



**Ghana's Land Reform
and Gender Equality**

Rachel Spichiger and Paul Stacey

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LIST OF ABBREVIATIONS

ADR	Alternative Dispute Resolution
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CIDA	Canadian International Development Agency
CLS	Customary Land Secretariat
CHRAJ	Commission on Human Rights and Administrative Justice
DANIDA	Danish International Development Agency
DFID	UK Department for International Development
EC	European Commission
FAO	Food and Agriculture Organisation
GDP	Gross Domestic Product
GEST	Ghana Gender Equality Sector Group
GoG	Government of Ghana
GTZ	Deutsche Gesellschaft für Technische Zusammenarbeit (German Agency for Technical Cooperation)
IIED	Institute for International Environmental Development
ILGS	Institute of Local Government Studies
IMF	International Monetary Fund
KFW	Kreditanstalt für Wiederaufbau (German Bank for Reconstruction)
LAP	Land Administration Project
LSAs	Land Sector Agencies
MLNR	Ministry of Lands and Natural Resources
NDF	Nordic Development Fund
NDP	National Development Plan
NGO	Non-governmental organisation
OASL	Office of the Administrator of Stool Lands
OECD	Organisation for Economic Co-operation and Development
PNDC	Provisional National Defence Council
PRSP	Poverty Reduction Strategy Paper
SAP	Structural Adjustment Programme
UN	United Nations
WB	World Bank

ABSTRACT

Ghana has been implementing a land administration reform since 1999. The Land Administration Project (LAP), an ambitious programme supported by donors, aims to strengthen land administration institutions and increase land holders' security of tenure on both state and customary land. This working paper reviews the literature on this land reform process, with a focus on issues related to gender. At first absent from the 1999 Land Policy, gender concerns were later incorporated into the project and a gender strategy was developed in 2009, with the goal to mainstream gender in land-related agencies and activities. Although donors have contributed to the gender strategy, the inclusion of gender equality has not been at the forefront of their priorities. At this stage no conclusive evidence has come to light with regard to the impact of gender mainstreaming on women's access to land and landownership, although an increase in female ownership and titling has been reported in some pilot areas. Most of the land in Ghana is held under customary tenure, and although some state laws, e.g. on inheritance, aim to regulate succession for spouses under customary marriages, they do not seem to have had much influence in the rural areas. Similarly, the impact of the reform in relation to landholders' insecurity of tenure due to multiple land sales, lack of or unclear boundaries, and issues related to chieftaincy disputes is difficult to assess. The role of the recently introduced Customary Secretariats, among other formal institutions, will be crucial and very interesting to observe, as these are an illustration of the wish of the government to work hand in hand with traditional authorities. In relation to this, this paper examines the shifts that have taken place in development policies with regard to both customary land tenure and gender. The land administration project in Ghana is indeed illustrative of how donor policies are advocating the recognition and involvement of traditional authorities as main actors in the reform's implementation. These policies have also recently taken gender issues into account. Although the impact or success of these policies is difficult to assess at this stage, as the reform is an on-going process, the evidence available shows that registration or titling is not always clarifying rights or simplifying the very complex tenure system in Ghana but exacerbates existing conflicting rights. It also shows that the recognition and involvement of traditional authorities may not be the panacea it is claimed to be, especially if left unchecked. Moreover, the recent inclusion of gender or the call for more attention to be paid to women's situation with regard to access to land shows that despite a progressive legal framework, gender equality is facing challenges in a context of entrenched discriminatory cultural and social practices. Donors and policy makers have so far paid limited attention to the issue of gender equality in their land administration reform efforts. Future research will be useful in examining how the gender mainstreaming of the LAP activities will address issues of land access and also, crucially, of land dispute settlement, for both men and women.

INTRODUCTION

The last decades have witnessed rapid changes regarding land use and land tenure in Ghana. Land plays a central role in people's livelihoods. Although poverty in Ghana declined over the last years,¹ it is still endemic in some regions (Oduro et al. 2011: 3). Land remains a primary means of production for the country: part of the land is used for mining and timber activities, and most of the land (69%) is used for agriculture (USAID 2013: 4). Agriculture, most of which is based on small-scale farming production², is the main contributor to Gross Domestic Product (GDP) (FAO 2012a: 26; see also Wily and Hammond 2001), and cocoa is the major agricultural export (FAO 2012a). Recent years have also seen large-scale land acquisitions for biofuel and agriculture taking place.³ Pressure on land has increased under significant population growth (Codjoe 2007: 200), also resulting in growing urbanization. Peri-urban areas in particular have experienced important changes, with contradicting demands for residential and cultivated land leading to conflicts (Ubink 2008a: 266; Wily and Hammond 2001). At the same time, and as importantly, previous land reform policies' attempts to clarify the law have contributed to the creation of conflicts by fuelling contest of authority over land⁴ (Lund 2008).

1 Ghana became a lower middle-income country in 2011.

2 The agriculture sector shows signs of change, though, with shifts from subsistence to cash crops and from small-scale to more commercial farming (Kanji et al. 2005).

3 1.184 million ha of land are being used by 20 commercial plantation companies for the purpose of developing biofuel feedstock plantations in Ghana (see Schoneveld et al. 2011).

4 Reforms vested agency in customary authorities, leading to communities arguing over the legitimacy of these very authorities. Also, making chiefs the guardians of land distribution has fuelled debate about tradition and about who arrived first on the land (Lund 2008).

Around 80 percent of the land in Ghana is customary, while 20 percent is under the control of the state. People access and hold land in different ways, as will be shown below, but broadly speaking they can acquire land from their community through their membership in a lineage, or through purchasing or renting. Chiefs, heads of families or other traditional authorities are the custodians of the rights held by individuals, as stipulated in the 1992 Constitution (Antwi 2006: 4). Land is governed by a plural legal system of customary, statutory law (including constitutional provisions and judicial decisions) and religious law (Hilhorst and Porchet 2012; and Sarpong 2006). The complexity of land relations is evident in the 23 or so 'informal' and 'formal' institutions that comprise the mosaic of the Ghanaian land administration system, and is visible in the high number of land disputes (Ayee et al. 2011: 7-8.).

Considering that the full economic development and use of land was constrained by several issues, in 1999 Ghana engaged in an ambitious land reform process with the adoption of a National Land Policy. The policy, aiming at strengthening land administration institutions and increasing the security of land tenure for landholders, has been implemented through a Land Administration Project (LAP), supposed to last for about 20 years, and supported by the World Bank and several other donors. One of the main aims underpinning the reform is the registration of rights. The idea was not entirely new: deeds registration had been in existence since 1843, then repealed and re-enacted, shortly after independence (Alhassan and Manuh 2005: 7-8). In 1986, the Land Title Registration Law had been introduced as a more effective system of land titling and registration (see also next section), by registering title rather than the transaction itself, with a focus on two areas (Greater Accra and Kumasi Metropolis) (GoG 2011; and Alhassan and Manuh 2005: 8). Underlying these efforts, in

Ghana but also elsewhere, was the assumption that increasing formalisation would provide improved tenure security, increased investments in land and economic growth (Amanor and Ubink 2008: 10; see also Pedersen et al. 2012).

Although at first not focussing on nor including issues related to women's land rights, after its launch in 2003⁵, the LAP tackled gender issues by developing a gender strategy to mainstream gender in activities and policies. Indeed, it was soon recognised that despite Ghana's legislation enabling them to own and inherit property, women, as often in the rest of sub-Saharan Africa, do not enjoy equal access to land as men, and are dependent on male relatives, and that very few women actually *own* land (USAID: 3)⁶. The aim of the gender strategy is to mainstream gender in land-related agencies (customary and state) and in activities and projects as well as raise gender awareness.

Based on a literature review⁷, this study aims at giving a background of policies and their implementation in Ghana and examining how they approach gender issues. It will also examine the role of donor assistance related to these issues. It is structured in the following way: section 1 gives a brief overview of the reform and its context, while section 2 examines it in more detail. Section 3 gives background information on land governance. Issues pertaining to women and land are treated in section 4. Section 5 looks at donor interventions

⁵ It is interesting to note that the PRSP I, during the same period (2003-2005) was also seen as gender-blind (Chiwara and Karadenizli 2008).

⁶ Gender is of course not the only basis for differentiated land rights, as these can be grounded also on the basis of, among other, ethnicity, age, religion, and party political affiliation, which also, importantly, can affect women.

⁷ The works reviewed here are publications by scholars and land sector experts as well as policy documents.

which have been undertaken in relation to the aforementioned issues and the influence of donors in interventions, through the LAP but in particular through gender-related interventions. The conclusion summarizes the central objectives pertaining to land law and gender mainstreaming and discusses some important societal features that limit the success of these policies.

I. GHANA'S LAND REFORM AND THE LAND ADMINISTRATION PROJECT

The land reform in Ghana was spurred by the Government's recognition that land-related economic development was constrained by several problems (Larbi 2011). The 1999 National Land Policy identified the following main problems: the lack of an adequate policy and regulatory framework; the malfunctioning of land administration institutions (customary and statutory); a weak land administration system; a lack of demarcations on customary land; and state compulsory acquisitions without payment of compensation (GoG 2011: 2; and Larbi 2011). It was acknowledged that these issues had led to high tenure insecurity, increasing land disputes "clogg[ing] the court system" (GoG 2011: iv) and creating an "undisciplined" land market (GoG 1999: 3; and GoG 2011: 2), reflected in multiple land sales and land encroachments (GoG 1999: 3). The drive to formalize land tenure and the registration or titling of land, in Ghana and elsewhere, has been based on the assumption that increasing formalisation would improve tenure security, investments in land and economic growth. In the last decade, these ideas have been rekindled by the influential book *The Mystery of Capital* by Hernando de Soto (2000).

The 1999 policy, amended in 2002, was the first comprehensive land policy formulated in Ghana (GoG 1999)⁸. It was adopted to strengthen land administration institutions and to increase the security of land tenure through land registration, on both state and customary land. It aimed at reinforcing the Compulsory Land Title Registration Law, which, since its introduction in 1986, had been only weakly implemented (Jones-Casey and Knox 2011: 2; and Hilhorst and Porchet 2012: 3)⁹.

The actions recommended in the National Land Policy document have been implemented through a Land Administration Project (LAP), an initiative of the Ministry of Lands and Natural Resources. The project has multi-donor support with development partners including the World Bank, the International Development Association, Nordic Development Fund (NDF), Canadian International Development Agency (CIDA), the UK Department for International Development (DFID) as well as the German Bank for Reconstruction (KfW) and the German Agency for Technical Cooperation (GTZ)¹⁰ (USAID: 14).

The project, launched in 1999, but effectively started in 2003, is expected to last 20 years, and lays the foundation for the implementation of the land reform programme (World Bank 2003: 3). The reform and the project aim at enhancing tenure security and improving land administration by making it

fairer, decentralized and more efficient, and developing a land market (*ibid*)¹¹, through policy, legal and institutional reforms. Over the past few years, the project has also begun to register land in pilot regions (Jones-Casey and Knox 2011: 2).

The land reform process in Ghana is interesting in that it is quite emblematic of recent African land reforms recognizing customary land rights and authorities while keeping the earlier reforms' emphasis on titling. Indeed, while one of its aims was to "speed up title registration to cover all interests in land throughout Ghana" (GoG 1999, section 5.3.), the policy also acknowledged the different tenure systems, including "customary land usages and titles", and aimed to work with traditional authorities (Berry 2009: 1371). It also sought to "harmonize" land policies and legislation with customary law (World Bank 2003: 3). On the governance of customary land, the policy aims for the government to divest itself of responsibility for the management of customary (or stool¹²) lands to Customary Land Secretariats (CLS) (Ubink 2008a: 266), whose tasks are to register individual claims to land as well as be responsible for dispute resolution (Ubink 2008a; Schoneveld et al. 2011: no page number; Jones-Casey and Knox 2011: 2). The success of customary institutions in solving disputes, however, varies greatly around the country. In a number of locations, disputes over the legitimacy of customary authorities and debates about customary law, both between and

8 There had been an initial attempt to prepare a Land Policy document in 1973, submitted in an Interim Report by the Land Reform Commission. The Commission submitted its final report in 1994 (GoG 1999).

9 According to the Government, 5 percent of land had been registered over 25 years after the introduction of the law (GoG 2011: 2).

10 GTZ merged in 2011 with the German Development Service DED (Deutscher Entwicklungsdienst) to form the German Agency for International Cooperation GIZ (Deutsche Gesellschaft für Internationale Zusammenarbeit).

11 Land selling, though, was not a new concept, as land sales had been in existence since before the colonial period (Amanor 2010: 105; see also Onoma 2010).

12 The term "stool" is used in reference to the stool on which chiefs sit in southern Ghana, while "skin" is the term used in Northern Ghana (there are also customary communities where authorities are neither skin or stool); however, in this context the word is used to refer more broadly to customary land.

within different ethnic groups, have meant that the legitimacy of the traditional institutions recognised by the government is questioned. As such, the formalisation of land ownership and registration of titles may not match local understandings of legitimate land-controlling institutions (Stacey 2012).

The LAP has now entered its second phase (2011-2016). The first phase (LAP-1) of the reforms, implemented from 2003 to 2010, reviewed the statutes on land and undertook institutional reforms. LAP-1 also undertook pilot projects on for instance customary boundary demarcation, the establishment of customary land secretariats, the digitalization of land records, the establishment of land courts and systematic title registration (GoG 2011: ii).

The second phase (LAP-2) aims to consolidate what has been achieved by Phase 1. LAP-2 aims to “strengthen land administration and management systems for efficient and transparent service delivery by deepening the reforms, enable the land sector agencies to be more responsive to clients, cut down the cost and time of doing business and provide an enabling environment to reflect the objective of an efficient and transparent service delivery” (GoG 2011: vi).

The LAP-2 is also implementing the gender strategy developed in LAP-1 (World Bank 2011: xiii) and will support the judiciary to improve the adjudication of land cases. However, it is not clear from the documentation available whether a) gender is being successfully mainstreamed in the project and its implementation and b) whether this will lead to tangible results, in particular with regard to land dispute settlement. It has indeed been shown in Ghana (and elsewhere) that for women to get involved “in a public dispute is a last resort [...]” (Crook, Asante and Brobbey 2011: 11). Moreover, the procedures of the newly established customary secretariats, which combine elements from formal state court procedures

and rituals from the traditional system, tend to make them “unfriendly” to women and strangers (Crook, Asante and Brobbey 2010: 23-24; see also Gedzi 2009).

2. LAND IN GHANA

2.1 Land tenure systems

Land in Ghana consists of public or state lands and private land (GoG 1999: 2; Obeng-Odoom 2012)¹³. *Public land* consists of all the land acquired in the public interest by the government and land that was vested in the government before the coming into force of the 1992 Constitution (Obeng-Odoom 2012: 164). *Private land*, constituting around 80 percent of all land (Wily and Hammond 2001: 27; Ubink and Quan 2008: 199; and Aryeetey and Udry 2010: 1) is in fact communal land held in trust for the community by a traditional authority (a stool in Southern Ghana and a skin in Northern Ghana) or a clan, family or in some cases, individuals (this varies in the different areas of Ghana) (GoG 1999: 2; Kasanga 2003; and Ubink and Quan 2008: 199).

To these two main categories of public and private lands, two other categories can be added to provide for specific cases. These are the category of “vested lands”, whose ownership is split between the state and the traditional owners (GoG 1999: 2; World Bank 2003: 88) and the category of “private lands given or sold as freehold by stools, skins and families to individuals, corporations and institutions”. This last category applies only to cases where the

¹³ The nomenclature for the classification of land is not always consistent (see Obeng-Odoom 2012: 164); nevertheless, Ghana’s government uses “public” or “state land” and “private land”, and major donors use the names of “public” and “private” land).

freehold ownership was obtained prior to the enactment of the 1992 Constitution (World Bank 2003: 88; GoG 2011: 2).

On customary land, community members mostly obtain land through membership in a group (lineage, extended family). However, despite a legal framework allowing for equal ownership of land by all, in practice some community members are experiencing discrimination. Women, migrants and herders, for instance, are less likely to own land, and find their access often challenged, although these practices are likely to vary regionally and ethnically (see sections below). This shows that social and ethnic identity plays a crucial role in the distribution of resources and is used as a means to legitimise ownership and to dismiss the claims of others (see Berry 2002).

Apart from land ownership through one's lineage, there is also a growing informal land market of sales and rentals (Aryeetey and Udry 2010: 1), and sharecropping and other ten-

ancy agreements have long been in existence. Indeed, in some parts of Ghana people holding usufruct may choose to relinquish their interest by sale, lease, mortgage or pledge, or to grant agricultural tenancies or shareholder agreements (Sarpong 2006: 3; see the table below outlining the different "interests in land" that people can have). However, the legitimacy of such transfers can vary greatly around the country. In the Northern Region for example, it is likely that an usufruct holder would be able to transfer a farm to the next generation, but the respective skin institution would expect to be consulted before land is transferred in some way to a third party. Generally, a 'native' holder of land, as a member of the skin community, has much greater latitude over land use than a designated 'migrant'. At the same time, any non-compliance with a customary principle, in theory, could easily lead to the skin demanding the return of the land. Still, this would depend on whether the

Box 1: Rights or 'interests' in land

Customary rights to land

Allodial title is the highest interest in land, and is held in common by the members of a community while the community's chief is the custodian of the land

Customary freehold title, or **usufructuary title**, is held by subgroups or individuals within a larger community and can be passed down to successors

Customary leasehold: right to use land for a specified period of time, granted by an allodial or customary freehold owner

Sharecropping arrangements cover different arrangements where a tenant uses the land and gives a portion of the harvest to the landlord. Most common are *abusa*, a third share and *abunu*, a half share

Sources: Arko-Adjei 2011: 59, Ubink 2007: 3, Hilhorst and Porchet 2012: 4, Marfo, Colfer et al. 2010; Sarpong 2006: 3; Larbi 2008: 2.

respective customary authority agrees with the incompliance, or is able or willing to enforce any sanctions (Stacey 2012).

2.2 Legal framework related to land

A complex legal framework regulates land administration, land management and the agencies responsible thereof. The most important legal texts are the 1992 Constitution, the State Property and Contracts Act of 1960, the State Lands Act of 1962, the Land Title Registration Act of 1986, the Administration of Stool Lands Act of 1994; and the Lands Commission Act of 2008. The 1979 Constitution had already had an impact on land administration as it divested land from the state and enabled government-recognised chiefs to substantiate and gain government backing of their claims to land in the Northern Region¹⁴ (Lund 2004; Jönsson 2007).

Laws governing inheritance and property among spouses or family members also impact on land. These laws are the Marriage Ordinance of 1884, the Marriage of Mohammedans Ordinance of 1907, the Matrimonial Causes Act of 1971 (which does not mention “land” but movable and immovable property (GoG 1971, section 20 and 21)), the Customary Marriage and Divorce (Registration) (Amendment) Law 1991 and subsequent laws on marriage (see section 5 for more on the recent laws and their impact on women).

¹⁴ Until 1979, all land in the North was vested in the President, while the South had been commercialised since the colonial period.

2.3 Land administration and land dispute settlement

The aim of this section is to highlight briefly which agencies are responsible for the administration and adjudication of land and what their tasks are. Issues related to their functioning, before or after the inception of the LAP, will be examined in later sections.

2.3.1 Land administration

The Ministry of Lands and Natural Resources (MLNR) has overall responsibility for land issues as well as mines and forestry (GoG 2011). The following institutions are responsible for the administration management of customary and public land, with some overlap of tasks.

Public land

- *The National Lands Commission*, established by the 2008 Land Administration Act, is responsible for and managing state and vested lands (World Bank 2003; and GoG 2011: 1). The creation of this new commission was aimed at streamlining land administration by grouping different agencies and making them become divisions under one agency.

This commission is constituted of four divisions: (1) the Land Title Registry Division, responsible for registering interests in land and issuing title certificates; (2) the Lands Commission Secretariat; (3) the Survey Department, responsible for cadastral, geodetic and hydrographic surveying, the production of base maps, and cadastral plans for individual parcels of land for which title certificates are issued; and (4) the Land Valuation Board, responsible for government property (Jones-Casey and Knox 2011).

- *The Town and Country Planning Department* is responsible for land-use planning and development (but falls under the Ministry of Environment, Science and technology) (GoG 2011) through the *district assemblies*. District assemblies were created as part of the decentralisation programme ushered in by the democratization process. Since the mid 1980s the number of assemblies has increased to 169 and they are the main planning authority (Ubink and Quan 2008: 201). These assemblies are also involved in land administration as they can make by-laws for building, sanitation and environment (ibid).
- *The Office of the Administrator of Stool Lands (OASL)*¹⁵ is a decentralized office with thirty district-level offices throughout the nation, which assists in the demarcation of holdings to generate revenue from land vested in customary authorities (Ubink and Quan 2008: 200); it also researches land issues (USAID: 11). It collects rents and distributes the proceeds in accordance with the provisions of the 1992 Constitution (GoG 2011).¹⁶ Provided for in the Constitution, it was established by the Office of the Administrator of Stool Lands Act in 1994 (GoG 1994).

Stool and skin lands (private land)

Different institutions are involved in customary land governance and administration.

- *Traditional authorities*, such as paramount, divisional and sub-divisional chiefs, and, in the northern regions, earth priests and family heads are responsible for the management of private land and are the custodians of the land, as the Constitution obliges them to administer “the land in the interest of the whole community” (Ubink 2007: 3). On an everyday basis, land issues are therefore dealt with by various community elders and traditional authorities. Around the country there are ca. 190 government-recognised traditional councils where an area’s paramount chief sits as chairman with a number of government-recognised divisional and sub-divisional chiefs. From a government perspective, these ultimately have the responsibility to ensure that any land transfer respects the social obligation that land control entails. Further, that distribution mechanisms will be in agreement with the customary laws of the respective traditional council.
- *The Lands Commission* is also partly involved in the administration of customary land, as it is supposed to give consent to the disposition of stool, skin and family lands, provided the development is consistent with the approved planning schemes of the area (World Bank 2003; GoG 2011: 2).
- *Customary Land Secretariats (CLSs)* Originally, these secretariats had been developed by chiefs themselves, to keep track of land transactions by recording land allocations made by chiefs (Kanji et al. 2005: 13). The LAP sought to reinforce these systems and to mainstream them into the formal land administration system (ibid). After having been supplied in pilot

¹⁵ Here again, “stool land” refers to customary land and “includes any land or interest in, or right over, any land controlled by a stool or skin, the head of a particular community or the captain of a company, for the benefit of the subjects of that stool or the members of that community or company” (GoG 1994, section 18).

¹⁶ In the proportion of: (a) the district assembly 49.5 percent; (b) the stool or skin 22.5 percent; (c) the customary council 18 percent and (d) OASL 10 percent to cover its administrative expenses as provided in the 1992 Constitution (GoG 2011:2).

sites selected by the government, CLS are now established upon demand (Quan et al. 2008). These institutions are administered by chiefs and their staff employed by the traditional councils (Crook 2011: 3). Their role is to control land ownership and land distribution, which includes recording and demarcating land under customary tenure as well as recording and formalising allocations of land. They are also given an adjudicatory role as they are responsible for land disputes, and to this end are mandated to set up *Land Management Committees* (Crook 2011: 3-4). As of 2011 there were 38 CLSs spread around the country's ten regions.¹⁷

2.3.2 Land dispute settlement

Several dispute settlement institutions are available to people whose rights are infringed.

State courts

- Of the state courts, the *high courts*, of which there are 20, have original jurisdiction, subject to the Constitution, in all matters civil and criminal, and any other constitutionally conferred jurisdiction. They also have supervisory jurisdiction over lower courts. It is envisaged that all high courts will have a land court. These land courts were introduced by the LAP to deal with the state system's backlogs (Crook 2009: 8; and Crook et al. 2007: 13). A number of them have already been established around the country, and the

government plans to improve the training of judges and lawyers in land administration matters and dispute settlement practices (GoG on <http://www.ghanalap.gov.gh/index1.php?linkid=283>).

- The district or *magistrate's courts* are the lowest-level courts which apply formal state law (this includes customary law) (Crook, Asante, and Brobbey 2010: 2).

Other dispute settlement institutions

- The *Commission on Human Rights and Administrative Justice* (CHRAJ) can also deal with land issues, although it does not have the mandate to adjudicate, but can solve disputes through mediation. The commission has around 110 district offices (out of 170 districts) which offer free mediation or alternative dispute resolution¹⁸ (Crook, Asante, and Brobbey 2010: 2).
- *Customary Land Secretariats* are also responsible for land disputes (Crook et al. 2007: 33) They use customary law related to land but have been advised to offer Alternative Dispute Resolution (Crook, Asante, and Brobbey 2010: 3).

It is important to note that people involved in land disputes will generally choose to solve it locally through family heads, village elders,

¹⁸ Alternative Dispute Resolution, or ADR, has recently increasingly been used in justice sector programmes in the developing world (Crook 2008: 132). It is seen as a "cheaper, faster and more accessible" form of justice which at the same time compensates for overburdened state courts suffering backlogs. At the core of ADR is the idea that mediation delivers better justice than court judgement by focusing on an agreement between parties rather than 'winning' or 'losing' a case (Crook 2008: 133).

¹⁷ According to a World Bank Report from 2011, there were 38 CLSs at the time of the report, but government's documentation cites a figure of 37.

traditional authorities or assembly members (Alhassan and Manuh 2005: 29; Stacey 2012; Crook 2008: 132). Due to the costs and risk of prolonging a dispute, parties will normally only take formal legal steps when local and community options have been exhausted (Stacey 2012).

2.4 Tenure security

As acknowledged by the policy in 1999, land tenure insecurity in Ghana is high, with a high incidence of disputes on customary land (Quan et al. 2008: 183), compounded by increasing pressure on land, as well as resulting from many previous attempts to define the 'owners'. A study by the IIED found that among land-related conflicts in Western Ghana, conflicts about land boundaries were the biggest problem, followed by conflicts about crop-sharing arrangements (Alhassan and Manuh 2005: 27). Several interrelated factors have been highlighted that contribute to the increasing number of land conflicts, among which unclear boundaries, multiple land sales, allocation and judicial processes hindered by backlog (Aryeetey and Udry 2010: 2), migration and food insecurity.

Other issues related to land insecurity have increasingly come on the agenda: the ways in which the State has alienated land through *compulsory acquisitions* has been problematic and this has been acknowledged by the National Land Policy (Wily and Hammond 2001: 21). According to Larbi et al. (2004), compulsory land acquisition is the way government can acquire private land for public land and has been widespread since the colonial period. Ostensibly, acquisition is for the public good and improves social inequalities and social amenities, though in practice it often results in increased landlessness, social uprooting and worsening of government-local relations (Larbi et al. 2004). Several occurrences of *land alienation*

by chiefs have also been recorded (Antwi 2006: 4; USAID 2013: 1; Kanji et al. 2005: 13).

Other issues affect some community members in particular, for instance, *migrants or settlers*. In Ghana distinction is commonly made between natives and strangers, i.e. people coming to settle in an area (Wily and Hammond 2001: 18). Around the country there are areas where migrant groups of farmers comprise the majority, for example in the Eastern Corridor in the Northern Region which is a significant yam production centre. Despite having resided and farmed an area for several generations, migrants have to accept their inferior land rights in perpetuity. Scholars have characterised the position of strangers as "structural[ly] disadvantage[d] when it comes to acquiring land and defending acquired land rights (even property held under land title)" (Boone and Kwane Duku 2012: 673). Experts have indeed documented that because of increasing land scarcity, migrants find that their land access has become less secure. This insecurity can take different forms: it can become difficult to access land, or certain land, or the conditions of this access have hardened, with for instance shorter tenancy duration, higher tributes to be paid etc. (Wily and Hammond 2001: 18).

Conflicts between farmers and *herders*, in particular in northern Ghana (Volta Basin), have also been on the rise over the last decades. Unlike Mali and Burkina Faso, Ghana lacks a Pastoral Charter (USAID: 2), and herders' rights are therefore not defined.

Paradoxically, the increased tenure security of chiefs and landholders through registration has also had the effect of decreasing migrants' or other land users' security, where the recognition of the latter's rights has led to the alienation of land groups having only user rights (Amanor 2010: 105; Ubink 2008).

These issues have been mentioned as being at the root of problems plaguing land tenure in Ghana. The sections below will examine

whether, and how, they have been tackled through the land reform.

3. IMPLEMENTATION OF THE LAND REFORM: IMPACT ON LEGISLATION, INSTITUTIONS AND LAND GOVERNANCE

The following paragraphs only give tentative understandings concerning the impact of the land reform as it is an ongoing process of implementation. Even recent literature only refers to issues that are being *potentially* resolved or taken up by the LAP. However, several problems are worth mentioning, and have occurred within and outside the LAP, resolved by or on the way to be resolved by the LAP or have been said to be caused by weaknesses in the land reform and the LAP itself.

3.1 Land administration and legislation processes

According to the Government of Ghana (GoG 2011), the achievements of the LAP by 2011 are the following: (i) the merging of different land sector agencies into one Lands Commission through the passing of the Lands Commission Act 2008; (ii) the decentralization of the deeds registry to nine regional capitals effectively thereby shortening registration time; (iii) the establishment of 37 customary land secretariats to facilitate the management and record keeping by traditional authorities of land allocations and transactions within their traditional areas; (iv) the modelling of land use planning at three levels; (v) the reduction of the backlog of land-related court cases; (vi) the testing of title registration and demarcation of boundaries of customary land through private surveyors; and (vii) the ascertainment and cod-

ification of customary land rights in 20 traditional areas (GoG 2011).

3.1.1 New land legislation delayed

Despite LAP-1 having achieved some of its goals, the drafting of important land legislation has been delayed. As mentioned above, the Lands Commission Act was passed under the LAP, but other legislation such as a Lands Act and Land Use Act have not been passed, and have fallen behind schedule. Both bills are ambitious in reach and intend to harmonise land administration institutions, improve registration, increase transparency and cut fraud and corrupt practices. At the time of writing it is not clear whether and when they will be passed in full (their successful completion has become part of the goals of LAP-2). Tentatively, the current delays could be explained by resistance to reform within the present system.

3.1.2 Registration process

Other issues have been identified that are constraining the goals of the reform, and in particular the registration of titles. Notwithstanding the fact that it has been argued that titling may not be the panacea to tenure insecurity in Ghana (see for instance Wily and Hammond 2001) there is other criticism. These weaknesses relate to the agencies involved in registration but also to other factors.

According to the government, “only a small proportion of the estimated 6 million total land parcels of Ghana are registered” (GoG 2011). On a positive note, it has recently been reported that the LAP has led to an increase in deed registration, due to the opening of regional offices which made them more accessible to people (World Bank 2013). However, the deeds system, established shortly after independence, does not always clarify issues of ownership, as it does not prove “that the party that registered the land actually owns the property” (GoG

2011). One consequence of this has been for instance the occurrences of multiple sales of a same piece of land, fostering disputes about ownership. Studies examining the situation in 2005 found that land title registration in peri-urban areas was undertaken mostly by the urban elite, while deed registration in rural areas was undertaken by agribusiness, mining or forestry companies (Kanji et al. 2005: 24), thereby not benefiting small-holders. Moreover, even if people wanted to register their property, there is a huge backlog in ownership registration and documentation (Hammond and Abdulai 2011).

There is agreement among several authors that the following are the most important factors with regard to problems of documentation and registration: insufficient financial resources in the LAP project itself, prohibitive costs of registration¹⁹, and, referring in particular to the use of GIS, lack of human capacity and adequate training, lack of equipment²⁰ (Karikari et al. 2005: 358). However, as we shall see below, beyond these technical factors, there are other more structural reasons why implementation lags behind.

In general, the different land agencies suffer several problems. The Lands Commission and the Office for the Administration of Stool Lands have been found to be hampered by a lack of trained staff and by corruption (Ubink and Quan 2008: 201). In a recent performance assessment, the World Bank notes that the lack of capacity and capability of the CLS has made it difficult for them to deliver in documenting land rights, demarcating boundaries and in

improving vulnerable groups' tenure security (World Bank 2013: 19).

Others emphasize concerns such as the difficulties in accessing institutions and data, the lack of knowledge of potential applicants and a lack of participatory approach in land registration (Arko-Adjei 2006: 15). In a survey in a peri-urban area, for instance, Ubink and Quan report that 50.8 percent of the people interviewed had never heard of the Lands Commission! Likewise, newly established CLS have been shown to be used only by a small number of people (World Bank 2013). In a research undertaken in Eastern and Western Ghana, it was found that poorer farmers, in particular, know little about formal registration processes and are "unlikely to use it to make their land rights more secure" (Alhassan and Manuh 2005: 15). This indicates that the everyday practice of land access often takes place outside of government and may follow a different logic to that of formal state law.

Some of these concerns also relate at a more profound level to the way land institutions function and are organized and the impact these have on the people they are supposed to serve. For instance, the corruption at the Office of the Administrator of Stool Lands and its lack of accountability make it lose legitimacy in people's eyes. Moreover, it has also been argued that the institutions themselves might be at the root of insecurity, as will be shown below (Amanor and Ubink 2008).

3.1.3 Overlapping and conflicting roles of institutions

According to Wily and Hammond (2001), the insecurity of people on customary lands does not stem from the lack of registration but rather from a deterioration of customary rights, as customary norms are changing "to support an elite capture of majority interests" (Wily and Hammond 2001: 13). For instance,

¹⁹ Often "landholders do not have the means to collect titles that have been issued" (Wily and Hammond 2001: 23).

²⁰ A study surveying land agencies in Accra and other places found that they lacked maintenance schemes and funds (Karikari et al. 2005).

in their analysis, “chiefs have become landlords rather than custodians” and individuals have started “reaping benefits from communally owned lands” (ibid: 14). Likewise, a study by the IIED in 2005 found that chiefs and family heads were widely viewed as behaving “as absolute owners rather than custodians of the land” (Alhassan and Manuh 2005: 33). In the same vein, Ubink’s study on peri-urban areas shows how the traditional elite has benefited from sales of residential land to the disadvantage of small-scale farmers (Ubink 2008a).

But at the same time, perhaps paradoxically, in order to be successful, “any registration process requires the participation of chiefs and other traditional authorities” (Alhassan and Manuh 2005: 33). There seems to be a double problem. Chiefs and traditional authorities are taking increasing ownership of land or at least increasing their claims over land with reference to tradition and identity, while at the same time being reluctant to for instance establish customary land secretariats. Indeed, they might be disinclined to “adopt new land management structures that risk circumscribing their authority over land” (Ubink and Quan 2008; Schoneveld et al. 2011: no pg. number). Further, it is important to remember that government has no jurisdiction over chieftaincy affairs and political parties have no right to encroach on traditional issues, as is enshrined in the 1992 Constitution. This means that the country’s many chieftaincy disputes, which very often centre on land-related issues, typically are very difficult to solve. Besides the risk of registration circumscribing traditional authority, there is also the risk that formalisation would call into question historical transactions that once were legitimate but are no

longer so, and result in the surfacing of fraudulent transfers of land.²¹

Related to this, Ubink emphasizes the “checks and balances on local power holders” that need to go hand in hand with the strengthening of customary institutions in order to avoid reinforcing existing inequality (Ubink 2008a: 281). For instance, while the Lands Commission is supposed to “in practice, consent before an alienation of stool land”, this consent is hardly ever sought (Ubink and Quan 2008: 201). When it happens, it is often after the alienation has taken place and been put in motion by the lessees themselves who want to “formalise their acquisition” (ibid). Other institutions, such as the Customary Land Secretariats, need to be kept accountable as there is also a risk that they are used by traditional authorities to dispossess their subjects of land (Quan et al 2008: 203).

Even where there is control over chiefs’ allocation, such as the checks provided by the district assemblies, significant problems can still persist: the assemblies will be reluctant to oppose the chiefs’ allocations as they need their collaboration (Ubink and Quan 2008: 201). In areas where the district assembly is dominated by migrants, their inferior social status regarding land access means that they may not have the legitimacy or local authority to exert pressure on chiefs in line with the egalitarian objectives of formal state law.

21 Berry (2001) writes that litigation can involve oral accounts from the 16th century being recognized as expert witness testimony.

3.2 Land dispute settlement processes

3.2.1 Contestations between dispute settlement institutions

The same dysfunctions and problems take place in connection with land dispute settlement. Disputes over land ownership can be resolved either formally, informally or through a combination of both. However, studies have reported that a majority of people who had been involved in a land dispute had used the informal system (Abdulai et al. 2007: 480). A large number of disputes therefore never reaches the courts or is “embedded in ‘chieftaincy affairs’ for which state courts do not have jurisdiction” (Ubink and Quand 2008: 203). Nevertheless, state institutions for land dispute settlement still play an important role: in 2003 Kasanga estimated there were some 60,000 land disputes in courts around the country (Kasanga 2003), and in 2009 Crook reported that 45 percent of all cases filed in Ghanaian courts between 2005 and 2009 were land cases (Crook 2009: 11).

Even when state courts’ decisions actually protect usufructuary right holders (e.g. against a chief), the effect of these decisions is limited (Ubink and Quand 2008: 203). Judges’ legitimacy is also at stake as their decisions might differ from local customary norms and practices (Ubink and Quan 2008: 203). Moreover, as for land administration, the lack of checks and balances from the state on implementation and enforcement means that the decisions of the courts are not necessarily respected. As such, land disputes are rarely only about land but more about competing understandings of authority and law.

Here again, the role of the customary land secretariats has been seen as paradoxical, as in several cases the chiefs themselves are at the root of disputes through multiple allocations

or sales of land (ibid). Crook 2009 finds that customary systems are “manipulated by elites in order to profit from rising land values often at the expense of holders of customary land rights” (Crook 2009: 19). He also found customary land secretariats to be more top-down than other dispute settlement systems such as Magistrate’s Courts or CHRAJs (Crook 2011). A survey undertaken in two districts showed that people’s trust in the secretariats was quite low, but that this could be due to the fact that people had not heard of them.

3.2.2 Alternative dispute resolution

An innovation of the LAP was the use of Alternative Dispute Resolution (ADR)²². Positive experiences have been noted with the Commission for Human Rights and Administrative Justice (CHRAJ) in some districts, as they are being viewed as competent and fair (Alhassan and Manuh 2005: 31-32; see also Crook, Asante, and Brobbey 2010). Crook et al. showed for instance that the Commission was popular in the Brong Ahafo region where they found that the local CHRAJ heard almost ten times more cases than the CLSs examined during the same time span (Crook, Asante, and Brobbey 2010: 19). However, the CHRAJ has limitations as it has no power to issue binding judgments but can only mediate “for amicable settlement between the parties” (Kanji et al. 2005: 22). Courts are also empowered to use ADR (Crook 2009: 9), and Customary Land Secretariats have been also encouraged to use ADR. A recent assessment of some of the pilot CLSs established by the LAP found that the use of ADR had helped to decongest the formal

²² However, Crook et al. 2007 report that there are different and possibly contradictory proposals about the ways in which ADR systems should operate and where they should be located, with different degrees in the level of support from the state (Crook et al. 2007: 34-35).

courts (World Bank 2013: 19). Gender experts see the enhancing of the use of ADR at community level as key to enforcing women's land rights (Minkah-Premo and Dowuona-Hammond 2005). It is not clear yet whether CLS, with the use of ADR, have indeed contributed to better enforcement of these rights; key to assessing their impact would be to examine how CLS handle disputes related to women's land rights, and how accessible they are to women as dispute settlement forums.

4. WOMEN'S LAND RIGHTS AND THE LAP

4.1 Gender equality in Ghana

In 2007, Ghana's Joint Assistance Strategy noted that Ghana has made limited progress towards gender equality. There is a general lack of recognition of gender equality "as a critical development issue", and women fare badly in several areas. Even though there has been some progress in women's access to education, women's access to other services such as health and water remains challenging (Ghana Joint Assistance Strategy 2007: 11). Moreover, their access to assets is weak (Ghana Joint Assistance Strategy 2007: 5). A recent study at national level showed that gender distribution of wealth in Ghana is biased in favour of males, both in urban and rural areas (Oduro et al. 2011: 41). Legislation aiming to protect and promote women's rights exists, but has been weakly implemented, also due to "strong cultural impediments" (Ghana Joint Assistance Strategy 2007: 5), as we shall also see below in particular in relation to land. Participation in national processes is limited: women are under-represented in public life and decision making and occupy currently less than 10 percent of seats in the parliament (FAO 2012b).

4.2 Women's land rights

As in most of West Africa, and sub-Saharan Africa, women, at least on customary land, rarely have ownership of land, but have access rights through their husbands, fathers or brothers (Rünger 2006; see also Toulmin 2009). However, one should note that the situation for women has been considered better in Ghana than in some other countries, as some customary systems permit daughters to inherit land, and as, in principle, there are no barriers to women purchasing their own land (Wily and Hammond 2001: 19). On customary land, according to customary law, all members of a lineage are entitled to usufructuary rights or customary freehold regardless of their sex (Rünger 2006: 5).

In practice, however, women and men are not equal in this respect. A national coverage survey undertaken in 2010 examining the gaps in asset ownership found that 38 percent of mixed-sex households of residence have female owners, while 80 percent of similar households have male owners. This means that in a large proportion of households that own land and/or the place of residence, men are the only owners of these assets (Oduro et al. 2011: 37). The same survey found that even women who are asset owners "do not have the same extent of control over their assets". For instance they are more likely than men not to have rights to the assets, "either because someone else has the right or because it cannot be sold, bequeathed or used as collateral." (Oduro et al. 2011: 53).

Lineage systems are determinant factors for obtaining and inheriting land: women in patrilineal communities, for instance, experience more difficulties in acquiring land (Akua Duncan 2010: 302 and 317). And even if women can inherit land on their side and what they have acquired before marriage belongs to them (most of the time), marriage still remains one of the most important ways for women to acquire land (FAO 2012b: 10). It is also male

family heads of household who are in charge of establishing land ownership (Rünger 2006).

It has been noted that upon widowhood, having children or not was an important factor in maintaining full or partial access to land after husbands had passed away (Akua Duncan 2004: 8)²³.

Women can also obtain land through gifts from their families or spouses, a practice which is linked to cash crop areas and matrilineal lineages (Rünger 2006: 6; Akua Duncan 2010; Oduro et al. 2011). Studies have documented transfers of land from husbands to wives and vice versa in exchange for labour support in cocoa-growing regions (Akua Duncan 2010: 310).

Apart from cultural practices such as customary inheritance and marriage, women's ownership of as well as access to land are hampered by other factors: land scarcity, production relations and the size and kind of land (Minkah-Premo and Dowuona-Hammond 2005; see also Rünger 2006: 5). While land rentals or sharecropping arrangements may provide alternatives in accessing land, they have been shown to be discriminatory and often provide less tenure security. In some cases this may even lead to women's impoverishment, for instance when owners ask for part of the produced crops as payment (Minkah-Premo and Dowuona-Hammond 2005: no page number), or when landlords change the terms of the original sharecropping arrangement (Akua Duncan 2004: 66). Even within households, women who may have their own field may not be able to develop it fully due to gender-biased constraints such as the obligation to perform household chores and assist their husband.

Research in Southern Ghana also showed that women's reduced certainty of maintaining their rights may lead them not to fallow their land, thereby rendering it less productive (Goldstein and Udry 2008: 1017).

Moreover, an issue affecting both men and women is the tendency of some chiefs to alienate land from their subjects, in peri-urban but also in agricultural areas (see Ubink and Quan 2008: 42-43). However, increasing instances of compulsory land acquisition with inadequate compensation have been shown to have a *disproportionately* negative impact on women, as these have fewer options than men when deprived of their land (Minkah-Premo and Dowuona-Hammond 2005: no page number).

Laws also affect women's land rights, in Ghana as elsewhere. Interestingly, while a legal framework can uphold or strengthen women's land rights, some legislation can also lead to discriminatory practices or allow their existence because of lack of clarity or a lack of fit between different co-existing legal systems, for instance statutory and customary. Even in cases where legislation is in place that protect women's rights, lack of implementation and enforcement of the law *in practice* may mean that the situation remains unchanged. Ghana is illustrative of this: the country is for instance considered a "leader in the struggle for inheritance rights in Africa", and its legislation does not allow for exceptions in customary law or its application (Cooper 2010: 18). However, in practice, customary law persists and the application of statutory law is constrained in many ways, as will be shown below.

4.2.1 Gender equality and regulation of property: legal pluralism generates uncertainty

Internationally, Ghana is bound to protect and promote women's rights to property through legislation and related institutions. It is indeed

23 This finding is based on a survey undertaken in both patrilineal and matrilineal communities from four regions of Ghana (Northern, Volta, Brong Ahafo and Ashanti regions) (Akua Duncan 2004).

a signatory of the Universal Declaration on Human Rights 1948, the International Covenant on Economic, Social and Cultural Rights 1966, and the African Charter on Human and People's Rights (Rünger 2006: 2; USAID). It ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1986²⁴ and the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa in 2007.²⁵

The protection of these rights is reflected at the national level. *The 1992 Constitution* ensures equality between men and women (article 17) and guarantees every citizen the right to property (article 18) (GoG 1992). However, importantly, article 17 also allows for exceptions in personal law, including areas of marriage, divorce, and devolution of property (USAID 2013: 9). Also, the Constitution recognizes legal pluralism within Ghana's legal system (Rünger 2006: 4), which allows for discriminatory practices when they occur for instance in some customary systems.

Laws regulating the issuance of property and inheritance are central to women's access to land. The marital regime in Ghana is that of separation of property, under both customary and statutory law (Oduro et al. 2011). Wom-

en's inheritance rights in monogamous unions are protected under the Matrimonial Causes Act, 1971. The act states that the courts have the discretion to determine the interest a spouse has in a property acquired during the marriage. However, no guidelines are provided to the courts. Cases show that for a claim to succeed often depends on the fact that the claiming spouse made a financial contribution to the acquisition of the property, which is harder for rural women to 'prove'. Indeed, it is a challenge to quantify the contributions a woman made to the acquisition of a property (labour, kind of labour, duration of the time spent working on husband's land etc.) (Minkah-Premo and Dowuona-Hammond 2005). The Customary Marriage and Divorce (Amendment) Law 1991 outlines the procedures for registering customary marriages, but most marriages are not registered (Cooper, no date: p. 5). The Customary Marriage Law, however, provides that the Intestate Succession Law can be applied to non-registered customary marriage (ibid).

The *Intestate Succession Law*, adopted in 1985 and in force until recently, aimed at providing a uniform law for inheritance applicable throughout the country, and was in fact a state intervention in the customary domain (Minkah-Premo and Dowuona-Hammond 2005: no page number). It was passed along with three other laws²⁶ aimed at "lessening inequality" of women "under customary systems" (USAID: 9). The Succession Law stipulated that in the absence of testamentary wills, two-thirds of the deceased's estate passes to the spouse and children, and the rest to the remaining family members. The effect

24 See http://treaties.un.org/Pages/ViewDetails.aspx?s-rc=TREATY&mtdsg_no=IV-8&chapter=4&lang=en

25 Land is also covered in these texts. According to the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, states parties shall "take appropriate measures" to provide women with access to water, fuel "land and the means of producing nutritious food" (art. 15). They shall also "promote women's access to and control over productive resources such as land and guarantee their right to property" (art. 19). However, in articles treating inheritance, it is interesting to note the ambiguity linked to the word "equitable", which does not imply "equal": women have the right to an "equitable share", and men and women have the rights to inherit from their parents "in equitable shares" (Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, art. 21).

26 The Customary Marriage and Divorce (Registration) Law (PNDC 112), the Administration of Estate (Amendment) Law (PNDC 113), the Head of Family (Accountability) Law (PNDC 114).

of a law can only be seen if the law is implemented. Opinions and findings are mixed about the impact of this law. Some argue that it has led to changes in inheritance patterns. For instance, for land acquired personally by husbands (i.e. not family lands), some scholars have found that the influence of the extended family weakened to the benefit of the conjugal unit and children, with husbands passing land to wives and children (Akua Duncan 2010: 316; Quisumbing et al. 2001: 158). It has also been noted that courts have attempted to remedy the lack of legislative provisions by using principles of equity in divorce cases (Rünger 2006: 7). However, this has been contradicted by other research finding that the law has only rarely been implemented, and that traditional inheritance norms have persisted (Kutsoati and Morck 2012: 3). Linked to this, others have pointed to the ignorance of the law as well the costs of enforcement as constraints to women's ability to enforce their inheritance rights (Minkah-Premo and Dowuona-Hammond 2005).

Although the 1992 Constitution acknowledged that the legislation regarding access to property needed to be updated and required for new laws to be enacted,²⁷ it took 20 years for a new law on property to be enacted. In summer 2012, three years after being introduced to the Parliament, the Intestate Succession Bill was passed, replacing the Intestate Succession Law of 1985. The process did not go smoothly, and examination of the bill was often delayed or stalled, due to the divisive nature of

the subject. In June 2012, for instance, the passage of the Intestate Succession Bill was frozen "following strong fears that the proposed legislation could, among other things, destabilize Ghana's age-old extended family system"²⁸. The Property Rights of Spouses Bill was not passed. Both bills are viewed as controversial as "most men, including parliamentarians" saw them as "being in favour of women".²⁹ The point of departure of the Intestate Succession Bill is that the nuclear family has taken increasing importance in Ghana, and that a surviving spouse, who is most likely to look after the children, should be compensated. It also aims to redress the gender discrimination from the previous law (where the widower could obtain more from his deceased wife's property than a widow from her deceased husband's property). It also contains specific provisions for polygamous marriages.

These constitutional provisions and other statutory law, however progressive, face limitations in that their implementation and enforcement are compromised by the existence and predominance of discriminatory customary practices (FAO 2012b: 9), and by the lack of legal literacy and ability of rights-holders to call upon law-enforcing institutions. It remains therefore to be seen to what extent and how the new Intestate Succession Law will be implemented and enforced.

Chieftaincy and gender equality

At the same time, the continuation of historical gender roles reverberates differently through parts of Ghanaian society. Among the

²⁷ Art. 22 spells out the need for the enactment of legislation "regulating the property rights of spouses" (Ghana 1992, art. 22 (2)), and regulating "equal access to property jointly acquired during marriages and equitable distribution between spouses upon dissolution of the marriage" (Ghana 1992, art. 22 (3); Minkah-Premo and Dowuona-Hammond 2005: no page number; Appiah 2010: 17).

²⁸ Ghana Web News, Friday 29 June 2012, <http://www.ghanaweb.com/GhanaHomePage/NewsArchive/>

²⁹ Statement from Majority Leader in Parliament reported in the Daily Graphic on 17 August 2012 (<http://politics.myjoyonline.com/pages/parliament/201201/79963.php>)

Akans for example there is a long tradition of ‘queenmothers’ enjoying considerable influence, while in most of the Northern Region and Upper East and Upper West, the custom of not having women chiefs continues and they play no role in chieftaincy issues (Brobey 2008: 67).

This indicates that although there is no a priori incompatibility between chieftaincy and gender equality, the spirit of the Constitution to improve equality has not penetrated traditionally male-dominated chieftaincy institutions. On the contrary, it could be argued that the constitutional provision that ‘parliament shall have no power to enact any law which in any way detracts or derogates from the honour and dignity of chieftaincy’ (art 270, 2, b) can be interpreted as providing support for a male-dominated society.

The land policy and gender

Strikingly, the land reform was not concerned by these issues at its inception: the 1999 National Land Policy, for instance, is silent on women’s land rights or access to land or other gender issues. However, in 2003, the World Bank, one of the main partners of the LAP, acknowledged in a project appraisal document that women’s land rights were “not clearly defined and documented and many stand the risk of dispossession” in case of divorce or widowhood “or when land shortage becomes acute”. Advising to work “with customary authorities to help them adopt new procedures to attend to the land rights of *women, tenants and strangers*” (World Bank 2003: 11, authors’ emphasis), the document further recommended to conduct a study on women and land issues to guide “policy and legislative considerations and implementation of the project” (World Bank 2003: 92). The activities following the LAP inception in 2003, as well as documents, have therefore been gender-conscious and have

attempted “at correcting the policy” (Rünger 2008 quoted in Hilhorst and Porchet 2012: 5).

In 2009, a gender strategy for the land sector was therefore developed by the Institute of Local Government Studies (ILGS) to mainstream gender and address gender-related problems both at the level of traditional authorities and of the Land Sector Agencies (LSAs) (website of the Ministry of Land, <http://www.ghana.gov.gh/index.php/2012-02-08-08-18-09/ministries/264-ministry-of-lands-and-natural-resources>, accessed in August 2012). A Gender and Social Development unit was established to lead the implementation of the strategy, but it is too early to be able to evaluate its impact.

4.2.2 The reform and women: not an integrated process yet

Implementation successes and constraints mentioned in section 4 of course affect men and women, and will not be repeated here. However, the issues below are of particular salience for women.

Women prevented from participating in registration processes

Although land registration and titling is one of the main aims of the reform, it has been shown to be problematic for several reasons. First, the costs and procedure of the titling process itself can be prohibitive. Secondly, women may experience more difficulty in accessing land once it is titled. The increased value of the land after it is titled may render it inaccessible for women, who are most often hindered by their socio-economic position (Minkah-Premo and Dowuona-Hammond 2005: no page number; Rünger 2006: 6; Yaro 2010: 209). Moreover, women may be affected negatively by titling and registration which might ignore other, secondary rights to land, for instance collecting

fruit or wood (Minkah-Premo and Dowuona-Hammond 2005).

Even on customary land, where women may purchase land as there are no formal laws or customs preventing this, only few women can do it because of the costs involved and the need for accumulated capital (Rünger 2006: 6).

A World Bank LAP Implementation Status and Results Report from 2011 notes that land titles and deeds registered by women had increased by 50 percent in the pilot areas (World Bank 2011: 3). However, a separate study led across six regions found on the contrary that land registration by women had not increased (World Bank 2013: 24).

Interestingly, Minkah-Premo and Dowuona-Hammond (2005) had found that in cases where women had applied for title registration, many allowed the land to be registered in the name of the husband (Minkah-Premo and Dowuona-Hammond 2005: no page number). The gender strategy developed through the project therefore strongly advises to develop sensitization and awareness to educate women on their land rights and the implications of the different kinds of registration, but also the implications of whose name a property is recorded in (Minkah-Premo and Dowuona-Hammond 2005: no page number). The strategy also includes a proposal for sustained advocacy for registering women's land rights, particularly in rural communities. In rural areas, community outreach and sensitization on the land reforms has been taking place, focusing in particular on the processes of registration of land for men and women (Ministry of Lands, no date, possibly 2013).

Limited access to formal administration and dispute settlement institutions

One of the main issues that women face, however, is their access to formal institutions. Both legal and administrative agencies are out of

reach of most women. Women often lack legal and other literacy, the financial means and the time to access these institutions and to be able to navigate them (Rünger 2006: 4). However, in relation to land disputes, progress has been noted: the CHRAJ has been shown to be effective in protecting women's land rights. This could be due to the fact that it is both geographically and economically more accessible than the courts, and has a more flexible process (Karikari et al. 2005).

Progress or future progress?

The gender strategy that is being implemented in phase 2 can play a central role in redressing at least part of the weaknesses above, through both gender awareness training of the staff from land agencies and land dispute settlement institutions. However, it is not clear how the reform and in particular the gender strategy have addressed and will address cultural and social constraints. These pose the biggest challenges, and not only in rural, customary areas, as is illustrated by the long and difficult process of the legislation protecting women's rights due to opposition from both population and parliament members.

5. DONOR-SUPPORTED INTERVENTIONS AND EXPERIENCES

This section examines donor interventions and their role in introducing a gender focus, and whether they were instrumental to the changes that occurred.

In general, aid to Ghana increased during the 1960s and 1970s, and multi-lateral donors, especially the World Bank, started to play

an important role in the 1980s³⁰. In 1983, the Economic Recovery Programme and the Structural Adjustment Programme (SAP) were both launched in Ghana by the World Bank, IMF and other donors (Kasanga 2002: 33). It should be realised that although donors pushed for far-reaching reforms, the adoption of SAP and the reform package of stabilization, privatisation and liberalisation from the mid-1980s by the Head of State, Jerry Rawlings, was a highly politically viable move³¹. It was welcomed across the political spectrum, by the business community, and by customary authorities. For chiefs, the reforms endorsed what was already occurring: that they take on their role as holders of private property (Boafo-Arthur 2001; Lund 2003). As such, it appears that the success of donor policy initiatives depends on how they connect with existing and emerging power relations and whether the polity is primed for such initiatives. Ghana therefore embraced the demands of the international community not as conditions, but because there were distinct domestic political advantages in their adoption (Nugent 1995).

In the 1990s, the World Bank was the largest donor in Ghana, followed by Japan, the UK and Canada (Aryeetey et al. 2000: 198). The World Bank and other donors' early focus on Economic Recovery Programmes, which were mostly focussed on stabilization issues, was replaced by more social concerns (ibid: 198). Today, the World Bank remains the largest donor, followed by the EC, the US and the UK (DFID 2012).

Over time, project lending shifted to policy-based programme lending (Aryeetey et al.

2000: 196-198), a tendency heightened by the Paris Declaration³². Nevertheless, today project funding remains important, with 65 percent of aid delivered through projects (Chiwara and Karadenizli 2008: 16).

5.1 Development assistance and gender

Donors' gender concerns have also experienced content shifts. While the 1960s and 1970s saw development aid focussed on the welfare of 'women in development', women's earning capacity came to the fore in the 1980s (Aryeetey et al. 2000: 339), with several projects on e.g. credit, technology transfer and literacy. These projects were undertaken individually or in collaboration by UN agencies and bilateral donors (GTZ, CIDA, DANIDA) (ibid). In the 1990s, collaboration with government departments increased and other issues took prominence, such as women's human rights and related issues.

On the state's side, in 1982 Rawlings initiated the '31 December Women's Movement' which was to become a very popular and widespread grassroots movement to improve gender equality. On the one hand, gender initiatives certainly improved women's standing in society. But on the other, male-dominated structures of power, such as the Northern Region chieftaincy institutions, remained the same. At the same time, government's strategies with regard to poverty reduction did not see gender as one of the priorities to tackle, and

30 The number of donors (bilateral and multilateral) rose from 12 in 1968 to 38 in 2008 (Lawson 2010: 2).

31 It boosted Rawlings' authority and enabled him to rule as Head of State until 1993 and as President from 1993 to 2001 (Boafo-Arthur 2001).

32 The Paris Declaration on Aid Effectiveness is the outcome of meetings between developed and developing countries as well as bilateral and multilateral development institutions. It aims to reform the ways in which aid is managed and delivered. The five main principles of the Declaration are ownership, harmonisation, alignment, results and mutual accountability.

Ghana's first Poverty Reduction Strategy Paper (2003-2005), for instance, was 'gender blind' (Chiwara and Karadenizli 2008: 9). However, following the successful lobbying by gender equality advocates, the PRSP II (2006-2008) included the views of civil society organizations, gender advocates and other development partners and focused on women's empowerment and gender equality policies (ibid).

In 2008, a survey undertaken by the European Commission (EC) found that at least ten donors claimed to have current projects on the promotion of women's empowerment in Ghana (Chiwara and Karadenizli 2008: 20). However, in their study on aid effectiveness the EC notes that the commitments for gender equality and women's empowerment still fail to be translated into specific programmes and funding (ibid). This is partly blamed on a *lack of sex-disaggregated data*. The report emphasizes the need to strengthen national information systems as well as the collection of sex-disaggregated data³³ to ensure gender-responsive monitoring and evaluation of national development strategies and plans as well as donor programmes (ibid: 22). The 2006 OECD Baseline survey found that while poverty-related data collection was improving, it is still inaccessible because of a lack of alignment between ministries on their frameworks, reporting timelines and formats. The Ministry of Women and Children's Affairs (MOWAC) is therefore piloting an initiative to collect sex-disaggregated data in four districts.

33 The National Bureau of Statistics and ministries responsible for collecting data have not routinely gathered sex-disaggregated data.

The Ghana Gender Equality Standing Team (GEST)³⁴ was established in 2004 and is a sector group functioning as a forum promoting communication and coherence among the different donors while participating in national development planning processes (Chiwara and Karadenizli 2008: 18; Pobee-Hayford and Awori 2008). However, as was said previously, gender concerns have only recently been included in programmes from the land sector.

5.2 Development assistance and land

The LAP is an illustration of the instrumental role played by development assistance in a land reform. It is interesting to see that the shift towards the recognition of traditional or customary authorities has only taken place recently. It is interesting to see that the policies have followed the same overall shifts that have taken place with regard to the recognition of customary institutions and their involvement in the implementation of the reform

Support to customary institutions

Support to customary tenure has therefore increased over the last years. Customary land secretariats, for instance, are illustrative of these shifts. As was discussed in previous sections, the government has chosen to work hand in hand with customary authorities, also through the establishment of customary land secretariats, a process supported by donors. DFID, who supported the pilot establishment of CLSs, note in their evaluation report of 2006, that they consider their intervention in the LAP to have "successfully identified the importance of improved management of customary land" and

34 The GEST is chaired by the United Nations Population Fund (UNFPA) and the Ministry of Women and Children's Affairs, and includes the EC, the UK, Canada, Denmark, the Netherlands and France (OECD 2009).

to have “shifted the focus of the programme beyond the original imperative of land titling” (Azeem et al. 2006: 28). In their project manual on the CLS, DFID states it aims to “strengthening the capacity of CLS to address the needs of diverse populations within their communities, and recognise the great range of customary tenure systems in different regions of Ghana” (Toulmin et al. 2004, quoted in Antwi 2006: 3)³⁵. From 2007 until 2010 Germany, who also supports the LAP, was involved in a project having to do with customary land and traditional authorities.³⁶

However, as noted previously, CLSs are in the process of being established and may not yet be the arena people select to settle land disputes. In 2006, Antwi notes that in the pilot area examined, “Adjudication of land disputes take place but are not supported in any meaningful way by CLS” (Antwi 2006: 6). One of the criteria that CLS should comply with for obtaining support by the LAP is that they “link with existing customary institutions such as land allocation committees and dispute resolution by councils of elders”, and that they should be more representative by including women (Quan et al. 2008: 192). It is not clear, though, whether this has been implemented and whether and how gender has been mainstreamed in institutions such as Customary Land Secretariats. The risks mentioned before of chiefs and local authorities appropriating CLSs for their own enrichment also need to be held in check.

35 DFID withdrew from the Land Sector (DFID 2012: 3), focusing from 2011 onwards on two “cross-cutting priorities: girls and women, and poverty reduction and growth in the North” (ibid), while CIDA has now embarked on the support for the second phase of the LAP.

36 The BMZ project “Advice the NHC in the Area of Ascertainment of Customary Land and Family Law”, 2007-2010 (see www.offene-entwicklungshilfe.de/sector/241/151).

In an update on the implementation of the gender strategy, the Ministry of Lands reports having focused on the sensitization of traditional authorities and community leaders in order to “reform customary practices and tenure systems that are discriminatory and undermine women’s access, ownership and control of land” (Ministry of Lands, no date (possibly 2013), no page number). However, no mention has been made of how gender mainstreaming will actually be implemented in land institutions, including customary secretariats or other institutions dealing with dispute settlement. For donors and civil society, in particular women’s organisations, to follow this process will be crucial.

CONCLUSION

This paper has examined the on-going land reform process in Ghana. While most of Ghana’s land is customary, the state-led land reform is aiming to enhance and strengthen the tenure security of land-holders on both customary and state land, at different levels. The reform is based on the assumption that the registration of land and the strengthening of land management institutions will diminish land disputes and stimulate investment and enable a better and more efficient use of the land. It aims to harmonise the land-related legal and policy framework, as well as strengthening the institutional system dealing with land, by restructuring land sector agencies and decentralising land management to state-backed institutions such as customary land secretariats. It also aims to improve land registration and mapping. Finally, it has, of late, tackled gender concerns through a gender strategy which is currently being implemented through gender mainstreaming of land institutions and LAP-related activities. While it is difficult to assess the impact of the recently implemented

land reform at this stage, the evidence available points to several issues that need to be taken into account. Issues related to both the administration of land and the settlement of disputes are at the core of the problems which the LAP tries to resolve.

First, although the land reform is based on the assumption that registration and formalisation will solve disputes, history has shown that this is very challenging, as it is difficult to identify one single, rightful owner. The formalisation process takes root in previous efforts which were based on unreliable mapping and sketching. Many communities are making multiple claims to land, and even at the individual level there are numerous instances of multiple sales and overlapping claims which cannot be solved by registration. Related to this it has to be realised that community understandings of legitimate land allocation practices change over time because of contemporary political, legal, economic and social developments: while it may have been legitimate to transfer land from natives to newcomers in previous decades, in many areas such practices are today more contentious. This means that land holding which was once accepted becomes challenged and notions of community customs and traditional practices become hardened.

While some success has been recorded in some pilot areas with the registration of land, a lot of issues remain. Registration problems have been ascribed to weaknesses in the functioning of land sector agencies (e.g. corruption, lack of capacity, financial resources and equipment). Beyond these more technical problems, other issues have been identified, which are at the core of the problem, such as the lack of trust in institutions and the overlapping and conflicting role of land management institutions.

This is linked to our second point: although the recognition given to customary authorities and the strengthening of their role over land is-

issues have been considered a progressive stance, the vesting of agency in such cultural institutions has also brought about considerable problems. Chieftaincy disputes have become relatively common as communities debate land claims, allocation rights, and begin to question social and political relations that are supposed to underpin customary institutions but which are no longer considered legitimate.

Morover, the assumption by government institutions that traditional authorities automatically will be supportive of the land registration process is doubtful. Some will be much more in favour of registration than others. This is because registration can call into question the legitimacy of previous land transactions and exchanges, and result in the reanimation of unresolved contests. To overcome this, some new legal frameworks have endeavoured to wipe the slate clean. The 1979 Constitution for example, that divested land from the state to its original owners in the Northern Region, is a case in point. Rather than clarifying land claims, however, it inadvertently produced a barrage of counter claims against those considered by government to be the rightful and original owners.

The conflicting roles of different institutions are also central to the problem. While on an everyday basis, district assemblies may be able to provide checks over chiefs' allocation, they may be reluctant to do so, especially where assemblies are dominated by migrants, which means they do not have the legitimacy to exert pressure on chiefs. As such, there is therefore a real risk that the ambitions of new statutes will face similar structural and institutional constraints as previous endeavours.

With regard to settlement of land disputes, dispute settlement institutions also show signs of dysfunction. First, most disputes are not settled by the formal system. Courts do play an important role though, with slightly less than half of cases being about land. Nevertheless, the enforcement of courts' decision at the local

level is limited. Alternative Dispute Resolution, introduced by the LAP in 2003, has enjoyed some success with the work undertaken by the CHRAJ. Customary Land Secretariats have also been enjoined to use ADR. However, these secretariats have not been established everywhere and it is too early to tell about their implementation. There are concerns that the CLSs risk being manipulated by chiefs and elites. Moreover, their dispute settlement procedures and process have been shown to be quite top-down in approach and less friendly towards women.

In sum, it is far from certain whether the national LAP objectives will be entirely fulfilled. In regard to chieftaincy institutions and traditional jurisdictions, it seems likely that the success of LAP will depend on how it dovetails with accepted social and cultural practices at the level of inception. As such, it appears there will be spatial and temporal variations in its effect. For some chieftaincy institutions it will be congenial and provide for traditional authority to be substantiated. For others it will be a causal mechanism of increased litigation and debate about past practices.

Third, as far as women's land rights are concerned, the main problem faced by the implementation of the reform is that despite a progressive legal framework in relation to inheritance, customary and cultural practices which are discriminatory remain the norm. Indeed, women rarely have ownership of land, and gain access to land often through a male relative, for instance husband, brother or father. However, one should note that access to land can also be differentiated on the basis of ethnicity, religion, social status, political affiliation, and background, where economic and/or geographical factors can be decisive. Women in patrilineal communities, for instance, may experience more difficulties in obtaining land, while in other lineages or areas, it may be easier for women to inherit.

Nevertheless, overall, embedded cultural values concerning the role of men and women constrain potential change. This is also visible at the level of the state. In general, it has been noted that Ghana has made limited progress towards gender equality, with very low participation and representation of women in public life and decision-making fora. The recent legal process of the Intestate Succession Bill is emblematic of the persistence of cultural values at the political and legal level. Indeed, it took 20 years after the Constitution's call for updated law in relation to inheritance to be enacted. The process of the passage of the Intestate Succession Bill itself took three years, thwarted by several delays, due to people's and parliamentarians' resistance to the potentially threatening effect of this law on the extended family system.

Another issue is that women may often lack access to institutions and education (including legal literacy), which would be central to gaining or re-gaining their claims to land. Financial resources play an important role, and expensive registration processes may prevent many women from having their land registered. While there are no restrictions for women to purchase land, women may experience more difficulties in acquiring land this way as they tend to be poorer than men. Strengthening and facilitating women's access to land administration agencies as well as law enforcement institutions is also crucial for women to be able to know of their rights but also to be enabled to call upon these institutions and have their rights enforced. Women should also be represented in the different land agencies.

Fourth, while not much has been written on the role of donor support to these different efforts, it seems that early on support was more focused on titling and registration projects. This was followed by a shift noticeable in the growing support given to the establishment or reinforcement of customary institutions. From

the literature available, one can note that women's land rights were at first not at the core of the preoccupations, but have become the object of more attention in recent years, mainly through the gender mainstreaming of the LAP but also as part of some projects on agriculture. Donor efforts, however, may have been thwarted by their confidence in the technical aspects of the reform, and in the potential of the LAP to clarify Ghana's complex tenure system. The call here is for more attention to be paid to the potentially excluding and alienating impact of the reform along the lines of gender, but also ethnicity and social status, and on how best to make all citizens part of these changes. As this study has shown, gender has not been at the centre of preoccupations in activities of the land sector. By clarifying, circumscribing and registering land ownership individually, the different layers of rights in Ghana's complex tenure system might be dissolved at the expense of secondary rights holders. Likewise, while bringing on board customary authorities and acknowledging their crucial role in dispute settlement is a positive development, it may also entrench discriminatory practices, along the basis of gender, religion, or ethnicity. Access to institutions for all needs therefore to underpin the reform and related efforts, as does awareness raising on these issues. Finally, one should bear in mind that these endeavours will not be reaching the poorest without addressing their limited access to resources necessary for benefitting from progress brought by the reform.

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ANNEX: RECENT PROGRAMMES SPECIFICALLY ON LAND

DONOR	PROJECT	YEAR	GENDER FOCUSED	GENDER COMPONENT	STATUS IN JAN 2013
WORLD BANK	LAP-1	2003-2010	No	Yes, development of gender strategy	On-going
WORLD BANK	LAP-2	2011-2016	No	Yes, implementation of the gender strategy	On-going
CIDA	LAP-1 and LAP-2		No	Yes, idem as WB	On-going
DFID	Support to customary land secretariats	2007-2010?	No	Information not available	Closed DFID out of land sector
Nordic Development Fund	The Land Use Planning and Management Project (LUPMP)	2007-2010	No	Information not available	
GTZ	Legal project, ascertaining customary law		No	Information not available	Closed
USAID/MCC	agricultural Programme with land component aiming at pilot registration programs, public awareness campaigns related to land rights and laws;		No	Information not available	
USAID	Ghana Land Titling Reform Project	2009-2012		Focus on the poor	
MEDEEM (Ghana NGO and private sector)	Land registration with "parcel cert"		No		On-going

Source: USAID Land Portal, FAO database