then women's livelihoods may be most impacted by the taking. However, if compensation for the acquisition is paid only to heads of households in a community, men will most likely receive the majority of the benefits. (FAO 2009.) Thus the challenge of ensuring that appropriate compensation is paid and distributed equitably across the household is twofold. First, the legislation (or regulations) should ensure that all household losses are identified and valued in the claims and compensation process. As has previously been noted, there are often multiple, overlapping rights to the same area of land, and all of those who use and/or rely on the proceeds from the land will be impacted by the loss. For example, different household members may have different rights to the same forestland where, for example, the man uses the forest to collect timber for sale, and the woman may gather other forest products which she either sells or uses to feed her family. Both will suffer loss if the forestland is taken, but the loss is different for each (different value of products on the market, different responsibility in the home and to the family that rely on those products). To address these issues, the legislation should establish a set of principles or require regulations that aim to ensure that all losses suffered by households are identified in the claims and compensation process.

Second, the legislation should seek to identify alternative mechanisms to ensure that compensation awards are distributed equitably both within communities and within households. One approach to consider might involve the creation of trust accounts for compensation to be paid into for the loss of communal resources. The beneficiaries of the trust would be members of the community that suffered a loss as a result of the taking of the community resource. Trustees could be identified to develop procedures for claims and for ensuring that the proceeds of the trust are distributed fairly and equitably.

(i) The Bill does not define or provide parameters for what constitutes urgent cases under Section 258.

Section 258 grants the Lands Commission the power to issue a Certificate of Urgency and take possession of land after 14 days' notice if the Commission has determined that the land is urgently required for a public purpose. The terms "urgent cases" and "urgently required" lack definition in the Bill. To justify this broad use of authority and to better protect the rights of interested parties, the Bill should define these terms, perhaps offering a list of examples of when land would be considered "urgently required."

Claims, Valuation and Payment Stage Recommendations:

- Identify a date on which valuation will be determined (preferably the date of notice in the Gazette.)
- Revise the claims process so that the timeline for filing a claim commences upon service of notices as opposed to the date a declaration is published in the Gazette.
- Include provisions providing for legal and technical assistance to disadvantaged groups and individuals in the claims process.
- Identify the rights and interests in land that may be compensated.
- Identify a process or mechanism for how compensation will be determined for such things as business loss, crop loss, use and access rights, etc.
- Require that all payments be made within a certain number of days of the award, after which the prevailing commercial interest rate will accrue.
- Assign valuation functions and responsibilities to an independent body or commission that is separate and distinct from the Lands Commissions.
- Clearly identify the basis of the valuation for compensation, e.g. (i) market value, (ii) resettlement and/or (iii) land of equivalent value and make clear these are alternatives to each other and may be used as appropriate and as set out in the detailed regulations governing valuation and compensation.
- Include provisions that ensure that the distribution of compensation is equitable within communities and families.
- Define or provide parameters for what constitutes urgent cases under Section 258.

5.3.3 Hearing/Appeals Stage

(a) The draft Bill does not expressly identify the specific issues that can be appealed within the compulsory acquisition process.

Section 252 provides that persons aggrieved by a decision of the Commission may appeal to the High Court or resort to the use of alternative dispute mechanisms. Significantly, however, the section does not prescribe the types of issues that can be appealed. Generally, compulsory acquisition laws identify three types of appeals that may be taken:

- *Appeals against the purpose of the project.* These types of appeals challenge that the project does not serve a public purpose, that a particular parcel is not needed or that the project should be located elsewhere.
- *Appeals against the procedures.* These types of appeals typically allege that the government did not follow the procedures required under the law. (E.g. related to notice or timing.)
- *Appeals against the compensation award.* These appeals challenge the valuation principles/methodology used or challenge that the compensation is unjust or fails to include compensable interests.

(FAO 2009.)

In order to protect the rights of the people against arbitrary government action and to conform the Bill to international best practices the legislation should be revised to expressly identify the three types of appeals that can be taken.

(b) There are no provisions within the Bill identifying the procedures for how appeals will be conducted.

Neither Section 252, nor any other section in the draft Bill provides any guidance on how appeals will be conducted. For the appeals process to be effective and seen as legitimate, people must know the basic rules. This includes basic information on:

- Which bodies or courts will hear specific types of appeals (identified as the High Court in Sec. 252);
- The time limits for bringing an appeal;
- What kinds of evidence can be used; and
- Which party has the burden of proof.

While some of this information can and should be provided in administrative regulations, the law should provide the basic framework for how the system works.

(c) Consider creating an administrative appeals process that would allow for a special commission or other body to hear claims before resort to the High Court.

The draft Bill currently requires that all claims against the Commission be made to the High Court. An appeal to a court can often be expensive, time consuming and simply not feasible for many people. To address these challenges, some countries have elected to establish administrative courts or special commissions to hear initial compulsorily acquisition claims. Such entities, are generally far more cost effective (for both the government and the claimants), more accessible to the people, and can be composed of experts who are well versed in compulsory acquisition matters. Consider revising the draft Bill to incorporate the use of special commissions or administrative courts to hear claims of first impression.

Hearings/Appeals Stage Recommendations:

- Expressly identify the three types of issues that can be appealed within the compulsory acquisition process. (Appeals against the purpose; appeals against the process; and appeals against the compensation award.)
- Revise the Bill by adding provisions that identify the basic procedures for how appeals will be conducted.
- Consider creating an administrative appeals process that would allow for a special commission or other body to hear claims before resort to the High Court.

5.4 Other Issues Related to Compulsory Acquisition

(a) Use of the phrase “Conclusive Evidence.”

The term “conclusive evidence” is defined as evidence which cannot be contradicted by any other evidence.¹⁴ Use of the phrase “conclusive evidence” in Sections 235(2) (Declaration of Project Need) and “final and conclusive evidence” in Section 244(2) (Awards) implies that this evidence is incontrovertible and that no appeal may be made on these matters. This is not, in fact, the case, because later sections make clear that appeals as to the award of compensation are allowed. Consider using a different phrase other than “conclusive evidence” in Sections 235 and 244 in order to more clearly convey the intended meaning.

(b) Resettlement of displaced person (Sec. 275).

It is not clear how this section fits in with all of the previous provisions (Secs. 225-274) related to compulsory acquisition. For example, are the resettlement provisions of Section 275 an alternative process that can be followed in lieu of the compulsory acquisition (Secs. 225-274)? If so, when are the different processes applicable and/or who makes the selection as to what process will be followed? Or, are the provisions of Section 275 only intended to apply to informal rights holders that inhabit land being acquired? Or, is resettlement under Section 275 intended to serve as an alternative form of compensation when certain factors are present? Needless to say, the purpose and intent of Section 275 is less than clear as it currently reads. It is recommended that the section be revised to clarify its applicability and also the relationship between the compulsory acquisition process and the resettlement process. More specifically, the legislation should clearly articulate the basis of the valuation for compensation, e.g. (i) market value, (ii) resettlement or (iii) land of equivalent value and make clear when and how these different alternatives may be utilized.

(c) Failure of the government to use land acquired.

A commonly cited complaint of the compulsorily acquisition process in Ghana is that the government has in the past acquired more land than it needed and/or not utilized lands that have been acquired.¹⁵ One mechanism that could be utilized to address this challenge is to add a provision in the law that requires the government to return compulsorily acquired lands to their original owners if, after a certain number of years, the lands have not been utilized for the original public purpose for which they were taken.

Recommendations:

- Consider using a different phrase other than “conclusive evidence” in Sections 235 and 244 in order to more clearly convey the intended meaning.
- Revise Section 275 to clarify its applicability and also to clarify the relationship between the compulsory acquisition process and the resettlement process.

¹⁴ Burton’s Legal Thesaurus, 4E. S.v. “conclusive evidence.” Retrieved July 21 2013 from <http://legal-dictionary.thefreedictionary.com/conclusive+evidence>.

¹⁵ Larbi, Wordsworth Odame. Compulsory Land Acquisition and Compensation in Ghana: Searching for Alternative Policies and Strategies. FI/FAO/CNG International Seminar on State and Public Sector Land Management, Verone Italy, September 2008.

- Consider adding a provision in the law that requires the government to return compulsorily acquired lands to their original owners, if, after a certain number of years, the lands have not been utilized.

6.0 Vesting and Temporary Occupation of Land

6.1 It Is Unclear How Section 280 on the “Use of Land for Public Purpose” is Distinguishable from Compulsory Acquisition

Section 280 allows the President to authorize the use of land for a purpose which, “in the opinion of the President is conducive to the public welfare or interests of the State.” This section is confusing on several levels. As a preliminary matter, it is not clear how the provisions of Section 280 differ from the taking of land by the government under the compulsory acquisition process that is outlined in Sub-Part Seven. Presumably, however, there is a difference and a historical reason for creating a separate Sub-Part on the “temporary occupation of land” by the government. The distinction, however, is not clearly articulated in the draft Bill. The reviewers recommend that revisions be made to the Bill to clarify the purpose and intent of this section and to make clear how the government occupation of land under this sub-part differs from compulsory acquisition.

More specifically, Section 280 should be revised to address the specific parameters around the use of land for a public purpose. For example, are there any parameters or limitations on the President’s authority to authorize the occupation of lands under Section 280? Must the President identify the specific interests to the State prior to occupation? Do communities or people living on these lands have any right to appeal the decision of the President to occupy these lands? How is compensation that is paid for land to be determined? How does the claims process work? What types of interest and uses may be compensated? At what point in the process must compensation be paid?

In short, without more detail that identifies the process and procedures for implementing Section 280, and the provisions in place to protect the public, it would appear that this section could essentially be used to avoid the use of the more detailed and protective compulsory acquisition process set forth in Sub-Part Seven. Therefore, the reviewers recommend that Section 280 either be integrated into the compulsory acquisition process or, in the alternative, that additional details around process, procedure and protections be added to Section 280.

Recommendations:

- Clarify the distinction between the “temporary occupation of land” in Sub-Part Eight and a temporary taking under the compulsory acquisition process.
- Consider incorporating the entirety of Section 280 into the compulsory acquisition provisions so that a separate process is not created for presidentially authorized takings of land.
- If Section 280 is not incorporated into the compulsory acquisition provisions, consider adding much more detail on the process and procedures for carrying out a temporary occupation of land under Section 280 so as to ensure that the rights and interests of communities and people affected by the occupation are protected to the same extent as under the compulsory acquisition process.

6.2 Consider Placing Limitations or Accountability Provisions on the Commission’s Authority to Override the Stool Land Grant Limitations Set Out in Section 282(3)

Section 282(3) places limitations on the size of stool land grants that may be given to any one person. Section 282(4) grants the Commission the authority to override those limitations when “special circumstances exist that render compliance with the limits . . . prejudicial to the national interest or the interest of a stool.” Significantly, however, the Bill does not contain any checks and balances on the Commission’s authority nor are there any accountability or transparency mechanisms that are required when the Commission exercises this authority. Nor does the Bill clarify what constitutes “special circumstances” that would allow the Commission to override limitations.

Recommendations:

- Revise the Bill to further clarify what is intended by “special circumstances” that allow the Commission to override the stool land grant size limitations.
- Incorporate some public accountability and transparency provisions into the process that the Commission must follow in order to override the grant size limits.

7.0 Registration

7.1 Background: Issues Related to Land Registration in Ghana

Before discussing specific issues related to the registration provisions in the draft Land Bill, reviewers offer a brief description of some of the challenges with the current land registration

system in Ghana, as identified by observers, in order to create a foundation for comments and recommendations as they relate to specific issues in the Bill.¹⁶

First, land registration is primarily an urban phenomenon. (Bugri 2012, p. 60.) Within the customary system, usufructuary rights (held by the majority of rural people for both their house plot and the land they farm) are very rarely registered or recorded. (*Ibid.*) This is especially true for farmland.¹⁷ This contributes to land-based conflicts, and also to insecurity by less empowered members of customary communities, such as women and strangers, as well as those who live in areas where demand on the land is very high (e.g., peri-urban areas). Because records are poor or non-existent, customary authorities frequently allocate usufructuary rights to the same parcel to multiple people. (Kumbun-NaaYiri 2006, p. 4.) The lack of recording also creates other challenges, including impeding the collection of ground rents by OASL.

Second, as discussed above in Section 3.2 on institutions, the land registries are often not accessible to those who need to use them, and accountability is lacking. Barriers to public access include high formal fees (often related to the high costs associated with cadastral surveys), complex and lengthy procedures and corrupt practices (such as rent-seeking, informal extra payments, failure to provide receipts for registration services and payments). (Bugri 2012, p. 63; Duncan, Gaafar & Lufkin 2013, pp. 18-20.)

Third, among those who have registered land rights, women are significantly under-represented. According to a 2012 report, only approximately 15 percent of all registered rights are registered either jointly or in the name of a woman (with rights registered in the name of a woman outnumbering jointly registered rights by approximately 3 to 1 in Accra from 1989 to 2002). (Bugri 2012, p. 60.) It is not clear, however, whether these low numbers are due to the fact that women simply do not have recognized rights that can be registered, or whether they hold these rights but for some reason have been unable to register them. It is worth noting that under LAP efforts within title registration districts in Accra and Kumasi, approximately 30 percent of all rights registered were in women's names. (Bugri 2012 p. 7.)

Fourth, the two separate systems for registering/recording land rights – deeds registration and title registration – have not always been well integrated within pilot title registration districts. The country has been transitioning from a deeds system to a title system, through assigning compulsory title registration districts. (CPS/Terradigm 2009, p. 12.) Deed Registration operates

¹⁶ In offering a list of background issues up front, this Section on Registration differs in format from other Sections in the report. Due to the complex nature of registration (and legislating for it), the authors thought adding a background Section would help set the stage for the particular issues and recommendations that follow.

¹⁷ Among the four CLSs in the Northern Region, for example, less than a handful farmland parcels had been recorded at the time of the authors' Land Tenure Risk Assessment in the region (May 2013).

in nine regions of the country (as of 2010), whereas Title Registration only currently operates in the Greater Accra Region and Kumasi. (Larbi 2010.)

Several problems have occurred within the title registration districts that have obstructed an effective transition. Records from the Deeds Registry and Records Office (which fall within the Public and Vested Lands Management Division and Land Registration Division of the Lands Commission, according to Act 767) are critical to determining whether a claim for title is valid. However, the Deeds Registries and Title Registries reportedly have not always cooperated well in this. As CPS/Terradigm noted in its project report: “This lack of information sharing and cooperation results in a slowing down to the point of paralysis in terms of advancing title registration, improving tenure security, and enhancing public accountability.” (CPS/Terradigm 2009, p. 12.) One of the results of the disparate functioning of the deed and title systems has been multiple entries of the same parcel of land (e.g. one entry in the deed system, one in the title system) by different people. (Kumbun-NaaYiri 2006, p. 4; see also CPS/Terradigm 2009, p. 12.) To resolve these issues, a new practice is reportedly in place, whereby the Land Registration Division at the Deeds Registry conducts a mandatory search before a Land Title Certificate is issued to an applicant. If the result shows any conflict in the root of title, a Certificate will not be issued until it is clarified.

Other obstacles have hindered efforts to convert deeds to titles within title registration districts. For example, the deeds records themselves do not provide sufficiently accurate information for simple conversion to the Title Registry, or for proper notification to the Deeds holder of the conversion. Three factors underscore this point: (1) the majority of the deed parcel plans were not derived scientifically, and therefore cannot be relied upon for creation of entries in the title registry; (2) deeds were recorded chronologically in the national Deeds Registry, rather than in districts, rendering it more difficult to convert them to a district-based title registry; and (3) the majority of old deeds in the Registry lacked addresses for the deed holders, rendering it “virtually impossible for the Land Title Registrar to notify Registered Deed owners of the intention to register their interests as statutorily required” within registration districts. (Larbi 2010.)

Fifth, the role of customary recording of rights vis-à-vis formal registration is not well understood. As between the formal land rights registration systems and the customary land rights recording systems, it is not clear whether and how locally recorded rights will be linked to formal registration processes with the Lands Commission in the future, or to any kind of national, regional or district-level land rights information system (e.g., cadastral map). Currently, the customary authorities, sometimes with assistance of their CLSs, are keeping records in a number of different fashions. (Duncan, Gaafar & Lufkin 2013, p. 24 et seq.) Some link individual usufructuary rights to a land use scheme prepared by the District Assembly,

others do not. Some view the informal recording process as a stepping stone to formal registration with the Lands Commission, assisting clients to assemble the documents they will need while in the meantime offering at least a temporary recording service. Others simply charge clients a fee to file an allocation letter at the CLS, without integrating this service into formal registration processes. (*Ibid*, p. 25.) It may well be that uniformity in customary land rights recording should not be the end goal. However, under the current system there is little assurance that people understand what services they are actually receiving through recording customarily; what degree of security this offers them—especially vis-à-vis formally registered rights; and whether at some point these services can be linked to the formal registration system.

While not all of these challenges can be addressed within the new land law, a well-crafted law can lay the legal foundation for systemic and institutional changes that are required to improve the registration system.

7.2 Issues Related to Registration in the Draft Bill

Sub-Part Four of the Bill, on Title Registration, provides a legislative framework for Ghana's land registration system, in which titles will replace deeds. While the sub-part contains much useful information about title registration, complex text, gaps in content and disparate organizational structure render it generally difficult to understand. Without significant revision, it is unlikely that registration functions will be well-implemented by registration officials and others. Rather than providing a running commentary on the registration sub-part, the reviewers have identified ten priority issues that could be improved in regard to registration.

7.2.1 Provisions Defining the Basic Nature of the Registration System Are Scattered in the Bill

The Bill presents information concerning the fundamental nature of the registration system throughout the registration sub-part, including at the very end, without tying it together into a cohesive package. Key provisions in this regard include:

- Section 74 (qualifications for registration),
- Section 94 (registration is conclusive evidence of title),
- Section 106(1) (registration is generally indefeasible),
- Section 107 (interests conferred by registration),
- Section 213 (registration is required for the validity of any land instrument), and
- Section 214 (registration serves as actual notice to all persons and for all purposes).

The scattered placement of these provisions in the Bill makes it more difficult for the reader to comprehend the fundamental nature of the registration system.

Recommendation:

- Create a preliminary group of sections in the registration sub-part that compiles provisions relating to whether and in what circumstances registration is mandatory, and what the legal effects of registration are. Include information currently contained in Sections 94, 106(1), 107, 213 and 214. See the following paragraphs for further recommendations.

7.2.2 The Bill Does Not Provide Sufficient Linkages to the Institutional Framework for Administering Registration

The Bill does not include a description of the institutional framework for registration, including a structured general reference to the Lands Commission’s Registration Division and Survey and Mapping Division (per the Lands Commission Act of 2008). The Bill does include Section 200, which provides that the Director of the Land Registration Division “shall keep a register” in which to “register instruments presented to the Director.” However this section does not appear until the end of the sub-part. Perhaps most importantly, the Bill does not, in Section 200 or elsewhere, clarify at what geographic level the Registration District shall operate, a critical piece of information for implementation of the Bill. Nor does the Lands Commission Act of 2008 shed light on this question. Expanding on the institutions linkages presented in Section 200 and moving this to the front of the sub-part would provide greater coherency between the Bill and the Lands Commission Act, two key pieces of land legislation. Doing so would help to establish the necessary statutory framework for implementing the registration sub-part.

Recommendation:

- Near to the beginning of the sub-part on Registration, include one or more concise provisions describing registration-related institutions and their respective roles, referring to the Lands Commission Act of 2008. Include the geographic level(s) at which the Registration Division shall operate.

7.2.3 The Bill Does Not Address Reforms Needed to Make the Registration System More Accessible and Accountable

In order for title registration to increase land rights security in an equitable, inclusive manner, it must be made accessible to a broad range of people, and implementing agencies should have built-in accountability safeguards. As discussed in Section 3.2 of this paper, accessibility requires, at a minimum, affordable costs, simplified processes and procedures and efficient provision of services as locally as possible (see, e.g., Larbi 2010.) As written, however, the Bill does not appear to take significant steps toward making registration more accessible to land

rights holders, or registration institutions more accountable. The complexities that have impeded an efficient registration system in the past would thus likely remain.

In addition, the Bill provides broad discretion to the Registrar in some instances, increasing the opportunity for inefficiencies and misfeasance (or the perception of such). Section 87 grants power to the director to “cancel any entry in the land register if the Director is satisfied that the entry has ceased to have any effect.” This authority to cancel an entry would best be accompanied by due process safeguards, such as the requirement of notice and the right to contest (prior to the cancellation) to all parties concerned. Section 171(4) allows the Land Registrar to refuse to register a caveat if he deems it unnecessary, but does not provide guidance as to when a caveat may be deemed unnecessary. For further discussion and recommendations related to this point, please see the section on caveats, below.

Recommendations:

- Include additional safeguards in the Bill to ensure greater accessibility and accountability of registration. These could include:
 - setting limits for fees, providing that they shall be reasonable and shall in any event not exceed the costs to the Registry in providing the service (see Sec. 189);
 - requiring that fee schedules and timelines for services be prominently posted on the office of all registrars (including informal recording agencies, such as CLSs);
 - requiring that a written receipt be issued promptly for each transaction (and that the requirement for this be posted in every registry); and
 - making registration functions available at the most decentralized level possible, to increase the accessibility for rural people.
- Temper the registrar’s broad authority to cancel entries to the registry by requiring notice and the right to contest be provided to all persons affected by the potential cancellation. (The safeguards established in Section 91, limiting discretion of the Land Registrar to reject an application within a title registration district, could be used as a model for this.)

7.2.4 The Bill Lacks Clarity on the Necessity and Effects of Registration for Customary Lands

(a) It is not clear whether every grant or allocation of land rights within the customary system must be formally registered.

Within new title registration districts, the Bill requires that allodial rights be registered and provides that other interest holders must “make a claim” (Section 82), but does not specify whether and how such claims will be transferred into formally registered interests. Outside of title registration districts, the question of what customary lands rights must be registered (and

where) is even less clear (Sections 170 and 220). Section 213 requires all future land rights transactions to be registered, but does not clarify whether this applies to customary lands transactions (including, for example, any allocation of usufructuary rights) as well. If so, must these transactions be formally registered or only recorded by a CLS under Section 220?

Section 35, on recording customary transfers, requires oral grants to be recorded in the “prescribed form,” to be signed by the transferor, and certified by a Court Registrar, who gives copies to the transferor and transferee, disposing of a third copy as may be provided in future regulations. It is unclear from this section whether an oral grant would be effective prior to some sort of registration, and also unclear where and how that registration (or recording) would take place. On a broader level, drafters might consider whether the timing is right in Ghana for mandatory registration of all customary transactions, including oral grants.

b. It is not clear how exactly usufructuary and similar customary rights will be registered, and what benefits holders of such rights will gain through registration.

Section 6 of the draft Bill provides that “the usufructuary interest may be registered in accordance with the prescribed forms.” Under Section 74, it appears that usufructuary and similar customary rights may be registered (see 74(1)(e) and 74(3)). There is not, however, adequate guidance on the process for registering usufructuary and other customary rights. Nor is it clear that such forms will adequately capture the understanding of usufructuary rights in each instance of allocation or transfer.

The Bill also does not clearly set out the benefits and effects of registering interests – particularly usufructuary interests – on customary land. The Bill simply provides, in Section 107(a), that registration “shall vest in that person [the rights holder] the interest described in the transaction by which it was created, together with all implied and expressed rights and privileges attaching or appertaining thereto and subject to all implied and express covenants, liabilities and other incidents...” But it is not clear what this would actually mean for the holder of a land right within the customary system. Important questions that should be considered include the following:

- What are the benefits/effects of registering usufructuary or customary freehold rights within stool/skin/clan/family land?
- Can the act of registration protect a rights holder from further transaction of the land by the allodial title holder? Or rather, is the registration of this right only meaningful vis-à-vis another usufructuary holder within the community?

- Or will the answer to the above question depend on the understanding of “usufructuary right” within each stool, and possibly as applies to each specific grant of rights?¹⁸
- Finally, what information about the specific customary right to be registered would be needed in an allocation letter, or perhaps transcribed on a form and signed by the traditional authority?

This set of issues may relate more to the fundamental nature of the customary right, and the varied understanding of that right within the customary system, than to the registration of the right. However, the two are closely related, particularly within title registration districts where registration is necessary for rights recognition. Former Project Director for LAP I, Odame W. Larbi, summarized the challenges related to registering customary land rights as follows (excerpted verbatim from the PowerPoint):

- Customary system of land ownership requires careful analysis and understanding to be able to capture existing land rights, their quantum and caveats;
- Customary system does not lend itself to the rolling out of large scale certification programmes at the state level;
- Large nature of informal and unrecorded transactions;
- Customary transactions – e.g. customary gift; and
- The format for capturing data and the nature of certification. (Larbi 2010.)

Assuming that most interests in land across the country (or at least the rural parts of the country) are held in usufructuary rights by residents within stool lands, tackling these issues as best as possible in the Land Bill, by clarifying the manner in which these rights will be registered, and the effects of registration, will be critical.

Recommendation:

- In a new preliminary section to the registration provisions mentioned in the recommendation above, set out how and under what circumstances land in each rights category and tenure type may be registered, and to what effect. Perhaps a new section could be created for each land category, e.g., public land; quasi-public land (comprised of vested stool land); customary land (including unvested stool/skin land, family and clan land and community land); and private freehold. Tenure types would include allodial title, customary freehold, usufructuary, etc.
- Develop templates for prescribed forms and procedures in order to appropriately and efficiently capture relevant data related to particular rights categories and tenure types. Make these forms and procedures widely available to the public.

¹⁸ See also the suggestion in the Preliminary Sections discussion (*supra*) to define some aspects of customary rights within the Land Bill, leaving details to be determined by varying customary understanding.

c. The Bill's registration provisions may create undue levels of insecurity for usufructuary and similar rights within the customary system.

First, the draft Bill does not establish the legal nature of customary rights recorded with CLSs (per Sec. 220), especially vis-à-vis rights that are formally registered. In particular, the Bill does not clarify whether rights recorded with the Customary Land Secretariats are legally on par with rights formally registered. As noted above, it is not clear in the Bill whether all customary rights must be formally registered. Assuming that these rights may be recorded by CLSs, rather than entered in the formal registry, will they stand up against conflicting entries in the formal registry? Certain provisions of the Bill imply a negative answer to this question. Section 94 (1), for example, makes registration conclusive evidence of title, and Section 106(1) provides that registered rights are generally indefeasible. The Bill does not specify how the CLS records will be merged with the formal registry (thereby presumably reducing the incidence of double allocation and conflict), if at all.

Second, the Bill requires registration of all land instruments, and makes registration conclusive evidence of title, but without providing the legal infrastructure necessary to ensure that all customary land rights are duly registered or even recorded. As noted above, it is not clear how usufructuary and other customary rights will be formally registered, and it seems highly improbable that any kind of systematic registration of these rights will happen in most areas of the country in the near future (see, e.g., Bugri 2010, pp. 3-5, calling into question the suitability of universal land title registration in Ghana). It seems even less likely that the CLSs will have the capacity to record interests in and rights to land (per Sec. 220(2)(a)) in a broad, systematic way in the near future. Because the Bill makes registration “conclusive evidence of title,” and registered rights generally indefeasible, this could result in a high level of insecurity for those with usufructuary and other rights on customary lands across the country, as very few of these rights are currently registered or even recorded, and entry barriers to the formal registration system (such as high costs, travel, and long delays) may impede most people from registering their rights.

Third, Section 220(2)(b) requires the CLS to “provide a catalogue of existing customary rights and interests in the land” in the CLS area. But this will be very difficult for most, if not all, CLSs to do comprehensively; and there is danger that such cataloguing would result in only the partial cataloguing of rights, leaving some interests and rights un-catalogued and so even further unprotected. Furthermore, the basis and purpose of such cataloguing is not clear. Since only a fraction of the customary rights have been recorded by CLSs, upon what records would the catalogues be based? What of the customary lands in the many areas of the country to which no CLS currently pertains? Would the catalogue itself become the record of rights?

Recommendations:

- Clarify the nature and effects of land rights or interests recorded with the CLSs, especially vis-à-vis formally registered rights.
- Clarify whether and how rights recorded with the CLSs will be merged with the formal registries and, more generally, how the CLS recording system and the formal registration system will inter-relate. For example, if usufructuary and other customary rights *may* be registered formally (as implied by Sections 6 and 74 of the draft Bill), clarify whether a CLS has to verify any claims to the land in the formal registry before recording a transaction, including any new allocation.
- Consider including safeguards in the Bill for those many customary rights holders who will not be able to register their rights within the near or even mid-term future. For example, the Bill could allow for a grace period of ten years or more for people to register their rights, before registration becomes conclusive evidence of title.
- Mandate in the law that registration be made more accessible to current holders of customary rights (e.g., reduced fees, procedural safeguards for the registration process, etc.), per recommendations below.

7.2.5 The Bill Makes Registration Conclusive Evidence of Title, but without Ensuring that Valid Entries in the Deed System Are Converted into the Title Registration System

As a preliminary matter, the draft Bill appears to usher in a national title registration system, replacing the Deeds Registry that is now prevalent in most of the country. The question of whether the country is well-prepared for this transition is outside the scope of this review. However, the Bill does not appear to provide the legislative framework to ensure that this transition happens without prejudice to those rights previously recorded by deeds.

First, title registration should not be considered conclusive evidence of title, nor such title be made indefeasible, as long as historically valid records within the deeds system have not been transferred in whole to the title registration system.¹⁹ The draft Bill repeals the law governing deed registration (Land Registry Act of 1962), leaving the law on title registration (Land Title Registration Law of 1986) in place. The Bill provides in Section 219 that an instrument registered in accordance with “an enactment in force before the commencement of the Act” would remain in force and registered under the new Act, dated back to the original registration. Presumably this section means that rights registered under the Deeds system would remain intact. However, transferring deeds to the title registries is likely to be a difficult and complex

¹⁹Cashnoba, Bismark Aha (n.d.) The Land Title Registration Law: A Panacea to the Land Registration Problems in Ghana?

http://www.academia.edu/3372506/The_Land_Title_Registration_Law_A_Panacea_to_Land_Registration_Problems_in_Ghana.

task (see discussion above on the issues that have accompanied this process in the Accra and Kumasi pilot title registration districts), and the draft Bill does not provide sufficient guidance as to how this will occur, nor safeguards to ensure the timely conversion of the deeds registries.

To date the pilot title registration districts have experienced significant impediments in integrating the former Deeds system into the new title registration system, and double-allocation has occurred with some frequency (see discussion above). But the draft Bill does not sufficiently resolve issues with lack of information sharing between the Deeds and Title systems.²⁰ Section 84 of the Bill calls for compilation of registered deeds within new title registration districts, providing that the Director of the Land Registration Division *may* prepare information concerning instruments demonstrating proprietorship of land in the district. The Bill does not require the Director to do so, however. It is thus unclear whether sufficient deeds information would be rendered. Without further assurance in the Bill that the deeds records will be effectively converted to the title registry, it is likely that confusion of records between the systems will continue, including the problem of double allocation. Given the legal primacy of rights entered in the title registry, per Sections 94(1), 106(1), 213 and 214 of the draft Bill, a holder of a historically valid right under the deeds system might well lose out to a person who was able to register rights to the same parcel of land under the title registration system. This does not appear to be a fair outcome. At the very least, the Bill could codify the current practice (see above) in title registration districts of conducting a mandatory deeds search before issuing the Title Certificate (and suspending the issuance if the search results show any conflict in the root of the title).

Recommendations:

- Add further detail about converting entries from the Deeds system to the Title system, so as to make possible the implementation of Section 219. This conversion should encompass procedural safeguards to ensure accuracy, and should not require affirmative action on the part of the deeds records holder, other than perhaps to validate (where possible) the prepared title registration entry before it is officially filed.
- Amend Section 84 of the Bill so that the Director of Land Registration Division *must* prepare information concerning instruments demonstrating proprietorship of land in the district.

7.2.6 The Draft Bill Does Not Identify the Spectrum of Rights to Be Registered, nor Does it Establish Adequate Procedural Guidance or Safeguards

²⁰ Reviewers understand that under the current title registration system there is in force a practice whereby a mandatory search is carried out at the Deeds Registry before a Land Title Certificate is issued to an applicant. If the result shows any conflict in the root of title a Certificate will not be issued until it is clarified. This practice could be captured in the Bill to provide the necessary linkage.

The draft Bill sets out the framework for title registration districts, but without clarifying the full spectrum of rights to be registered within these. Section 82 establishes that all allodial owners must register their title within a certain time frame. This section also requires all “claimants to land or any interest in land” within the district to mark or indicate their boundaries and present their claims to the registrar/agent within a specified time period as provided in the notice (see Sec. 97(1)). However, the draft Bill does not specify exactly which rights or interests in land must be claimed (all usufructuary rights? sharecropping rights? spousal rights?), nor does it provide any safeguards to ensure a reasonable time period in which those with valid claims could present them. In particular, Section 82 does not describe which spousal rights can or must be claimed, and does not provide any safeguards to ensure that those who are illiterate will both receive notice of the requirement and be able to respond by submitting a claim.

Also, the draft Bill does not provide sufficient criteria for establishing a valid claim for first registration. First registration requires opening a folio in the name of any person “who has been shown to be entitled to be registered as the holder of the interest specified in the land register in relation to that parcel of land and other particulars of that person and that person’s interest as are prescribed to be entered.” (Sec. 89(2)(a).) But the Bill does not specify how the legitimacy of any such interest would be established. Without further guidance as to the evidence necessary to demonstrate a claim for first registration, validation would be left to the broad discretion of the Director of the Land Registration Division.

Finally, Section 90 gives additional authority to the Director of the Land Registration Division in the context of first registration, stating that the Director “may reject an application for first registration by a person claiming to be a holder of an interest in land and who bases the claim on an instrument” in a number of instances. However, this section does not provide any safeguard for applicants presenting an instrument that lacks data on its face. This could be especially prejudicial against applicants who are illiterate and who are unable to receive legal or other assistance in filing their claim.

Recommendations:

- Add further specification to the Bill on what precise interests and rights (usufructuary rights? lease, sub-lease and sharecrop rights? spousal rights?) constitute valid claims in the context of first registration. Include an important procedural safeguard to Section 97(1) providing that the “period specified in the notice” pertaining to first registration be at a minimum 90 days.
- Add a section or sub-section establishing specific requirements necessary to establish a valid claim for first registration. Such requirements might include documentation (e.g., allocation letter), witnesses, etc.

- In Section 90, provide applicants with an opportunity to fill gaps and correct flaws in an instrument that lacks essential data on its face, prior to summary rejection by the Director of the Land Registration Division.

7.2.7 The Bill Does Not Adequately Establish the Meaning of “Good Title”

The Bill presents the concept of “good title” in Section 98, but without describing its effects or meaning. Also, it is not clear how “good title” (a term normally used to describe property free from all obvious claims or liens and therefore ready for sale or other transaction) relates to the overriding interests presented in 110(1)(f). A further question is whether, given the definition given in Section 98, the concept of “good title” could ever apply to customary lands.

Recommendation:

- Further describe the meaning of “good title” in Section 98, including how it relates to overriding interests and customary lands, and whether there is any other form of title that could be held on par with it.

7.2.8 The Draft Bill Does Not Sufficiently Protect Women’s Land Rights in the Context of Registering Spousal Rights to Jointly Held Property

The draft Bill does not protect spouses’ rights to land within the context of land title registration districts, or customary recording of rights by the CLSs.

The draft Bill does not explicitly require that spouses’ names be included on land title documents as they are registered in the new land title districts. Nor does the Bill require that spouses’ names be included on any household land rights that are recorded by the CLSs. As it moves forward in reforming its land registration system, Ghana has a historic opportunity to ensure that all statutory and/or customary rights to land are recorded and thereby better protected. This opportunity includes the inclusion of spouses’ names on all documentation of land rights that they hold jointly. In the case of polygamous marriages, a seemingly equitable framework for determining the property rights of each spouse is established in the draft Property Rights of Spouses Bill (discussed in Section 8.3, below); to the extent possible, the draft Bill should incorporate this framework as the basis for registration of joint spousal rights to property. Without explicit provisions mandating the recordation of spousal property rights, Ghana’s efforts to formalize land rights threaten to marginalize spouses’ (usually wives’) interests in jointly held land completely if these rights are not recorded at the time of first registration.

Recommendations:

- Include explicit mechanisms in the Bill to ensure that spouses' names are included on all formally registered household title documents, and also on documents used by the CLSs to record relevant land rights.
- Incorporate the polygamous property rights framework contained in the draft Property Rights of Spouses Bill, as the basis for registration of the property rights of people in polygamous marriages.

7.2.9 The Provisions on Caveats and Restrictions in the Bill Are Confusing and Do Not Provide Adequate Procedural Safeguards

First, Section 171(1) on caveats is difficult to understand. It would be useful to clarify what qualifies as an “unregistered” interest (justifying a caveat). If this applies to spouses, the provision should clearly say so.

Second, Section 171(4) gives excessive discretion to the Land Registrar in refusing to register a caveat. The Section provides that “The Land Registrar may refuse to register a caveat if the Land Registrar considers it unnecessary...,” but does not provide any specific grounds for this determination. In the interest of transparency and fair process, drafters might consider adding a list of factors the Registrar could take into consideration.

Third, Section 175 (on wrongful caveats) does not provide standards and criteria for defining what it means to lodge or maintain a caveat “wrongfully and without reasonable cause.” The provision simply provides that a person who lodges or maintains such a caveat will be liable in court to anyone who has suffered damages as a result of the caveat. In the absence of explicit standards and criteria for what may be deemed a “wrongful” caveat, or one “without reasonable cause,” people who have every right to file a caveat may be unwilling to risk doing so for fear of incurring liability.

Recommendations:

- Clarify in Section 171(1) what is an “unregistered” interest that would justify a caveat. Consider explicitly stating that this applies to spousal interests to household land, if these interests are not otherwise registered.
- Provide in Section 171(4) a list of factors that the Registrar should take into consideration in refusing to register a caveat.
- To Section 175, add standards and criteria for determining what it means to file a wrongful caveat, or one without reasonable cause.

7.2.10 The Clauses on Overriding Interests for Occupants May Be Problematic as Written

Section 110(1)(f) of the draft Bill provides that occupants have overriding interest to land, whether their rights to the land were acquired through customary law or otherwise. This section protects the “rights, whether acquired by customary law or otherwise, of every person in actual occupation of the land except where an enquiry is made of that person and the rights are not disclosed.” This section appears to establish a very strong safeguard for occupants, such that their presence on any parcel of land could create an interest in the land that would trump a bona-fide registered right, unless “the contrary is recorded in the land register.” The section therefore creates a presumption of legal validity for an occupant’s interest, regardless of any rights that may be formally registered. (Sec. 110(1).)

In fact, this protection may be so strong as to reduce the incentive of most occupants of land to register or record any interest they may have in it, despite sections of the Bill stating that registration is the conclusive evidence of title, that all transactions must be registered, etc. If the intent of this provision is to establish an important legal protection for unregistered customary use rights, this right by occupants should probably be provided early in the Bill, in a clear description of the nature (and limitations) of each of the tenure types/land rights.

Overriding interests of occupants may be difficult to enforce in practice, although they provide important potential protections to occupants. This protection is especially important because most occupants of rural land in the country are not likely to have registered or recorded their interests in land in the near future. The breadth of the overriding interest for occupants could be narrowed through the introductory clause in Section 110(1) that seems to establish some way to void overriding interests through explicitly recording them in the registry. The relevant clause is very confusing, however, providing that “*unless the contrary is recorded* in the land register any land or interest in land registered under this Act is subject to any of the following overriding interests whether or not they are entered in the land register.” (Italics added.) The clause is quite confusing, providing both that registered rights are subject to overriding interests *unless the contrary is recorded in the land register*, while at the same time providing that registered rights are subject to overriding interests *whether or not* they are entered in the land register.”

Recommendations:

- Clarify the introductory clause in Section 110(1), regarding whether or not overriding interests may be somehow voided and narrowed through some kind of a note recorded in the registry. If this may be done, establish a clear and detailed process for it.
- Address the substantive land rights of occupants clearly and up-front in the Bill. Also, in regard to the rights of occupants, consider including in the Bill a more robust treatment of the rights to Adverse Possession and Prescription currently established under

common law. (In this regard, perhaps Section 94(2), referring to the Limitations Act of 1972, could be expanded upon.)

8.0 Gender Considerations

8.1 The Bill Should Incorporate the Gender-Based Protections Enshrined in the Constitution

The Land Bill will be the basis of Ghana's land governance framework. As such, it ought to incorporate and reinforce the rights and values inscribed in Ghana's Constitution, including gender-based protections. The Constitution includes several protections for women's legal and economic rights. All persons are considered equal under the law and discrimination on the basis of gender is prohibited under Article 17. Article 36(6) requires the government to take steps to improve women's economic integration in Ghana – “The State shall afford equality of economic opportunity to all citizens, in particular, the State shall take all necessary steps so as to ensure the full integration of women into the mainstream of the economic development of Ghana.” As land is an important economic asset in Ghana, and therefore critical to economic development, ensuring that women have secure rights to land (including rights of access, use and ownership) and that they are able to enforce their rights is central to women's economic integration.

In its current form, the Land Bill includes few provisions that explicitly support women's rights to land. Section 5 prohibits customary decisions or practices which deny, “women, children, strangers . . . access to ownership, occupation and/or use of any land or imposes any other conditions which violate Article 17 of the Constitution.” It seems that the intent of this provision is the prohibition of gender discrimination in customary practices, in line with Article 17. However the practical effects of this provision are unclear, as the rights of children will necessarily be different than those of adults, and, on customary land, the rights of indigenes will differ from those of strangers in most cases, indicating that this provision will not act as a ban on discrimination. In the interest of clarity, Section 5 should incorporate or refer to the language in Article 17 of the Constitution.

Article 35(6)(b) of the Constitution requires the state to take reasonable measures to, “achieve reasonable regional and gender balance in recruitment and appointment to public offices.” Women's inclusion in land sector agencies, and particularly on decision-making bodies, could significantly improve their economic integration, in line with Article 36(6) [requiring the State to take steps towards women's economic integration]. At least one member of the eight-member Land Fund Management Committee must be a woman under Section 293(f) of the Land Bill. However, other bodies described in the Land Bill do not require any female members. These include the National and Regional Lands Commissions, Customary Land Secretariats, the Technical Advisory Committee that advises the Director of Survey and Mapping Division, Management Committees and the Land Dispute Settlement Committees. Although Articles 259 and 260 specify the agencies and institutions that must be represented among Presidential

appointees to the National and Regional Lands Commissions, they do not appear to preclude the addition of a requirement that a certain number of women be appointed to the Commissions.²¹

Recommendation:

- Integrate the gender protections contained in Ghana's Constitution and include provisions that explicitly prohibit gender-based discrimination in land administration and management.
- Consider revising Section 5 to incorporate the specific language Article 17 of the Constitution ["A person shall not be discriminated against on grounds of gender, race, colour, ethnic origin, religion, creed or social or economic status."]
- Consider requirements that women comprise a set minimum portion of the members of decision-making bodies involved in land administration and management.

8.2 The Bill Does Not Explicitly Protect Women's Rights to Customary Land

Although formal legal protections for women's property rights exist, an estimated 80 percent of Ghana's land is held under customary tenure, and thus customary law determines the land rights of many women in Ghana. The Land Bill attempts to incorporate customary law and rights, but there are several sections of the Land Bill under which women's rights and participation will be dependent upon the rules that govern their particular community. It is important that the land law include provisions which prohibit discrimination and bias against women in customary institutions and practices, in furtherance of Article 17's prohibition on gender discrimination.

Several provisions in the Bill identify rights which are dependent upon membership in the community (see Sec. 7(6)), but the basis for membership in a community is not defined, as these rules vary among Ghanaian communities. However, the rules of customary law are considered part of Ghanaian common law under Article 11(2) of the Constitution and therefore appear to be subject to Article 17(1)-(2), requiring all persons to be considered equal before the law and prohibiting discrimination on the basis of gender. In the interest of full implementation of Article 17, the Bill might include a provision explicitly stating that the rules and basis for community membership must be non-discriminatory.

Several other Sections of the Land Bill make references to customary law. These include Section 7(3), which states that usage and management of common property shall be in accordance with customary law, Section 34(1)(g), which allows oral grants of customary land in accordance with customary law, and Section 153(5), which states that an instrument will be considered executed by a stool, skin or family when the instrument has been agreed to by all

²¹ See Const. Art. 1(2), which voids laws only to the extent that they are inconsistent with the Constitution. As Articles 259 and 260 do not bar the imposition of additional membership requirements, a gender representation requirement is unlikely to be found inconsistent with the Constitution and thereby voided.

whose consent is necessary under customary law. In addition, CLSs are charged with creating a catalogue of customary rights and interests in land, which will necessarily depend on customary law and understanding. (Sec. 220.) As the Land Bill clearly acknowledges the significant role customary law will play in land management, it should also include provisions to ensure that discriminatory practices are not incorporated into formal law and practice.

As CLSs commence recording customary land rights, it will be very important to clarify who holds those rights. It is often the case that land rights are recorded only in the name of the head of household, typically a man, as representative of the family. While women may continue to have access to the land, they are left extremely vulnerable to loss of land in cases of divorce, separation, desertion or death of the recorded rights holder. One of the most effective methods to secure women's rights to marital property is joint titling of the property, i.e., recording the land in the names of both the husband and wife (see UN-HABITAT 2005). Doing so leaves women significantly less vulnerable to loss upon changes in marital status, and can also protect them during a marriage by limiting the ability of their husbands to alienate the land without their consent.

Recommendations:

- Consider including language in the Bill providing that customary laws related to land (particularly rules around community membership, land allocation and rights to use and transfer land) apply equally to women and men.
- Consider requiring CLSs to record the rights of all adult household members who have an interest in the land not a single head of household, when cataloguing customary rights to household land.
- Revise Section 153(5) to require the consent of spouses prior to alienation of household land.

8.3 The Bill Does Not Adequately Incorporate Constitutional Protections for Spousal Property Rights

In terms of spousal property rights, Ghana appears to be operating on a separation of property regime (see Art. 18, Art. 22.) However, the Constitution and existing marriage laws²² provide spouses with some rights to each other's property upon the dissolution of a marriage. Article 22 of the Ghanaian Constitution protects women's rights to property in marriage. It guarantees surviving spouses a "reasonable provision" from a deceased spouse's estate, requires Parliament to enact legislation regulating the property of spouses, and states that, "spouses shall have equal access to property jointly acquired during marriage," and, "assets which are jointly acquired during marriage shall be distributed equitably between the spouses upon dissolution of the marriage." (Art. 22(3).) This last provision suggests that joint titling for spouses should at the very least be available, if not the default status for property acquired during the marriage. In fact, the draft Property Right of Spouses Bill (discussed below) includes

²² See the Matrimonial Causes Act (1971).

a presumption that all property acquired during a marriage is jointly acquired, with some specified exceptions.

The Land Bill currently addresses joint tenancies in land sales and transfers (see Sec. 115), but does not include explicit provisions regarding joint titling for spouses or make reference to the default status of property acquired during a marriage. As noted above, joint titling for spouses can significantly improve women's land tenure security, and compulsory joint tenure for spouses "usually provides women within a marriage or consensual union with the most secure rights to land." (UN-HABITAT 2005.) It should also be noted that while separation of property appears to be the current default regime in Ghana, the Constitution allows for "interference with the privacy of . . . property" as may be needed for the economic well-being of the country and for the protection of the rights of others. (Art 18(2).) Compulsory joint tenure for spouses would not appear to violate any constitutional provisions, and may in fact be supported by Articles 18 and 22.

The draft Bill allows a person to register usufructuary and other land rights acquired under customary law (see, e.g., Sec. 74(1)(b)), but it does not adequately provide for registration of spousal rights to customary land; as women in customary communities in Ghana often hold land rights through men, typically fathers, uncles or brothers, prior to marriage and husbands after marriage, the rights of women, particularly wives, may be inadvertently excluded from a recordation/formalization process. While the formalization of customary rights can bring many benefits, there is also a risk that formalization will marginalize married women by recording only the rights of their husbands, further entrenching gender-discriminatory land practices. (This issue and other gender-related issues relating to registration are addressed in more detail in the Registration Section of this Report.)

A draft Property Rights of Spouses Bill is currently under consideration, which would fulfill the constitutional requirement under Article 22(2). That Bill appears to interpret the constitutional provision in Article 22(3) to mean that all property acquired by spouses during a marriage, regardless of how the property is titled, is considered joint property. (Property Rights of Spouses Bill (draft), Sec. 10.) Indeed, requiring joint titling for that property would protect women's property rights per the Constitution, and provide them with greater tenure security.

Estimates indicate that over 20 percent of women in Ghana are in polygamous marriages (OECD 2012), but the rights of these women are not clearly defined in existing laws.²³ To the extent possible, the rights of women in polygamous unions should be addressed in the Bill, and protected to the same extent as those of women in monogamous marriages. The draft Property Rights of Spouses Bill contains a basic framework for property rights within polygamous marriages: property acquired during the first marriage but prior to the second marriage is the

²³ Polygamous marriages are allowed under the Customary Marriage and Divorce Registration Law, 1985 (PNDC 112) and the Marriage of Mohammedans Ordinance, 1951 (CAP 129), but neither law provides a framework for property rights within the marriage and upon divorce. The laws do address intestacy: spouses are entitled to inherit according to Islamic law under CAP 129, and according to the Intestate Succession Law, 1985 (PNDC 111) under PNDC 112.

joint property of the husband and first wife, while property acquired subsequently is the joint property of the husband and both wives, with the same formula used to determine property rights in each subsequent marriage (Sec. 20). The drafters of the Land Bill should consider incorporating this approach to the extent possible, in part by allowing joint titling for multiple spouses.

Recommendations:

- Require joint titling of property acquired during marriage in order to fulfill the constitutional mandates related to spouses' rights to property acquired during marriage. The Bill should be consistent with the Constitution regarding marital property, and, to the extent possible, consistent with the Property Rights of Spouses Bill.
- Barring a joint titling requirement, include a provision requiring spousal consent for transactions involving marital property, which should be defined in the Bill as property acquired in marriage with exceptions for certain categories of property, such as property acquired by gift or inheritance, property acquired as part of a settlement for personal injury etc. (See draft Property Rights of Spouses Bill, Sec. 11.)

8.4 The Bill Does Not Explicitly Address the Rights of Women to Compensation for Property Compulsorily Acquired by the State

When land is compulsorily acquired by the state, a question arises as to who is entitled to compensation for the loss. On private, formally registered land, this question is easily answered, but on customary land the answer is more complex as there are often a large number of people who hold interests that are defined by customary law, but are not formally recorded. Customary law, as mentioned above, can often disenfranchise women by granting them rights that are secondary to those of men, as well as by the enforcement of social norms that limit women's ability to participate in community decision-making. (Sarpong 2006; Hughes 2011.) As such, it seems likely that the vast majority of claimants for compensation when customary land is compulsorily acquired by the state will be men, which could cause women to suffer further economic marginalization. The Land Bill does not currently address the issue of who is entitled to compensation, and without explicit provisions to support women's rights to compensation for the land they use it is likely that compensation schemes will inadvertently discriminate against them.

Recommendation:

- The Bill should clearly define the category of claimants eligible for compensation for compulsory acquisition. Drafters could include explicit provisions guaranteeing spouses the right to compensation for land they use, even where the land is considered to be "owned" by only the head of household.

8.5 The Bill Does Not Include Safeguards to Address Constraints to Implementing Land Legislation on Behalf of Women

The drafters of the Land Bill might consider addressing the variety of constraints that impact women's ability to formalize or enforce their land rights. Women are often more constrained than men in their ability to document and formalize their rights to land. They also face additional challenges in enforcing their rights, often related to lack of access to formal and informal dispute resolution mechanisms.

Women may face additional challenges in accessing land administration and management services, including registration services. The cost creates a barrier for many women, who often have less access to cash to make the payment, shutting many of them out of the formal land management system. (FAO 2010; ActionAid 2005.) In addition, there may be a perception of gender bias within institutions that further discourages women from pursuing formalization of their rights (see Appiah 2013.) Finally, higher rates of illiteracy among women may limit their ability to access land administration services. Literacy rates are lowest in rural areas, particularly the northern regions, where the gender differential in literacy rates is highest; in Upper East region, the male literacy rate is 50 percent, but the female literacy rate is just 22 percent. (FAO 2012.) Although literacy is not necessarily required to access land administration services, the processes involved in recording rights to land will often be more difficult for illiterate people to navigate.

For similar reasons, access to both formal and traditional dispute resolution mechanisms also tends to be more challenging for women than men. Women in Ghana, particularly rural women, generally have less access to cash than men due to lack of employment opportunities as well as having less access to credit; in rural areas, men are five times more likely to engage in paid labor than women, who are more likely to be engaged in unpaid family work and, therefore, unlikely to have access to the cash needed to pursue formal legal claims. (FAO 2012; FAO 2010; Appiagyei-Atua 2013.) High rates of illiteracy among rural women also affect women's ability to enforce their rights through formal dispute resolution mechanisms; fear of the judicial system due to low levels of education has been cited as a key barrier to access to justice in Ghana. (Appiah 2013.)

In addition, social norms may discourage women from enforcing their rights through existing dispute resolution mechanisms. (Appiah 2013; Appiagyei-Atua 2013.) As an example, in many Ghanaian cultural groups there is a social taboo against women speaking in public, and women are therefore unlikely to use formal or informal dispute resolution mechanisms when their rights are denied or threatened. (Appiah 2013.) Finally, traditional dispute resolution mechanisms usually carry with them culturally entrenched biases, which often elevate the rights of men over those of women. (*Ibid.*) Gender discrimination, both perceived and real, by customary dispute resolution actors can increase women's reluctance to access those mechanisms when their rights are denied.

Recommendations:

- Study the variety of constraints that affect women's access to land and ability to enforce rights in Ghana, and consider including provisions in the Bill to address these constraints or counteract their effects.
- Require land institutions that offer services to the public to make assistance available to illiterate Ghanaians.
- Reduce costs of land administration to the extent possible.
- Consider including mandates for public information and awareness campaigns on available land administration services, specifically targeting women.

9.0 Conclusion

Drafting a comprehensive land bill is an important but challenging undertaking, and is perhaps particularly challenging in Ghana given the complex nature of the country's customary land rights and governance systems. While the draft Bill provides much useful information on land rights in Ghana, it also contains a number of gaps and areas of confusion. In this report, reviewers have attempted to highlight some of the primary issues in the Draft Land Bill, while recommending concrete actions that could be taken to address these. These are compiled and presented in Appendix I to this report.

Steps to finalizing the draft Bill will of course include collection of broad stakeholder input, including at a community level, across the country. The government could also consider conducting targeted research in respect to several priority issues including, which might include the following:

- **A comprehensive study of the Acts to be repealed by the Bill (presented in Section 303), to be certain that all necessary elements of contemporary land rights and governance that were established in these Acts are sufficiently covered by the Bill.** While outside the scope of this paper, conducting this study will be a critical prerequisite to producing a final Bill that succeeds in revising and consolidating existing law on land.
- **Studies of how existing customary land rights are interpreted and understood among the many diverse customary communities in Ghana.** To better inform development of a statutory legal framework that includes significant reference to customary land rights, the Government might consider supporting studies of customary rules around land allocation and, in particular, understandings of the relationship between usufructuary rights-holders and allodial titleholders. Specific outstanding questions could be drawn from particular parts of the Bill (e.g., the description of tenure types and the sub-part on

Registration), and findings used to strengthen the way that relevant parts and sections address customary land rights.

- **Analysis of existing laws and practices affecting women's land rights.** A variety of factors constrain women's access to land and ability to enforce their rights. An analysis of existing legislation as well as customary practices and social norms affecting women's rights should be conducted in order to ascertain key constraints which could be addressed in the Land Bill.

Reviewers humbly offer this paper and the recommendation herein in support of the government's efforts to revise, consolidate and harmonize Ghana's legislative framework for land rights and governance. Developing this comprehensive legislation is an important step toward establishing transparency in land rights and governance, and thus helping to ensure development of a secure, equitable and productive land sector.

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Appendix 1: Table of Recommendations

Table of Recommendations	
<i>Additional Sections</i>	<p>Recommendations on Additional Sections:</p> <ul style="list-style-type: none">➤ In a preliminary section, consider providing for the scope and application of the law, and establishing guiding values and principles, in order to support efforts to correctly interpret and implement the law.➤ Provide an interpretation Section. Adding an interpretation/definitions Section will be critical to ensuring a common understanding of the legislation, especially given the many terms of art unique to Ghanaian land law jurisprudence.➤ Consider adding a new preliminary section introducing the fundamental nature of land rights in Ghana. This section would establish: (1) the categories of land recognized in Ghana; and (2) the tenure types recognized in Ghana. Ensure that any text in this section align closely with the Constitution (and to this end, correct Section 3(2) of the Bill, which contravenes the Constitution by providing that family land is not subject to freehold interests).
<i>Institutions</i>	<p>Recommendations on Institutional Framework:</p> <ul style="list-style-type: none">➤ Consider including reference to the basic institutional framework at the beginning of Part Two.➤ Include cross-references to relevant legislation throughout the Bill, wherever appropriate. <p>Recommendations on Accessibility and Accountability:</p> <ul style="list-style-type: none">➤ Include provisions in the Bill to improve accessibility of land administration services, including:<ul style="list-style-type: none">○ Public access to land records and land information at a cost that is reasonable to the average Ghanaian;○ The availability of land administration services at the most decentralized level feasible;○ Public information on the availability of land administration services and the benefits of their utilization;○ Public posting/publication of all processes and fees associated with land-related services, in English and local languages to ensure understanding. <p>Recommendations on Fees Associated With Registration and Other Services:</p> <ul style="list-style-type: none">➤ Consider adding a provision stating that fees associated with services to the public may not exceed the cost of doing service.➤ Require the posting of official procedures and fees in all offices that provide services to the public.➤ Consider creating a code of conduct for state officials who provide services to the public. <p>Recommendations on Limiting Discretion of Land Officials:</p> <ul style="list-style-type: none">➤ Limit the discretion of public officials to the extent possible by including requirements that affected parties be given notice and an opportunity to contest the decisions of public officials.➤ Require public posting of maps and development schemes, and develop a dispute resolution framework for the contestation of maps and schemes.➤ Establish independent oversight of land administration agencies.➤ Consider the creation of performance standards and codes of conduct for public officials. <p>Recommendations on Strengthening Rights to Appeal:</p> <ul style="list-style-type: none">➤ Clarify rights to appeal throughout the draft Bill, either through reorganization of relevant Sections in the Bill or cross-references to appeal provisions throughout the Bill. Include guidance as to the appropriate grounds for appeal and the process that will be utilized in deciding cases. Increase the window of time for appeals to the extent possible.➤ Allow for contestation and appeal of boundaries on maps verified by the Director of the Survey and Mapping Division.

Recommendations on Customary Land Administration:

Revise the Bill to provide a basic framework for customary land administration that includes:

- The categories of land that are subject to customary land administration;
- Guiding principles for the management and administration of customary lands; and
- The specific functions and powers of the state land sector agencies with respect to customary land management and administration.

Recommendations on Community Land Secretariats:

- Provide a purpose section that includes background information on the nature and purpose of CLSS;
- Revise the Bill to provide additional information on the process and procedures for establishing a CLS;
- Provide additional information related to the structure and staffing of the CLS, even if it is in the form of guidance as opposed to a requirement;
- Consider adding additional functions and powers for CLSSs related to collaboration with land sector agencies and the sharing of information with the public and LSAs;
- Consider additional accountability provisions for CLSSs, particularly related to financial management; and
- Ensure that fees charged for CLS services are reasonable and that CLSSs have a sustainable source of funding. Drafters might consider including a specific state funding mandate or mechanism for CLSSs in the Bill.

Recommendation on the Power of the State to Acquire Land (Sec. 225):

- Consider revising Section 225 to provide a more detailed definition of the term “public purpose.”
- Consider revising Section 225 so that proposals to acquire land for development undergo strict public scrutiny to ensure that there is a true public need for the land and that the public benefit outweighs the burden placed land rights holders.
- Revise Section 225 so as to clarify that the government must provide information justifying the “necessity for the acquisition” and “reasonable justification” for any hardships caused to persons with an interest in the property being acquired.
- Section 225 should be revised to specifically incorporate the constitutional mandate that the government make “prompt payment of fair and adequate compensation” when acquiring property.
- The Land Bill should be revised in Section 225 to clarify that that the compulsory acquisition provisions apply to customary lands.

The Process for Compulsorily Acquiring Land

Planning and Publicity Stage Recommendations:

- *Preliminary Investigation.* Expand the Concept and Scope of the Preliminary Investigation to require that: (1) alternative sites are analyzed; (2) the social, economic and environmental impacts of a project are reviewed; (3) an inventory of affected owners and occupants be developed; and (4) a public outreach plan be created.
- *Public Hearings and Consultations.* Revise the provisions related to public hearings and consultations to require that key information related to the project and the acquisition process be provided to the public, and require that the meetings be held at times and places that allow for participation by affected populations.
- *Notice.* Combine the two existing notice provisions into a single provision that fully addresses the questions of (1) Who must be provided notice; (2) What information must affected stakeholders be provided with; (3) When must notice be served; and (4) How must notice be provided or served to affected individuals.

Claims, Valuation and Payment Stage Recommendations <ul style="list-style-type: none"> ➤ Revise the claims process so that the timeline for filing a claim commences upon service of notices as opposed to the date a declaration is published in the Gazette. ➤ Include provisions providing for legal and technical assistance to disadvantaged groups and individuals in the claims process. ➤ Identify the rights and interests in land that may be compensated. ➤ Identify a process or mechanism for how compensation will be determined for such things as business loss, crop loss, use and access rights, etc. ➤ Assign valuation functions and responsibilities to an independent body or commission that is separate and distinct from the Lands Commissions. ➤ Establish a specific time requirement by which the government must pay full compensation. ➤ Include provisions that ensure that the distribution of compensation is equitable within communities and families. ➤ Define or provide parameters for what constitutes urgent cases under Section 258. Hearings/Appeals Stage Recommendations: <ul style="list-style-type: none"> ➤ Expressly identify the three types of issues that can be appealed within the compulsory acquisition process. (Appeals against the purpose; appeals against the process; and appeals against the compensation award.) ➤ Revise the Bill by adding provisions that identify the basic procedures for how appeals will be conducted. ➤ Consider creating an administrative appeals process that would allow for a special commission or other body to hear claims before resort to the High Court. Other Compulsory Acquisition Related Recommendations: <ul style="list-style-type: none"> ➤ Consider using a different phrase other than “conclusive evidence” in Sections 235 and 244 in order to more clearly convey the intended meaning. ➤ Revise Section 275 to clarify its applicability and also to clarify the relationship between the compulsory acquisition process and the resettlement process. ➤ Consider adding a provision in the law that requires the government to return compulsorily acquired lands to their original owners, if, after a certain number of years, the lands have not been utilized. Recommendations on Section 280 “Use of Land for Public Purpose”: <ul style="list-style-type: none"> ➤ Clarify what lands are subject to occupation and use under Section 280. ➤ Consider revising the “public purpose” language of Section 280 so that it is consistent with the public purpose language of Section 225 (Compulsory Acquisition). ➤ Consider incorporating the entirety of Section 280 into the compulsory acquisition provisions so that a separate process is not created for presidentially authorized takings of land. Recommendations on Section 282(3) (Authority to override the stool land grant limitations): <ul style="list-style-type: none"> ➤ Revise the Bill to further clarify what is intended by “special circumstances” that allow the Commission to override the stool land grant size limitations. ➤ Incorporate some public accountability and transparency provisions into the process that the Commission must follow in order to override the grant size limits. Recommendations on Defining the Basic Nature of the Registration System: <ul style="list-style-type: none"> ➤ Create a preliminary group of sections in the registration sub-part that compiles provisions relating to whether and in what circumstances registration is mandatory, and what the legal effects of registration are. Include information currently contained in Sections 94, 106(1), 107, 213 and 214. See the following paragraphs for further recommendations. Recommendations on Linkages to the Institutional Framework for Administering Registration: <ul style="list-style-type: none"> ➤ Near to the beginning of the sub-part on Registration, include one or more concise provisions

describing registration-related institutions and their respective roles, referring to the Lands Commission Act of 2008. Include the geographic level(s) at which the Registration Division shall operate.

Recommendations on Reforms Needed to Make the Registration System More Accessible and Accountable:

- Include additional safeguards in the Bill to ensure greater accessibility and accountability of registration. These could include:
 - setting limits for fees, providing that they shall be reasonable and shall in any event not exceed the costs to the Registry in providing the service (see Sec. 189);
 - requiring that fee schedules and timelines for services be prominently posted on the office of all registrars (including informal recording agencies, such as CLSs);
 - requiring that a written receipt be issued promptly for each transaction (and that the requirement for this be posted in every registry); and
 - making registration functions available at the most decentralized level possible, to increase the accessibility for rural people.
- Tempering the registrar's broad authority to cancel entries to the registry by requiring notice and the right to contest be provided to all persons affected by the potential cancellation. (The safeguards established in Section 91, limiting discretion of the Land Registrar to reject an application within a title registration district, could be used as a model for this.)

Recommendations on the Necessity and Effects of Registration for Customary Lands:

- In a new preliminary section to the registration provisions mentioned in the recommendation above, set out how and under what circumstances land in each rights category and tenure type may be registered, and to what effect. Perhaps create a new section for each land category, e.g., public land; quasi-public land (comprised of vested stool land); customary land (including unvested stool/skin land, family and clan land and community land); and private freehold. Tenure types would include allodial title, customary freehold, usufructuary, etc.
- Clarify the nature and effects of land rights or interests recorded with the CLSs, especially vis-à-vis formally registered rights.
- Clarify whether and how rights recorded with the CLSs will be merged with the formal registries and, more generally, how the CLS recording system and the formal registration system will inter-relate. For example, if usufructuary and other customary rights *may* be registered formally (as implied by Sections 6 and 74 of the draft Bill), clarify whether a CLS has to verify any claims to the land in the formal registry before recording a transaction, including any new allocation.
- Consider including safeguards in the Bill for those many customary rights holders who will not be able to register their rights within the near or even mid-term future. For example, the Bill could allow for a grace period of ten years or more for people to register their rights, before registration becomes conclusive evidence of title.
- Mandate in the law that registration be made more accessible to current holders of customary rights (e.g., reduced fees, procedural safeguards for the registration process, etc.), per recommendations below.

Recommendations on Ensuring that Valid Entries in the Deed System are Converted into the Title Registration System:

- Add further detail about converting entries from the Deeds system to the Title system, so as to make possible the implementation of Section 219. This conversion should encompass procedural safeguards to ensure accuracy, and should not require affirmative action on the part of the deeds records holder, other than perhaps to validate (where possible) the prepared title registration entry before it is officially filed.
- Amend Section 84 of the Bill so that the Director of Land Registration Division *must* prepare information concerning instruments demonstrating proprietorship of land in the district.

Recommendations on the Spectrum of Rights to be Registered and Procedural Guidance or Safeguards:

- Add further specification to the Bill on what precise interests and rights (usufructuary rights? lease, sub-lease and sharecrop rights? spousal rights?) constitute valid claims in the context of first registration.
- Include an important procedural safeguard to Section 97(1) providing that the “period specified in the notice” pertaining to first registration be at a minimum 90 days.
- Add a section or sub-section establishing specific requirements necessary to establish a valid claim for first registration. Such requirements might include documentation (e.g., allocation letter), witnesses, etc.
- In Section 90, provide applicants with an opportunity to fill gaps and correct flaws in an instrument that lacks essential data on its face, prior to summary rejection by the Director of the Land Registration Division.

Recommendations on the Meaning of “Good Title”:

- Further describe the meaning of “good title” in Section 98, including how it relates to overriding interests and customary lands, and whether there is any other form of title that could be held on par with it.

Recommendations on Protecting Women’s Land Rights in the Context of Registering Spousal Rights to Jointly Held Property:

- Add a specific requirement to Section 170(3) requiring the consent and concurrence of relevant women and spouses in order to register a disposition of stool or family land.
- Include in Section 195 a clause stating that the oath of any relevant spouse(s) is required as proof that an instrument presented for registration has been duly executed by the grantor. Include explicit mechanisms in the Bill to ensure that spouses’ names are included on title documents, and also on documents used by the CLSs to record land rights.

Recommendations on Caveats and Restrictions:

- Clarify in Section 171(1) what is an “unregistered” interest that would justify a caveat. Consider explicitly stating that this applies to spousal interests to household land, if these interests are not otherwise registered.
- Provide in Section 171(4) a list of factors that the Registrar should take into consideration in refusing to register a caveat.
- To Section 175, add standards and criteria for determining what it means to file a wrongful caveat, or one without reasonable cause.

Recommendations on Overriding Interests:

- Clarify the introductory clause in Section 110(1), regarding whether or not overriding interests may be somehow voided and narrowed through some kind of a note recorded in the registry. If this may be done, establish a clear and detailed process for it.
- Address the substantive land rights of occupants clearly and up-front in the Bill. Also, in regard to the rights of occupants, consider including in the Bill a more robust treatment of the rights to Adverse Possession and Prescription currently established under common law. (In this regard, perhaps Section 94(2), referring to the Limitations Act of 1972, could be expanded upon.)

Recommendations on Incorporating the Gender-based Protections Enshrined in the Constitution:

- Integrate the gender protections contained in Ghana’s Constitution and include provisions that explicitly prohibit gender-based discrimination in land administration and management.
- Consider revising Section 5 to incorporate the specific language Article 17 of the Constitution [“A person shall not be discriminated against on grounds of gender, race, colour, ethnic origin, religion, creed or social or economic status.”]
- Consider requirements that women comprise a set minimum portion of the members of decision-making bodies involved in land administration and management.

Recommendations on Protecting Women’s Rights to Customary Land:

- Consider including language in the Bill providing that customary laws related to land (particularly rules around community membership, land allocation, and rights to use and transfer land) apply equally to women and men.

- Consider requiring CLSs to record the rights of all adult household members, not a single head of household, when cataloguing customary rights to household land.
- Revise Section 153(5) to require the consent of spouses prior to alienation of household land.

Recommendations on Constitutional Protections for Spousal Property Rights:

- Require joint titling of property acquired during marriage in order to fulfill the constitutional mandates related to spouses' rights to property acquired during marriage. The Bill should be consistent with the Constitution regarding marital property, and, to the extent possible, consistent with the Property Rights of Spouses Bill.
- Barring a joint titling requirement, include a provision requiring spousal consent for transactions involving marital property, which should be defined in the Bill as property acquired in marriage with exceptions for certain categories of property, such as property acquired by gift or inheritance, property acquired as part of a settlement for personal injury etc. (see draft Property Rights of Spouses Bill, Sec. 11).

Recommendations on Rights of Women to Compensation for Property Compulsorily Acquired by the State:

- The Bill should clearly define the category of claimants eligible for compensation for compulsory acquisition. Drafters could include explicit provisions guaranteeing spouses the right to compensation for land they use, even where the land is considered to be "owned" by only the head of household.

Recommendations on Inheritance:

- Consider including a section providing that both women and men are entitled to acquire land through inheritance.

Recommendations on Safeguards to Address Constraints to Implementing Land Legislation on behalf of Women:

- Study the variety of constraints that affect women's access to land and ability to enforce rights in Ghana, and consider including provisions in the Bill to address these constraints or counteract their effects.
- Require land institutions that offer services to the public to make assistance available to illiterate Ghanaians.
- Reduce costs of land administration to the extent possible.
- Consider including mandates for public information and awareness campaigns on available land administration services, specifically targeting women and other vulnerable groups.