



POLICY BRIEF

THE LAND BILL: ANALYSIS AND POLICY RECOMMENDATIONS

GHANA LAND POLICY ACTION NODE: Policies That Work 4 Land

Introduction

This Policy Brief provides a summary of the key findings and recommendations from a report that analyzes Ghana's draft Land Bill (Draft 3, 2011). The report was prepared by a team of legal experts from the Alliance for a Green Revolution in Africa (AGRA)'s Ghana Land Policy Action Node (Node). The reviewers analyzed the Land Bill vis-à-vis key principles established in Ghana's Constitution and National Land Policy, and international best practices for land rights and governance. The Node is implementing a three year Land Tenure and Security Improvement Project (LATSIP), for the primary purpose of improving land tenure security for small holder farmers, and particularly for women. The policy brief and the report are intended to further the work of LATSIP by providing clear recommendations to policymakers for improving the legal framework governing land.

This Policy Brief addresses seven key elements of the draft bill: (1) additional sections; (2) state institutions (land sector agencies); (3) customary land administration; (4) compulsory acquisition; (5) vesting and temporary occupation of land; (6) registration; and (7) gender concerns.

Additional Sections

Because the confluence of statutory and customary land law in Ghana is complex, and due to the purpose of the bill in streamlining legislation on land rights, it would be helpful to add three specific sections to the bill. The

first would include scope and application of the Bill, as well as guiding values and principles. The second would describe the fundamental nature of land rights in Ghana. It could include a description of the primary categories of land rights, as well as a description of tenure types. The third would be an interpretation—or definitions—section.

Institutions

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

Customary Land Administration

While the Bill does contain a sub-part on customary land administration, the section is focused almost exclusively on Customary Land Secretariats and lacks supplementary information that could significantly improve



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the clarity of the customary land administration framework and facilitate harmonization with other land sector agencies and policies. A set of guiding principles could promote improved land administration by articulating agreed upon national expectations around customary land administration. The Bill provides little or no guidance on the roles and responsibilities of state land sector agencies with respect to customary lands or the relationships between customary land authorities and the state actors. The provisions related to the establishment of Customary Land Secretariats lack sufficient detail to guide their development.

Compulsory Acquisition

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

With respect to the compulsory acquisition process, additional safeguards and protections are necessary to improve the processes for preliminary investigation, public hearings and consultations, and the adequacy of notice for interested parties in the land subject to acquisition. Reviewers recommend

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

Vesting and Temporary Occupation of Land

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

Registration

The Bill adopts a title registration approach to all formal registration of land in Ghana. However the Bill does not adequately provide



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for the national transition from a deeds registration system. In addition, safeguards are needed in the Bill to reduce the Registrar's discretion in some instances, and to ensure that registration services are made accessible and accountable to the public. In the Bill as currently drafted, several critical questions about registration (or recordation) of customary lands remain outstanding: In what circumstances must customary land rights be registered? In title registration districts, how exactly will usufructuary and similar rights be registered? What is the legal status of customarily recorded or registered rights (e.g. those rights recorded with Customary Land Secretariats) vis-à-vis formally registered rights? It will be important to clarify the answers to these questions in subsequent drafts of the Bill.

Gender Considerations

Although the language of the Land Bill is gender-neutral, it does not incorporate gender-based protections enshrined in the Ghanaian Constitution. In addition, the Bill does not contain explicit protections for women's rights on customary land, where customary rules typically discriminate against women's land rights. There is also no protection in the Bill for spousal property rights, leaving women vulnerable to the loss of land they shared with their spouses upon separation, divorce, or death of the husband. On customary land, the Bill does not adequately address the question of who will be entitled to compensation for land that is compulsorily acquired by the State; without explicit protections for women, it is likely that they will be excluded from compensation due to gender-discrimination in customary rules of land ownership. Finally, the Bill does not include safeguards to address constraints to implementing land legislation on behalf of

women, which can include less access to cash, lack of transportation, higher rates of illiteracy, and social/cultural norms that discourage women from accessing available services or pursuing enforcement of their rights through the courts.

Conclusion

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

The entire report prepared by the Ghana Land Policy Action Node titled *The Land Bill (Draft 3): Analysis and Policy Recommendations*, as well as a summary table containing all of the Node's recommendations may be obtained by contacting John Bugri, Node Coordinator, at jtbugri@yahoo.com or Nana Ama Yirrah, Executive Director, COLANDEF, at colandef@gmail.com.