



**USAID** | **GHANA**  
FROM THE AMERICAN PEOPLE

# FEED THE FUTURE AGRICULTURE POLICY SUPPORT PROJECT (APSP)

**QUARTERLY PROGRESS REPORT (APRIL-JUNE 2016)  
FISCAL YEAR 2016, QUARTER 3**



**July 31, 2016**

The author's views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.



**USAID** | **GHANA**  
FROM THE AMERICAN PEOPLE

**Contract No. 64I-C-14-0001**

**Cover Photo:** Participants at the Forum on Commercialization of Breeder/Basic Seeds. .  
*Photo: USAID/APSP*

**July 31, 2016**

The author's views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.

# **FEED THE FUTURE AGRICULTURE POLICY SUPPORT PROJECT (APSP)**

**QUARTERLY REPORT (APRIL-JUNE 2016)  
FISCAL YEAR 2016, QUARTER 3**

**Contract No. 641-C-14-00001**

**July 31, 2016**

The author's views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.

# CONTENTS

|  |           |
|--|-----------|
| <b>Executive Summary .....</b>   | <b>1</b>  |
| <b>A. PROGRESS BY COMPONENT.....</b>                                       | <b>4</b>  |
| <b>A1. Component 1: Policy Formation and Implementation.....</b>           | <b>4</b>  |
| <b>A2. Component 2: Policy Research.....</b>                               | <b>13</b> |
| <b>A3. Component 3: Policy Advocacy.....</b>                               | <b>16</b> |
| <b>B. Planned Activities for Next Quarter by Component .....</b>           | <b>21</b> |
| <b>C. PROGRESS ON GENDER AND ENVIRONMENTAL COMPLIANCE.....</b>             | <b>22</b> |
| <b>C1. Gender .....</b>  | <b>22</b> |
| <b>C2. Environmental Compliance .....</b>                                  | <b>23</b> |
| <b>D. MONITORING AND EVALUATION .....</b>                                  | <b>23</b> |
| <b>ANNEXES.....</b>  | <b>24</b> |
| <b>Annex A: Indicator Data Table – FY3 Q3 Report, July 2016 .....</b>      | <b>24</b> |
| <b>Annex B. Agricultural Enabling Environment Policies Developed .....</b> | <b>26</b> |
| <b>Annex C: Agriculture Policy Communications Developed.....</b>           | <b>28</b> |
| <b>Annex D: Snapshots .....</b>  | <b>29</b> |
| <b>Annex E: Landesa’s Final Trip Report: Ghana Land Bill Analysis.....</b> | <b>32</b> |

# ACRONYMS

|         |   |
|---------|---|
| ACET    | African Center for Economic Transformation              |
| ADVANCE | Agriculture Development and Value Chain Enhancement     |
| AGRA    | Alliance for Green Revolution in Africa                 |
| APD     | Animal Production Directorate                           |
| APPDF   | Agricultural Public-Private Dialogue Forum              |
| APR     | Annual Performance Review                               |
| APSP    | Agriculture Policy Support Project                      |
| ASWG    | Agriculture Sector Working Group                        |
| ATTP    | Agriculture Technology Transfer Project                 |
| BUSAC   | Business Sector Advocacy Challenge Fund                 |
| CAADP   | Comprehensive African Agriculture Development Program   |
| CAPI    | Computer-Assisted Personal Interviewing                 |
| CEPA    | Center for Policy Analysis                              |
| COP     | Chief of Party  |
| CRI     | Crop Research Institute                                 |
| CSD     | Crop Services Directorate                               |
| CSO     | Civil Society Organizations                             |
| CSIR    | Council for Scientific and Industrial Research          |
| DCS     | Directorate of Crops Services                           |
| DFID    | Department for International Development                |
| DUS     | Distinctiveness, Uniformity and Stability               |
| FASDEP  | Food and Agriculture Sector Development Policy          |
| FAO     | Food and Agriculture Organization                       |
| FBO     | Farmer-Based Organizations                              |
| FMSL    | Farm Management Services Limited                        |
| FTF     | Feed the Future   |
| GADS    | Gender and Agriculture Development Strategy             |
| GAPS    | Ghana Agriculture Production Surveys                    |
| GARDJA  | Ghana Association of Rural and Agricultural Journalists |
| GIBA    | Ghana Independent Broadcasters Association              |
| GIDA    | Ghana Irrigation Development Authority                  |
| GIMPA   | Ghana Institute of Management and Public Administration |
| GIS     | Geographic Information System                           |
| GIZ     | German Agency for International Cooperation             |
| GOG     | Government of Ghana                                     |
| GSID    | Ghana Seeds Inspection Division                         |
| GSSP    | Ghana Strategic Support Program                         |
| IFPRI   | International Food Policy Research Institute            |
| ISSER   | Institute of Statistical Social and Economic Research   |
| ISU     | Iowa State University                                   |
| JSR     | Joint Sector Review                                     |
| KRA     | Key Result Area   |
| LAP     | Land Administration Project (II)                        |
| MEAS    | Modernizing Extension and Advisory Services             |
| METASIP | Medium Term Agriculture Sector Investment Plan          |
| MLNR    | Ministry of Lands and Natural Resources                 |
| MOAP    | Market Oriented Agriculture Program                     |
| MOF     | Ministry of Finance                                     |
| MOFA    | Ministry of Food and Agriculture                        |

|        |  |
|--------|--|
| MOFAD  | Ministry of Fisheries and Aquaculture Development  |
| NAFCO  | National Food Buffer Stock Company                 |
| NBA    | National Bio-Safety Authority                      |
| NORPRA | Northern Patriots in Research and Advocacy         |
| NSA    | Non-State Actor                                    |
| NSC    | National Seeds Council                             |
| PPBD   | Policy Planning and Budget Directorate             |
| PSM    | Procurement and Supply Management                  |
| RFA    | Request for Application                            |
| SADA   | Savannah Accelerated Development Authority         |
| SAKSS  | Strategic Analysis and Knowledge Support System    |
| SC     | Steering Committee                                 |
| SRID   | Statistics Research and Information Directorate    |
| STEPRI | Science and Technology Policy Research Institute   |
| TOR    | Terms of Reference                                 |
| TOT    | Training of Trainers                               |
| TVRC   | Technical Variety Release Committee                |
| USAID  | United States Agency for International Development |
| VCU    | Value for Cultivation and Use                      |
| WIAD   | Women in Agriculture Development                   |

## Executive Summary

Chemonics International Inc. is pleased to submit this third quarterly report to USAID/Ghana, covering the period of April to June 2016. The main goal of the Feed the Future (FtF) Agriculture Policy Support Project (APSP) is to improve the food security enabling environment for private sector investment by increasing the capacity of the Government of Ghana (GoG), the private sector, and civil society organizations to implement evidence-based policy formation and implementation, research and advocacy, as well as perform rigorous monitoring and evaluation of agricultural programs implemented under the Medium Term Agriculture Sector Investment Plan (METASIP).

The Project has three components:

- a. Policy formation and implementation, aimed at improving Ghana's agricultural sector policy process for evidence-based decision making related to food security.
- b. Policy research, aimed at increasing rigorous policy analysis capacity for evidence-based policy making.
- c. Policy advocacy, aimed at strengthening the institutional and technical capacities of private agribusiness organizations, civil society organizations, and the media, to enable these entities to increase their participation and amplify their voices in the public policy process.

During this third quarter, APSP continued implementing its Y3 work plan and achieved the following major accomplishments:

### Component 1:

- Improved the Ministry of Food and Agriculture's (MoFA) ability to carry out evidence-based policy analysis and advice by working with officials to strengthen and restructure its Policy Unit. This included working with MoFA to create and adopt a new organogram and new job descriptions for Policy Unit staff as well as provide rigorous training on policy analysis to 14 MoFA staff. This is an important step towards restructuring the Policy Unit and turning it into an effective tool for policy analysis and advice.
- Provided consultation to the MoFA to draft and finalize its Annual Performance Review (APR), which documents sector progress in achieving METASIP targets and objectives. The APR will form the basis for the August 2016 Joint Sector Review (JSR), and support the creation of a platform for public and private sector stakeholders and development partners (DP) to evaluate sector performance and strategize for the future. Stakeholder input into the policy process is crucial to introducing reforms that encourage modernization and private-sector investment.
- Strengthened the enabling environment for private sector investment in agricultural land by assisting the GoG in formulating and validating groundbreaking land policy guidelines and an updated Land Bill. This support is critical for GoGs' first attempt to regulate the acquisition of large tracts of land, and improve land administration by introducing transparency, defining standard procedures for acquisitions, and creating mechanisms for community involvement. Towards this goal, APSP provided significant technical and policy input into finalizing the guidelines and Land Bill for Parliamentary approval.
- Facilitated community input and validation of an APSP developed farmer-based organization (FBO) strategy paper. The strategy paper advances existing GoG efforts to revitalize sector growth by recommending important reforms to strengthen and improve operational efficiencies within FBOs and also enable them to provide better agricultural extension services to their members.
- Advanced APSP's policy assessment program through three major policy assessments, which is paving the way for private sector-led growth of the Ghanaian agriculture sector. A study of the National Food Buffer Stock Company (NAFCO) will review how NAFCO's

interventions impact private operators. A study of MoFA's data collection and analysis methodologies will allow the ministry to make reforms that improve data credibility. A situational analysis of agricultural marketing in Ghana will provide policy options for developing a comprehensive national agriculture marketing policy. Together, these assessments lay the foundation for the kinds of evidence-based policies that will boost Ghana's agriculture sector.

### **Component 2:**

- Advanced APSP's research grants program through 10 research grant awards in support of GoG policy priority areas, including marketing of agricultural products in local and international markets, increased income growth, food security and emergency preparedness, application of science and technology, agricultural sector coordination, and evidence-based policy analysis. The research grants program supports creative and unconventional partnerships between the public and private sectors, and will assist key public, private, and civil society institutions in improving their policy research capacity. APSP also completed terms of reference (ToRs) for two other METASIP/Strategic Analysis and Knowledge Support System (SAKSS) priority research studies which explore ways to increase farmer incomes and enable sustainable management of land and the environment.

### **Component 3:**

- In partnership with the USAID Agriculture Development and Value Chain Enhancement (ADVANCE) II project, APSP strengthened farmer based organization (FBO) networks in Ghana by training 25 members of the Upper West Region's FBO network from five districts in policy advocacy skills necessary to actively participate in the policy-making process and advocate for increased government support for regional agricultural development. Participants drafted a three-year advocacy strategic action plan to engage their district political authorities to seek solutions for farmer access to mechanization, tractor services, fertilizers, and irrigation facilities, and environmental degradation. This advances APSP's mandate to build the advocacy capacity of farmers and amplifies their voices in the agriculture policy process.
- Promoted the GoG's Plant & Fertilizer Act 803 by working with three new APSP grantees, Syecomp, Northern Patriots in Research and Advocacy (NORPRA) and Rootlink Africa, to improve private sector stakeholders' ability to carry out public education and advocacy related to the new act. Act 803 is a groundbreaking piece of legislation that ends the public sector monopoly on foundation seed production. Implementing the act will increase seed production efficiency and drive certified seed prices down, thereby encouraging the use of improved seeds and leading to production increases. Public acceptance of the act, which introduces private-sector competition into the seed industry, is an important step towards ensuring its successful implementation. These reforms will make more seed varieties available to Ghana's farmers.
- Continued building capacity of targeted non-state actors (NSA) by evaluating more than half of the NSAs trained in FY3 Q1 to identify key areas for support. These NSAs assist project objectives by expanding policy advocacy initiatives across Ghana. Preliminary findings indicate that NSAs have improved in a number of operational areas, including governance and financial and general management. APSP also identified some challenges, including an inability of some NSA's to source funding for advocacy programs. APSP will continue to evaluate the remaining NSAs in FY3 Q4 and work with these NSAs to identify potential sources of funding.
- Improved Ghanaian journalists' capacity to report on and create demand for agricultural stories by training 26 Ghana Association of Rural and Agricultural Journalists (GARDJA) and Ghana Independent Broadcasters Association (GIBA) members in analytical writing, policy analysis, media advocacy, and writing compelling agriculture-related articles. The



training sessions have led to increased reportage of agricultural issues in the Ghanaian media and amplified the media's voice in the public policy process which is otherwise lacking.

## A. PROGRESS BY COMPONENT

The narrative that follows is organized by key result areas (KRAs) (*subheadings in bold and italics*) and by work plan activities (*Italicized text*) under each component.

In FY3 Q3, APSP continued implementing agreed-upon work plan activities as well as other initiatives that contributed to project objectives.

### AI. Component I: Policy Formation and Implementation

Component 1 will improve Ghana's agricultural sector policy process for evidence-based decision making related to food security through four main pillars:

- Improve capacity for policy analysis and evaluation by core METASIP institutions by standing up the Strategic Analysis and Knowledge Support System (SAKSS) Node and enhancing capacity for policy analysis and evaluation.
- Enhance implementation of improved policies, regulations, and administrative procedures as outlined by GoG-endorsed policy documents and agreements between the GoG, donors, and the private sector.
- Improve policies that enable private sector development, commercialization, and the use of improved agricultural inputs to increase smallholder productivity and incomes.
- Improve execution of the METASIP.

#### A1a. Progress to date per agreed-upon work plan

**KRA 1.1: *Improve capacity for policy analysis and evaluation by core METASIP implementing institutions by standing up the SAKSS Node and enhancing capacity for policy analysis and evaluation.***

*Build capacity of METASIP/SAKSS members [indicators 1, 2 and 5].* In light of the MoFA focusing on other activities in this quarter, the project strategized capacity building activities for METASIP/SAKSS members in FY 3 Q4 instead. In the next quarter, the project will review the impact of previous trainings to determine new training modules to be introduced. Training of members is an ongoing process that will allow METASIP/SAKSS to better identify policy needs.

*Implement action plans for METASIP/SAKSS [indicators 1, 2 and 5].* Similar to the above, METASIP/SAKSS activities will advance in FY 3 Q4 when METASIP/SAKSS quarterly meetings are reactivated at the direction of the new Minister.

#### COMPONENT 1: KEY ACHIEVEMENTS

- Organized a meeting of APSP and MoFA to draft the 2015 annual performance review (APR). The APR will form the basis for the 2016 Joint Sector Review (JSR), a platform for public and private stakeholders to come together to evaluate sector performance and formulate plans for improvements.
- Assisted the GoG in formulating and validating new land policy guidelines and a new Land Bill. These activities will improve land administration in Ghana by introducing transparency, defining standard processes, and creating mechanisms for community involvement.
- Facilitated community input and validation of the first draft of the farmer-based organization (FBO) strategy. The strategy will provide the basis for reforms that will enable FBOs to provide better extension services to members.
- Initiated a study of the National Food Buffer Stock Company (NAFCO) to review how the company's interventions impact private operators. This activity will pave the way for private sector-led agricultural growth.
- Worked with an IT firm to develop a website for the NBA (National Bio-Safety Authority) to improve its image and increase public awareness and acceptability of bio-technology in agriculture.
- Launched a situational analysis study of agricultural marketing in Ghana. The analysis will provide policy options for developing a comprehensive national agriculture marketing policy.
- Improved MoFA's ability to carry out evidence-based policy analysis by working with officials to strengthen and restructure its Policy Unit. This included working with MoFA to create a new organogram and new job descriptions for Policy Unit staff.

The meetings will help SAKSS Nodes to identify priority policy areas for future research and to propose solutions for the formation and implementation of agricultural policies that will improve Ghana’s food security and private investments in agriculture.

*KRA 1.1 Collaboration with other partners*

| Mechanism             | Members           | Objective/Activity  |
|-----------------------|-------------------|---|
| Partnership Agreement | APSP and Re-SAKSS | Partnered with Re-SAKSS to establish and furnish a secretariat at MoFA to improve the coordination and functioning of METASIP/SAKSS. This body will propose solutions for the formation and implementation of agricultural policies that will improve Ghana’s food security and private investments in agriculture. |

**KRA 1.2: Enhance implementation of improved policies, regulations, and administrative procedures as outlined by GoG-endorsed policy documents and agreements between GoG, donors, and the private sector**

*Support implementation of relevant JSR activities [indicators 4 and 12].* In FY3 Q3, APSP supported the MoFA to finalize its 2015 APR. The APR will form the basis for the 2016 Joint Sector Review (JSR), a platform for public and private stakeholders to come together to evaluate sector performance and formulate plans for improvements. APSP guided the session, ensuring that report contents provide a sound basis for Ghana to meet its obligations under the Comprehensive African Agriculture Development Program (CAADP) and promote policy reforms that will improve the enabling environment for private sector investment. In FY3 Q4, APSP will support MoFA to distribute the report to promote public awareness and support public policy advocacy.

*Support drafting and passage of Land Act to improve access to agriculture land [indicators 4 and 5].* In FY3 Q3, APSP implemented two major activities in coordination with the Ministry of Lands and Natural Resources (MLNR) to support the GoG in undertaking land reforms that will attract private sector investments.

First, APSP collaborated with the Lands Commission to organize two validation workshops for the “Guidelines for Large Scale Land Transactions.” One workshop targeted the north of the country and the other targeted the south. Participants in both workshops included traditional rulers (who are custodians of the majority of Ghana’s land), FBOs, civil society organizations (CSOs), MoFA officials, and private sector actors.

Second, through technical assistance from Landesa Rural Development Institute, an American-based organization with land transaction expertise, APSP supported the Land Administration Project’s (LAP) to finalize a draft Land Bill. Through validation workshop and working sessions with the Land Bill Drafting Group, APSP presented on international best practices for enhancing transparency and accountability, reducing costs of registration and recording rights and making these services more widely accessible, among others. APSP’s inputs towards the Bill include strategic measures that the GoG can implement to secure Parliament’s approval for passage, as described in the attached trip report (Annex E). Both the guidelines and the Land Bill will improve land administration in Ghana, strengthen the enabling environment for expanded private sector investment in land, and provide land tenure security for long-term agricultural development. Please find Landesa Rural Development Institute’s final trip report and presentation attached for your reference.

*Review MoFA's FBO strategy [indicators 4 and 14].* APSP engaged local experts in FY3 Q2 and Q3 to review MoFA's FBO strategy. Through a comparative analysis of government versus private sector supported FBOs, the review focused on ways to improve existing agricultural extension delivery and promote agricultural commercialization to increase private investment. Upon completion of the reviews, APSP organized two workshops to validate recommendations and to receive stakeholder input. Recommendations included encouraging private-sector operators to promote FBOs, and pushing for mechanisms to register all FBOs in Ghana. These are important activities, as small holder farmers across Ghana rely on FBOs for extension services, and improved farmer livelihoods and sector performance. APSP is currently finalizing the review document with inputs from the workshops and will submit it to MoFA in FY3 Q4.

*Assessment of NAFCO [indicator 4].* In FY3 Q3, APSP initiated an assessment of the National Food Buffer Company (NAFCO) to be completed in FY3 Q4. The assessment will assist MoFA to introduce policy reforms that adjust NAFCO's operations to improve domestic market efficiency and encourage private investment. It will also measure the impact of the government's commodity market intervention policy and help address private sector concerns regarding NAFCO operations distorting agricultural commodity markets.

*Support education and sensitization of the Bio-Safety Act [indicators 4, 6 and 11].* In FY3 Q3, APSP assisted the National Bio-Safety Authority (NBA) to develop its website, as part of APSP's overall support to the NBA to implement its communication strategy. This intervention improves the NBA's external communications, enhances the authority's corporate image, and educates the general public on the benefits of biotechnology as a driver for long-term development and modernization of Ghana's agricultural sector. The general public's lack of understanding and acceptance of biotechnology in agriculture is a roadblock to the agriculture sector's growth in Ghana, which this activities seeks to overcome.

*Sensitization on Gender and Agriculture Development Strategy (GADS) [indicators 2, 4, 5, 7 and 13].* In FY3 Q3, APSP supported the MoFA Women in Agriculture Development (WIAD) to plan two sensitization/ToT workshops for the northern and southern regions of Ghana. Specifically, APSP developed a detailed curriculum for the training, which covered strategies to centralize gender issues in the agriculture policy process, strategic objectives of the strategy and proposed institutional responsibilities. APSP also provided training materials including PowerPoint slides and notes. This activity educated participants from the ministry on strategies for integrating gender considerations into agriculture sector policies and programs.

*Other emerging policy issues.* APSP prioritized the policy issues already identified by MoFA and will continue to consult with ministry on additional policy issues that may arise.

#### *KRA 1.2 Collaboration with other partners*

| <b>Mechanism</b>  | <b>Members</b>  | <b>Objective/Activity</b>  |
|---|---|--|
| Collaborative Circle of Feed the Future Chiefs of Party | ATTP (Agriculture Technology Transfer Project) and APSP   | Supported the GoG in implementing the Bio-Safety Act (Act 831) to support biotechnology as a driver for long-term development and modernization of Ghana's agricultural sector (Please see table <i>KRA 1.3 Summary of work on the implementation of the Seeds and Fertilizer Act 803</i> for details.)                    |
| Technical staff exchanges                               | World Bank, Food and Agriculture Organization (FAO), Modernizing Extension and Advisory Services (MEAS), APSP | Coordinated with the World Bank to support the GoG for the development of the Land Bill and Guidelines for Large Scale Land Transactions to improve private sector access to agricultural lands and farmer livelihoods. Provided key input into the bill through an international consultant and two validation workshops. |

|              |   |  |
|--------------|---|--|
|              |   | Validated the revised FBO strategy through community workshops, as agreed with MEAS in our joint extension forum in FY2, to improve agricultural extension delivery to FBO members and to promote agricultural commercialization.  |
|              |   | Commissioned NAFCO assessment after agreeing on ToR with FAO and other partners to introduce policy reforms that adjust NAFCO's operations to improve domestic market efficiency.  |
| Coordination | APSP, German Agency for International Cooperation (GIZ) | Coordinated, provided technical direction, and assisted in printing MoFA's annual performance review (APR). The APR will form the basis for the 2016 Joint Sector Review (JSR), a platform for public and private stakeholders to come together to evaluate sector performance and formulate plans for improvements. |

**KRA 1.3: Improve policies that enable the private sector to develop, commercialize, and use improved agricultural inputs to increase smallholder productivity and incomes.**

*Support for the GoG investment plan [indicator 4].* APSP provided technical assistance to the MoFA to develop METASIP II (2015-2017) in FY3 Q3 by engaging a policy expert. As a result, the MoFA has indicated that the METASIP II document is now complete and has been printed for distribution through assistance from the FAO. APSP will continue to consult with MoFA to provide the ministry with ongoing support for METASIP II implementation in areas that it identifies in the future.

*Support to agriculture commodity trading systems in Ghana [indicators 4 and 6].* APSP submitted its Commodity Exchange Assessment Report to the USAID/Ghana Mission in FY3 Q1, as an annex to the project's Quarterly Progress Report. The report makes recommendations to build commodity exchange management, improve warehouse receipt systems, and outsource certain exchange processes as a way to improve efficiency and attract investment. APSP will formulate next steps pending USAID's review of the report.

*Development of an agriculture marketing policy [indicators 4, 11 and 14].* APSP engaged a consultant in FY3 Q3 to undertake a "Situational Analysis of Agricultural Marketing in Ghana." The study findings will identify evidence-based policy options that will allow MoFA to develop an agriculture marketing policy that promotes efficiency in commodity markets and creates opportunities for increased private sector agricultural investments.

*Support for the implementation of the Seeds and Fertilizer Act of 2010 (Act 803) [indicators 2, 4, 5 and 14].* APSP helped MoFA implement Act 803 and the National Seed Plan. (See table below for a summary of work that APSP performed.) Act 803 is groundbreaking legislation that ends the public sector monopoly on foundation seed production. This will help attract increased private sector investments into the seed industry, improve seed production efficiency, and drive certified seeds prices down, thereby encouraging expanded use of improved seeds to achieve productivity and production increases. The project's assistance in this field is helping to make the seed industry more efficient and modern by introducing private-sector competition.

*KRA 1.3 Summary of work on the implementation of the Seeds and Fertilizer Act 803*

| Counterpart                                | Activity  | Objective  | Impact  |
|--|---|--|---|
| Technical Variety Release Committee (TVRC) | <ul style="list-style-type: none"> <li>In FY3 Q1, ISU drafted a variety evaluation and release manual.</li> </ul> | To provide MoFA TVRC with guidelines for accreditation applications; initial and periodic audits; training in variety testing; distinctiveness, uniformity and stability (DUS) and value for | <ul style="list-style-type: none"> <li>Both manuals are expected to be approved by the National Seeds Council before the end of FY3.</li> </ul> |

|  |  |  |  |
|--|--|--|--|
|  | <ul style="list-style-type: none"> <li>In FY3 Q2, TVRC members validated the proposed manual.</li> </ul>   | cultivation and use (VCU) evaluations; variety release; handling of confidential business information; and appeals.  | <ul style="list-style-type: none"> <li>The manuals will introduce standards into the seed industry and facilitate the production, distribution, sale, and use of quality seeds for increased agriculture productivity and production.</li> </ul> |
| Ghana Seeds Inspection Division (GSID)                                 | With ISU's technical assistance, GSID drafted an accreditation manual in FY3 Q1. GSID trained its staff on the contents of the proposed manual in FY3 Q2.  | To provide MoFA GSID with guidelines for seed certification, initial and periodic audits, training in variety testing, DUS and VCU evaluations, variety release, handling of confidential business information, and appeals. |  |
| Member institutions of the National Agriculture Research System (NARS) | In FY3 Q2, the APSP/ISU team visited the Savannah Agriculture Research Institute (SARI), Crop Research Institute (CRI), University of Cape Coast, and University of Ghana. APSP explained the benefits of establishing licensing policies and signing licensing contracts with private seed companies and trained staff accordingly. | To formalize and commercialize seed production and research institution trading business.  | Adoption of licensing policies and implementation of licensing contracts between research organizations and seed companies will help scale up the production of foundation seeds and increase the availability of planting material to farmers.  |
| Secretariat of the National Seeds Council (NSC)                        | In FY3 Q2, APSP furnished the NSC Secretariat with equipment.  | To improve coordination and administration of the NSC's work.  | NSC is the main body under Ghana's law regulating and promoting the seed industry in Ghana. Increasing the operational efficiency of its Secretariat supports the overall implementation of Act 803 and of the National Seed Plan.               |
| Support to Ghanaian Seed Traders Associations                          | In FY3 Q2, APSP continued to support efforts of splinter seed associations to form an umbrella body. (Details provided under Component 3 below.)   | To establish a unified private sector organization that will advocate for policy reforms that enhance the seed industry in Ghana and strengthen public and private linkages along the seed value chain                       | A strong umbrella body will give voice to seed industry operators to advocate for policy reforms for the growth of the industry.   |

*Develop new irrigation policy [indicators 2, 4, 5, 11, 12 and 14].* Following MoFA's acceptance in FY3 Q1 for APSPs technical assistance towards developing a new private sector-led irrigation policy, APSP worked with the Ghana Irrigation Development Authority (GIDA) and the International Water Management Institute (IWMI) to develop a comprehensive short-term technical assistance terms of reference (ToR). The technical assistance will advance the formation of irrigation policy which will be instrumental in attracting private sector investment for the provision and management of irrigation facilities, expanding irrigation infrastructure across the country, improving access to and use of irrigation facilities, reducing dependence on rain-fed agriculture, and increasing farmer incomes.

*Establish Policy Unit in MoFA [Indicators 1, 2, 4, 5 and 14].* APSP guided the MoFA on restructuring and strengthening the ministry's Policy Unit. Towards this end, the project worked with MoFA to evaluate the roles and responsibilities for Policy Unit Staff to promote workflow efficiencies, address bottlenecks and create team synergy. As a result, APSP established a new organogram and job descriptions for Policy Unit staff. In FY3 Q4, APSP and MoFA will develop a roadmap to plan, develop, implement, monitor and evaluate the Unit's restructuring. Completing this activity and will enhance staff's skills to identify and

address challenges that hinder private sector investments in agriculture. This will increase sector growth and modernization overall.

*KRA 1.3 Collaboration with other partners.*

| Mechanism                 | Members   | Objective/Activity   |
|---------------------------|---|--|
| Technical staff exchanges | FAO, Department for International Development (DFID) and APSP | Worked together on content of the ToR for the assessment of NAFCO. The assessment will assist MoFA to introduce policy reforms that adjust NAFCO's operations to improve domestic market efficiency and encourage investment.  |
|                           |   | Coordinated and provided technical input into the assessment of the agriculture commodity trading system. The report makes recommendations to build commodity exchange management, improve warehouse receipt systems, and outsource certain exchange processes.  |
| Technical staff exchanges | IWMI and GIDA   | Worked together to finalize the ToR for the irrigation policy assignment. A new irrigation policy will help attract private sector investment into the provision and management of irrigation facilities, expand irrigation infrastructure across the country, improve access to and use of irrigation facilities, reduce dependence on rain-fed agriculture, and increase farmer incomes. |

**KRA 1.4: Improved execution of METASIP programs**

*Support METASIP activities [indicators 2, 4, 5 and 14].* In FY3 Q3, the METASIP Steering Committee (SC) held its routine quarterly meeting with technical and financial assistance from APSP. Participants agreed on the following:

- To meet with the new Minister for Food and Agriculture and the Chief Director to seek their support for the SC's work.
- To request technical and financial assistance from APSP to train its members.
- To discuss its planned annual work plan at the next meeting.

Implementation of the METASIP work plan will help drive the sector policy formation process, address policy challenges, and create an enabling environment that supports increased private sector investments.

*Commission SAKSS research.* APSP and MoFA jointly finalized the ToR for two priority research studies to increase farmer incomes and enable sustainable management of land and the environment. (Details are provided under Component 2 below.)

*Improve agriculture sector data collection, analysis, management, and reporting.* In FY3 Q3, APSP provided technical assistance to the Statistics Research and Information Directorate (SRID) to enrich its data collection, analysis, management, and reporting capacity. The objective is to support the SRID produce credible data and information in support of its mandate to promote effective coordination, collaboration, cooperation, and information sharing among stakeholders in the national agricultural statistics system. This will promote appropriate and effective policy analysis, decision making, and planning within the agriculture sector in Ghana. (See table below for details.)

*KRA 1.4 Summary of work on sector data collection, analysis, management, and reporting*

| Counterpart | Activity   | Objective   | Impact   |
|-------------|--|---|--|
| SRID        | <i>Implementation of electronic data collection system</i> | <ul style="list-style-type: none"> <li>• In FY3 Q1 and Q2, APSP and SRID continued developing a holistic approach for quality agriculture data collection including geographic</li> </ul> | This activity will improve MoFA SRID's capacity to produce credible data and information to achieve its mandate to promote effective |

|  |                                  |   |  |
|--|----------------------------------|---|--|
|  | <i>[indicators 2, 5, and 14]</i> | <p>information system (GIS) plotting, and analysis and management with a computer-assisted personal interviewing (CAPI) data collection system.</p> <ul style="list-style-type: none"> <li>• In FY3 Q3, APSP procured and configured a cloud-based virtual private server (VPS) system to host CAPI.</li> <li>• In FY3 Q3, APSP trained 15 core SRID staff to implement CAPI, bringing the total to 40 trained staff.</li> <li>• In FY3 Q3, APSP procured accessories including 85 3G Tablets with GPS capability built to withstand rugged terrains, internet access capability for field work, raincoats, weighing scales, clipboards, overalls, and field backpacks.</li> <li>• In FY3 Q3, APSP convened a high level meeting with SRID, USAID, and the International Food Policy Research Institute (IFPRI) to discuss progress in implementing CAPI. The parties made a decision to limit the piloting of the CAPI to two districts in the 2016 season.</li> <li>• In FY3 Q4, APSP will procure an in-house server and software for CAPI system administration and downloaded data.</li> </ul> | <p>coordination, collaboration, cooperation, and information sharing among stakeholders in the national agricultural statistics system. This will promote appropriate and effective policy analysis, decision making, and planning within the agriculture sector in Ghana.</p> |
|--|----------------------------------|---|--|

#### *KRA 1.4 Collaboration with other partners*

| Mechanism    | Members           | Objective/Activity  |
|--------------|-------------------|---|
| Coordination | Re-SAKSS and APSP | Partnered with Re-SAKSS to establish and furnish a secretariat at MoFA to improve the coordination and functioning of METASIP/SAKSS. This body will propose solutions for the formation and implementation of agricultural policies that will improve Ghana's food security and private investments in agriculture. |

#### *Additional activities not originally considered in FY3 annual work plan*

*Pilot program to promote seed licensing contracts [indicators 2, 4, 5 and 14].* In FY3 Q3, APSP piloted a unique program to promote seed licensing contracts between research institutes and private seed producers. Through grants worth approximately USD 100,000, APSP will support five research institutions and a number of private seed producers (the final number will depend on demand) to finalize licensing contracts in line with the reforms introduced by Plants and Fertilizer Act 803. This is an innovative way to facilitate cooperation across sectors and improve seed production and seed availability in Ghana.

The project organized a consultation, with representatives from research institutions and seed producers, to explain the pilot program and to receive input into the RFA. Private sector production of foundation seeds is one forward-looking reform introduced by Act 803 to break the public sector monopoly in foundation seed production. This will help attract increased private sector investments into the seed industry, improve seed production efficiency, and drive certified seeds prices down, thereby encouraging expanded use of improved seeds to achieve productivity and production increases.



In FY3 Q3, the project also provided technical assistance to MoFA, through the Directorate of Crops Services (DCS), to develop guidelines for approving private sector participation in foundation seed production. These activities will improve the enabling environment for private sector participation in the development and commercialization of foundation seeds and will promote long-term technical and business linkages between research organizations and seed producers for the overall modernization of the seed industry.

*Forum on the seed industry [indicators 2, 4, 5, 11 and 13].* APSP, ATT, and IFPRI's Ghana Strategic Support Program (GSSP), organized a two-day retreat attended by the Deputy Minister, Chief Director and other key MoFA directors, to deliberate on the status of the country's seed industry and strategies for its development. APSP leveraged the high-profile GoG presence and presented its seed licensing pilot program at the forum. The pilot program is intended to contribute to and positively influence the ongoing national discussion on the use of commercial seeds, variety development and release, seed pricing, production of foundation seeds, seed regulations, seed imports, and implementation of the National Seed Plan.

Specifically, it includes strategic, and contextually-relevant activities to modernize the seed industry by promoting licensing contracts and business linkages between research organizations and seed companies, improving the enabling environment for private sector participation in the development and commercialization of foundation seeds. This is an exciting initiative that takes advantage of recent legislative reforms to accelerate the commercialization of the seed industry and make larger quantities of certified seeds available for farmer use. While the MoFA remains doubtful that the private sector has the capacity to perform its role efficiently, it remains open to APSPs continued assistance to further seed licensing consultations with relevant stakeholders.

*Research on agriculture data collection methodologies [indicators 8 and 9].* In line with APSP's mandate to improve agriculture data credibility, the project conducted research on data collection methodologies in FY3 Q3. The assessment looked at the methodologies used to collect, collate, and analyze data on agricultural value chains, and proposed improved methodologies. The adoption of the assessment's recommendations will improve data credibility and acceptability, and provide the basis for more reliable and accurate decision making at MoFA.

### **A1b. Identification of specific problems and delays, and recommendations for corrective action**

*A1b. Identification of specific problems and delays, and recommendations for corrective action*

| <b>Work Plan Activity Affected</b>                                | <b>Specific Problem</b>   | <b>Corrective Action</b>  |
|---|---|---|
| Implement METASIP/ SAKSS work plans                               | METASIP/SAKSS coordinators did not convene any meetings.  | The newly appointed Hon. Minister has called for a retreat at the end of August, 2016 to discuss the functioning of policy platforms, including METASIP/SAKSS, after which quarterly meetings will be restored. |
| Support JSR recommendations                                       | Except for assistance to draft the 2015 APR, APSP received no other requests from MoFA.   | The functioning of the JSR is one of the policy platforms that stakeholders will address during the Hon. Minister's retreat.  |
| Build capacity of MoFA's decentralized departments                | A lack of commitment by partners delayed the implementation.  | APSP and partners suspended this activity. The project may consider reviving it later in the life of the project, especially if it complements other USAID-funded activities.                                   |
| Facilitate passage of Animal Health and Livestock Production Bill | The draft bill is ready, but parliamentary passage has been delayed because the Cabinet has yet to approve the sub-sector policy. Per GoG procedure, the Cabinet must approve policy before a bill may be passed. | APSP has sent the draft sector policy and its related cabinet memo to the Hon. Minister for submission to the Cabinet and for approval. APSP is working with MoFA to follow up with the Cabinet.                |

|   |  |  |
|---|--|--|
| Build capacity of members of Parliamentary Select Committee | The project was informed that Parliamentary Select Committees were being restructured and their mandates might change as a result of restructuring                   | APSP will bring the activity back into FY4 work plan.  |
| Train NSC members   | MoFA could not convene the meeting of the NSC because the Hon. Minister who is chairman was only recently posted to the ministry and had not yet taken up this duty. | Stakeholders will discuss the functioning of the NSC at the proposed ministerial retreat in August, 2016.                      |
| Support for the GoG's investment plans                      | MoFA did not request any support for METASIP II, which has been finalized with FAO assistance.   | APSP continues to assure MoFA that the project is ready to partner with the ministry and help develop future investment plans. |

### A1c. Outcomes of high level meetings

#### A1c. Outcomes of high level meetings

| Meeting with Project Stakeholders   | Outcome   |
|---|---|
| Meeting with MoFA Chief Director, selected directors, IFPRI Country Manager, and NASTAG representatives   | <ul style="list-style-type: none"> <li>Participants briefed the Chief Director on the formation of NASTAG and the challenges confronting private sector seed operators.</li> <li>Participants agreed to organize a seed retreat to hold holistic discussions on the status of the seed industry and the way forward.</li> </ul> |
| Meeting with MoFA Director for Policy Planning and Budget and his staff                                   | MoFA agreed to send a proposal to APSP to make formal requests for assistance in strengthening its Policy Unit in an efficient and more sustainable manner.   |
| APSP's Chief of Party (COP) and Senior Policy Advisor attended meeting of TVRC in Kumasi in April of 2016 | <ul style="list-style-type: none"> <li>TVRC agreed on selected varieties of crops to promote, based on research findings and recommendations.</li> <li>APSP delivered a presentation on the pilot program on seed licensing contract.</li> </ul>  |

### A1d. Assessment of the validity and efficacy of progress against the objectives, results, and reasons why established targets were not met

#### A1d. Assessment of the validity and efficacy of progress against the objectives, results, and reasons why established targets were not met

| Quarterly Target or Milestone                          | Efficacy of Progress Against Objectives and Results and Reasons Why APSP Did Not Meet Targets   |
|--|---|
| Build capacity of METASIP/SAKSS members                | On track. A total of 50 members from METASIP/SAKSS implementing institutions have been trained on six out of the 20 training modules. The project will evaluate the completed trainings to pave the way for further training in FY4.  |
| Review MoFA FBO strategy                               | Completed. Final report/strategy has been submitted after incorporating inputs received from two validation workshops.  |
| Passage of Animal Health and Livestock Production Bill | Behind schedule. Drafting of the bill itself is complete but sub-sector policy has not yet received Cabinet approval. Once the Cabinet approves the policy, the bill will go to Parliament for passage.   |
| Assessment of NAFCO                                    | On track. Consultant's inception report has been approved and field work began in FY3 Q3.   |
| Support to develop Land Bill/Land Policy               | On track. <ul style="list-style-type: none"> <li>APSP organized two regional workshops to validate the land policy "Guidelines for Large Scale Land Transactions" in FY3 Q3.</li> <li>APSP provided technical assistance in FY3 Q3 to help finalize the draft Land Bill.</li> </ul> |
| Enhance momentum of New Alliance                       | MoFA made no request to support activities related to the New Alliance. Activities in relation to these area are demand-driven.   |

|   |  |
|---|--|
| Support education and sensitization of the Bio-safety Act                       | On track. <ul style="list-style-type: none"> <li>• Developed logo and handed it over to National Bio-Safety Authority.</li> <li>• Providing technical and financial assistance to design a website for the NBA as part of its support in implementing the NBA's communication strategic plan.</li> </ul>   |
| Sensitization on GADS   | On track. Completed preparations to organize two sensitization workshops in FY3 Q4.  |
| Support to agriculture commodity trading systems in Ghana                       | On track. Final report has been submitted by the consultant to APSP and forwarded to USAID as an attachment to the FY3 Q1 report.  |
| Support for the Plant and Fertilizer Act  | On track. <ul style="list-style-type: none"> <li>• Built capacity of seed industry players (TVRC, GSID and breeders).</li> <li>• Completed Manuals for Variety Evaluation and Release and for Accreditation for Seed Certification.</li> <li>• Trained National Agriculture Research Institutions to draft licensing policies and seed licensing contracts.</li> <li>• Provided technical and financial assistance to develop guidelines for private sector participation in foundation seed production.</li> </ul>  |
| Development of marketing policies   | On track. Consultant received approval for his inception report and began field work.  |
| Development of irrigation policy  | Delayed due to long response time from interested parties. APSP will carry out its evaluation and award a contract for the assignment in FY3 Q4.   |
| Establish Policy Unit at MoFA   | On track. Completed brainstorming session on unit and initial training of 14 staff. Completed and agreed on organogram and job description for the policy unit with MoFA. MoFA will submit a formal request to APSP for support in establishing a sustainable Policy Unit.   |
| Support METASIP activities  | On track. SC has met during the last two quarters to deliberate on important policy issues, including proposing government land policy guidelines on the acquisition of large tracts of land.  |
| Improve agriculture sector data collection, analysis, management and reporting. | On track. <ul style="list-style-type: none"> <li>• Developed and tested computer-assisted personal interviewing (CAPI) data collection system to support the Ghana Agriculture Production Surveys (GAPS). APSP will pilot the system in FY3 Q4.</li> <li>• Trained 40 SRID staff members on CAPI.</li> <li>• Acquired and configured 85 3G Android Tablets to aid in mobile data collection, accessories to be used for field work and to pilot the CAPI and GAPS and market surveys, and a cloud-based VPS system to host CAPI.</li> <li>• Awarded a consultancy to review agriculture data collection methodologies via a value approach.</li> </ul> |

## A2. Component 2: Policy Research

APSP Component 2 focuses on policy research, and aims to increase the availability of rigorous policy analysis capacity for evidence-based policymaking.

### A2a. Progress to date per agreed-upon work plan.

#### KRA 2.1 Enhance high quality policy research capacity.

*Operationalize small-grants fund [indicators 8 and 9].* APSP's policy research component will increase the availability of rigorous policy analysis capacity for evidence-based policymaking through research grants that are competitively awarded to local organizations, including Ghanaian universities, think tanks, and private sector and civil society organizations. The resulting research will generate data to fill gaps in knowledge and contribute to the implementation of Component 1 (Policy Formation and Implementation) activities.

#### COMPONENT 2: KEY ACHIEVEMENTS

- Advanced APSP's research grants program which directs resources towards GoG policy priority areas. APSP submitted 10 research grant awards to USAID in FY3 Q3.
- APSP commissioned seven research studies, which will commence in FY3 Q4. Research studies direct resources towards GoG policy priority areas, including marketing of agricultural products in local and international markets, increased income growth, food security and emergency preparedness, and application of science and technology.
- APSP finalized ToRs for two METASIP/SAKSS priority research studies which will make recommendations that aim to increase farmer incomes and enable sustainable management of land and environment.

In line with both MoFA and METASIP policy research priorities, APSP strategically identified and sought USAID approval for research grants to key public institutions in Ghana. (See table below for details on grant policy areas). The research grants to public institutions will begin in FY3 Q4 and will provide evidence-based quantitative and qualitative findings to reform sector policies and attract increased private sector investments. (See table below for details regarding these grants.) Awarding grants to the below public institutions is a critical step towards fostering partnerships between the public, private, and civil society sectors at all levels, and will assist key public, private, and civil society institutions to improve their policy research capacity.

*KRA 2.1 Work to operationalize small-grants fund (by institution)*

|   | <b>Research Institution</b>  | <b>High Quality Research</b> | <b>Special Studies</b> | <b>PhD. Thesis</b> |
|---|--|------------------------------|------------------------|--------------------|
| 1 | Council for Scientific and Industrial Research (CSIR) - Crops Research Institute | 1                            | 1                      |                    |
| 2 | CSIR - Science And Technology Policy Research Institute (STEPRI)                 | 1                            |                        |                    |
| 3 | University of Cape Coast   |                              | 1                      |                    |
| 4 | University of Development Studies  | 1                            |                        | 2                  |
|   | <b>TOTAL</b>   | <b>3</b>                     | <b>2</b>               | <b>2</b>           |

*KRA 2.1 Work to operationalize small-grants fund (by proposal)*

| <b>No.</b> | <b>Title of Proposal</b>   | <b>Proposing Institution</b>       | <b>Category of Study</b> | <b>FASDEP and/or METASIP Priority Area</b>  |
|------------|--|------------------------------------|--------------------------|---|
| 1          | Market standardization, grading and pricing in the maize market in Ghana: the case of Ejura-Sekyeredumase municipality   | CSIR-Crops Research Institute      | High quality research    | Marketing of agricultural products in local and international markets   |
| 2          | Qualitative study of gender responsive agricultural extension for improved agricultural productivity in northern Ghana   | CSIR-STEPRI. George Owusu Essegbey | High quality research    | Agricultural sector coordination  |
| 3          | Review and meta-analysis of national food security in Ghana  | University of Cape Coast           | Special study            | Food security and emergency preparedness  |
| 4          | Analyses of value chain approach by Association of Church-based Development Projects/Presbyterian Agriculture Services (ACDEP/PAS) for development                               | University of Development Studies  | Special study            | Agricultural sector coordination  |
| 5          | Assessing the role and effectiveness of mobile phone technology on agricultural extension services delivery in northern Ghana; the case of Tolon district                        | University of Development Studies  | Thesis dissertation      | Application of science and technology in food and agricultural development  |
| 6          | Productivity heterogeneity and gender dichotomy of rice production in Ghana: policy implications for farmer and agricultural technology innovations                              | University of Development Studies  | Thesis dissertation      | Application of science and technology in food and agricultural development  |
| 7          | An assessment of the preparedness of national research institutes and universities for DUS and VCU testing under the newly proposed Crop Variety Release and Registration System | CSIR-Crops Research Institute      | Special study            | Study will generate recommendations to improve the capacity of agriculture research organizations to conduct DUS and VCU testing, both critical for seed variety release. Agricultural inputs, seed sector. |

*Engage with MoFA to issue tenders for specific METASIP research studies [indicators 8 and 9].* APSP consulted with the MoFA on their priority research studies and accordingly developed a rigorous ToR for two METASIP priority studies under SAKSS Nodes 2 and 4. The first study looks at land access in urban areas and the second looks at how public and private sector service providers can use sustainable land and water management technologies. The studies will contribute valuable information to the existing literature on ways to increase farmer incomes and enable sustainable management of land and the environment, respectively. (See table below for details.) To operationalize these research studies, APSP will identify and engage research organizations in FY3 Q4 through grants.

*KRA 2.1 Work to engage with MoFA to issue tenders for specific METASIP research studies*

| Research   | SAKSS Node   | FASDEP and/or METASIP Priority Area             |
|--|--------------|---|
| <ul style="list-style-type: none"> <li>Changing access and use pattern of land in urban and peri-urban areas: a threat to agricultural production?</li> </ul>  | SAKSS Node 2 | Increased growth in incomes.                    |
| <ul style="list-style-type: none"> <li>Documenting the various sustainable land and water management technologies into forms that can be used for extension service provision by both public and private sector service providers</li> </ul> | SAKSS Node 4 | Sustainable management of land and environment. |

*Building Capacity for research among research institutions [indicator 9].* In FY3 Q3, APSP finalized its guidelines for awarding grants to build capacity of research institutions. Building on this, the project will issue grants to target public and private research institutions and organizations in FY3 Q4 to build institutional and research capacity in Ghana on agriculture-related topics.

**A2b. Identification of specific problems and delays, and recommendations for corrective action**

*A2b. Identification of specific problems and delays, and recommendations for corrective action.*

| Work Plan Activity Affected   | Specific Problem   | Corrective Action   |
|---|--|---|
| Award grants for nine research studies  | Delays in USAID approval to award non-in-kind grant funds to selected partner government entities.   | APSP diligently followed up emphasizing the negative impact of the delay in achieving targets. As a result, USAID approval will be received at the beginning of FY3 Q4. |
| Improve agricultural research capacity in selected public and private universities and CSIR research institutions | Discussions on the guidelines were delayed due to the absence of specific requests for capacity building despite repeated requests from the project. | APSP has finalized guidelines and grant award will commence in FY3 Q4.  |

**A2c. Outcomes of high level meetings**

APSP did not hold high level meetings in this quarter pertaining to the policy research component.

**A2d. Assessment of the validity and efficacy of progress against the objectives and results, and reasons why established targets were not met**

*A2d. Assessment of the validity and efficacy of progress against the objectives and results, and reasons why established targets were not met*

| Quarterly Target or Milestone  | Efficacy of Progress Against Objectives and Results and Reasons Why APSP Did Not Meet Targets  |
|--|--|
| Publish six high quality studies   | Due to delays in USAID's approval of relevant public institutions, APSP is behind schedule in awarding research grants for these studies.                                      |
| Improve areas of policy research capacity in assisted research organizations and units | In FY3 Q3, APSP provided capacity building to organizations that requested it and, intends on building research institution capacity, in particular, as a parallel initiative. |

**A3. Component 3: Policy Advocacy**

Component 3 is focused on building the capacity of CSOs and FBOs to develop and implement policy advocacy activities and amplify their voices in the agriculture policy process to:

- Improve private sector engagement in food security policy reforms and implementation.
- Improve the capacity of the private sector to advocate for pro-business agriculture sector reforms.
- Provide civil society support for the policy efforts of other Ghana FtF projects.

**A3a. Progress to date per agreed-upon work plan.**

**KRA 3.1 *Improve engagement of the private sector in food security policy reforms and implementation.***

*Support the revival of Agricultural Public Private Dialogue Forum (APPDF) [indicators 6, 7, 11, 12 and 13].* Following APPDF's submission of an unsolicited grant application to APSP in FY3 Q2, APSP and APPDF established a technical working group with representation from both parties. The technical working group developed a first-year work plan with a budget aimed at re-launching the forum in FY3 Q4. The revival of APPDF will help promote public private dialogues and establish consensus on the needed policy reforms and program implementation to improve private sector investments in Ghana's agriculture.

*Facilitation of policy advocacy activities strengthening FBO networks [indicators 6, 7, 11 and 12].* In FY3 Q3, APSP collaborated with the USAID ADVANCE II project to train 25 members (21 men and 4 women) of the Upper West Region FBO Network in policy advocacy. Participants successfully drafted a three-year advocacy strategic action plan to engage their respective district political authorities to seek solutions for farmer access to mechanization, tractor services, fertilizers, and irrigation facilities, and environmental degradation arising from indiscriminate cutting of trees. The training and action plan implementation, which ADVANCE II will monitor, will encourage FBO networks to participate in the agriculture policy making process and to advocate for increased support for agricultural development in their region.

*Expanding non-state actor participation through the small grants fund [indicators 4,6,7,9,10,11,12, and 14].* In FY3 Q3, APSP engaged Syecomp to mainstream gender in national youth policy, NORPRA to include women and youth farmer priorities in Savannah Accelerated Development Authority's (SADA)

**COMPONENT 3: QUARTER KEY ACHIEVEMENTS**

- Strengthened farmer based organization (FBO) networks in Ghana by training 25 members of the Upper West Region's FBO network from five districts in policy advocacy. The training sessions gave FBO networks the skills to participate in the policy-making process.
- Finalized three grant agreements for policy advocacy and public education activities around Plant and Fertilizer Act 803. This will improve private sector stakeholders' ability to carry out public education related to the act. Public acceptance of the act, which introduces competition into the seed industry, is an important step to successful implementation.
- Completed post-training evaluation of NSAs trained to determine areas for further assistance. The skills acquired by the NSAs will improve their ability to advocate for policy reforms that will increase private sector investments in the agricultural sector.
- Reviewed grant applications from APPDF and NASTAG. These activities will address crucial policy constraints and create an enabling environment to increase private sector investments in the Ghana's agriculture sector.
- Improved Ghanaian journalists' capacity to report on and create demand for agricultural stories by training 26 Ghana Association of Rural and Agricultural Journalists (GARDJA) and Ghana Independent Broadcasters Association (GIBA) members in analytical writing, policy analysis, and media advocacy.

medium-term plan, and Rootlink Africa for policy advocacy and public education activities on Ghana's Plant & Fertilizer Act 803. These new grants align with the project's objective to increase the policy advocacy and public education capacity of private sector and community actors to engage in the policy process. (See table below for details.)

### KRA 3.1 Work with grantees

| Grantee   | Activity   | Expected Impacts   |
|---|--|--|
| FMSL Multi Media (Rite 90.1 FM)                     | The grantee is using radio to highlight the importance of agriculture and to advocate for increasing resource allocation to District Departments of Agriculture through selected activities. Grantee has produced 10 radio discussion programs on agriculture topics; played over 270 radio jingles that highlight agriculture issues; drafted 12 agriculture-related articles for the Rite 90.1FM website ( <a href="http://ritefmonline.org">http://ritefmonline.org</a> ); held two advocacy forums in each of the six beneficiary districts; produced a radio documentary entitled "Agriculture and Our Market" to draw policy makers' attention to the state of roads and markets in the Upper Manya district in the Eastern Region, and to call for their repair.                                      | <ul style="list-style-type: none"> <li>• Farmers have organized themselves and applied pressure to local policy makers to award a contract for the repair of road networks in their districts, thereby improving commodity transport and agricultural marketing.</li> <li>• Farmer participation in policy making, annual planning, and budgetary processes has increased to 793 persons, 356 women and 437 men participating in dialogue forums for the 2017 district plans and budgets.</li> </ul> |
| CREAT   | Initiative to assess Ghana's Agriculture Sustainable Land Management (SLM) strategy and action plan implementation in five municipal assemblies in the Volta region. In FY3 Q3, CREAT analysed its research data and produced a draft study report for stakeholder study and validation. The final study report will be ready in FY3 Q4.   | <ul style="list-style-type: none"> <li>• Recommendations for research and other dialogue forums on the subject matter will contribute to GoG adopting policy reforms geared at promoting sustainable land management in Ghana.</li> </ul>  |
| Syecom Ltd.   | Initiative to analyse challenges and opportunities for mainstreaming gender in Ghana's youth policy and youth in agriculture policies and programs. The grantee held an inception workshop and two regional panel forums in the southern and northern zones of Ghana. The forums generated ideas on how to engage youth in more diverse and productive roles in agriculture for employment and job creation. 43 participants, 24 men and 19 women, took part in the two regional forums. Syecom produced and posted four blog articles online at <a href="http://www.agricinghana.org">www.agricinghana.org</a> on topics relating to youth in agriculture. The grantee also produced a draft position paper based on discussions held at the forums. APSP is reviewing the paper for publication in FY3 Q4. | <ul style="list-style-type: none"> <li>• Initiative will complement the government's policy of attracting youth into Ghana's agriculture sector.</li> <li>• Created platform for policy discussions to guide the development of an all-inclusive youth in agriculture policy and programs in Ghana.</li> <li>• Recommendations from the forums will contribute to adopting policy reforms needed to transform youth in agriculture policy and programs in Ghana.</li> </ul>                          |
| Northern Patriots in Research and Advocacy (NORPRA) | Initiative to support grassroots farmers, particularly youth and women farmers from the Savannah Accelerated Development Authority (SADA) zone, to advocate for their priorities to be incorporated into the new Medium Term Development Plan of SADA. In FY3 Q3, NORPRA held an inception workshop in Tamale in the Northern Region and three regional consultative forums in the Upper West, Upper East, and Volta Regions. These forums attracted a total of 128 participants, 74 women and 54 men. Participants shared   | <ul style="list-style-type: none"> <li>• The dialogue forums helped integrate the concerns of women, FBOs, and youth (i.e. provision of irrigation infrastructure, agro-processing machinery, agriculture financing schemes, extension services, mechanization centres, marketing opportunities, and anti-bush fire plans) into SADA's Medium Term Development Plan. This will create opportunities for these vulnerable groups to work and improve their incomes.</li> </ul>                        |

| Grantee | Activity  | Expected Impacts |
|---------|---|------------------|
|         | ideas for integrating women, youth, and small holder farmers into SADA's medium term development plan. NORPRA published two related newspaper articles in a Ghanaian newspaper on June 29 and 30 of 2016. |                  |

**KRA 3.2: Improve the capacity of the private sector to advocate for pro-business agriculture sector reforms in Ghana.**

*Post-Training evaluation of trained NSAs [indicators 1, 6, 7, and 13].* In FY3 Q3, APSP carried out post-training evaluations of more than half of the NSAs trained in FY3 Q1 to help identify key areas for further support. APSP will continue evaluating the remaining NSAs in FY3 Q4. Preliminary findings indicate an improvement in some operational areas, including governance and financial and general management, while some NSAs still face non-technical challenges such as an inability to source funding for advocacy programs. APSP will continue to work with these NSAs to identify potential sources of funding. The skills acquired by the NSAs will strengthen their policy advocacy capabilities to improve their ability to advocate for policy reforms that will increase private sector investments in the agricultural sector.

*Strengthening the Capacity of NASTAG [indicators 4, 6, 11, 12, and 13].* In FY3 Q2, APSP received and reviewed an unsolicited application from NASTAG for grant support to strengthen its institutional and policy advocacy activities. NASTAG submitted a revised application in FY3 Q3 and APSP is currently working with NASTAG to define the deliverables to meet NASTAG's objectives and to pave the way for grant disbursement in FY3 Q4. The objective of the activity will be to help seed value chain actors build a stronger association around NASTAG that can effectively engage the government and promote reforms to commercialize Ghana's seed industry. This will fulfill APSP's strategic commitment to support implementation of the Plant and Fertilizer Act of 2010 (Act 803) and of the National Seed Plan, and will support commercialization and growth of Ghana's seed industry.

*Strengthening the capacity of GARDJA and GIBA [indicators 2, 6, 7, 13 and 14].* APSP organized a three-day media training session on writing compelling agriculture stories, analytical writing, policy analysis, and media advocacy for 26 GARDJA and GIBA members, 21 men and 5 women, and selected MoFA staff in FY3 Q3. The training is the fifth and final of the project's planned media training series for Ghanaian journalists and will help sharpen journalists' knowledge and skills to improve on agriculture reporting, make stories reader-friendly, and create demand for agricultural stories. Trainings have led to increased reportage of agricultural issues in the Ghanaian media and amplified the media's voice in the public policy process.

**KRA 3.3: Provide civil society support for the policy efforts of other Ghana Feed the Future Projects.**

*Collaboration with other USAID/Ghana FTF projects and other development partners [indicators 2, 6, 7, 11, and 12].* As noted in the table below, APSP collaborated with other development partners in FY3 Q3 to strengthen public-private sector dialogue and advocacy, especially with other USAID projects. These collaborative efforts will harmonize and harness resources toward enhancing policy advocacy initiatives.

*KRA 3.2 Collaboration with other partners*



| Mechanism                | Members   | Objective/Activity  |
|--------------------------|---|---|
| Staff Technical Exchange | APSP, Africa LEAD II and GiZ - Market Oriented Agriculture Program (MOAP)   | <ul style="list-style-type: none"> <li>To support the revival of a well-functioning APPDF in Ghana. The rebirth of the APPDF will unify major private sector players to advocate for and promote public private dialogues that will address crucial policy constraints and create an enabling environment to increase private sector investments in the Ghana's agriculture sector.</li> </ul>  |
|                          | APSP and ADVANCE II   | <ul style="list-style-type: none"> <li>To strengthen the policy advocacy capacity of FBO Networks to better advocate for policy reforms in districts and regions in the North of Ghana. The two projects organized a policy advocacy capacity building workshop for five district FBO Networks in Upper West Region in May of 2016.</li> </ul>  |
|                          | APSP, Business Sector Advocacy Challenge Fund (BUSAC), ATTP, and ADVANCE II | <ul style="list-style-type: none"> <li>To provide technical support to NASTAG to represent and promote the seed value chain in Ghana. In FY3 Q3, APSP participated in a pre-season event in Tamale which was co-hosted by NASTAG. APSP and ATTP founded NASTAG, which was launched at this event, to be an active and fundamental institutional actor advocating for policy reforms to strengthen and modernize the seed industry in Ghana.</li> <li>APSP participated in launching the Northern Ghana Seed Platform hosted by NASTAG with support from ATTP. The platform is expected to be NASTAG's mouthpiece in the north of Ghana advocating for transformation of the seed industry in that part of the country. At the event, APSP presented its initiative to promote the implementation of licensing contracts to scale up private sector production of breeder seed and basic seeds.</li> </ul> |

*Additional activities not originally considered in FY3 annual work plan.*

During FY3 Q3, APSP did not undertake any activities under Component 3 outside of those specifically planned in the annual work plan.

### **A3b. Identification of specific problems and recommendations for corrective action**

*A3b. Identification of specific problems and recommendations for corrective action*

| Work Plan Activity Affected                                  | Specific Problem   | Corrective Action   |
|--|--|---|
| Revival of APPDF   | APPDF has been slow in establishing an office and recruiting staff. APSP is in discussions with APPDF representatives on how activities can commence based on agreed-upon plans. | APSP will provide technical and financial support to APPDF for recruitment of vital staff and establishment of its secretariat. The rebirth of the APPDF will unify major private sector players to advocate for and promote public private dialogues that will address crucial policy constraints and create an enabling environment to increase private sector investments in the Ghana's agriculture sector. |
| Support to National Seed Trade Association of Ghana (NASTAG) | APSP received an unsolicited application from NASTAG which required additional capacity building to ensure the application conforms with APSPs requirements.                     | APSP reviewed the revised application with representatives of NASTAG and technical support will be granted to meet its capacity building objectives..   |
| APSP newsletter  | Delays stemming from the departure of two previous Communications and Media Specialists.   | APSP's newly recruited Communications and Media Specialist has developed a preliminary format for the newsletter. Implementation will take place in Q4 and will target project stakeholders and development partners.   |

|   |  |  |
|---|--|--|
| Monitor recommendations at policy forum | Most district assemblies only recently started work after the elections in FY3 Q2, so they have not yet had a chance to deliberate on recommendations. | APSP has developed a ToR for this activity and will begin implementation of this activity in Q4. |
|---|--|--|

### A3c. Outcomes of high level meetings

#### A3c. Outcomes of high level meetings

| Meeting with Project Stakeholders  | Outcome  |
|--|--|
| In April of 2016, APSP and representatives of NASTAG's interim executive board met to review the unsolicited grant application that NASTAG submitted to the project in March of 2016. In May of 2016, APSP and representatives of APPDF met to review its revised application. | NASTAG resubmitted a revised grant application to APSP in May 2016 for evaluation and subsequent funding. APPDF has agreed to recruit staff for the secretariat and to present a budget to APSP for funding. |

### A3d. Assessment of the validity and efficacy of progress against the objectives and results, and reasons why established targets were not met

#### A3d. Assessment of the validity and efficacy of progress against the objectives and results, and reasons why established targets were not met

| Quarterly Target or Milestone                                       | Efficacy of Progress Against Objectives and Results and Reasons Why APSP Did Not Meet Targets  |
|---|--|
| Two NSAs receive grants for policy advocacy                         | On track. APSP signed three grant agreements in FY3 Q3. Grant activities will increase the number of policy advocacy forums and communication materials the project develops.  |
| Post training evaluation of NSAs carried out                        | On track. APSP carried out post-training assessments in FY3 Q3. Findings indicate an improvement in some operational areas, including governance and financial and general management.   |
| Other FtF projects supported  | On track. APSP, ATTP, and BUSAC are collaborating to support NASTAG financially, and with GiZ-MOAP to revive APPDF.  |
| At least 20 members of the media trained                            | On track. APSP carried out training of 26 journalists in April of 2016. The training is the fifth and final of the project's planned media training series for Ghanaian journalists and will help sharpen journalists' knowledge and skills to improve on agriculture reporting, make stories reader-friendly, and create demand for agricultural stories. |
| Recommendations from the public-private dialogue forums implemented | Behind schedule. APSP should begin monitoring the implementation of recommendations at the District Assemblies (which started working in FY3 Q2) after their election, inauguration, and seating. The project will commence monitoring in FY3 Q4.  |
| One FBO Network strengthened  | On track. APSP organized a workshop to strengthen the advocacy capacity of five district FBO Networks in the Upper West Region. The training gave FBO networks the skills to participate in the policy-making process and to advocate for increased government support for regional agricultural development.  |

## B. Planned Activities for Next Quarter by Component

### B1. Planned activities for next quarter – component 1

| Component 1: Policy Formation and Implementation |  |  |
|--|--|--|
| Type of Activity                                 | Work Plan Activity   | Milestone for Next Quarter   |
| High-Level Meetings                              | <ul style="list-style-type: none"> <li>Meet with the Policy Planning and Budget Directorate (PPBD) to discuss its request for APSP to strengthen MoFAs Policy Unit, and formulate a road map for achieving deliverables.</li> <li>Meet with MoFA Chief Director and directors and present APSP's ongoing program and its achievements to-date.</li> </ul>  | <ul style="list-style-type: none"> <li>Road map for strengthening Policy Unit completed and implementation begun.</li> <li>APSP's achievements shared with MoFA.</li> </ul>  |
| Technical Assistance, Trainings, and Assessments | <ul style="list-style-type: none"> <li>Activate quarterly meetings of SAKSS Nodes to implement action plan.</li> <li>Support joint sector review implementation and agriculture sector working group (ASWG) meeting</li> <li>Complete sensitization/ToT workshops on GADS.</li> <li>Meet and discuss implementation of revised FBO strategy with MoFA.</li> <li>Organize training sessions for NSC and TVRC members and other seed experts.</li> <li>Continue discussions on strengthening the Policy Unit at MoFA and implement road map.</li> <li>Train 40 MoFA/SRID staff in 10 districts on CAPI after piloting in 2 districts.</li> <li>Complete contract for developing CAPI.</li> <li>Organize stakeholder validation workshops on the NAFCO assessment, the situational analysis of agriculture marketing study, and the research on data collection methodologies.</li> <li>Follow up on status of incorporating guidelines of large lands into the Land Bill and progress in its passage.</li> </ul> | <ul style="list-style-type: none"> <li>Quarterly meetings of SAKSS/METASIP re-activated.</li> <li>GADS sensitization completed.</li> <li>Capacity of NSC and TVRC members built.</li> <li>CAPI piloted in 2 districts and 40 SRID staff trained on CAPI.</li> <li>Findings and recommendations of three studies commissioned in FY3 Q3 validated.</li> </ul> |
| Grants, Subcontracts                             | <ul style="list-style-type: none"> <li>Liaise with CEPA for completion of the three assessments, including NAFCO, Situation Analysis of Agriculture Marketing, and New Methods to Collect Agriculture Data.</li> <li>Liaise with CEPA and MoFA to present findings and recommendations of studies to MoFA policy team.</li> </ul>  | <ul style="list-style-type: none"> <li>Three studies currently undertaken completed and findings disseminated.</li> </ul>  |
| Collaboration                                    | <ul style="list-style-type: none"> <li>Collaborate with ATTP, IFPRI and Alliance for Green Revolution in Africa (AGRA) in supporting implementation of Act 803 and the National Seed Plan.</li> </ul>  | <ul style="list-style-type: none"> <li>Capacity of stakeholders in seed industry strengthened.</li> </ul>  |

### B2. Planned activities for next quarter – component 2

| Component 2: Policy Research |  |   |
|------------------------------|--|---|
| Type of Activity             | Work Plan Activity   | Milestone for Next Quarter  |
| High-Level Meetings          | <ul style="list-style-type: none"> <li>Meet with MoFA management to discuss recommendations coming from policy research studies.</li> <li>Meet with faculty deans of selected research institutions to discuss improving agriculture policy research.</li> </ul> | MoFA prioritized policy research studies completed and findings disseminated. |

|   |   |  |
|---|---|--|
| Technical Assistance, Trainings and Assessments | Project will explore the idea of providing limited technical assistance to improve capacity for agriculture policy research with selected universities and research institutions.                                   | Research capacity of selected institutions enhanced. |
| Grants, Subcontracts                            | <ul style="list-style-type: none"> <li>Award seven research grants for high quality research, PhD dissertations, and special policy studies.</li> <li>Issue second tender for small grants for Research.</li> </ul> | APSP's policy research program expanded.             |
| Collaboration                                   | Engage with other FtF projects to fund research proposals relevant to their projects for sponsorship.   | Research program expanded.                           |

### B3. Planned activities for next quarter – component 3

| Component 3: Policy Advocacy                    |  |   |
|---|--|---|
| Type of Activity                                | Work Plan Activity   | Milestone for Next Quarter  |
| High Level Meetings                             | Meet with APPDF & NASTAG representatives on finalization of their grant support applications.  | Process for strengthening APPDF and NASTAG commenced.                   |
| Technical Assistance, Trainings and Assessments | <ul style="list-style-type: none"> <li>Conduct post-training evaluation of remaining 17 NSAs.</li> <li>Produce NSA post-training evaluation report.</li> <li>Follow up on recommendations of agriculture policy forums.</li> <li>Strengthen advocacy capacity of one FBO Network.</li> </ul> | Policy advocacy capacity of NSAs strengthened.                          |
| Grants, Subcontracts                            | <ul style="list-style-type: none"> <li>Provide grant to one NSA.</li> <li>Award unsolicited grants to APPDF &amp; NASTAG.</li> </ul>   | Private sector policy advocacy activities enhanced.                     |
| Collaboration                                   | <ul style="list-style-type: none"> <li>Strengthen collaboration with ADVANCE II project to strengthen policy advocacy capacities of FBO networks.</li> <li>Strengthen and collaborate with ATTP on building the institutional and advocacy capacity of NASTAG.</li> </ul>                    | Improved partnership with other USAID projects in building strong NSAs. |

## C. PROGRESS ON GENDER AND ENVIRONMENTAL COMPLIANCE

### CI. Gender

*Project progress in gender mainstreaming.* In FY3 Q3, under the leadership and guidance of the Gender Specialist, APSP staff continued implementing the project's gender strategy and mainstreaming gender-sensitive policy-making activities by ensuring that gender considerations and adequate representation of women were included in the planning and implementation of all activities. Staff also continued to engage WIAD and a number of gender CSOs involved in agriculture across the country to organize gender forums. Since MoFA launched GADS II in January of 2016, APSP and WIAD have worked closely to create gender and communication strategies to create public awareness. In FY3 Q3, APSP agreed to organize two public stakeholder forums in the Southern and Northern zones respectively during FY3 Q4. These forums will assist WIAD to centralize gender issues in the agriculture policy process, contribute to sustainability of WIAD activities, and provide a forum for gender research institutions to intensify their gender research activities to produce high quality research which addresses gender constraints and opportunities.

## C2. Environmental Compliance

APSP FY3 Q3 activities complied with basic environmental policy requirements which encourage minimal environmental impacts arising from the implementation of agricultural projects. Many of the project's activities involved workshops, training sessions, advocacy initiatives, policy research, and stakeholder consultations, all with virtually no environmental impact. They were categorically excluded from the project's Initial Environmental Examination. (See table below for details.)

| Activities under 22 CFR 216<br>Categorically Excluded  | APSP Activities in Q3 (illustrative)  |
|--|---|
| Activities involving education, training, technical assistance or training programs, except to the extent such programs include activities directly affecting the environment (e.g. construction of facilities, etc.). | <ul style="list-style-type: none"><li>• Technical assessment of market intervention policies like NAFCO.</li><li>• Provision of technical assistance in the development of an agriculture marketing policy for Ghana.</li></ul> |
| Activities involving analyses, studies, academic research, or workshops and meetings.  | <ul style="list-style-type: none"><li>• Policy research undertaken by research institutions and universities.</li><li>• Support for MoFA in developing the 2015 APR.</li><li>• Consultations on FBO strategy review.</li></ul>  |

## D. MONITORING AND EVALUATION

*Knowledge management and learning.* In FY3 Q3, APSP's M&E Specialist participated in the USAID/Ghana Office of Economic Growth Implementing Partners M&E Staff Working Group Meeting. The meeting introduced FtF implementing partners to the M&E tracking system and the AIDTracker portals. The meeting also covered collaboration, learning, and adapting for impacts among FtF implementing partners. APSP also continued with routine performance monitoring of all project, grantee, and subcontractor activities and prepared for project Mid-Term Performance Review by the Economic Growth Office.

## ANNEXES

### Annex A: Indicator Data Table – FY3 Q3 Report, July 2016

| #   | INDICATOR   | LOA TARGET | FY16 TARGET | FY16 Q3 ACTUAL | CUMULATIVE RESULT | ANALYSIS OF PROCESSES/RESULTS AGAINST TARGETS  |
|---|---|------------|-------------|----------------|-------------------|--|
| #1  | Score, in percent, of combined key areas of organizational capacity among direct and indirect local implementing partners   | 4          | -           | -              | <b>2.83</b>       | APSP completed baseline surveys for 45 NSAs using the OCA tool. Project began a post-capacity building review of organizational capacity among NSAs in FY3 Q3.   |
| #2  | Number of individuals who have received U.S. government-supported short-term agriculture sector productivity or food security training                            | 5000       | <b>1500</b> | <b>224</b>     | <b>3438</b>       | In FY3 Q3, subcontractors and the APSP advocacy team provided short-term training to 224 individuals.  |
| #3  | Number of organizations focusing on women in agriculture policy advocacy, demonstrating knowledge of sources and use of gender disaggregated data on agriculture. | 10         | 2           | -              | <b>0</b>          | APSP has reached out and engaged with organizations focusing on women in agriculture, and will organize capacity building in analysis and use of gender data for advocacy in FY3 Q4.   |
| <b>Component I: POLICY FORMATION &amp; IMPLEMENTATION</b> |   |            |             |                |                   |  |
| #4  | Number of agricultural and nutritional enabling environment policies completing the following processes/steps of development as a result of USG assistance        |            |             |                |                   | <b>Indicator on track.</b><br>Specific project activities are progressing steadily to achieve results in this indicator. Please see Annex B below for disaggregation by stages in the policy process. For each policy, the highest stage completed during the reporting period is counted. |
|   | Stage 1: Analyzed   | 20         | 5           | <b>0</b>       | <b>19</b>         |  |
|   | Stage 2: Drafted for public consultation  | 15         | 4           | <b>1</b>       | <b>15</b>         |  |
|   | Stage 3: Presented for legislation  | 10         | 3           | <b>0</b>       | <b>6</b>          |  |
|   | Stage 4: Passed/approved  | 5          | 2           | <b>0</b>       | <b>3</b>          |  |
|   | Stage 5: Passed and implementation has begun  | 3          | 1           | <b>0</b>       | <b>3</b>          |  |
| #5  | Number of government units or divisions that have received short-term training.   | 20         | <b>4</b>    | <b>4</b>       | <b>16</b>         | <b>Indicator is on track</b><br>RADU, SRID, WIAD, VSD, APD, DAES, PPRSD, DCS, PPB, M&ED, TVRC, NSC, Parliamentary Select Committee, MLNR - Land Commission, MESTI-National Bio-safety Authority.   |
| #6  | Number of agriculture policy communications, developed and/or written for stakeholder consumption   | 200        | <b>90</b>   | <b>6</b>       | <b>120</b>        | <b>Indicator is on track</b><br>GOG (4), Grantees (50), Subcontractors (66). In the Q3, grantees Seycomp, and NORPRA developed Blog posts and newspaper communications   |

| #                                   | INDICATOR   | LOA TARGET | FY16 TARGET | FY16 Q3 ACTUAL | CUMULATIVE RESULT | ANALYSIS OF PROCESSES/RESULTS AGAINST TARGETS   |
|-------------------------------------|---|------------|-------------|----------------|-------------------|---|
| #7                                  | Number of policy advocacy campaigns that focus on the separate needs of men and women small holder farmers  | 20         | 5           | 3              | 16                | <b>Indicator is on track</b><br>Indicator is on target and will accelerate as more grantees take on activities. In FY3 Q3 two grantees undertook six advocacy campaigns.  |
| <b>Component 2: POLICY RESEARCH</b> |   |            |             |                |                   |   |
| #8                                  | Number of high quality research reports published   | 6          | 2           | 0              | 2                 | APSP will commission seven research studies in the next quarter. Beneficiaries completed two project-sponsored research studies in FY3 Q2: "Towards a Soil Fertility Strategy in Ghana", and "Report on Agricultural Insurance in Ghana."   |
| #9                                  | Score, in percent, of improved areas of policy research capacity in assisted research organizations and units (Outcome)   | 4(80%)     | n/a         | -              | 1.75              | Project will explore provision of limited technical assistance to improve capacities for agriculture policy research with selected universities and research institutions.  |
| <b>Component 3: POLICY ADVOCACY</b> |   |            |             |                |                   |   |
| #10                                 | Score, in percent, of the capacity of the private sector to advocate for pro-business agriculture sector reform in Ghana (Outcome)  | 4          | n/a         | -              | 2.50              | APSP will conduct a second round of Advocacy Capacity Assessments of NSAs in Y4 as a post-capacity building training assessment.  |
| #11                                 | Number of public-private advocacy dialogues focused on policy that supports private sector investment   | 120        | 40          | 14             | 84                | Grantee activities (64), APSP activities (20)<br>New in Q3: Seycomp (2), FMSL (12)  |
| #12                                 | Percent of recommendations agreed upon during public-private dialogues that are implemented.  | 30%        | 5           | 5              | 5                 | Project is tracking implementation of agreed-upon agreements stemming from policy advocacy dialogues with district assemblies is ongoing<br><br>(Percent is calculated by dividing the total number of recommendations by the number of recommendations that are actually and fully implemented.) |
| #13                                 | 4.5.2-11: Number of food security private enterprises (for profit), producers organizations, water users associations, women's groups, trade and agribusiness associations (such as FBOs, CBOs) receiving USG assistance (Output) | 90         | 20          | 1              | 50                | APEX Organizations (6), CSOs (22), private (for profit) enterprises (3), producer organizations (11), women groups (4).<br><br>ISU assisted six (6) institutions strengthen capacity of seed breeders   |
| #14                                 | Number of Local Entities receiving performance improvement assistance (government, CSO, Private sector)   | 110        | 36          | 1              | 66                | Number has reduced from the last quarter because 12 grantees were double-counted for grants and capacity building training in FY3 Q2  |

## Annex B. Agricultural Enabling Environment Policies Developed

|                | Stages of Development   | Numbers of Policies, Regulations, Administrative Procedures |
|----------------|---|---|
| <b>Stage 1</b> | First stage of the policy reform process – policy is <b>ANALYZED</b>  | <b>4</b>  |
| <b>Stage 2</b> | The second stage: Policy is <b>DRAFTED</b> and Presented for public debate and/or consultation with stakeholders                  | <b>8</b>  |
| <b>Stage 3</b> | The third stage: Policy <b>PRESENTED</b> for Legislation  | <b>3</b>  |
| <b>Stage 4</b> | Fourth stage of the policy reform process – policy is <b>PASSED</b> or approved by the legislature or by relevant government unit | <b>3</b>  |
| <b>Stage 5</b> | Fifth stage of the policy reform process – new or revised policy has been passed and <b>IMPLEMENTATION</b> has begun.             | <b>3</b>  |

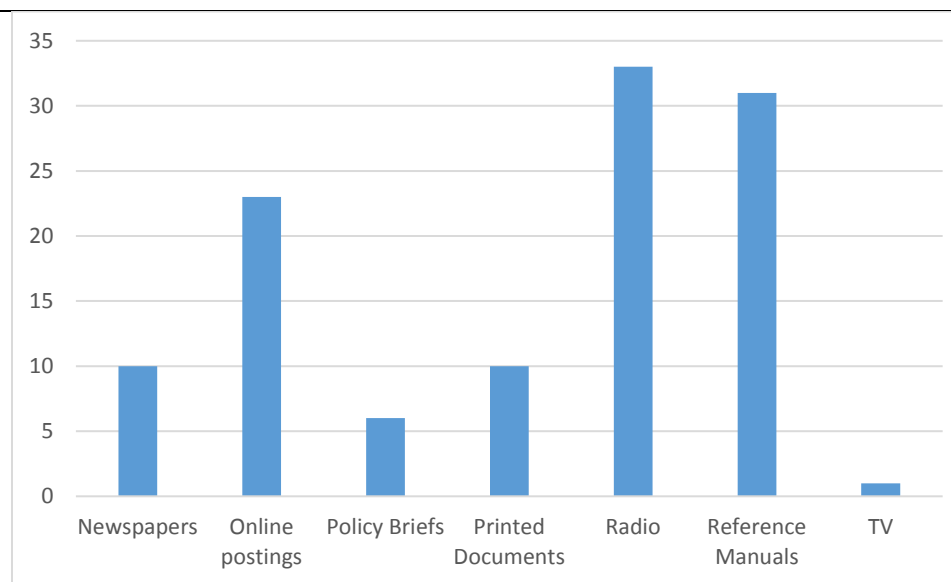
| Details of Policy Reform Activities for the USAID/Ghana Feed the Future Agriculture Policy Support Project for FY3 |                          |                |                    |   |                                     |                            |   |
|--|--------------------------|----------------|--------------------|---|-------------------------------------|----------------------------|---|
| Enabling Environment for Private Sector Investment<br>(Policies/ Regulations/ Administrative Procedures)           | Type of Policy           | Disaggregation | Stage 1 - Analyzed | Stage 2 - Drafted/ Presented for Consultation | Stage 3 - Presented for Legislation | Stage 4 - Passed/ Approved | Stage 5 - Passed and Implementation Begun |
| 1) Development of an Agriculture Marketing Policy (research and analysis stage)                                    | Policy / Regulation      | Other          | X                  |   |                                     |                            |   |
| 2) Development of Ghana Irrigation Policy  | Policy / Regulation      | Other          | X                  |   |                                     |                            |   |
| 3) Assessment of National Buffer Stock Company, NAFCO Policy   | Administrative Procedure | Other          | X                  |   |                                     |                            |   |
| 4) Development Plans for Aquaculture Investments MOFAD   | Policy / Regulation      | Other          | X                  |   |                                     |                            |   |
| 5) Ghana Agriculture Extension Policy (Review of FBO Strategy)   | Policy / Regulation      | Other          |                    | X   |                                     |                            |   |
| 6) Fertilizer subsidy policy analyzed as part of Soil Fertility study and presented to GoG.                        | Policy / Regulation      | Input policy   |                    | X   |                                     |                            |   |
| 7) Assessment of the Agriculture Commodity Trading Systems in Ghana, GCX   | Policy / Regulation      | Other          |                    | X   |                                     |                            |   |
| 8) 'Guidelines for large scale lands transactions'   | Administrative Procedure | Input policy   |                    | X   |                                     |                            |   |



|     |  |                          |                  |          |          |          |          |          |
|-----|--|--------------------------|------------------|----------|----------|----------|----------|----------|
| 9)  | Drafting of Land Bill  | Administrative Procedure | Legal Instrument |          | X        |          |          |          |
| 10) | Establish a Policy Unit at MoFA  | Administrative Procedure | Other            |          | X        |          |          |          |
| 11) | Crop Variety Licensing Policy for NARS   | Administrative Procedure | Input policy     |          | X        |          |          |          |
| 12) | Seed Commercialization Agreements for NARS                                       | Administrative Procedure | Input policy     |          | X        |          |          |          |
| 13) | Contract for the Production of Breeder/Basic Seed for NARS                       | Administrative Procedure | Input policy     |          | X        |          |          |          |
| 14) | National Seed Policy and Seed Regulation analyzed by public-private stakeholders | Policy / Regulation      | Input policy     |          |          | X        |          |          |
| 15) | Animal Health Bill presented for legislation.                                    | Policy / Regulation      | Resilience       |          |          | X        |          |          |
| 16) | Livestock Production Bill presented for legislation.                             | Policy / Regulation      | Resilience       |          |          | X        |          |          |
| 17) | National Quarantine Pest List approved.  | Policy / Regulation      | Resilience       |          |          |          | X        |          |
| 18) | Variety Evaluation and Release manual for TVRC                                   | Administrative Procedure | Input policy     |          |          |          | X        |          |
| 19) | Accreditation manual for seed certification for GISD                             | Administrative Procedure | Input policy     |          |          |          | X        |          |
| 20) | Bio-Safety Act, 2011 (Act 831). Technical Assistance (TA) to implement policy    | Administrative Procedure | Resilience       |          |          |          |          | X        |
| 21) | Plants and Fertilizers Act, 2010 (Act 803). TA to disseminate policy             | Administrative Procedure | Input policy     |          |          |          |          | X        |
| 22) | Gender and Agriculture Development Strategy (GADS). TA to disseminate strategy   | Gender                   | Other            |          |          |          |          | X        |
|     |  |                          |                  | <b>4</b> | <b>9</b> | <b>3</b> | <b>3</b> | <b>3</b> |

## Annex C: Agriculture Policy Communications Developed

| Medium of Communication | Policy Area targeted |                 | Total      |
|-------------------------|----------------------|-----------------|------------|
|                         | Capacity Building    | Policy Advocacy |            |
| Newspapers              | 1                    | 9               | 10         |
| Online postings         | 4                    | 19              | 23         |
| Policy Briefs           |                      | 6               | 6          |
| Printed Documents       | 8                    | 2               | 10         |
| Radio                   |                      | 33              | 33         |
| Reference Manuals       | 31                   |                 | 31         |
| TV                      |                      | 1               | 1          |
| <b>Total</b>            | <b>44</b>            | <b>71</b>       | <b>114</b> |



**Annex D: Snapshots**



## SNAPSHOT

### APSP is Working with the Government of Ghana to Improve Land Administration

#### Strengthening Ghana's Land Management System to Promote Private Sector Investment



**PHOTO: USAID/APSP**  
Cross section of participants at a plenary discussion during the validation workshop in Accra.

*“As a women's advocate it was encouraging that the new guidelines took into consideration the difficulties women face in procuring land to farm and protecting lands already owned by women”*

Leadership in  
Advocacy for  
Women in Africa  
(LAWIA)

Private investment in Ghanaian agriculture through the acquisition of large tracts of land is a growing trend and an important step to developing the country's agricultural sector. However, due to an absence of strong land administration guidelines, these acquisitions often hurt vulnerable small-holder farmers and lead to poor land use.

Small-holder farmers make up the majority of land users in areas where demand for land is highest, yet they often do not have ownership of the lands where they live and work. According to a traditional land owner in Yorogo: “In many instances decisions to sell lands in my traditional area have been based on monetary enticements” and do not consider the rights and livelihoods of land users.

In order to ensure that private sector investment in agriculture leads to equitable economic growth, USAID has partnered with the Government of Ghana (GoG) to develop and finalize a set of land policy guidelines titled “Guidelines for Large-Scale Land Transactions in Ghana” that address these problems.

The guidelines require investors to prepare an environmental, social, and economic impact assessment of their proposed acquisition for community review. Community members, relevant government representatives, the NGO community, and other stakeholders then convene a forum in which they have a voice in the decision to accept, reject, or modify planned acquisitions. When an acquisition takes place, investors and community stakeholders must then agree upon a memorandum of understanding that defines respective rights and responsibilities.

The new guidelines also include mechanisms to ensure that investors conform to the approved uses of the lands they acquire. This will cut down on unproductive land speculation, protect genuine investors, and ensure that lands are put to their most productive use.

The guidelines were drafted through an inclusive process, with USAID providing technical input into the draft bill and providing financial assistance to two community validation workshops. Workshop participants expressed confidence that the guidelines will address their needs and concerns. One farmer from Kharma Farms in Tamale, noted: “It took us almost two years to strike a deal with our landlords to acquire land for our business and I hope these guidelines will change all that.”



**USAID**  
FROM THE AMERICAN PEOPLE

**GHANA**

## SNAPSHOT

### MoFA's Policy Unit Prepares for Effective Policy Analysis and Advice

#### 14 MoFA Policy Unit Staff Benefit from Analytical Skills Training



Training Session Participants



Beneficiary Receiving Certificate of Participation

#### PHOTOS: USAID/APSP

*“This has been refresher to me since I have been dormant for a while. This training must be continuous in order to put me on my toes for effective execution of my task at the Policy Unit”*

Agricultural Economist  
MoFA, Policy Unit

In order to address the Ministry of Food and Agriculture's Policy Unit's need for improved policy analysis training and technical capacity building, the USAID/Ghana Feed the Future Agriculture Policy Support Project (APSP) is working with Iowa State University to train Ministry personnel on a number of important analytical skills. Agricultural economists in Ghana note that unit staff lack an understanding of the fundamental microeconomic concepts and skills needed to shape policies that spur demand, incentivize production, and shape a healthy agricultural sector.

To address this need, a USAID-led training program recently worked with 14 staff from MoFA's Policy Unit to cover foundational concepts like input supply and demand and competitive market equilibrium; teach skills like algebra for agricultural analysis; and explain how policy interventions shape producer and consumer behavior and can be used to achieve desired macroeconomic results. With an improved understanding of these concepts and skills, Policy Unit staff will be able to make informed decisions and craft policy interventions that produce results.

The MoFA Deputy Director responsible for the Policy Unit, noted: “The training exercise has introduced us to a wide array of policy topics and stimulated us to continue to improve on our skills to deliver on our institutional mandate.”

Improved capacity within MoFA's Policy Unit will have a lasting impact on Ghana's agricultural sector and will allow the Government of Ghana to develop and implement policies that stem from rigorous analysis, and to put in place the reforms that a diverse and growing sector demands.

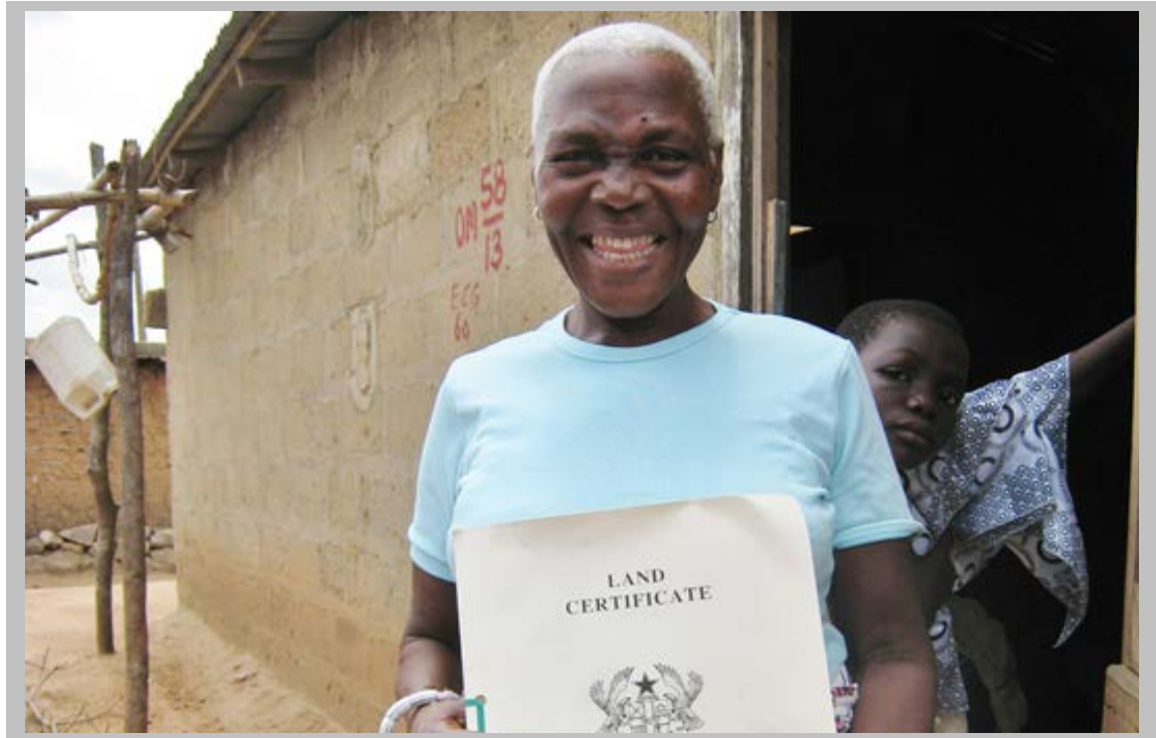
USAID will therefore continue to deliver targeted trainings, work with the unit to improve its IT infrastructure, and monitor the unit's progress. USAID has recruited local Ghanaian organizations, including the Center for Policy Analysis (CEPA) and the Institute of Statistical, Social and Economic Research (ISSER), to help in its efforts.

## **Annex E: Landesa's Final Trip Report: Ghana Land Bill Analysis**



# FEED THE FUTURE

The U.S. Government's Global Hunger & Food Security Initiative



## FINAL TRIP REPORT: GHANA LAND BILL ANALYSIS

RESPECTFULLY SUBMITTED TO CHEMONICS, FEED THE  
FUTURE POLICY SUPPORT, GHANA

IN FULFILLMENT OF DELIVERABLE 2, SUB-248  
UNDER AID-641-C-14-0001

BY LANDESA:  
JENNIFER DUNCAN, BETH ROBERTS, MY-LAN DODD



**USAID**  
FROM THE AMERICAN PEOPLE







# FINAL TRIP REPORT

RESPECTFULLY SUBMITTED TO CHEMONICS, FEED THE  
FUTURE POLICY SUPPORT, GHANA

IN FULFILLMENT OF DELIVERABLE 2, SUB-248  
UNDER AID-641-C-14-0001

BY LANDESA:  
JENNIFER DUNCAN, BETH ROBERTS, MY-LAN DODD

**Cover photo:** Comfort Davordzi holds the land title that was granted to her by officials in the Awutu Senya District of Ghana. The land title guarantees that she will enjoy secure rights to the land she farms. (Credit: Kelsey Jones-Casey / Landesa)

## DISCLAIMER

This publication was made possible through support provided by Feed the Future through the U.S. Agency for International Development, under the terms of Contract No. AID-641-C-14-00001. The opinions expressed herein are those of the authors and do not necessarily reflect the views of the U.S. Agency for International Development.

# CONTENTS

|  |    |
|--|----|
| <u>Acronyms</u> .....  | ii |
| <u>Executive Summary</u> .....   | 1  |
| <u>Background and Trip Description</u> .....   | 5  |
| <u>Key Issues and Recommendations</u> .....  | 8  |
| <u>Annex A. Summary of Recommendations</u> .....   | 21 |
| <u>Annex B. Landesa Memorandum to Working Group on 7 June 2016:<br/>Supplemental Information Requested By Working Group Memebers at 6 June<br/>Meeting</u> ..... | 24 |
| <u>Annex C. Landesa Memorandum to Working Group on 17 june 2016: Support<br/>for the Spousal Rights Provisions of the Land Bill (Draft Four)</u> .....           | 45 |
| <u>Annex D: Integrated Water &amp; Agricultural Development Ghana Ltd. Investor<br/>Case Study</u> .....   | 71 |
| <u>Annex E: Power Point Presentation to the Land Bill Working Group on 6-7 June<br/>2016</u> .....   | 74 |

# ACRONYMS

|          |   |
|----------|---|
| AGRA     | Alliance for a Green Revolution in Africa                   |
| APSP     | Agriculture Policy Support Project                          |
| CLS      | Customary Land Secretariat                                  |
| COLANDEF | Community, Land and Development Foundation                  |
| FAO      | Food and Agriculture Organization of the United Nations     |
| FPIC     | Free, Prior and Informed Consent                            |
| GCAP     | Ghana Commercial Agricultural Project                       |
| GoG      | Government of Ghana   |
| IWAD     | Integrated Water Management and Agricultural Development    |
| KNUST    | Kwame Nkrumah University of Science and Technology          |
| NRCD     | National Redemption Council Decree (NRCD)                   |
| LAP-1    | Land Administration Project I                               |
| LAP II   | Land Administration Project II                              |
| LGAF     | Land Governance Assessment Framework                        |
| LRA      | Land Registration Act                                       |
| LSA      | Land Sector Agency  |
| LSLT     | Large-scale Land Transactions                               |
| LSLBI    | Large Scale Land-Based Investments                          |
| NGO      | Non-Governmental Organization                               |
| NLP      | National Land Policy  |
| VGGT     | Voluntary Guidelines Under Responsible Governance of Tenure |

# EXECUTIVE SUMMARY

The purpose of this consultancy was to provide support to the Government of Ghana (Land Administration Project—LAP II) in finalizing Draft Four of its Land Bill (“the Bill”), through offering perspective and information based on international best practices in land governance. To this end, the Lead Consultant worked with a team of people from Landesa to identify key issues in the Bill, as presented through background documents and discussions with the World Bank, and during Consultant’s trip to Ghana from 30 May to 8 June, 2016.

The trip entailed meetings with members of the Core Drafting Group (a 6-member sub-set of the larger 22-person Land Bill Working Group), attendance at the Government’s stakeholder consultations on the Bill in Tamale, two days of presentations to the Working Group in Accra, and interviews with COLANDEF (a leading land sector NGO in Ghana) and IWAD (a private sector land-based investor in Ghana). The Land Bill Working Group sessions on 6<sup>th</sup> and 7<sup>th</sup> June, 2016 provided an opportunity for the Consultant to present information on international best practices related to a number of thematic topics covered by the Bill. Primary topics of presentation, discussion and recommendation included the following:

**1) Mitigating the risks of transaction-based registration/recording.** Consultant discussed the risks of conveyance-based registration—in the absence of a systematic first registration—in that those who can’t afford to acquire land or record/register what they already have may end up worse off and more vulnerable as land rights become formally recognized. This risk is indeed reflected in the functional reality of Customary Land Secretariat (CLS) operations in some parts of Ghana over the past decade: the CLSs in some areas charge relatively large amounts of money (upward of US\$ 100) to record rights to a parcel of land, which has resulted in inequitable access to recording. While residential and commercial developers in growing township areas can afford to register their rights, small-scale farmers and other usufructuary rights holders cannot. The Group discussed the challenges related to systematic first registration/recording of land rights in Ghana, including both costs and political will among Traditional Authorities. Recommendations include seeking ways to reduce the costs of registration and recording rights to make these services more widely accessible, and to sensitize land rights holders as to the importance of registering/recording their rights. Consultant provided information on low-cost registration systems in Rwanda and Ethiopia.

**2) Addressing other concerns within the customary land rights framework.** The Bill’s treatment of customary land rights improved significantly in Draft Four. It could still be strengthened in a number of ways, however. The anti-discrimination provision in Clause 13 is ambiguous, suggesting that safeguards against discrimination would be subject to customary norms. This clause could be narrowed to ensure that constitutional safeguards against discrimination of protected classes apply even within customary systems. In Clause 20, the definition of “community” is unclear. At the request of the Working Group, Consultant provided comparative international information on how this term has been interpreted and applied in land law and practice. (Please see Annex B to this report.) Finally, the Bill makes

significant strides in defining the rights of usufructuary rights holders vis-à-vis allodial rights holders, by requiring that, prior to alienating usufructuary land rights, allodial rights holders must (1) have the consent of the usufructuary rights holders; and (2) provide compensation to the usufructuary, at a minimum of 25 percent of the value of the land. While these are important safeguards, it is recommended that the Working Group consider adjusting the “25 percent” upward to accurately reflect the value of the land to small-hold farmers, both as a source of livelihood and an intergenerational asset that confers economic stability and social status.

### **3) Enhancing transparency and accountability in land governance institutions.**

The Consultant noted that the Bill may not adequately address the historic and contemporary concerns of many stakeholders around improved transparency and accountability in land governance. Although the Bill does provide for penalties for officials who do not exercise professionalism in carrying out their duties, it falls short of addressing lack of transparency and corruption in a systematic way.

Recommendations include mandating in the Bill (or requiring that this be included in forthcoming regulations) that all land sector agencies prominently and publicly post information about: (1) detailed steps necessary for any procedure (e.g., registration); (2) timelines for agency action in response to these steps; and (3) fees required.

### **4) More clearly articulating registration and recording options for land rights in Ghana.**

The Bill provides three different methods of registering and recording land rights in Ghana, but without making clear when each of these would apply, and what the relationship between the three types will be. It would be useful to add provisions to the Bill that would clarify the three types of registration/recording systems in Ghana: deed system, title system and customary recording system. The Consultant recommends adding to the Bill new provisions that would describe the legal effects of each system, the applicability of each system to different kinds of rights, and the relative weight of each type of registration/recording vis-à-vis the other types.

**5) Expanding coverage for electronic registration and conveyancing.** The Working Group expressed the need for information on electronic registration and conveyancing. Consultant provided the Group with extensive comparative information on both, based on international experience (see Annex B to this Report), and recommended that the Group add provisions to the Bill based on these comparative examples that will provide a more comprehensive and sustainable legal framework for electronic land administration systems.

### **6) Incorporating a more robust legal framework for Large-scale Land Transactions (LSLT).**

The provisions in the Bill related to LSLT are not comprehensive enough to address the key issues and challenges related to this subject matter in Ghana. The Consultant presented the Group with information about international best practices, as embedded in FAO’s Voluntary Guidelines for Governance of Tenure and documents issued by the African Union’s Land Policy Initiative. Consultant also provided written information to the Group, as requested, about the doctrine of Free, Prior and Informed Consent in international law and practice. (This information is included within Annex B to this report.)

Recommendations include adding new provisions to the Bill to better frame and guide policy related to LSLT, and providing improved linkages to the government’s Guidelines for Large-scale Land Transactions. An additional recommendation is to

reconsider the provision in the Bill that requires additional governmental scrutiny of any land transaction that is a minimum of 10 acres in size. The GoG will need to align the minimum size with that provided in the draft LSLT Guidelines (50 acres), and may want to consider a minimum size that varies in different parts of the country, depending on agricultural, socio-economic and tenure conditions.

**7) Improving the compulsory acquisition sections of the Bill.** Drafters have made significant improvements in Version Four of the Bill, as related to Compulsory Acquisition. However, several issues remain. First, the definition of “public purpose” is very broad, allowing the government to compulsorily take land from less efficient (and often poorer) rights holders for transfer to more efficient private sector users. The Consultant discussed the implications of this kind of broad authority on land rights security, particularly given the checkered history of public takings in Ghana, and recommended a narrower definition of “public purpose” that would reflect that found in the Constitution. Second, the Bill limits grounds for administrative appeal for Compulsory Acquisition to issues related to compensation. Expanding the scope of appeal to substantive matters, such as whether the acquisition was properly considered to be in the public interest, would help to ensure accountability and transparency. Third, the Bill does not require distribution of compensation to people within the household, which creates the risk that members of the household other than the person receiving payment (usually the male head of household) will not receive compensation. Fourth, in an issue closely related to compulsory acquisition, the Bill explicitly provides that informal occupants of public land have no rights to that land. This means that they would not be compensated upon eviction. This could be very problematic in Ghana, given the many conflicted claims of public land ownership and past takings. In many cases, customary groups have continued to occupy areas the government claims to have acquired decades ago. This provision in the Bill also runs contrary to international best practices, as espoused by the World Bank’s Resettlement Policy. Recommendations include providing some form of limited compensable right to occupants of public lands. Finally, the Bill provides the State a number of procedural shortcuts for “temporary” occupation of land. However this temporary occupation may be for a lengthy period (up to 10 years and renewable to 20) and should be subject to the same procedural safeguards required for compulsory acquisition.

**8) Defending and refining the Bill’s coverage of women’s land rights.** One of the most significant improvements in Version Four of the Land Bill is the enhanced protection for spousal rights to land. The Bill requires that spouses’ names be included when registering land acquired during marriage, and provides a presumption that any land acquired during a marriage by one spouse is co-owned by both spouses (even if only one name is registered). The Bill also requires spousal consent for transaction of any land acquired during a marriage. These provisions are very controversial in Ghana, and the Working Group requested additional information based on international best practices to support them in presentations to stakeholders and to Parliament. Consultant provided extensive information on this topic through an additional memo (attached to this report as Annex C). The Bill’s coverage of women’s land rights could be improved by adding specific guidance for spousal protections in polygamous marriage. Finally, the Bill should establish a clear compensable right to secondary uses of land, such as access to shea nuts, that are of high socio-economic value to women.

This report will first provide a brief description of the background to this consultancy, including a summary of the trip objectives, following with a description of the key issues discussed, as well as recommended options for the Working Group. Annex A provides a summary of recommendations. Annexes B and C contain much of the detailed information on comparative best practices provided to the Working Group, per requests from that Group during Consultant's stay in Ghana. The memoranda presented in these annexes were intended as a rapid, fairly informal means for the Consultant to respond to the Group's need for information quickly, so that it could be used in the Group's ongoing consultations on the Bill in June and July. Annex B comprises a memorandum from Consultant to the Group, with responses to specific requests from the group for information on: (1) definition of "community"; (2) low-cost comprehensive registration and titling systems in Rwanda and Ethiopia; (3) the doctrine of Free, Prior and Informed Consent (FPIC); and (4) electronic registration and conveyancing. Annex C contains a memorandum from the Consultant providing support for the spousal rights provisions in the Bill, as requested by the Group. Annex D contains a land investment case study based on the experience of the Integrated Water & Agricultural Development Ghana Ltd., and the Consultant's Power Point presentation to the Working Group comprises Annex E.

## SECTION 1

# BACKGROUND AND TRIP DESCRIPTION

The Land Bill in Ghana is the manifestation of reforms in the land sector that began with the implementation of the 1999 National Land Policy (NLP). Such reforms aim to address longstanding problems embedded in land sector activity and governance in Ghana, summarized in the NLP as follows:

The policy seeks to address some of the fundamental problems associated with land management in the country. These include general indiscipline in the land market, characterised by land encroachments, multiple land sales, use of unapproved development schemes, haphazard development, indeterminate boundaries of customary-owned, resulting from lack of reliable maps and plans, compulsory acquisition by government of large tracts of land, which have not been utilised; a weak land administration system and conflicting land uses, such as, the activities of mining companies, which leave large tracts of land denuded as against farming, which is the mainstay of the rural economy, and the time-consuming land litigation, which have crowded out other cases in our courts.<sup>1</sup>

Since the adoption of the NLP, pressure on agricultural land in Ghana has markedly increased, particularly in areas of urban and township expansion, and large-scale commercial farm development. This has caused new stress on both customary and formal land governance systems, and has elevated tensions between different groups of land users in many parts of the country.

The Land Bill provides a critical opportunity to the Government of Ghana to address both historic and current challenges and issues in the land sector, with far-reaching repercussions on the nation's socio-economic development. The specific purpose of the Bill, according to the Lands Commission, is to “revise and consolidate the laws on land, with the view to harmonizing these laws to ensure sustainable land administration and management, effective land tenure and efficient surveying and mapping regimes and to provide for related matters.”<sup>2</sup>

Landesa has engaged in land policy development in Ghana over the past several years. In 2013, Landesa worked with the Alliance for a Green Revolution in Africa (AGRA) and the Ghana Land Policy Action Node to develop and apply a risk assessment tool for land tenure security in Northern Region. Under the policy rubric of this project, Landesa also submitted detailed comments to LAP II and the GoG on Version Three of the Land Bill, based on Landesa's experience in Ghana and comparative experience in over 50 other countries in the world. In 2014, Landesa worked for the Ghana Commercial Agricultural Project (GCAP) to develop a Model Lease Agreement and Community/Investor Guidelines for large-scale land based

---

<sup>1</sup> Ministry of Land and Forestry. (1999). Foreword to the National Land Policy.

<sup>2</sup> Power Point Presentation by the Core Group of the Land Bill Working Group, May 16, 2016.



investments. To this end, Landesa worked with a team from its US-based headquarters and with Ghanaian consultants, including Dr. John Bugri and Dr. Eric Yeboah from the Land Policy Department at Kwame Nkrumah University of Science and Technology (KNUST), to conduct field research in seven regions of Ghana, interviewing groups of farmers, local and national-level land sector officials, traditional authorities, investors, NGOs and others.

In June 2016, the USAID/ Ghana Feed the Future (Ft) Agriculture Policy Support Project (APSP), being implemented by Chemonics International, contracted Landesa to provide short-term technical assistance to the GoG's efforts to revise and finalize Draft Four of the Land Bill.

The contract provides the following substantive parameters for the Trip Report:

The Subcontractor will provide Jennifer Duncan as an expert consultant to advise the Ministry of Lands and Natural Resources in Accra, Ghana from on or about May 30, 2016 to on or about June 8, 2016. Following completion of this assignment, the Subcontractor will submit a draft trip report summarizing the work undertaken during the assignment, results of the assignment, and recommended next steps for the Land Administration Project in finalizing the draft of the land bill. The draft trip report will also include reference to international best practices and examples from the consultant's experience that would assist the Land Administration Project in finalizing the land bill.

Consultant submitted the draft trip report earlier in June, and incorporated feedback into this final version of the report.

Work undertaken during the Assignment included:

- Review of all background documents sent by GoG partners and otherwise collected by Landesa;
- Review and detailed mark-up of the Land Bill (Version Four);
- Meetings with Feed the Future Agriculture Policy Support Project leadership in Ghana (Walter Nuñez-Rodriguez, Chief of Party and Kwaku Owusu-Baah, Senior Policy Advisor);
- Meetings with members of the Government's Land Bill Working Group while in Ghana, and particularly with members of the Core Group (drafting team);
- Meetings with Nana Ama Yirrah of COLANDEF (leading land sector NGO) and Tom Durang, the Managing Director of Integrated Water & Agricultural Development Ghana Ltd;
- Travel with the GoG to Tamale and attendance at the northern area stakeholder consultation workshop on the Bill (31 May through 3 June);
- Presentation to the Working Group on 6-7 June (based on a Power Point Presentation, attached as Annex E)
- Rapid response to specific questions of the Working Group during the presentations and ensuing discussions (attached as Annexes B and C).

The Working Group was receptive to information presented by Consultant, and eager to learn more about specific areas as noted above. In some instances the Group agreed, during the presentation and discussion, to address specific recommendations through amendments to the Bill. A detailed description follows in the next section.

A final note: Many of our comments on the Bill overlap to some degree with comments recently submitted by the World Bank to the Working Group, in the form of in-country presentations and discussions, as well as a detailed mark-up of the Bill by Jonathan Lindsay. In our work we have endeavored to underline several of the Bank's recommendations, but also to focus on new issues that were not covered by the Bank, in order to maximize the usefulness of our contributions.

## SECTION 2

# KEY ISSUES AND RECOMMENDATIONS

### 1) RISKS OF TRANSACTION-BASED OR SPORADIC REGISTRATION AND RECORDING OF LAND RIGHTS.

Under the Bill, land rights would be registered (with deeds or titles) or recorded (within customary communities) sporadically, and usually in the context of transactions. However this approach to registering/recording land rights has proven to be inequitable both in other countries and in Ghana. From a global perspective, the high cost of land titling has forced many countries to establish a system of land titling on demand, and this has made land titles costlier and only available to the wealthy.<sup>3</sup> Therefore, there is substantial need for more low-cost, broad scale and egalitarian systems for land registration in low and middle-income countries.

In Ghana, concerns may be most acute within the system for customary recording of land. The experience of the Customary Land Secretariats (CLSs) to date has underlined risks associated with transaction-based recording. Based on Consultant's research in seven different regions of the country, CLSs often charge fees for recording that are upward of US\$ 100, and prohibitively high for most small farmers and other traditional usufructuary rights holders. The CLSs have not generally attempted to record rights systematically within their jurisdictions, but rather attempt to record rights at the time of transaction.

The Bill provides a new legal basis for the CLSs, and assigns to them the role of taking an inventory of customary rights within their jurisdiction (see Clause 16[a-b]). But the costs of systematic, comprehensive inventorying or recording of customary rights, including usufructuary rights, would be prohibitive without some kind of a low-cost, highly efficient approach to customary recording.

The concern is that by establishing legal backing for the CLSs, but not providing a practical mechanism for recording rights systematically, CLSs will continue to record rights only based on transactions. This will create greater security for new investors (e.g., those who are investing in residential development in the expanding township areas). This is important, as it will likely continue to abate the problem with double sales, etc. that stifles investment. But it will not provide security to traditional low-income usufructuary rights holders such as small farmers. Most of these people will not be able to afford to have their rights recorded. Their rights will not only remain insecure, but they will become more so as demand for land goes up and chiefs continue to find high value in sales of farm land to developers and investors, who—unlike the farmers—will be able to record their rights. The Bill clarifies certain rights

---

<sup>3</sup>Bezu, Sosina and Holden, Stein. (2014). *Demand for Second-Stage Land Certification in Ethiopia: Evidence from Household Panel Data*. 194, internal citations omitted, available at: <http://www.sciencedirect.com/science/article/pii/S0264837714001203>

for usufructuary rights holders, but these new rights will be tenuous at best if they are not based on a recorded existing right. For example, it is not clear how a usufructuary rights holder would be able to assert their rights under Clause 48(19) (making alienation of any land by the allodial rights holder contingent on consent from and compensation to the relevant usufructuary rights holder[s]), if the rights of the usufructuaries are not recorded.

### **RECOMMENDATIONS:**

- Clarify what it means for CLSs to “provide a catalogue of existing customary rights and interests in land” in Clause 16(b).
- Consider ways to significantly reduce costs of recording land parcels through CLSs, and to require in the law that fees by CLSs for recording remain low (e.g., at least not higher than the actual administrative costs required for recording). Models for reference include Rwanda, Ethiopia, and an innovative effort by the CLS in Wassa Akropong in Western Region, which started to systematically record rights using a low-cost method of grouping people into clusters by geographical area. The CLS grouped people into clusters by geographic area, mapped their land rights, document oral agreements, and delivered this in bulk to the Chief, thereby significantly decreasing costs of recording per household.<sup>4</sup>
- Mandate accessibility for registration to current customary rights holders (reduced fees, procedural safeguards, etc.).
- Provide safeguards for rights holders whose rights are not recorded, and add protections so that registration cannot be used as exclusive evidence of title that would deprive legitimate rights holders of their rights.

## **2) CONCERNS WITHIN THE CUSTOMARY LAND RIGHTS FRAMEWORK.**

Draft Four of the Land Bill contains significant improvements over previous drafts in setting out a legal framework for customary land rights. Some of the tenure categories for customary land continue to be vague, however, and the Bill is highly oriented toward registration and conveyances of privately held land. However, the Consultant appreciates the delicate political balance drafters face in providing a clear legal framework for rights, on one hand, while respecting the autonomy of customary systems over land governance, on the other. Some overlap among customary rights categories is to be expected given the broad range of customary systems throughout the country. Also, drafters must be careful not to define customary rights so narrowly as to prevent or inhibit the natural evolution of customary rights over the course of time, so long as this does not come at the expense of those who are marginalized or vulnerable.

The Bill’s treatment of customary rights could be strengthened in three specific ways. First, the anti-discrimination provision (Clause 13) needs to be tightened up if it is to

have any real meaning.<sup>5</sup> As written, the Clause would not require customary authorities to comply with the Constitution (Article 17, containing an anti-

---

<sup>4</sup> Based on an interview with Nana Ama Yirrah, Founder of COLANDEF, in Accra on 30 June 2016.

<sup>5</sup> Clause 13 provides: A decision or practice in respect of land under customary tenure, whether the land is individually or communally held shall be in accordance with the customs,

discrimination mandate) if such discrimination was related to acquisition of interests in land. This exception would appear to undermine the purpose of the anti-discrimination clause in general, given that much of land governance within customary systems relates to the acquisition of land. It may also be considered unconstitutional.

Second, the Bill in Clause 20 provides a framework for customary communities to record areas reserved for common use. The utility of this clause is not immediately apparent. Is the purpose to motivate a more inclusive decision-making process around common areas by the “community”? If so, this is not clear in the clause. Additional clarification is needed on the definition of “community” and it what it means for a “community” to take the actions mentioned in the clause. The Working Group specifically requested international comparative information on how “community” is defined, which Consultant provided in the Memorandum included as Annex B to this report.

Third, the Bill provides in Clause 48(19)(b) that allodial title holders must compensate usufructuary rights holders at a minimum of 25 percent of the market value of the land. (Clause 48 also clarifies, in 19(b), that consent of the usufructuary rights holder is required before the allodial title holder may alienate the land.) While Clause 48(19)(b) sets out very important basic rights for usufructuaries, it also raises several concerns:

- (1) The 25 percent amount seems far too low, given the lifelong loss of the productive value of the land upon which farm families depend. Increasingly in urban and township expansion areas, no additional land is available for allocation within the chieftancy/family land, so a family that loses its land may not be able to find any alternative way to farm.
- (2) It is not clear whether this amount would be in place of, or in addition to, the allocation of a land plot in an alternative area within the chieftancy/family land. In some parts of the country, the Traditional Authorities customarily re-allocate land to a usufructuary when taking his/her farming plot for alternative use. This re-allocation is disruptive, and is often for a less-valuable parcel, that often requires further travel by the usufructuary. However, receiving new land of some kind is critical to the farmers. An important question is whether this provision might replace or undermine these types of traditional re-allocation practices. If so, the risks to women especially could be especially high: global evidence points to high risks to women and children associated with monetary compensation for farmland rights in the context of compulsory acquisition. The money is usually paid in lump sum to the head of the household, who is almost always a man, and there is no guarantee at all that any of this money will go toward the long-term benefit of the rest of the family.
- (3) In a related point, some traditional authorities who take a usufructuary’s farm land for the purpose of residential development have customarily allocated

---

traditions and practices of the community concerned and a decision or practice which discriminates on grounds of

- (a) gender, race, colour, religion, creed, and ethnic origin, *except as provided for under Customary Law in relation to acquisition of interests in land, or*
- (b) social or economic status

in contravention of Article 17 of the Constitution is void. (Italics added.)

some portion of the new residential lots to the usufructuary. (For example, if 4-5 new residential plots will be built on the land, the Traditional Authority may give one of these to the usufructuary.) It is not clear whether the 25 percent minimum compensation value noted in this clause could be paid for in-kind, in such a fashion.

#### **RECOMMENDATIONS:**

- Delete the exception to anti-discrimination within customary systems for governance related to acquisition of lands in Clause 13(a).
- Clarify the purpose of Clause 20 on recording areas of common use, and the definition of “community” in the Bill.
- Consider raising the 25 percent minimum compensation value for usufructuary rights in Clause 48(19)(b). Evaluate the implications of this clause on possibly replacing traditional customary practices of compensating usufructuaries who lose land rights (e.g., replacement land or some equity share in new higher value use for the land).

### **3) ENHANCING TRANSPARENCY, ACCOUNTABILITY AND ACCESSIBILITY IN LAND GOVERNANCE INSTITUTIONS.<sup>6</sup>**

The Land Bill seeks to “ensure sustainable land administration and management.” Doing so will require directly addressing the primary concerns by stakeholders about past performance of land sector agencies, including lack of transparency, undue delays in service, demands for unofficial payments, and other forms of corruption. In order to encourage formal recordation/registration of existing land rights and the use of formal channels for transactions, which are vital to the creation of a sustainable system, land administration and management services must be accessible to the general population, including vulnerable groups. Complex, costly and inadequate land administration structures can frustrate investors and marginalize the poor or vulnerable by discouraging them from formalizing their rights.

While the Bill does provide for specific penalties for offenses by land sector officials (Clause 263), it could go much further in establishing a framework for transparent and accountable land sector services within public agencies. A more difficult question is how far the Bill can go in requiring safeguards within customary systems (e.g., for services provided by Customary Land Secretariats).

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

---

<sup>6</sup> This section excerpted in large part from Landesa’s Commentary on Version Three of the Land Bill.

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

Even where formal fees are minimized, there is a risk that informal fees will drive up the cost to such an extent that people abandon formal channels in favor of informal transactions. There are many fairly simple steps that can be taken to reduce corruption and limit informal costs associated with land administration. Requiring the posting of the official registration process and official fees prominently in land registration offices increases transparency and helps prevent individual officials from taking advantage of people’s lack of awareness to inflate fees. Also, it should be required that receipts be issued at the time payment is made, and this requirement should be well-posted. Public lists of registration applications – which could include only the plots to be registered, in the interest of individual privacy – can also serve to limit opportunities for corruption by increasing transparency. Finally, performance standards or codes of conduct for public officials has been shown to improve service-delivery in many countries. Reviewing and consistently enforcing the current civil service code of ethics for land sector agency (LSA) officials would likely be effective.<sup>7</sup>

#### **RECOMMENDATIONS:**

- Require periodic implementation of the Land Governance Assessment Framework, a diagnostic tool developed by the World Bank to provide governments with an objective assessment of land governance in their countries, in order to monitor progress.<sup>8</sup>
- Consider adding a provision stating that fees associated with services to the public should not exceed the cost of doing service.
- Require the posting of official procedures and fees in all offices that provide services to the public.
- Consistently enforce the civil service code of ethics for state land sector officials who provide services to the public.

#### **4) ARTICULATING REGISTRATION AND RECORDING OPTIONS FOR LAND RIGHTS IN GHANA.**

---

<sup>7</sup> Bugri, John Tiah. (2012). *Final Report: Improving Land Sector Governance in Ghana. Implementation of the Land Governance Assessment Framework*. 182, available at: [http://siteresources.worldbank.org/INTLGA/Resources/Ghana\\_Final\\_Report.pdf](http://siteresources.worldbank.org/INTLGA/Resources/Ghana_Final_Report.pdf).

<sup>8</sup> Excerpted in large part from Duncan, Lufkin & Gaafar. (2013). *The Land Bill (Draft 3): Analysis and Policy Recommendations* (Report produced for the Land Access and Tenure Security Project), on file with Landesa.

The Land Bill provides for three different systems of land rights registration and recording in Ghana: title registration, deeds registration and customary land rights recording. However, the Bill does not reflect a clear vision or framework for how these registration/recording systems relate to one another. For example, it is not clear in the Bill that the titling system would only apply in particular titling districts, which causes confusion and overlap with deeds registration. The Bill does also not make explicit what the legal effects of rights recorded within customary systems will be relative to deeds or titles. (It appears that the first to register a title, and probably a deed, would win out over any less formally recorded right—but this needs to be made explicit if it is in fact the case.) It is also not clear whether customarily recorded rights can be transferred over time to formally registered deeds or titles. This version of the Bill contains some important improvements that help to bring deeds registration up to a par with title registration, requiring additional information, etc., which will eventually lend itself to a more efficient transfer of interests to a uniform title registration system.

#### **RECOMMENDATIONS:**

- Add an overarching provision specifying that there are three distinct systems for registration/recording in Ghana.
- Clarify the relationship between the three systems and rights registered under each. In particular, clarify *the* effects of recording a right with CLS, especially vis a vis a formal right.
- Provide clarification on whether CLS records will be merged with formal records, and how they will relate to them.

### **5) EXPANDING COVERAGE FOR ELECTRONIC REGISTRATION AND CONVEYANCING.**

The provisions on electronic registration and conveyancing currently contained in the Bill provide an insufficient legal framework for the significant transition to digitalize land administration services. In response to the Working Group's request, Consultant provided significant additional information on this subject, included in Annex B to this Report. It did not seem appropriate to the Consultant to provide detailed recommendations for how to incorporate specific provisions to address electronic services at this time, due to the wide variety of models and approaches that should first be reviewed by the Working Group.

#### **RECOMMENDATIONS:**

- Review Annex B, pp. 36-42 for specific examples of e-registration and conveyancing in South Africa, Rwanda and the United Kingdom.
- Develop a legal framework for registration and conveyancing that covers both the submission of electronic documents and the authentication of these documents.
- Define the exact legal effects of an electronic conveyance (e.g., is it equivalent to a deed).
- Consider repeal of attestation requirements, as appropriate.

### **6) INCORPORATING A MORE ROBUST LEGAL FRAMEWORK FOR LARGE-SCALE LAND ACQUISITIONS.**



The Bill could establish a much stronger and clearer framework for large-scale land based investment. Domestic frameworks relating to large-scale land based investment already exist, including the 1999 National Land Policy and the 2012 Lands Commission’s Guidelines for Large Scale Land Transactions in Ghana, which the Commission has revised and is in the process of vetting. Drafters could integrate principles and perhaps key provisions of the revised Guidelines into the Bill to ensure that it harmonizes and therefore strengthens the current legal and policy framework for LSLT. The National Land Policy should be incorporated in the Bill through references to Free, Prior, and Informed Consent (FPIC) and other international standards.

The current draft of the Bill falls short of incorporating international best practices. The FAO’s Voluntary Guidelines on Responsible Governance of Tenure,<sup>9</sup> the African

**REFERENCE TO FPIC AND OTHER PRINCIPLES FOR SOCIALLY RESPONSIBLE INVESTMENT IN THE LANDS COMMISSION’S REVISED GUIDELINES FOR LARGE SCALE LAND TRANSACTIONS IN GHANA**

**3.0 APPLICABILITY OF THE GUIDELINES**

**3.1 The Guidelines are applicable to land acquisitions of fifty (50) acres or 20.23 hectares or more for agriculture. Such acquisitions must take into consideration the underlisted conditions that, they are:**

- a. not in violation of human rights, particularly the rights of particularly the rights of women and other vulnerable groups;**
- b. based on Free, Prior and Informed Consent (FPIC) of affected landowners and common land resource users;**
- c. based on a thorough assessment of social, economic and environmental impacts, including the way they are gendered;**
- d. based on transparent negotiations and contracts that specify clear and binding commitments about corporate social responsibilities, activities, employment and benefits-sharing between the investor and the communities; and**
- e. based on consultative planning, independent oversight by a recognized body and meaningful participation by all stakeholders.**

Union’s Guiding Principles on Large-Scale Land Based Investments,<sup>10</sup> and international guidance on FPIC all advocate for strong protections for communities and transparent processes in the context of acquisition by states and private actors. Provisions which specifically reference FPIC also apply to the recommendations that

<sup>9</sup> The FAO’s 2012 Voluntary Guidelines on the Responsible Governance of Land, Fisheries and Forests in the Context of National Food Security (endorsed by Ghana as member of UN General Assembly) incorporate FPIC principles and doctrine at Sections 3B.6, 9.9, and 12.7.

<sup>10</sup> Guiding Principles on Large Scale Land Based Investments in Africa. 13, available at: [http://www.uneca.org/sites/default/files/PublicationFiles/guiding\\_principles\\_eng\\_rev\\_era\\_size.pdf](http://www.uneca.org/sites/default/files/PublicationFiles/guiding_principles_eng_rev_era_size.pdf)

follow regarding compulsory acquisition. According to FPIC, a community's land cannot simply be compulsorily acquired by the government for large-scale land based investment. The government must negotiate with the community, seeking to garner its broad-based consent for the transaction and terms. The National Land Policy already includes a requirement for consultation with land owners and occupiers (NLP Section 4(3)(c)), and the Bill could align this commitment with international best practices. The revised Guidelines for Large Scale Land Transactions in Ghana likewise contain reference to FPIC, as referenced in the text box above.

The Bill needs to establish clearer institutional accountability mechanisms for land registration generally. This relates to LSLT in two ways. First, a clear and transparent process for screening investors, for which a single institution is accountable, would ensure that the interests of communities and investors alike are protected in the process, before the final stages of a transaction (registration) occur. Second, the current system of land registration in Ghana is a significant deterrent to land rights security, which hinders land-based investment (GCAP project interviews, on file with Consultant). Investor concerns include corruption and unofficial payments, unforeseen and numerous procedural steps that require visits to several different agencies and offices, lack of clarity about process and fees, and length of the registration process (which can extend up to seven years). The current version of the Bill does little to address these concerns. In addition, the LSLT Guidelines currently require investors to bear the entire cost of consultation, which inadequately addresses the widespread problem of corruption in LSAs. The Land Governance Assessment Framework report also found that communities were harmed when investors were not held accountable (LGAF at 9). Creating transparency for acquisition and registration processes will significantly reduce conflict and attract investment.

Neither the Bill nor the revised LSLT Guidelines in their current form sufficiently address these concerns. It is not sufficient to address these issues in the LSLT Guidelines, as they do not carry the force of law, and only apply to acquisitions of greater than 50 acres. Smaller-scale commercial investments would not be protected, and these investments are critical for encouraging domestic land-based investment

Finally, the minimum size limit for triggering heightened scrutiny of a land-based transaction should be harmonized between the Bill (which currently provides for a 10 acre minimum) and the LSLT Guidelines (which currently provide for a 50 acre minimum). The Government may want to consider a minimum size that varies in different parts of the country, depending on agricultural, socio-economic and tenure conditions.

#### **RECOMMENDATIONS:**

- Incorporate provisions that reference existing domestic legal and policy framework.
- Incorporate reference to international best practices.
- Consider establishing a single institution responsible for administration of large-scale land based investments, and link the responsibilities of that institution to a transparent registration process.
- Consider adjusting the 10-acre minimum to account for different types of land and to harmonize the bill with the Guidelines for Large Scale Land Transactions in Ghana.

## 7) IMPROVING THE COMPULSORY ACQUISITION SECTIONS OF THE BILL.

Issues related to Compulsory Acquisition in the Bill pertain to (1) the State's power to compulsorily redistribute land from one private sector user to another, (2) the scope of appeals, (3) compensation practices and mechanisms, and (4) the State's power to "temporarily" occupy land.

The broad definition of "public purpose" in Clause 220 leaves room for the government to allocate land to private sector or public actors with little restriction, and is not counterbalanced by sufficient due process. Clause 220 reads:

- (1) The State may compulsorily acquire any land where the acquisition of that land is necessary
  - (a) for a public purpose and in the interest of defence, public safety, public order, public morality, public health, town and country planning or resettlement; or
  - (b) in order to secure the development or utilization of that land or other land in such a manner that promotes the public benefit.

Part (b) of Clause 220 arguably broadens the definition of "public purpose" beyond what was intended in the Constitution, which provides a definition very similar to that contained in Clause 220(a) of the Bill.<sup>11</sup> While this broad power may be valued as a route to economic growth, it runs contrary to internationally accepted definitions of public purpose, could undermine long term economic development by increasing levels of poverty among those displaced, and could lead to ongoing conflict between investors or agencies and the communities impacted by acquisition.<sup>12</sup> A narrower definition of "public purpose" that reflects the Constitution and international best practice is strongly recommended.

Administrative appeal for compulsory acquisition is currently limited to issues related to delay in compensation in Clause 248. However, since the Constitutional provision requiring compensation has often not been adhered to, and the purposes for which land has been acquired by the state have been an ongoing source of conflict, appeal provisions should be broader. The scope of appeal should include both due process and substantive matters, including whether the acquisition was properly considered to be in the public interest and the basis for or adequacy of resettlement offers. Including additional bases for and routes to appeal should be done in line with international standards.

---

<sup>11</sup>Article 20 of the Constitution reads: "No property of any description, or interest in or right over any property shall be compulsorily taken possession of or acquired by the State unless the following conditions are satisfied-

- a. the taking of possession or acquisition is necessary in the interest of defence, public safety, public order, public morality, public health, town and country planning or the development or utilization of property in such a manner as to promote the public benefit,..."

<sup>12</sup> FAO Acquisition. 6, available at: <http://www.fao.org/3/a-i0506e.pdf>

Clause 225 requires the government to establish an escrow account funded by a private investor who will be beneficiary/transferee of interests compulsorily acquired by the state. This clause underlines the assumption in the Bill that the government will acquire the land for the purpose of transferring it to a private investor. The Bill does not make clear that even if a private actor is involved in providing a public service,<sup>13</sup> compulsory acquisition is best used only for truly public purposes, such as roads, schools, or government offices. Requiring escrow accounts for compensation prior to government occupancy of the land would be appropriate to ensure prompt payment, and would be appropriate if the account were established by the government, using government funds. Investor-established escrow accounts for land that is already state owned are also international best practice, but should not be a mechanism for the state to use investor interest to justify acquisition.

The Bill does not currently provide for a mechanism to distribute compensation payments from a compulsory acquisition within the household. However compensating only the household head ignores the different ways women and men access and use land, and ignores the importance of food security, as women are frequently responsible for providing food for the household and will be disproportionately affected by resettlement. (perhaps in Clause 242) should thus make compensation explicitly due to all affected members of the household to ensure that the rights of women, youth, and other vulnerable groups are adequately protected.

The denial of any rights to compensation under Clause 223 by unlawful occupants of public land is contrary to international best practices and has the potential to incite conflict and deter investment.<sup>14</sup> There is legitimate concern that providing compensation to occupants of public land will incentivize squatters, but provisions could be crafted to limit new unlawful encroachment to a large extent. When land deemed by the government to be public land is leased out for investment, providing compensation for those who have historically occupied public lands has the following benefits:

- (1) Avoiding litigation and violent conflict. Especially in the south, whole communities occupy lands that are claimed by the government to be public lands. Legal confusion about who officially owns the land is very high. The LGAF found that only 10% of the public land claimed in the Central Region had been paid for through compensation and was being occupied by the state.<sup>15</sup>

---

<sup>13</sup> FAO Acquisition. 11, available at: <http://www.fao.org/3/a-i0506e.pdf>

<sup>14</sup> Clause 223 reads: “Despite the provisions of the Limitation Act, 1972 (NRCD 54) and any other law, a person who unlawfully occupies public land does not acquire an interest in or right over that land by reason of the occupation.” This issue does not strictly pertain to the discussion of Compulsory Acquisition, since it has to do with the treatment and compensation of people occupying what is already considered to be State-owned land. Authors have chosen to cover it within this section because that is where the Clause is located within the Bill and because of the close parallels with Compulsory Acquisition issues and concerns.

<sup>15</sup> LGAF. 229 reads: “...literature review on the legislative framework for expropriation was carried out and supported by a sample of 713 public land sites in the Central Region of Ghana that has been subject to a public lands inventory on a pilot basis under the Land Administration Project (LAP-1). The sample data revealed that a marginal 10% of lands expropriated are compensated for and the government currently occupies several sites without proper acquisition nor payment of compensation.”

- (2) Encouraging investment. Investors seek to avoid conflict, and unofficial occupants of investment areas may use protest when their livelihoods are threatened in the absence of clear legal recourse. Creating a legal framework for compensating those who have historically occupied the land would help to assure investors that the Government has a plan for addressing the occupancy issue.
- (3) Increasing national food security. Offering livelihood replacement avoids increasing displaced communities' vulnerability.
- (4) Aligning the Bill with international standards, including the World Bank Resettlement Policy, the Voluntary Guidelines, and the AU Guidelines.

Finally, Clause 258 grants broad powers to the State to temporarily occupy land held privately. This provision enables the government to side-step the due process provisions in the compulsory acquisition process, for uses up to 10 years (renewable to 20 years). This is a very long time period, and should be considered effectively a permanent takings of land. It should thus be subject to the same appeal, public consultation, and notice provisions established for compulsory acquisition, or processes and procedures should be added to clarify the distinction between temporary occupation and compulsory acquisition.

#### **RECOMMENDATIONS:**

- Define “public purpose” in accordance with comparative best practices, and in closer alignment with the Constitution. Consider deleting Clause 220(b).
- Strengthen due process in administrative appeals by broadening to include the purpose of the acquisition and resettlement as well as compensation.
- Require compensation of all members of all members (or at least adults) within a household.
- Compensate unofficial occupants of public land (within limits and with a focus on livelihood replacement).
- Revise the sections on temporary occupation in Clause 258 et seq. to increase safeguards and/or significantly reduce the amount of time allowable for a “temporary” occupation.

#### **8) DEFENDING AND REFINING THE BILL'S COVERAGE OF WOMEN'S LAND RIGHTS.**

Draft Four of the Bill contains significant improvements on protection of women's land rights relative to previous drafts. These come primarily in the form of increased safeguards for spouses in the context of land acquired during a marriage. The Bill requires that spouses' names be included when registering land acquired during marriage, and provides a presumption that any land acquired during a marriage by one spouse is co-owned by both spouses (even if only one name is registered). The Bill also requires spousal consent for transaction of any land acquired during a marriage. The Consultant recognizes that these provisions are controversial in Ghana, and at the request of the Working Group has provided extensive information on international evidence, practices and standards related to spousal land rights (contained in Annex C to this report). In addition, the following refinements to the Bill would strengthen gender equity and women's rights to land.

First, the clauses related to spousal rights do not provide direction for the context of polygamous marriage, which is common in Ghana. In Clause 36, for example, it is unclear whether the spousal registration requirements for land acquired during marriage would apply to one wife or to all wives. Similarly, in Clause 45 it is not clear whether one wife would need to provide consent to a conveyance of land acquired during a marriage, or whether all wives must do so. Without further specification, these provisions will cause high levels of confusion and conflict in implementation. Drafters could refer to the Property Rights of Spouses Bill, 2013, for guidance.<sup>16</sup>

Second, the Bill could further clarify the nature of the consequence if a conveyance is made without the requisite spousal consent. Will the transaction be voided? (In which case the burden falls largely on the transferee, whose only option is then to hold the transferor liable for damages, under clause 70.) Or would the transaction stand but the transferring spouse owe damages to the non-consenting spouse? (In which case this is very hard to enforce.) Or would the spouse rather need to seek indemnity against the Registrar, if some negligence could be proved as to verification of the transacting spouse's marital status?

In a related point, the Bill could provide further detail on verification of marital status (by either providing for this directly in the Bill or mandating that this be addressed in regulations). In the Bill as it stands, it is not clear how the Registrar and/or transferee would know and verify the marital status of the conveying party. In Consultant's experience in other countries, registration fraud related to spousal consent requirements is very common, and regulations/procedures must be crafted carefully to avoid this.

The Bill does not adequately provide safeguards for the loss of access to economic tree nuts (e.g., shea nuts) and other land-based resources that are of high socio-economic value to women, when this access is lost through a compulsory acquisition or a large-scale land acquisition. These resources often exist in the common areas owned by customary communities. Loss of access can have important negative consequences to women. Yet the law does not establish a compensable right to these kinds of "secondary" uses or customary access points. Tom Durang, Managing Director of the Integrated Water & Agricultural Development Ghana Ltd., a land-based investment in Northern Region, pointed to the need for legal clarity around this point in his interview with Consultant. (Please see Annex D to this report.) Such clarity could be provided for within the framework of Clause 20 (common areas), but should also be incorporated into the Bill's coverage of LSLT and compulsory

---

<sup>16</sup> The Property Rights of Spouses Bill, 2013, provides in Section 20:

- (1) When a husband has more than one wife in a polygamous marriage, the ownership of the property shall be determined as follows:
  - (a) joint property acquired during the first marriage and before the second marriage was contracted is owned by the husband and first wife; and
  - (b) any joint property acquired after the second marriage is owned by the husband and the co-wives and the same principle is applicable to a subsequent marriage.
- (2) Despite section 1(b), where it is clear either through agreement or the conduct of the parties of the polygamous marriage that each has separate matrimonial property, each wife owns that separate matrimonial property separately without the inclusion of the other wives.

acquisition. If the Bill at a minimum establishes the compensable right, details could also be provided for in forthcoming guidelines and regulations.

#### **RECOMMENDATIONS:**

- Provide additional details on spousal land rights in the context of polygamy, with possible reference to the Spousal Rights to Property Bill, 2013, for guidance.
- Provide additional details on verification of marital status upon registration or conveyance of land rights.
- In the context of valuing land lost for compulsory acquisition or large-scale land transactions, seek ways to capture and incorporate the value of secondary use rights to land-based resources (such as shea nuts) that are of high socio-economic value to women.
- Refer to Annex C for information in support of the Bill's current treatment of spousal rights.

# ANNEX A. SUMMARY OF RECOMMENDATIONS

## 1) Risks of transaction-based or sporadic registration and recording of land rights

- Clarify what it means for CLSs to “provide a catalogue of existing customary rights and interests in land” in Clause 16(b).
- Consider ways to significantly reduce costs of recording land parcels through CLSs, and to require in the law that fees by CLSs for recording remain low (e.g., at least not higher than the actual administrative costs required for recording). Models for reference include Rwanda, Ethiopia, and an innovative effort by the CLS in Ulassa Akropong in Western Region, which started to systematically record rights using a low-cost method of grouping people into clusters by geographical area. The CLS grouped people into clusters by geographic area, mapped their land rights, document oral agreements, and delivered this in bulk to the Chief, thereby significantly decreasing costs of recording per household.
- Mandate accessibility for registration to current customary rights holders (reduced fees, procedural safeguards, etc.).
- Provide safeguards for rights holders whose rights are not recorded to protect from registration as exclusive evidence of title being used to deprive legitimate rights holders of their rights.

## 2) Concerns within the customary land rights framework

- Delete the exception to anti-discrimination within customary systems for governance related to acquisition of lands in Clause 13(a).
- Clarify the purpose of Clause 20 on recording areas of common use, and the definition of “community” in the Bill.
- Consider raising the 25 percent minimum compensation value for usufructuary rights in Clause 48(19)(b). Consider the implications of this clause on possibly replacing traditional customary practices of compensating usufructuaries who lose land rights (e.g., replacement land or some equity share in new higher value use for the land).

## 3) Enhancing transparency, accountability and accessibility in land governance institutions.<sup>1</sup>

- Require periodic implementation of the Land Governance Assessment Framework, a diagnostic tool developed by the World Bank to provide governments with an objective assessment of land governance in their countries, in order to monitor progress.<sup>2</sup>
- Consider adding a provision stating that fees associated with services to the public should not exceed the cost of doing service.

---

<sup>1</sup> This section excerpted in large part from Landesa’s Commentary on Version Three of the Land Bill.

<sup>2</sup> From Landesa’s commentary on Version Three of the Land Bill.



- Require the posting of official procedures and fees in all offices that provide services to the public.
- Consistently enforce the civil service code of ethics for state land sector officials who provide services to the public.

#### **4) Articulating registration and recording options for land rights in Ghana.**

- Add an overarching provision specifying that there are three distinct systems for registration/recording in Ghana.
- Clarify the relationship between the three systems and rights registered under each. In particular, clarify *the* effects of recording a right with CLS, especially vis a vis a formal right.
- Provide clarification on whether CLS records will be merged with formal records, and how they will relate to them.

#### **5) Expanding coverage for electronic registration and conveyancing.**

- Review Annex B, pp. 34-41 for specific examples of e-registration and conveyancing in South Africa, Rwanda and the UK.
- Develop a legal framework for registration and conveyancing that covers both the submission of electronic documents and the authentication of these documents.
- Define the exact legal effects of an electronic conveyance (e.g., is it equivalent to a deed).
- Consider repeal of attestation requirements, as appropriate.

#### **6) Incorporating a more robust legal framework for Large-scale Land Acquisitions.**

- Incorporate provisions that reference existing domestic legal and policy framework.
- Incorporate reference to international best practices.
- Consider establishing a single institution responsible for administration of LSLA, and link the responsibilities of that institution to a transparent registration process.
- Adjust the 10-acre minimum to account for different types of land and to harmonize the bill with the LSLA guidelines.

#### **7) Improving the compulsory acquisition sections of the Bill.**

- Define “public purpose” in accordance with comparative best practices, and in closer alignment with the Constitution. Consider deleting Clause 220(b).
- Strengthen due process in administrative appeals by broadening to include the purpose of the acquisition and resettlement as well as compensation.
- Require compensation of all members of all members (or at least adults) within a household.
- Compensate unofficial occupants of public land (within limits and with a focus on livelihood replacement).
- Revise the sections on temporary occupation in Clause 258 et seq. to increase safeguards and/or significantly reduce the amount of time allowable for a “temporary” occupation.

## **8) Defending and refining the Bill's coverage of women's land rights**

- Provide additional details on spousal land rights in the context of polygamy.
- Provide additional details on verification of marital status upon registration or conveyance of land rights.
- In the context of valuing land lost for compulsory acquisition or large-scale land transactions, seek ways to capture and incorporate the value of secondary use rights to land-based resources (such as shea nuts) that are of high socio-economic value to women.
- Refer to Annex C for information in support of the Bill's current treatment of spousal rights.

# ANNEX B. LANDESA MEMORANDUM TO WORKING GROUP ON 7 JUNE 2016: SUPPLEMENTAL INFORMATION REQUESTED BY WORKING GROUP MEMBERS AT 6 JUNE MEETING

**Date:** 7 June 2016

**To:** Ghana Land Administration Project and Land Bill Working Group

**From:** Landesa  
Jennifer Duncan ([jend@landesa.org](mailto:jend@landesa.org))  
My-Lan Dodd ([myland@landesa.org](mailto:myland@landesa.org))  
Beth Roberts ([bethr@landesa.org](mailto:bethr@landesa.org))

**Re:** Supplemental information requested by Working Group members at 6 June meeting

---

This memorandum responds to the request to provide information and comparative examples on the following subject matter:

- 1) Legal definition of “community” in other countries, as pertains to land law.
- 2) Low-cost land registration programmes in Rwanda and Ethiopia, including specific information on geo-physical data requirements and site plans
- 3) Free Prior and Informed Consent (FPIC) guidelines in international law and practice, with specific focus on “consent” requirements
- 4) More detailed information on e-registration and e-conveyancing in international practice

The memorandum is not offered as a final deliverable (report) for Landesa’s consultancy, but rather as a way to respond quickly and somewhat informally to the Working Group’s questions arising in the 6 June meeting with Landesa.

## PART 1: DEFINITION OF COMMUNITY<sup>1</sup>

### I. Examples of laws specifying which groups will be considered “community”

---

<sup>1</sup> This Part excerpted in whole from Michael Lufkin and My-Lan Dodd (2013) *Legislating Community Land Rights: A Technical Guide for Drafting Community Land Legislation Based on Comparative Review of International Experience and Best Practices* (Produced for the SECURE Project, USAID), at 44 et seq.

**Southern Sudan.** For instance, Southern Sudan’s Land Policy Draft specifies that the Community Land Act will safeguard the principle of community land tenure, ensuring that “all qualified citizens who are bona fide members of families, clans or communities that hold land in trust for their members continue to have access to land as a fundamental right of their membership in the group or community” (GoSS 2011, Sec. 4.8). Southern Sudan’s Land Act formalizes this by specifying that groups at the center of the “community tenure system” can be “a family, clan or a designated community leader” (GoSS 2009, Sec. 4).

**Benin.** Similarly, in Benin, “The investigation and certification [under the Law On the Regime of Rural Landholding]...is explicitly geared to include groups, communities, and especially family rights (See Arts. 3 & 5)” (Alden Wily 2012b, 4).

**Uganda.** In Uganda, the Land Act designates “communities” as those with indigenous affiliation enjoying communal land tenure. The law states, “‘community’ means an indigenous community of Uganda as provided for in the Third Schedule to the Constitution, or any clan or sub-clan of any such indigenous community communally occupying, using or managing land” (GoU 1998, Sec. 2).

## II. Examples of laws defining “community” as holding common interests and shared rules

**Liberia.** An example definition of “community” that provides parameters based on both common interests and possible groups can be found in Liberia’s Community Rights Law with Respect to Forest Lands, 2009. It defines “community” as “A self-identified and publicly or widely-recognized coherent social group or groups, who share common customs and traditions, irrespective of administrative and social sub-divisions, residing in a particular area of land over which members exercise jurisdiction, communally by agreement, custom, or law. A community may thus be a single village or town, or a group of villages or towns, or chiefdom” (Republic of Liberia [RoL] 2009, Sec. 1.3).

**Papua New Guinea.** Papua New Guinea’s Land Groups Incorporation Act, 1974 does not specify the type of groupings that make up a community, but rather recognizes legitimate groups as those who share—prior to the enactment of the law—common interest and a customary social arrangement. Specifically, a “community” is recognized as a community land group if the Registrar is satisfied that “(a) the member groups possess common interests and coherence independently of the proposed recognition, and share or are prepared to share

### BOX 4.2: PAPUA GUINEA’S LAND GROUPS INCORPORATION ACT 1974

(3) Recognition shall not be refused to a group simply because—  
(a) the members are part only of a customary group or are members of another incorporated land group; or  
(b) the group includes persons who are not members of the primary customary group, if the Registrar is satisfied that those persons regard themselves, and are regarded by the others, as bound by the relevant customs of the primary customary group; or  
(c) the group is made up of members of various customary groups, if the Registrar is satisfied that the group possesses common interests and coherence independently of the proposed recognition, and share or are prepared to share common customs, or a combination of those circumstances (Sec. 5).

common customs; and (b) the association between the groups represent a customary form of organization” (Government of Papua New Guinea [GoPNG] 1974, Sec. 5(5)). The Act also stipulates when the Registrar shall refuse recognition of the community, namely, if he “is satisfied that the group characteristics are so temporary, evanescent or doubtful that the group does not have a corporate nature” (Ibid, Art. 5(4)). (See Box 4.2 for additional provisions regulating the integrity of land groups.)

**South Africa.** Similar to Papua New Guinea’s law, South Africa’s CLRA, 2004, defines community on the basis of shared land tenure rules. The law states that, “‘community’ means a group of persons whose rights to land are derived from shared rules determining access to land held in common by such group” (GoSS 2004, Sec. 1). However, as compared to Papua New Guinea, there are less quality assurance provisions to ensure the integrity of the communities recognized.

Interestingly, South Africa provides a good case study on the challenges of defining community in law and realizing this in practice. For instance, it has been observed that de facto rights to land derive not from “shared rules” but from established occupation and land use, and acceptance of this by neighbors. Further, “the nested characteristics of communal land rights within a hierarchy of neighborhoods, sub-villages, villages, wards and chieftainships makes the definition of community intrinsically difficult” (Kepe 1998).

Moreover, government and tribal authorities interpreted the CLRA definition of “community” to mean conglomerations of villages and wards with populations of ten and twenty thousand covered by Apartheid-era delineations (Cousins 2009, 13-14). As such, local communities aggregated under these “communities” fell “under the jurisdiction of chiefs and tribal authorities that they had no previous connection to, and whose authority they now contest, is not acknowledged” (Ibid). These discrepancies led the South African Constitutional Court to declare the CLRA unconstitutional in May 2010 (Rural Women’s Movement 2010).

### **III “Community” Defined in the Context of Local Land-Based Interests**

**Mozambique and Southern Sudan.** As a counterpoint, in Mozambique (Land Law, 1997) and Southern Sudan (Land Act, 2009), legal provisions not only specify sub-local groupings and common land-based interest of the community, but also limit legitimate communities to jurisdictions that are local or sub-local. Mozambique’s law defines community as a “*local* community” which is composed of “a grouping of families and individuals, living in a territorial area that is at the level of a locality or smaller, which seeks to safeguard their common interests through the protection of areas for habitation or agricultural, whether cultivated or in lying fallow, forests, places of cultural importance, pastures, water sources and areas for expansion” (RoMZ 1997, Art. 1(1), emphasis added). Southern Sudan also uses this same definition of local community (See GoSS Land Act 2009, Sec. 4).

## **PART 2: LOW-COST REGISTRATION PROGRAMMES IN RWANDA AND ETHIOPIA**

## I. Framing the issue

The high cost of land titling has forced many countries to establish a system of land titling on demand, and this has made land titles costlier and only available to the wealthy. (Benjaminsen et al., 2009; Besley and Burgess, 2000; Cotula et al., 2004; Deininger, 2003). Therefore, there is substantial need for more low-cost, broad scale and egalitarian systems for land registration in low-income countries. In Honduras, the cost of land titling was estimated at 600 US\$ per title (Lopez, 1996), while in Madagascar it has been estimated at 150 US\$ per household under the conventional system of titling on demand (Jacoby and Minten, 2007). Burns et al. (2007) assessed the variation in costs across numerous countries and found average costs of between 20 and 55 US\$ per parcel. Ayalew et al. (2011) provide an estimate of the costs of hiring private surveyors for titling on demand for urban land owners in Dar es Salaam, Tanzania of approximately 350 US\$.”(Bezu & Holden 2014, 194).

Rwanda is at the lower end of the range. In 2015, all 10.67 million land parcels were demarcated and entered through the Land Tenure Regularization (LTR) and entered in the land administration information system (LAIS) database. . . .These outcomes were achieved at a cost of US\$65 per registered lease. (Hilhorst & Meunier 2015, 10).

The Ethiopian first stage land registration and certification system lies” at the very low end; “the cost of registration and certification was estimated to be approximately 1 US\$ per farm plot or 3.5 US\$ per household (Deininger et al., 2008).” (Bezu & Holden 2014, 194).

## II. Comparative examples from Africa

### A. Rwanda.

*Background.* “Rwanda is the only country in Africa that has succeeded in documenting all rights to land. In 2015, all 10.67 million land parcels were demarcated and entered through the Land Tenure Regularization (LTR) and entered in the land administration information system (LAIS) database. . . . Of these, 87 percent (9.1 million parcels) have full information on claimants. . . . These outcomes were achieved at a cost of US\$65 per registered lease. As a result, Rwanda is ranked 12th globally on the “registering property” indicator of the World Bank’s Doing Business index . . .” (Hilhorst & Meunier 2015, 10).

“The LTR achievement is attributable to 15 years of dedicated reform efforts, which started with a comprehensive review of Rwanda’s policy legal and institutional framework, now regularly updated” (Hilhorst & Meunier 2015, 10).

“Following passage of the 2005 Organic Land Law, Rwanda embarked on an ambitious process to adjudicate and subsequently register rights to 10.5 million urban and rural land parcels in a participatory and cost-effective (US\$6 per parcel) process over a period of three years. Success was contingent on” several factors, including “*a carefully crafted policy and legal framework that was constantly adjusted in light of*

*new evidence including from contemporaneous evaluation . . .” (Hilhorst & Meunier 2015, 7)*

*Rwanda’s Organic Land Law.* “The OLL explicitly recognized customarily acquired land, but also makes compulsory first-time registration and recording of follow-up transfers. Land registration thus became mandatory, which required setting up a nationwide land registration system to enable the formalization of customary rights, the legal foundation for the LTR program.” The OLL “established a unified legal and administrative tenure system and a national cadastral system, linked to a registry that records and guarantees the integrity of subsequent transactions.” (Hilhorst & Meunier 2015, 12)

| KEY LEGAL ASPECTS  | RWANDA’S ORGANIC LAND LAW   |
|--|---|
| Land law certifies land allocation or lease by issuing a certificate approving the land registration   | Article 26: Certifying that the land has been allocated or leased on sustainable basis shall be indicated by a certificate approving the registration of land issued by registrar of land authentic deeds. The structure, powers and functioning of the registrar of land authentic deeds are determined by a Presidential order  |
| Section 4: Land Registration   |   |
| Land law makes land registration mandatory.  | Article 30: Registration of land a person owns is obligatory. The order of the Minister having Land in his or her attributions specifies the procedures through which land registration is carried out.   |
| Land laws provides for the institutional capacity for systemic first registration by establishing decentralized government offices that are responsible for land registration. | <p>Article 31: Without prejudice to specific laws relating to the exploitation and management of land in boundaries of Towns or Municipalities, there is hereby established a land bureau at the level of every district, town or municipality responsible for registration of land.</p> <p>An employee called the Land Officer shall direct the land bureau.</p> <p>The Land Officer shall keep land registers and issues certificates approving ownership of land.</p> <p>Regarding land issues, he or she holds the power of the public notary and in regard to administration, he or she is supervised by administration of town, municipality or district in which the land he or she is responsible to register is located.</p> <p>The structure of the registers mentioned in paragraph 3 of this article as well as other responsibilities and functioning of the land bureau are determined by the order of the Minister having Land in his or her attributions.</p> |
| Land law defines what information shall be included in land certificates.  | <p>Article 32: The following certificates shall accompany the letter of application to certify landlordship:</p> <p>1° a detailed identity of the applicant, and of his or her spouse if married under the regime of community of property ;</p> <p>2° brief description of the land, indicating particularly the area, where the land is located with reference to well known landmarks like roads, rivers, neighbours sharing boundaries ;</p>  |

| KEY LEGAL ASPECTS | RWANDA'S ORGANIC LAND LAW  |
|-------------------|--|
|                   | 3° Any document certifying that the applicant is the person for whom the certificate is being sought, such as a certificate from the authorities, a certificate delivered to him or her by competent authorities at the time he or she was given the land or an official copy of a court's final decision. |

### *Implementation of Land Registration Program in Rwanda*

“The government’s meager financial and human resources led to the selection of low-cost options that allowed working at scale. The government moved away from the conventional cadaster survey approach and opted to use general boundary principles and high-resolution aerial orthophotos to identify and mark parcels. Other innovations were to involve the community in adjudication and dispute mediation "and to work with para-surveyors (PSs). Rwanda also decided to digitalize all data and develop a central land information system.” ([Hilhorst & Meunier 2015](#), 12)

“The evaluation results [of the registration pilots] suggested that the LTR addressed key constraints to environmental protection, agricultural development, and female empowerment in Rwanda. It concluded that the program’s positive impacts could be enhanced or potentially negative ones avoided by addressing areas where policy was unclear, ambiguous, or at variance with practice on the ground and by carefully and continuously monitoring performance in high-risk areas. Prominent among these areas were:

- rights of women who are not legally married;
- unaffordable fees to register subsequent transactions; and
- subdivision restrictions that the majority of landholders are unable to comply with.

The government immediately addressed the issue of informal marriage in the context of the LTR and successfully adjusted the LTR procedure (Ali et al. 2011).” ([Hilhorst & Meunier 2015](#), 13).

Additionally, following on from the pilots, ministerial orders were developed, and then subsequently officially adopted. Specifically, Ministerial Order N° 002/2008 of 01/04/2008 determined the modalities of land Registration. From this manuals were developed to “describe[] in detail the procedures for implementation of the LTR by mobile teams in campaign-style . . . and were further enriched by extensive consultation, discussion, and debate with key stakeholders. ([Hilhorst & Meunier 2015](#), 13).

### *B. Ethiopia’s Low Cost Land Certification*

- Deininger, Augustinus, Enemark, Munro-Faure, [Innovations in Land Rights Recognition, Administration, and Governance](#), 2010: See Section 4.2 “Gender, Low-Cost Land Certification, and Land Rental Market Participation in Ethiopia, starting on page 149



- Deininger, [Implementing Low-Cost Rural Land Certification: The Case of Ethiopia](#), 2008.
- [Bezu & Holden, Demand for second-stage land certification in Ethiopia: Evidence from household panel data, 2014](#)).

### III. What kind of survey map/ site plan/ spatial or physical information is required?

Rwanda.

- **“Cell index map and field sheet production.** *The cell boundary dataset is taken from the National Institute of Statistics of Rwanda (NISR) and overlaid onto the orthophoto image. The Field Manager (FM) then walks the cell boundary with the Cell Executive Secretary. If necessary, the boundary is corrected. Next, numbered rectangular polygons are arranged to cover the entire cell area with an overlap of 5 percent. Open-source software packages are used for batch printing of hard-copy maps from the orthophotos to make it easier for people to identify houses and pertinent features.”* ([Hilhorst & Meunier 2015](#), 14).
- **“Demarcation and identification of disputed parcels.** The PS [trained para-surveyors] traces the parcel boundary on the field sheet, walking around the parcel with the claimant, neighbors, and the village leader. No boundary markers are placed. A unique parcel number (UPI) is given and annotated. The claimant then gets a Demarcation Receipt and is instructed to take it immediately to the Adjudication Committee to register a claim. This is the first occasion to pay the registration fee of RF 1,000 (RF 5,000 in Kigali). The boundary of the disputed parcel is demarcated and marked on the field sheet and referred to the Adjudication Committee, the village leader, or a special mediator for resolution. Disputes that are unresolved are entered into the dispute register and the parties are referred to a mediator or a court.” (Id.).
- **“Data entry and checking.** Data from the claims register, dispute register, *field sheets*, claim receipt books, and dispute receipt books are entered sector by sector into the Land Tenure Regularisation Support System (LTRSS) database at the Zonal Office and checked for plausibility. (Id.).
- **“Parcel digitization** (parallel to step [above]). *Field sheets are scanned and then georeferenced* (in QGIS, another open-source software). Heads-up digitization of all parcel boundaries follows under their UPI and calculation of the area in m<sup>2</sup>. Finally, a cell map is printed, with villages color-coded and parcels denoted by their UPI. (Id.).
- **“Objections and corrections (O&C).** O&C starts in all cells of a sector at the same time under the responsibility of the FM and lasts two weeks. All claimants can inspect the *cell maps* and their data for errors and omissions or dispute claims made by others. If necessary, changes can be made of every data point collected. The adjudication committee oversees this process.” (Id.).
- **“Post-O&C parcel correction in the GIS, cadastral extract generation.** With all geometric data now corrected and confirmed, *an extract is generated for each parcel, showing the parcel and its adjacent neighbors*, with the UPI. (Id. At 15).

Ethiopia.

#### Legal Context:

- Federal Democratic Republic of Ethiopia Rural Land Administration and Land Use Proclamation No 456/2005 (2005).
  - 6. Rural land Measurement, Registration and Holding Certificate. (1) The sizes of rural lands under the holdings of private persons, communities, governmental and non-governmental organizations shall be measured as appropriate using cultural and modern measurement equipment; their land use and level of fertility shall be registered as well in the data base center by the competent authorities established at all levels. (2) *Rural land holdings* described under Sub-Article 1 of this Article shall be measured by the competent authority and shall be given cadastral maps showing their boundaries. (3) Any holder of rural land shall be given holding certificate to be prepared by the competent authority and that indicates *size of the land, land use type and cover*, level of fertility and borders, as well as the obligation and right of the holder.

#### Implementation Context:

- Ethiopia has implemented one of the largest, fastest and least expensive land registration and certification reforms in Africa. While there is evidence that this ‘first-stage’ land registration has had positive effects in terms of increased investment, land productivity and land rental market activities, the government is now piloting another round of land registration and certification that involves technically advanced land survey methods and computer registration. This ‘second-stage’ land registration differs from the registration system employed in the first round that used field markings in conjunction with neighbors’ recollections to identify plot borders. ([Bezu & Holden 2014](#), 193).<sup>2</sup>
- **First round of piloting.** “[T]he broad-scale first-stage land registration and certification involved the registration and demarcation of land plots using simple local technologies that required little training. The main sources for determining plot boundaries were field markings, in conjunction with the memories of the neighbors whose farm plots border those owned by the households in question. Measuring tapes and ropes were used to measure the farm plots. While the initial cost of this registration was extremely low (approximately 1 US\$ per farm plot or less), its impact in improving tenure security has been significant, as evidenced by increased investment, land productivity and land rental market activity (Deininger et al., 2008, 2011; Holden et al., 2009, 2011a; Bezabih et al., 2012).” ([Bezu & Holden 2014](#), 193).
- However, “the first-stage certification had limitations with respect to the maintenance and updating of land registration records. Ethiopia has begun

---

<sup>2</sup> Note: The “study revealed relatively low demand and willingness-to-pay (WTP) for second-stage certificates. The WTP also decreases significantly from 2007 to 2012. Our findings indicate that farmers do not believe that the second-stage certificate enhances tenure security relative to the first-stage certificate except in instances in which first-stage certification was poorly implemented. The demand for second-stage certificates appears to come primarily from governmental authorities, as it can provide a better basis for land administration and produce accessible public documentation of land-related affairs.” ([Bezu & Holden 2014](#), 193).

piloting and introducing a second stage land registration and certification in selected districts in the highland regions. (Id.)

Maps under first the 1<sup>st</sup> round of piloting.

- “The website of the Ethiopian Ministry of Agriculture (2013) describes the first-stage certification as “a process of providing “simple” temporary landholding certificates. . . Under Stage 1, *farmers receive temporary certificates with no geo-referencing or mapping of land parcels*” (MOA, 2013a).” ([Bezu & Holden 2014](#), 196).
- The Ethiopian first-stage registration was able to achieve high precision at a very low cost without mapping by adopting field demarcation and using neighbors as witnesses. ([Bezu & Holden 2014](#), 195).
- Spatial/physical information. Plot measurement/size; land quality ([Bezu & Holden 2014](#), 195).
- Certificates do not include maps of farms. ([Bezu & Holden 2014](#), 195).
- Not a focus/requirement.
  - Ethiopia’s “process was focused on . . . agricultural holdings”; however, this was done “to the detriment of common property resources and house plots” ([Deininger 2008](#), 2).
  - “Although registration demarcates boundaries in the field, it does not create a graphical record and may thus fall behind expectations in terms of reducing boundary disputes.” ([Deininger 2008](#), 4).

Maps under first the 2<sup>nd</sup> round of piloting.

- The more permanent second-stage certificate, therefore, “seeks to rectify the weaknesses in the Stage 1 land certification, particularly the need to geo-reference and map individual parcels to avoid or minimize boundary disputes.” ([Bezu & Holden 2014](#), 196).
- “The new registration and certification system involves *registering the precise geographical locations and sizes of individual farm plots using technologies such as GPS, satellite imagery or orthography*. Farmers receive plot-level certificates with maps rather than a household-level certificate.” ([Bezu & Holden 2014](#), 193).
- “Second-stage registration is carried out by surveyors and registrars in the pilot districts. The surveyors and the registrars collaborate to take *GPS measurements, prepare temporary sketches in the field, prepare maps on a computer, and combine the plot level measurements with household information*. The second-stage plot level certificates are printed on water resistant paper and include (side by side) the names of both husband and wife, *the size of the plot, GPS coordinates, a map of the plot, a unique plot code and the plot code and holder names of the neighboring farms.*” ([Bezu & Holden 2014](#), 197)
- Example under various programs and/or regions in Ethiopia ([Bezu & Holden 2014](#), 196-97):
  - USAID-funded ELTAP/ELAP program (the largest program, working in 24 districts (woredas) across the four large regions.). “*Cadastral surveying is performed using hand-held GPS devices, while the data were processed and stored on computers*” – with some indications that this method of land registration will be scaled up at national level for rural land registration (Wood et al., 2012). Handheld GPS devices are

not particularly expensive, with prices in the range of USD 200–USD 600, but their accuracy level is 5–15 m.”

- “SIDA-funded project in Amhara used *total stations and precision GPS devices*, which are believed to be accurate to the millimeter but are highly expensive (USD 40,000) and require cars to transport from place to place (SARDP, 2010).” (Id.)
- “The Finland-funded REILA (Responsible & Innovative Land Administration) project is currently conducting trials in four Ethiopian Regions using *orthophotos* that are *produced from aerial photographs and satellite images*. One district is selected from each of the four regions for the trial. The estimated cost of the second-stage land registration scheme based on the imagery trial completed thus far is USD 8.5 per parcel” (Hailu and Harris, 2013).
- NOTE: “While there seems to be a consensus among implementers regarding the desirability of a new land certificate with plot maps and geo-referencing, it is unclear which of the land survey methods will eventually be adopted to register rural farmland at the national level. It may be possible that different regional states will adopt different land surveying methods or a combination of thereof depending on the type of landscape, the value of land and the precision required.”
- In the region of Southern Nations, Nationalities and People (SNNP), “[t]he second-stage registration is performed using *hand-held GPS devices to measure the plot dimensions and computers to register the data*. Once the registration is completed, households are issued a single book listing all of their plots and containing the names of both the husband and wife as landholders. In addition, *separate maps are issued for each plot*.

### **PART 3: DOCTRINE OF FREE, PRIOR AND INFORMED CONSENT (FPIC)**

#### **I. Overview**

“Free, prior and informed consent (“FPIC”) is generally understood as the right of [indigenous] peoples to approve or reject proposed actions or projects that may affect them or their lands, territories or resources.”<sup>3</sup>

Why FPIC? Failing to respect the rights of local communities causes violent conflict:

- Between and within communities
- Between communities and companies
- Between communities and the state

Revising national laws that are contrary to FPIC and other international human rights standards are in a government’s best interest, and will help governments to gain benefits from investments, avoid reputational risks, and avoid civil conflict.

---

<sup>3</sup> Right2Respect.2011.”Free, Prior and Informed Consent” under UNDRIP: What Does it Really Mean? <http://www.right2respect.com/2011/06/%E2%80%98free-prior-and-informed-consent%E2%80%99-under-the-un-declaration-on-the-rights-of-indigenous-peoples-what-does-it-really-mean/>.

“Failing to respect the rights of local communities to the full extent of their lands and to FPIC is the root cause of protracted and at times violent conflict between and within communities, with companies and with the State. Such conflicts present serious risks to the communities, but also to plantation companies, investors and to the RSPO itself. Initiatives to revise national laws which are contrary to international human rights standards and the right to FPIC is also in the State’s best interests, placing them in a better position to gain the benefits from investments, to avoid reputational risks of being found in breach of international human rights law, to avoid civil conflict and to avoid investors choosing instead to invest in other countries where they feel their investments are more secure.”<sup>4</sup>

## II. Primary sources of international law on FPIC

- The International Bill of Rights (including Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights, ILO’s core conventions) address application of FPIC for project-affected peoples. Ghana is a signatory to the ICESCR,<sup>5</sup> the ICCPR,<sup>6</sup> and adopted the UNDRIP.<sup>7</sup>

- **UN Declaration on the Rights of Indigenous Peoples (6 articles)- Article 32(2):**

“States shall consult and cooperate in good faith with the Indigenous Peoples concerned through their own representative institutions in order to obtain FREE, PRIOR and INFORMED CONSENT prior to approval of any project affecting their land or territories.”

- **UN Declaration on the Right to Development:**

“Everyone has the right to development”. The sustainability of development is connected with the ability of people to control their development objectives. Community participation in projects that affect them should be consistent with the principles underlying FPIC

## III. FPIC is widely acknowledged best international practice for land acquisition and land-based investment

- FPIC plays a central role in the Large Scale Land Based Investment Principles of the African Union’s Land Policy Initiative, which state, “These Guiding Principles highlight the importance of States agencies and investors securing

---

<sup>4</sup> Chao, Sophie Marie Hélène. FPP. 2012. Free, Prior and Informed Consent and Oil Palm Expansion in Southeast Asia From Principles to Practice. <http://www.forestpeoples.org/sites/fpp/files/publication/2012/11/fpicoilpalmexpansionmedanconferenc epapersophie-chao.pdf>.

<sup>5</sup> ICESCR: [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-3&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en)

<sup>6</sup> ICCPR: [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-4&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-4&chapter=4&lang=en)

<sup>7</sup> <http://www.un.org/press/en/2007/ga10612.doc.htm>

the *prior* and *informed* participation and *consent* of communities in all aspects of LSLBI which can impact the rights and livelihood of communities.”<sup>8</sup>

- The FAO’s 2012 Voluntary Guidelines on the Responsible Governance of Land, Fisheries and Forests in the Context of National Food Security (endorsed by Ghana as member of UN General Assembly) incorporate FPIC principles and doctrine at Sections 3B.6, 9.9, and 12.7.<sup>9</sup>
- Private sector financing institutions are increasingly requiring that companies they finance utilize FPIC standards. (International Finance Corporation adopted FPIC as a performance standard for lending in 2012. FPIC was formally incorporated into the Equator Principles for banking and lending institutions in 2013.
- Private sector companies in the extractives and food and beverage industries are increasingly endorsing FPIC as a standard for land-based investment. (e.g., Coca Cola publicly committed in 2013 to follow FPIC principles in all land-based investment (not just those involving indigenous communities.)

#### **IV. Components of FPIC<sup>10</sup>**

##### **FREE**

- Consent given voluntarily, absent of “coercion, intimidation or manipulation.”
- Stakeholders determine process, timeline and decision-making structure;
- All community members are free to participate regardless of gender, age or standing.

##### **PRIOR**

- “Consent is sought sufficiently in advance of any authorization or commencement of activities.”
- Sufficient time provided for communities to understand and analyze relevant information on proposed activities.
- Before activities begin, including preliminary project activities and procedures.
- Varies according to decision-making processes and customs of affected communities.

##### **INFORMED**

- Information should:
  - Be accessible, clear, consistent, accurate, constant, and transparent;

---

<sup>8</sup> Guiding Principles on Large Scale Land Based Investments in Africa (at 13):

[http://www.uneca.org/sites/default/files/PublicationFiles/guiding\\_principles\\_eng\\_rev\\_era\\_size.pdf](http://www.uneca.org/sites/default/files/PublicationFiles/guiding_principles_eng_rev_era_size.pdf)

<sup>9</sup> See FAO Practice Manual: Respecting Free, Prior and Informed Consent: Practical guidance for governments, companies, NGOs, indigenous peoples and local communities in relation to land acquisition (2012), available at <http://www.fao.org/3/a-i3496e.pdf>.

<sup>10</sup> Except where noted, see Oxfam. 2010. Guide to Free, Prior and Informed Consent.

[http://www.culturalsurvival.org/sites/default/files/guidetofreepriorinformedconsent\\_0.pdf](http://www.culturalsurvival.org/sites/default/files/guidetofreepriorinformedconsent_0.pdf).

- Be delivered in appropriate language and culturally appropriate format (including radio, video, graphics, documentaries, photos, oral presentations);
  - Be objective, covering both the positive and negative potential of [project] activities and consequences of giving or withholding consent;
  - Be complete, covering the spectrum of potential social, financial, political, cultural, environmental impacts, including scientific information with access to original sources in appropriate language;
  - Be delivered by culturally appropriate personnel, in culturally appropriate locations, and include capacity building of indigenous or local trainers;
  - Be delivered with sufficient time to be understood and verified;
  - Reach the most remote, rural communities, women and the marginalized; and
  - Be provided on an ongoing and continuous basis throughout the FPIC process. (UN-REDD 2013, verbatim)<sup>11</sup>
- Communities must have access to independent information, not just information from the project developers or the government.
  - Communities must also have access to experts on law and technical issues, if requested, to help make their decision.

## CONSENT

- Consent refers to the collective decision made by the rights-holders and reached through the customary decision-making processes of the affected peoples or communities. Consent must be sought and granted or withheld according to the unique formal or informal political-administrative dynamic of each community (UN-REDD 2013, verbatim).
- Consent is:
  - A freely given decision that may be a “Yes” or a “No,” including the option to reconsider if the proposed activities change or if new information relevant to the proposed activities emerges;
  - A collective decision determined by the affected peoples (e.g. consensus, majority, etc.) in accordance with their own customs and traditions;
  - The expression of rights (to self-determination, lands, resources and territories, culture); and
  - Given or withheld in phases, for distinct stages or phases of [the project]. It is not a one-off process (UN-REDD 2013, verbatim).
- Consent should be sought and granted before permits are issued. “Although there is no official definition of this element, it is generally accepted as follows, “[it] should imply that consent has been *sought sufficiently*

---

<sup>11</sup> UN-REDD Programme. 2013. Guidelines on Free, Prior and Informed Consent. Link to pdf at [http://www.un-redd.org/Launch\\_of\\_FPIC\\_Guidelines/tabid/105976/Default.aspx](http://www.un-redd.org/Launch_of_FPIC_Guidelines/tabid/105976/Default.aspx).

*in advance of any authorization or commencement of activities . . .”* (UN Economic and Social Council)<sup>12</sup>

- Consent may be withheld  
“Most importantly, respect for the right to FPIC requires on the part of companies a recognition that even where a comprehensive process has been undertaken, before signing an agreement, communities still have the right to say ‘no’ to [oil palm] development on their lands.” (Chao, 2012)
- Gaining consent  
The engagement process will take account of existing social structures, leadership, and decision- making processes as well as social identities such as gender and age, and be cognisant of, inter alia:
  - Social norms and values that may limit women’s participation in leadership roles and decision- making processes;
  - The need to protect and ensure the legal rights of indigenous women; and
  - Marginal or vulnerable groups’ potentially limited realization of their economic and social rights as a consequence of poverty and limited access to economic resources, social services, or decision-making processes (IFC 2012).<sup>13</sup>

## **PART 4: E-REGISTRATION AND CONVEYANCING**

### **I. General Overview**

- “Developing a digital Land registration system requires re-engineering processes to enable e-submission of records and verifying the authenticity of such records. This requires changes at both technical as well as legal levels.” (Tembo, Nkwae, and Kampamba 2014, 1)
- “Sandberg(2010) has indicated the main challenge in e-registration is the problem of identifying parties to transactions and the authentication of documents.” (Tembo, Nkwae, and Kampamba 2014, 8). (See Dodd, Annex\_Chart: Comparative experience of electronic registers and the paper produced for examples around authentication of documents).
- Computerizing land registration systems can occur in conjunction with or parallel to paper formats and processes. For example, this is the case in South Africa, Taiwan, Japan, France, Germany, England and Wales, and the Canadian provinces of British Columbia and Ontario. (See Dodd & Mitchell, Comparative experience of issuing land certificates in the context of increasingly computerized land registration systems; see also below for South African example). Electronic registration can take a variety of forms electronic entries of registration (e.g., uploading paper-based forms or populating electronic form), which can occur side-by-side with a paper-based entries.

---

<sup>12</sup> United Nations Economic and Social Council (2005). Report of the International Workshop on Methodologies regarding Free, Prior and Informed Consent and Indigenous Peoples. (E/C.19/2005/3), 12.

<sup>13</sup> “The Right to Decide: Free, Prior and Informed Consent in Ghana”. Available at [https://www.oxfamamerica.org/static/media/files/FPIC\\_in\\_Ghana\\_FINAL.pdf](https://www.oxfamamerica.org/static/media/files/FPIC_in_Ghana_FINAL.pdf) , at 30.



- System of private conveyancing is deeds registration ([Mosert 2011](#), 94). “[A]part from preservation, computerisation of records”, jurisdictions may want to so far as to develop systems to additionally allow from electronic transactions, also known as e-electronic conveyancing. ([Tembo, Nkwae, and Kampamba 2014](#), 8).

## II. Comparative Examples of Electronic Registration from Africa

### A. South Africa’s Electronic Registration of Land Deeds

*Background.* Plans for digitizing registration in South Africa have been slow. Initial research and recommendations were made in 2003. ([Mosert 2011](#), 100). In 2009, the Government of South Africa (GoSA) approved a policy document to guide the electronic registration of deeds. It recommended the government follow the process of registering paper deeds and make changes to the Deeds Registration Act to permit an electronic process (as opposed to calling for more systematic changes). Following approval of the policy, planned to examine requirements and to revise the Deeds Registries Act and to draft an Electronic Deeds Registration Bill. (*Id.* at 93). In March of 2016, the GoSA published, and made available for public comment, the Deeds Registries Amendment Bill and Explanatory Memorandum. ([Ghost Digest 2016](#)). Significantly, the Bill provides provisions for establishing and maintaining an electronic deeds registration system. ([Deeds Registries Amendment Bill 2016 and Explanatory Memorandum, 2016](#), s. 1B). The memorandum identified reasons South Africa needed an electronic system, a key one stemming from “the inability of the present registration infrastructure and resources to accommodate the increase in volume in respect of an anticipated 20 million land parcels of the government's land reform measures”. (*Id.*)

*Some key legal aspects of registration and digitization of land-related information and evidence drawn from South Africa’s Deed Registries Amendment Bill*

The South African the Bill provides for:

- “an electronic deeds registration system;
- the electronic keeping of registers;
- the electronic lodgement of proof in paper and electronic form;
- the electronic issuing of deeds for information and judicial purposes only;
- the making of regulations in respect of electronic lodgement of deeds and documents and requirements relating to electronic or digital signatures;
- conveyancers to register as authorised users of the electronic deeds registration system;
- the electronic preparation of deeds and documents and the save -keeping and filing thereof by conveyancers.” ([Deeds Registries Amendment Bill 2016 and Explanatory Memorandum, 2016](#), Explanatory Memorandum, ¶. 1.4)

**Critical policy question.**  
Whether the legal changes providing for electronic registration will address points raised by the reform agenda around “*what* to register and *how* this should be done in the context of hitherto unregistered rights”; or, in the alternative, will the changes “merely reaffirm established perceptions of hierarchical notions of land rights” ([Mosert 2011](#), 100, 102).

| KEY LEGAL ASPECTS  | SOUTH AFRICA'S DEED REGISTRIES AMENDMENT BILL, 2016  |
|--|--|
| Legislation burdens the Registrar with the mandatory duty to establish and maintain an electronic deeds registration system in accordance with electronic communications/transactions legislation, including prescribing the necessary standards and procedures. | Section 1B. Electronic deeds registration system:<br>“The chief registrar of deeds must, subject to the provisions of the Electronic Communications and Transactions Act, 2002, establish and maintain the electronic deeds registration system which utilises computer and any other electronic technology for the preparation, lodgement, execution and storing of deeds and documents registerable in terms of this Act or any other law.<br>The Minister must prescribe—<br>(a) standards for – (i) the operation of the electronic deeds registration system in deed registries; and (ii) the collection and storing of data . . .<br>(b) procedures to be adopted and technological specification required for the electronic deeds registration system; and<br>(c) other matters . . .” |
| Legislation may need to define new roles and processes to enable electronic registration system.   | E.g., Section 15 permits conveyancers to be authorized users of the electronic deeds registration system. Section 20 allows land owners to authorize a conveyancer to electronically execute a deed of transfer.   |
| Legislation must provide the formalities needed to operationalize an electronic deeds registration system.   | E.g., Section 2. “Subject to ... Electronic Transactions and Communications Act, 2002, each registrar [shall] must have a seal of office which [shall] must be signed and affixed electronically to all [deeds executed or attested by him and to all copies of deeds issued by him to serve in lieu of the original deeds] . . .”   |
| Legislation must clearly state which registration requirements are not required for electronic registration.   | E.g., Section 3 removes the reference to attestation of deeds.   |
| Legislation must have provisions to coordinate electronic and paper-based formats (deeds, documents, proof).   | E.g., Section 3 clarifies that a registry copy of a re-registered deed is considered the original deed. Section 4 allows for proof to be provided in paper or electronic form.   |

*Note:* For a Summary of the South Africa’s Deed Registries Amendment Bill, 2016, provided in the Explanatory Memorandum, see Annex A.

### *Processual Aspects of E-registration*

“South African registration system . . . allows for e-registration by requiring conveyancers to be registered as E-Deeds Registry users and these are issued with encrypted passwords. The law has been amended to ensure that electronic signatures are admissible for this purpose. The system is able to automatically receive draft e-deeds submitted by an authenticated conveyancer, validate them (i.e. check whether there are encumbrances, and check against the electronic database at Deeds), and compare property description with the Surveyor General’s database. It then sends the validated draft deed to the examiners for examination who make notes electronically; the system allows the conveyancer to make electronic corrections if any and the Registrar can then electronically sign it off after all the necessarily payments have been done by the conveyancer. When the e-Deed is approved the Deeds Registry database is updated and information passed on to the Surveyor General’s office and the local authority by the system. The Deed is then microfilmed for preservation. Bramate and Jones (2006) have discussed various methods of recording documents to be used for registration to include semi-automated methods using

scanned images of documents, to use of XML and finally to the use of XHTML which allows for data to be automatically checked, accepted or rejected and also allows for electronic signatures. The use of XHTML in e-registration in USA is said to be used mainly by mortgage insurance companies and loan services and has not fully permeated to general use owing to fears of security breaches. The authors also have in 2010 visited Lantmäteriet offices in Sweden which have developed a fully computerized land registration system. The Swedish property register has legal validity and is guaranteed by the state. All stakeholders such as banks, local authorities, tax authorities including the public can have access to the property register. Other methods invented to help address the challenges of security include the use of biometric signatures in which conveyancers and notaries can sign in through biometric signatures. The jury is still out in terms of how the biometric identification can be fully used for the purpose of e-registration. The requirement that all pages in a deed should be initialed for instance creates challenges in terms of ensuring that documents are really authenticated and agreed upon by all parties to an agreement. ([Tembo, Nkwae, and Kampamba 2014](#), 8-9).

## **B. Rwanda's Paper-Based Systematic First Registration with back-end Digitization of Data**

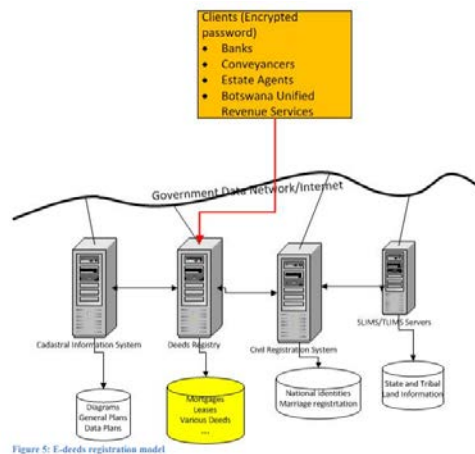
Rwanda conducted its systemic registration relying heavily on a paper-based format, including executing contracts and issuing land certificates. (See e.g., chart in [Hilhorst & Meunier 2015](#), 14-15, which lists the steps for first registration, including denoting where paper-based formats were used such as printing demarcated maps for display in villages, printing out registration information and verifying it against paper records, and issuing certificates). The land data was subsequently digitized and put in a central land information system, which was developed. ([Hilhorst & Meunier 2015](#), 12). In other words, Rwanda's model did not use electronic registration but rather conduct systematic first registration using paper-based formats followed by a back-end digitization and centralization of the information in an electronic registry.

*Process for digitization land data.* "After completing the first registration, the [Rwanda Natural Resource Authority] RNRA migrated the IT infrastructure to a new platform, the LAIS" [Land Administration Information System which was the electronic land registry, which used a mix of commercial and open source software for data processing ([Hilhorst & Meunier 2015](#), 16-7). The LAIS "combines a register with a cadaster and incorporates such functions as transfers, transactions, and mortgage registrations." ([Hilhorst & Meunier 2015](#), 18). "The LAIS was upgraded to enable the integration of parcel spatial data with legal data. A manual on the new integrated system was developed and distributed across the country so that land users, banks, and other businesses can take advantage of its convenient features. The RNRA also made an inventory of land information data requirements in other agencies, organizations, and the private sector. This work is combined with exploring the use of protected internet routes to ease information sharing, improve service delivery, and develop a geoportal. The RNRA is working on further expanding these linkages and strengthening interoperability for other entities (courts, city planning authorities, tax authorities, ombudsmen, and the Ministry of Agriculture). Linking land data with tax maps is one of the priority actions." ([Hilhorst & Meunier 2015](#), 18)

### C. Botswana's Electronic Registration of Land Deeds

*Background.* In 2009, the Government of Botswana (GoB) worked to computerize land records under the Land Administration Processes and Capacity (LAPCAS) project. The project team reported the computerization of 180,000+ deeds (including Deeds of Transfer, Bonds, and diagrams) in 2012. ([Tembo, Nkwae, and Kampamba 2014](#), 8). However, it has been noted that a key challenge is that Botswana (as of 2014) did not allow for the submission of e-documents). (Id.).

*Proposed Model for Botswana.* In light of deficiencies in the system supporting e-registration, the project looked to South Africa's legal system as an example. From this, they developed a proposed model for Botswana. See diagrams below (and note that while the models do not touch on the legal aspects of the system per se, they map out the technical model from which the legal aspects could be developed):



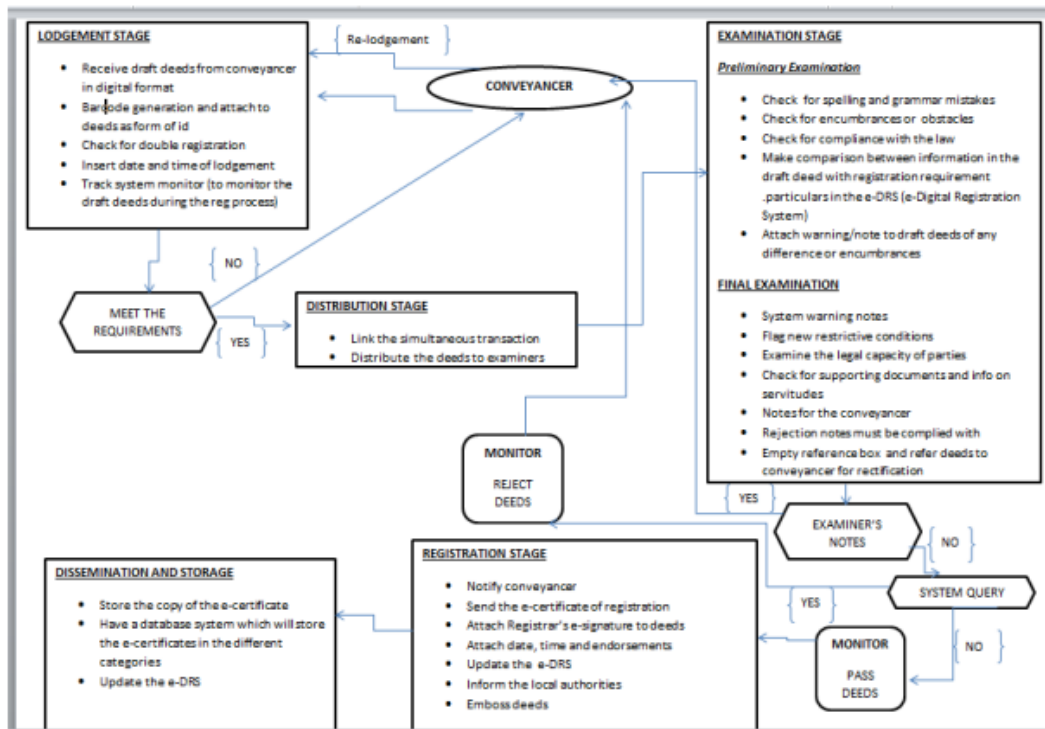


Figure 6: Proposed digital work flow

### III. E-Conveyancing

As mentioned in the General Overview, e-registration is related to but different from e-conveyancing. Under an e-registration system records might be preserved or computerized. Jurisdiction might decide as a matter of policy to extend their e-registration systems and process to additional support electronic transactions, also known as e-electronic conveyancing. (Tembo, Nkwae, and Kampamba 2014, 8). For example, England and Wales have adopted the policy goal of full e-conveyancing but currently most transactions cannot be completed electronically (Law Commission/HM Land Registration 2001, at 2; Walker & Oie, 2014)

*England and Wales, Land Registration Act (LRA), 2002*

The LRA provides the “statutory provisions necessary for gradually introducing and regulating a system of electronic conveyancing.” (Mosert 2011, 97). After successful pilot projects in 2006 and 2007, the government “rolled out” its e-conveyancing process (Id.).

The e-conveyancing system:

- Eliminates the registration gap (i.e., the gap between finalizing the real property transaction and registering the property);
- “[G]radually makes registration compulsory”;
- Permits e-settlement of accounts; and
- Authorizes conveyancers to directly change the register, which requires “strict rules on secure electronic networking and regulated access” as well as early involvement by the Registry (Id., 97-98).

## England and Wales, LRA's Part 8 on E-Conveyancing in Comparison with the Ghana Land Bill E-Conveyancing Provisions

Part 8 – E-Conveyancing: Articles 91-95 (see Annex B for provisions)

- Art. 91. Provides details on when a transaction can be governed by Part 8, the formalities that must be followed, and the effect of an e-conveyancing document.
  - Art. 91(1): Explains when the section on e-conveyancing applies. Namely, must meet the following specifications and conditions:
    - Art. 91(2) it is a disposition i) of a registered estate/charge, ii) of an interest subject of a notice in the register, or iii) which triggers the requirements of registration and
    - Art. 91(3) conditions:
      - Document provides for the time and date when it takes effect
      - Document has an e-signature
      - Each e-signature is certified and
      - Meets other which the rules may provide
  - 91(4) - (7): Explains the effect of a e-conveyancing doc
    - (4) its to be regarded as in writing and signed (and sealed) by those signified by the e-signature
    - (5) Such document to be regarded as a deed
    - (6) Above holds in the case of an agent acting for the principal
    - (7) Re how to handle notice: if notice is given through e-form in accordance w/the rules, it is regarded as given in writing
  - Art. 91(8): “purchaser’s right to the execution of a conveyance” (per s. 75 Law of Property Act) made not to apply to documents governed by e-conveyancing provisions
  - Art. 91(10): E-signature and certification read in accordance w/Electronic Communications Act
- Arts. 92 & 93: Institutions/Structures for e-conveyancing:
  - Art. 92: allow registrar to provide for an e-communications network as needed for transactions involving registration that “are capable of being effected electronically”
  - Art. 95: Empowers registrar to take steps to secure providing for electronic settlement (“The registrar may take such steps as he thinks fit for the purpose of securing the provision of a system of electronic settlement in relation to transactions involving registration”)
- Art. 93: Re **Power to require simultaneous registration in the case of conveyances**: disposition/K to make dispositions only has effect if made by means of an e-doc AND when doc purports to take effect is (a) e-communicated to registrar and (b) relevant registration requirements are met

**ANNEX A. Summary of the South Africa's Deed Registries Amendment Bill, 2016, provided in the Explanatory Memorandum**

**SUMMARY OF BILL**

The Bill provides for the amendment of the Act as follows:

- 4.1 The insertion of section 1A provides provisions pertaining to the establishment and maintaining of an electronic deeds registration system.
- 4.2 The amendment of section 2 provides for a seal of office to be electronically affixed to deeds and documents.
- 4.3 The amendment of section 3 provides for the deletion of reference to the 'attestation' of deeds. It further provides for the electronic keeping of registers and the maintaining of an efficient electronic deeds registration system and the electronic registered deeds registry copy of a deed to be deemed the original deed.
- 4.4 The amendment of section 4 provides for the electronic lodgement of proof in paper and electronic form and the electronic issuing of deeds for information and judicial purposes only.
- 4.5 The amendment of section 10 provides for the making of regulations in respect of electronic lodgement of deeds and documents, the enforcement of payment of fees, and requirements relating to electronic or digital signatures.
- 4.6 The amendment of sections 13, 15, 16A, 26, 27, 53, 91 and 92 provides for the deletion of reference to the 'attestation' of deeds.
- 4.7 The amendment of section 15 provides for conveyancers to register as authorised users of the electronic deeds registration system, the electronic preparation of deeds and documents and the safe -keeping and filing thereof by conveyancers.
- 4.8 The amendment of sections 17, 27, 28, 31, 32, 33, 37, 40, 43, 44, 45, 46, 46A, 47, 64, 65, 68, 75, 76, 78, 82 and 87 provides for the deeds registry copy of a title deed, bond or other deed to be endorsed and for the client's copy of such title deed, bond or other deed not to be lodged for endorsement.
- 4.9 The amendment of section 18, 22, 40, 43A, 44, 46, 46A and 47 provides for deeds to contain reference to diagrams and general plans that have been approved under the Land Survey Act, 1997 and to provide for such diagrams and plans not to be lodged; It further provides for a member of Cabinet of an Executive council responsible for the administration of state land to apply for the issuing of a certificate of registered state title.
- 4.10 The amendment of section 20 provides for the electronic execution of a deed of transfer by a conveyancer upon authorization of the owner of the land.
- 4.11 The amendment of section 50 provides for mortgage bonds to be prepared in the prescribed form and to be electronically executed by the conveyancer upon authorization of the owner.
- 4.12 The amendment of section 61 provides for the registration of a notarial bond to be effective as registration for the whole republic.

# ANNEX C. LANDESA MEMORANDUM TO WORKING GROUP ON 17 JUNE 2016: SUPPORT FOR THE SPOUSAL RIGHTS PROVISIONS OF THE LAND BILL (DRAFT FOUR)

**To:** Ghana Land Administration Project and Land Bill Working Group  
**From:** Landesa  
**Date:** 17 June 2016  
**Re:** Support for the spousal rights provisions of the Land Bill (Draft Four)

The purpose of this memo is to provide members of the Land Bill Working Group with additional justification for the spousal rights provisions incorporated into Draft Four Land Bill. The memo contains five parts: (1) summary of spousal rights provisions in the Bill, (2) support for the provision from Ghana's Constitution, (3) social and economic benefits of secure women's land rights in Ghana, (4) support for the provisions from international law and best practice guidelines, and (5) international comparative information on joint tenure and joint title from Africa, Europe, the United States, Latin America, and Asia. The memo contains two annexes. The first comprises of an analytical framework for understanding spousal property rights. The second provides details about community property regimes in five states within the U.S.

## **1. SUMMARY OF PROVISIONS IN THE LAND BILL**

Spousal rights provisions in the Land Bill (Draft Four) include the following.

**CI 13:** Anti-discrimination.

**CI 36(3):** Land acquired during marriage to be prepared in the names of both spouses.

**CI 36(4):** Conveyance on land prepared in the name of only one spouse during subsistence of marriage shall be presumed to be taken in the names of both spouses.

**CI 45(1):** Sale, contract, transfer, lease, mortgage, or gift of land made during the subsistence of marriage by one spouse is void unless it is made with the written consent of the other spouse.

**CI 94(4-5):** Application for registration of land acquired for valuable consideration during marriage shall be made in the joint names of both spouses.

**CI 121(7-8):** Certificate shall have the names of the spouses to the marriage.

## **2. GHANAIAN CONSTITUTION**



The spousal rights provisions in the Land Bill would serve to implement Ghana’s constitutional mandates on protection of spousal property in marriage, as set out in Article 22:

(1) A spouse shall not be deprived of a reasonable provision out of the estate of a spouse whether or not the spouse died having made a will.

(2) Parliament shall, as soon as practicable after the coming into force of this Constitution, enact legislation regulating the property rights of spouses.

(3) With a view to achieving the full realisation of the rights referred to in clause (2) of this article –

(a) spouses shall have equal access to property jointly acquired during marriage;

(b) assets which are jointly acquired during marriage shall be distributed equitably between the spouses upon dissolution of the marriage.

### **3. SOCIAL AND ECONOMIC BENEFITS OF STRENGTHENING WOMEN’S LAND RIGHTS (WLR) IN GHANA**

Approximately [90% of women](#) in rural areas in Ghana depend on agriculture for their livelihoods.<sup>1</sup> This means that women’s secure rights to land are particularly important for economic development in Ghana. Several current government policies aim to decrease poverty and increase food security, including the Medium Term Agriculture Sector Investment Plan (METASIP) and the Ghana Shared Growth and Development Agenda (GSGDA II). The policy most relevant to women’s land rights is the Gender in Agriculture Development Strategy (GADS II), [launched in January](#) of this year by the Women in Agriculture Directorate (WIAD) under MoFA. This strategy aims to help Ghana’s agricultural sector (where women make up 50% of the workforce) face current challenges, including climate change, soil degradation, and agro-processing efficiencies. “Enhancing access to land, information on land rights and tenure security” is one of the nine stated objectives of the strategy. Research has shown that strengthening women’s land rights in Ghana can have a host of social and economic benefits. Some prominent examples include:

- a. Strengthening land rights for women may reduce rural to urban migration of displaced women (LGAF at 68);
- b. Women’s agricultural productivity and income is greater when they are not involved in conflict over their land rights ([USAID](#) at 3);
- c. Climate change mitigation efforts will be more effective if women’s land rights are strengthened (METASIP 46-47; Landesa et al,

---

<sup>1</sup> Government of Ghana (2016). Report on the Launch of Gender in Agriculture Development Strategy II Document by the Ministry of Food and Agriculture on Wednesday, January 27, 2016. <http://www.ghana.gov.gh/index.php/media-center/ministerial-reports/food-agriculture/2424-report-on-the-launch-of-gender-in-agriculture-development-strategy-ii-document-by-the-ministry-of-food-and-agriculture-on-wednesday-january-27-2016>.

[Women's Land Rights and Climate Change](#), at 4; [OECD Working Paper](#), at 4);

- d. Food security may improve; a 2006 study showed that when women own a greater proportion of farmland in Ghana, families allocate a greater proportion of their household budget to food (Landesa Issue Brief: Women's Secure Rights to Land, at 2);
- e. Women's individual ownership of assets enables their economic empowerment and provides protection in the case of marital dissolution or abandonment (Ghana Demographic and Health Survey (GDHS) 2014, at 295);
- f. Rates of domestic violence may decrease as women's empowerment is increased through land ownership (see infographic below, GDHS at 300);

The spousal rights provisions of the Bill will help to uphold women's rights and access to land, which can be at particular risk where land rights are being recorded or registered. International research shows that strengthening land rights for rural women can bring about benefits to both women and their households, including gains in income, health, education, and safety. The infographic below highlights some of these benefits.



#### 4. INTERNATIONAL LAW AND BEST PRACTICES

a. International Treaties and Conventions

Ghana has ratified and is bound by several international and regional human rights treaties which explicitly uphold the land and property rights of women. Several of those provisions are listed in the box below.

### Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

#### Article 14 Rural Women

... 2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:

(g) To have... equal treatment in land and agrarian reform as well as in land resettlement schemes;

#### Article 15 Equality under Law

2. States Parties...shall give women equal rights to ... administer property.

#### Article 16 Marriage and family

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:... (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

In its General Recommendation 21 interpreting the treaty, the CEDAW Committee clarified that “[t]he right to own, manage, enjoy and dispose of property is central to a woman's right to enjoy financial independence, and in many countries will be critical to her ability to earn a livelihood and to provide adequate housing and nutrition for herself and for her family.”<sup>2</sup> It further stressed that “[i]n countries that are undergoing a programme of agrarian reform or redistribution of land among groups of different ethnic origins, the right of women, regardless of marital status, to share such redistributed land on equal terms with men should be carefully observed.”<sup>3</sup>

<sup>2</sup> CEDAW Committee, General Recommendation No. 21 (13<sup>th</sup> sess., 1994) Equality in marriage and family relations, para. 26; see also, CEDAW Committee, General recommendation No. 27 (47<sup>th</sup> sess., 2010) - Older women and protection of their human rights, para. 48 (“Laws and practices that negatively affect older women's rights to housing, land and property should be abolished. States parties should also protect older women against forced evictions and homelessness); para. 52 (“States parties must repeal all legislation that discriminates against older widows in respect of property and inheritance, and protect them from land grabbing.”).

<sup>3</sup> CEDAW Committee, General Recommendation No. 21, para. 27.

## International Covenant on Economic, Social, and Cultural Rights (ICESCR)

### Article 11(1)

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.

In General Comment No. 16 on the equal right of men and women to the enjoyment of all economic, social and cultural rights, the Committee specifically “requires that women have a right to own, use or otherwise control housing, land and property on an equal basis with men, and to access necessary resources to do so.”<sup>4</sup> In the context of food security, the Committee recognized the importance of “full and equal access to economic resources, particularly for women, including the right to inheritance and the ownership of land...; [and] maintaining registries on rights in land (including forests).”<sup>5</sup> General Comment No. 7 on housing recognizes that women in particular “suffer disproportionately from the practice of forced eviction” including from land they till and inhabit, and “are especially vulnerable given the extent of statutory and other forms of discrimination which often apply in relation to property rights (including home ownership) or rights of access to property or accommodation.”<sup>6</sup> In articulating state’s duty to protect the family under Article 10.1, the Committee requires States parties “to ensure that women have equal rights to marital property and inheritance upon their husband’s death.”<sup>7</sup>

## Protocol To The African Charter On Human And Peoples' Rights On The Rights Of Women In Africa (The Maputo Protocol)

### Article 6 Marriage

States Parties shall ensure that women and men enjoy equal rights and are regarded as equal partners in marriage. They shall enact appropriate national legislative measures to guarantee that: ...

- (e) the husband and wife shall, by mutual agreement, choose their matrimonial regime and place of residence;
- (j) during her marriage, a woman shall have the right to acquire her own property and to administer and manage it freely.

<sup>4</sup> CESCR Committee, General Comment No. 16: The equal right of men and women to the enjoyment of all economic, social and cultural rights (art. 3 of the covenant), at II(C)(28)

<sup>5</sup> CESCR Committee, General Comment No. 12: The right to adequate food (art. 11), at para. 26

<sup>6</sup> CESCR Committee, General Comment No. 7: The right to adequate housing (art. 11(1) of the Covenant): Forced evictions, at para. 10

<sup>7</sup> CESCR Committee, General Comment No. 16: The equal right of men and women to the enjoyment of all economic, social and cultural rights (art. 3 of the ICESCR), at para. II(C)(27)

### **Article 7 Separation, Divorce and Annulment of Marriage**

States Parties shall enact appropriate legislation to ensure that women and men enjoy the same rights in case of separation, divorce or annulment of marriage. In this regard, they shall ensure that: ...

(d) in case of separation, divorce or annulment of marriage, women and men shall have the right to an equitable sharing of the joint property deriving from the marriage.

### **Article 15 Right to Food Security**

States Parties shall ensure that women have the right to nutritious and adequate food. In this regard, they shall take appropriate measures to: (a) provide women with access to ... land, and the means of producing nutritious food.

### **Article 19 Right to Sustainable Development**

Women shall have the right to fully enjoy their right to sustainable development. In this connection, the States Parties shall take all appropriate measures to:...(c) promote women's access to and control over productive resources such as land and guarantee their right to property . . .

### **Article 21 Right to Inheritance**

1. A widow shall have the right to an equitable share in the inheritance of the property of her husband. A widow shall have the right to continue to live in the matrimonial house. ...

2. Women and men shall have the right to inherit, in equitable shares, their parents' properties . . .

In recognizing the critical importance of land rights, particularly for women, treaty bodies such as the Committee overseeing the International Covenant on Economic, Civil and Political Rights (CESCR) stressed that “the right of all to a secure place to live in peace and dignity, [includes] access to land as an entitlement.”<sup>8</sup> State duty to gender equality – according to the CESCR – “requires that women have a right to own, use or otherwise control housing, *land* and property on an equal basis with men, and to access necessary resources to do so.”<sup>9</sup> The Committee on the Elimination of All Forms of Discrimination Against Women’s stressed that State parties (including Ghana) “should take all necessary measures... to achieve rural women’s substantive equality in relation to land and natural resources” and “should eliminate discriminatory stereotypes including those that compromise the equal rights of rural women to land.”<sup>10</sup>

#### b. International Best Practice Guidelines

---

<sup>8</sup> CESCR Committee, General Comment No. 4: The right to adequate housing (art.11(1)), at para. 8(e).

<sup>9</sup> CESCR Committee, General Comment No. 16: The equal right of men and women to the enjoyment of all economic, social and cultural rights (art. 3), at para. 28.

<sup>10</sup> CEDAW, General recommendation No. 34: on the rights of rural women (March 4, 2016) at paras. 57, 23.

International best practice guidelines provide support for spousal rights in the Land Bill. Guidelines from FAO and AU are provided below.

### **FAO's Voluntary Guidelines for Sustainable Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT)**

“States should ensure that women and girls have equal tenure rights and access to land, fisheries and forests independent of their civil and marital status” (Article 3B.4)

“States should ensure that women and men enjoy the same rights in the newly recognized tenure rights, and that those rights are reflected in records.” (Article 7.4)

States should promote joint titling in land registration.<sup>11</sup>

“Where informal tenure to land, fisheries and forests exists, States should acknowledge it in a manner that respects existing formal rights under national law and in ways that recognize the reality of the situation and promote social, economic and environmental well-being. States should promote policies and laws to provide recognition to such informal tenure. The process of establishing these policies and laws should be participatory, gender sensitive and strive to make provision for technical and legal support to affected communities and individuals.” (Article 10.1)

### **African Union's Framework and Guidelines on Land Policy in Africa (2009)<sup>12</sup>**

The Framework and Guidelines acknowledge gender inequalities underlying land policy and governance in Africa, and state:

“If law and policy are to redress gender imbalances in land holding and use, it is necessary to deconstruct, reconstruct and reconceptualise existing rules of property in land under both customary and statutory law in ways that strengthen women's access and control of land while respecting family and other social networks. This would also be consistent with commitments made by African states as evidenced in the

<sup>11</sup> FAO (2013) Governing land for women and men: a technical guide to support the achievement of responsible gender-equitable governance in land tenure (VGGT implementation guide). Available at: <http://www.fao.org/docrep/017/i3114e/i3114e.pdf>.

<sup>12</sup> Available at [http://www.uneca.org/sites/default/files/PublicationFiles/fg\\_on\\_land\\_policy\\_eng.pdf](http://www.uneca.org/sites/default/files/PublicationFiles/fg_on_land_policy_eng.pdf).

AU's 2003 Maputo protocol... and the 2004 Solemn Declaration on Gender Equality in Africa both of which call for action to address gender inequalities including women's unequal access to land." (pp. 8-9)

## 5. INTERNATIONAL COMPARATIVE INFORMATION ON JOINT TENURE AND JOINT TITLE <sup>13</sup>

- **From Africa**

| Country      | Form of compulsory joint tenure  | Legal basis   |
|--------------|--|---|
| Burkina Faso | <ul style="list-style-type: none"> <li>• Partial community property in case of monogamy.<sup>14</sup></li> <li>• Compulsory joint titling if monogamous marriage.</li> </ul>   | <p>1997 Constitution</p> <p>Persons and Family Code of 1990a</p>  |
| Ethiopia     | <ul style="list-style-type: none"> <li>• Community property for property acquired after marriage.</li> <li>• Creates a presumption of common property for property registered in the name of one spouse.</li> <li>• Requires the consent of both spouses for transfers of common property.</li> <li>• Community property for consensual unions of more than 3 years.<b>b</b></li> <li>• In some States, joint titling of land is mandatory.</li> </ul> | <p>Revised Family Code Proclamation No.213/2000 of 2000</p> <p>Federal Proclamation No. 89/1997, Rural Land Administration Proclamation</p> |
| Kenya*       | <ul style="list-style-type: none"> <li>• As result of recent laws, partial community of property is the default regime. Specifically, land acquired during a marriage for use and enjoyment of spouses is presumed to be joint property.</li> <li>• Spouses have equal rights to administering community property.<sup>15</sup></li> </ul>   | <p>Matrimonial Property Act of 2013</p> <p>Land Registration Act of 2012</p>  |

<sup>13</sup> Except where otherwise noted, rows in the table excerpted in full from Lasterria-Cornhiel, S. and Renee Giovarelli (2005). [Shared Tenure Options for Women: A Global Overview](#) (UN-Habitat Report), at 23.

<sup>14</sup> The World Bank Group (2016). Women, Business and the Law, <http://wbl.worldbank.org/data/exploretopics/using-property>.

<sup>15</sup> World Bank Group (2015). Women, Business and the Law 2016: Getting to Equal. Washington, DC: World Bank. doi:10.1596/978-1-4648-0677-3. License: Creative Commons Attribution CC BY 3.0 IGO. <http://wbl.worldbank.org/~media/WBG/WBL/Documents/Reports/2016/Women-Business-and-the-Law-2016.pdf>, at 37.

|          |   |   |
|----------|---|---|
|          | <ul style="list-style-type: none"> <li>• Spousal consent required for transfers (including mortgage) of any matrimonial property.</li> </ul>  |   |
| Lesotho* | <ul style="list-style-type: none"> <li>• Partial community of property is the default regime.<sup>16</sup></li> <li>• Under this regime, title to real property allocated or acquired by either spouse is considered to be jointly acquired and jointly titled.</li> <li>• Spouses have equal powers to administer and dispose of joint assets.</li> </ul>  | <p>Marriage Act of 1974</p> <p>Legal Capacity of Married Persons Act of 2006</p> <p>Land Act of 2010</p>  |
| Namibia* | <ul style="list-style-type: none"> <li>• Full community of property is the default regime.<sup>17</sup></li> <li>• Spouses under the community property regime have equal powers to administer and dispose of joint assets.</li> <li>• Spouses are prohibited from alienating, mortgaging, or burdening with a servitude joint real estate (or contracting to do these) without the consent of the other spouse (with some qualifications).</li> </ul>  | <p>Married Persons Equality Act of 1996</p>   |
| Rwanda*  | <ul style="list-style-type: none"> <li>• Full community of property for spouses is the default regime.<sup>18</sup></li> <li>• Elective regimes include full community of property, limited community of acquests, or separate property. Under community property, spouses elect a marriage settlement based on joint ownership of real property and personal property. Under limited community of acquests, spouses share their properties on the day of marriage as well as properties acquired during marriage.</li> <li>• Joint titling required. A spouse married under a community property regime must include the name of his or her spouse when applying to</li> </ul> | <p>2003 Rwandan Constitution</p> <p>Law N° 22/99 of 12/11/1999 to supplement Book One of the Civil Code and to institute Part V regarding Matrimonial Regimes, Liberalities and Succession</p> <p>Rwanda Organic Land Law of 2005</p> |

<sup>16</sup> World Bank Group (2015), at 37; Social Institutions & Gender Index: Lesotho (2016), <http://www.genderindex.org/country/lesotho>.

<sup>17</sup> The World Bank Group (2016).

<sup>18</sup> *Id.*



|                       |   |                                     |
|-----------------------|---|-------------------------------------|
|                       | register household land. Joint title creates joint ownership. <sup>19</sup><br>• Dispositions that disadvantage the other spouse require the consent of that spouse. <sup>20</sup>  |                                     |
| Senegal*              | • The presumptive regime under the Family Code for monogamous marriages is compulsory community property (while the default for polygamous marriages is separation of property). <sup>21</sup><br>• The original owner administers the marital property <sup>22</sup> but dispositions that disadvantage the other spouse require the consent of that spouse. <sup>23</sup> | Family Code                         |
| South Africa*         | • Full community of property is the default regime. <sup>24</sup><br>• Spouses are prohibited from alienating, mortgaging, burdening with a servitude, or conferring any other real right in joint real estate (or contracting to do these) without the consent of the other spouse (with some qualifications).   | Matrimonial Property Act of 1984    |
| Tanzania*             | • While separation of property is the default regime, <sup>25</sup> the Land Act affords compulsory joint tenure on marital land for all spouses. <sup>26</sup><br>Spousal co-occupancy right of family land is presumed.<br>• Consent of both spouses is required to mortgage the matrimonial home.  | Law of Marriage<br>Land Act of 1999 |
| Uganda* <sup>27</sup> | • While separation of property is the default regime, spouses have  | Succession Act                      |

<sup>19</sup> Aparna Polavarapu (2014). Procuring Meaningful Land Rights for the Women of Rwanda. <http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1100&context=yhrdlj>, at 19.

<sup>20</sup> Hallward-Driemeier & Tazeen Hasan (2013). [Empowering Women: Legal Rights and Economic Opportunities](#), at 73.

<sup>21</sup> The World Bank Group (2016); Hallward-Driemeier & Tazeen Hasan, at 37.

<sup>22</sup> The World Bank Group (2016).

<sup>23</sup> Hallward-Driemeier & Tazeen Hasan, at 73.

<sup>24</sup> World Bank Group (2015), at 69.

<sup>25</sup> The World Bank Group (2016).

<sup>26</sup> Siraj Sait & Shelter Branch (2007). Policy Makers Guide to Women's Land, Property and Housing Rights across the World.

[http://www.gltm.net/jdownloads/GLTN%20Documents/policy\\_makers\\_guide\\_gender\\_2007.pdf](http://www.gltm.net/jdownloads/GLTN%20Documents/policy_makers_guide_gender_2007.pdf), at 23

<sup>27</sup> Leslie Hannay (2013) Women's Land Rights in Uganda. <http://www.landesa.org/wp-content/uploads/LandWise-Guide-Womens-land-rights-in-Uganda.pdf>, at 4; The World Bank Group (2016).

|         |  |  |
|---------|--|--|
|         | <p>guaranteed secure occupancy on family land.</p> <ul style="list-style-type: none"> <li>• Spousal consent prior to entering into any land transaction concerning land on which the spouse resides on and uses for sustenance.</li> </ul>   | Land Act of 2004, as amended   |
| Zambia* | <ul style="list-style-type: none"> <li>• Separation of property is the default regime<sup>28</sup> but compulsory joint tenure approaches have been adopted.*<sup>29</sup> For couples legally married under the Marriage Act, property belonging to either party and acquired during the marriage is treated as joint property, except for inherited property. The courts are required to distribute assets on an equitable basis with due regard to the facts of the case, and they have a wide margin of discretion. In practice, many men wish to keep their property separate and choose not to marry under the Act.</li> </ul> | <p>Law Reform (Married Women and Tortfeasors) Act of 1935</p> <p>Marriage Act, Cap. 50</p> |

- **From Europe and the United States**

| Country     | Form of compulsory joint tenure   | Legal basis |
|-------------|---|-------------|
| Belgium     | Partial community property is the default regime for spouses.   | Civil Code  |
| France      | <ul style="list-style-type: none"> <li>• Community of property, with option to contract out.</li> <li>• Both spouses must sign for sale/lease of land.</li> <li>• Either spouse may dispose of community property represented by his/her earnings, after contributing to the household expenses.</li> <li>• Neither spouse may dispose of the “rights which assure the family’s lodging and furniture” without the other spouse’s consent.</li> </ul> | Civil Code  |
| Netherlands | Universal or full community property system, but each spouse has the right to administer and dispose of the   | Civil Code  |

<sup>28</sup> The World Bank Group (2016).

<sup>29</sup> Siraj Sait & Shelter Branch, at 22.

|   |  |  |
|---|--|--|
|   | <p>assets that have been brought into the community.<b>b</b></p> <ul style="list-style-type: none"> <li>• Disposal of the matrimonial home requires consent of both spouses. The same is true for establishing a mortgage on the matrimonial home.<sup>*30</sup></li> </ul>  |  |
| Spain   | <ul style="list-style-type: none"> <li>• First country to adopt community property provisions in Civil Code.</li> <li>• Spouses may agree to a different property regime in the “articles of marriage,” a contract between the married partners.</li> <li>• In some autonomous communities, regional law may apply, and community property may not be the default property regime.</li> </ul>  | Civil Code   |
| United States (9 states only plus the U.S. Territory of Puerto Rico)* | <ul style="list-style-type: none"> <li>• Community property regime in 9 states (Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin), excluding gift, inheritance, and an award for personal injury damages acquired by one spouse.<sup>31</sup></li> <li>• All community property states but Texas<sup>32</sup> vest equal powers of management and disposition in each spouse. However, in these states, “one spouse alone may have enhanced powers when the other spouse leaves, disappears, or becomes incompetent to act as a property manager.”</li> <li>• Both spouses must participate in and provide written consent to transactions when they involve land, household necessities, and other specified assets.”<sup>*33</sup></li> </ul> | State Family Laws (See Annex B for a comparison of state law differences in the 9 community property states) |

<sup>30</sup> Conseil des Notariats de l’Union Européenne (2012). Couples in Europe: The Law for Couples in the 27 EU Countries. <http://www.coupleseurope.eu/en/netherlands/topics/2-is-there-a-statutory-matrimonial-property-regime-and-if-so-what-does-it-provide>.

<sup>31</sup> See also, IRS, Part 25.18, Basic Principles of Community Property Law, [https://www.irs.gov/irm/part25/irm\\_25-018-001.html](https://www.irs.gov/irm/part25/irm_25-018-001.html).

<sup>32</sup> James R. Ratner (2011). Distribution of Marital Assets in Community Property Jurisdictions: Equitable Doesn’t Equal Equal. <http://digitalcommons.law.lsu.edu/cgi/viewcontent.cgi?article=3047&context=lalrev>, at 24

<sup>33</sup> Roy Prosterman & Tim Hanstad (1999). [Legal Impediments to Effective Rural Land Relations in Eastern Europe and Central Asia: A Comparative Perspective](#), at 260.

## The Case Study of the United Kingdom

*England and Wales.* In England and Wales, there is no marital property regime and therefore no community of property. Instead, courts have wide discretion to issue a large range of orders upon divorce, known as ancillary relief.<sup>34</sup> Under the the Matrimonial Causes Act of 1973, courts can re-allocate or sell property, can assign assets to a trust, can order lump sum payments, etc. Section 25 of the Act enumerates the matters over which courts have discretion, listing the welfare of minor children as the first consideration. The overriding objective of ancillary relief is to obtain fairness. The courts in *Miller v. Miller; McFarlane v. McFarlane* have interpreted fairness to arise in the following three areas: the needs of the parties and their children, compensation, and sharing assets.<sup>35</sup> The court states that “[e]ach party is *entitled* to a *fair* share of the available property.”<sup>36</sup>

The legal concept of fair share upon dissolution of a marriage arises as a result of understanding the institution of marriage as a partnership of equals. The court in *Miller v. Miller; McFarlane v. McFarlane* acknowledged the precedent that the “husband and wife are now for all practical purposes equal partners in marriage,” noting this view to be “recognised widely, if not universally.”<sup>37</sup> The court explained its rationale as follows: “The parties commit themselves to sharing their lives. They live and work together. When their partnership ends each is entitled to an equal share of the assets of the partnership, unless there is a good reason to the contrary. Fairness requires no less.”<sup>38</sup>

The case also seemed to provide that certain categories of property, such as property acquired before marriage, inheritance, gifts, and non-matrimonial assets, might be evaluated differently—although this distinction recedes the longer the marriage.<sup>39</sup>

In sum, while a partial community of property regime established by statute does not exist in England and Wales, the substantive prescriptions for equitable division of marital property in the event of divorce is provided by common law precedent and ensured by the courts.

*Ireland.* It is likewise the case that Ireland does not have community of property, but the division of property is premised on the principles set forth

<sup>34</sup> [Conseil des Notariats de l’Union Européenne](#) (2012).

<sup>35</sup> [Conseil des Notariats de l’Union Européenne](#) (2012).

<sup>36</sup> [Miller v. Miller \[2006\] UKHL 24.](#)

<sup>37</sup> *Id.*, citing *R v R [1992] 1 AC 599*, 617.

<sup>38</sup> [Miller v. Miller \[2006\] UKHL 24.](#)

<sup>39</sup> [Conseil des Notariats de l’Union Européenne](#) (2012).

by common law legal precedent enunciated above (for details, see [Miller v. Miller; McFarlane v. McFarlane \[2006\] UKHL 24](#)).<sup>40</sup>

*Scotland.* In Scotland, there is a modified separate property system where “[t]he general rule [under the Family Law Act of 1985] is that marriage does not affect the ownership of property.”<sup>41</sup> However, the rule is modified as follows:

- A spouse has statutory occupancy rights in the matrimonial home, even if it is owned solely by the other spouse.
- There is a principle of fair sharing (which normally means equal sharing) of matrimonial property on divorce.
- A surviving spouse has certain protected rights on the death of the other and, on testacy, will often take the whole estate.<sup>42</sup>

In other words, Scotland adheres to equitable division of matrimonial property.<sup>43</sup>

- **From Latin America**

| Country  | Form of compulsory joint tenure  | Legal basis |
|--|--|-------------|
| Latin American countries (except Costa Rica, El Salvador, Mexico, Nicaragua) | <ul style="list-style-type: none"> <li>• Default regime is compulsory partial community of property, allowing exceptions, for example, for separate property by gift and inheritance. Profits derived from the separate property are deemed to be marital property.</li> </ul>   | Civil Codes |
| Bolivia*   | <ul style="list-style-type: none"> <li>• Partial community of property is the default regime.<sup>44</sup></li> <li>• Property acquired through concession or adjudication by the state forms part of the common property of the couple.</li> <li>• Disposition of community property requires the express consent of both spouses.</li> </ul> | Family Code |

<sup>40</sup> [Conseil des Notariats de l’Union Européenne](#) (2012).

<sup>41</sup> [Conseil des Notariats de l’Union Européenne](#) (2012).

<sup>42</sup> [Conseil des Notariats de l’Union Européenne](#) (2012).

<sup>43</sup> [Conseil des Notariats de l’Union Européenne](#) (2012).

<sup>44</sup> The World Bank Group (2016).

|              |  |  |
|--------------|--|--|
| Colombia*    | <ul style="list-style-type: none"> <li>• Deferred community of property is the default regime.<sup>45</sup></li> <li>• Joint allocation, titling and registration of agricultural land to spouses and stable partners in Family Agricultural Units, as part of land reform programme.</li> </ul>   | <p>Civil Code</p> <p>Law 28 of 1932</p> <p>Law 160 of 1994</p>                             |
| El Salvador* | <ul style="list-style-type: none"> <li>• Default regime is full or universal (deferred)<sup>46</sup> common property (pooling of all property and rents from property either brought into the marriage or acquired during the marriage, including through inheritance).</li> </ul>   | Family Code  |
| Honduras*    | <ul style="list-style-type: none"> <li>• The default regime it is now deferred community of property.<sup>47</sup></li> <li>• Initially joint titling was optional but now it is mandatory for married couples as well as consensual couples.<sup>48</sup></li> </ul>  | Civil Code   |
| Nicaragua*   | <ul style="list-style-type: none"> <li>• Separate property regime is default regime<sup>49</sup> but community of property regime can be established by pre-nuptial agreement.</li> <li>• Provides for compulsory joint titling for couples, whether married or not, in land titling programmes.<b>d</b></li> <li>• Titles issued in the name of the household head are considered as issued to both spouses/partners.</li> <li>• Civil Code recognises the husband as the head of the household (Art. 151).<b>e</b></li> <li>• Women are recognised as direct beneficiaries of land reform, regardless of family status.<b>f</b></li> </ul> | <p>Civil Code</p> <p>Law 870</p> <p>Law 278 of 1997</p> <p>Agrarian Reform Act of 1981</p> |

• **From Asia**

| Country | Form of compulsory joint tenure   | Legal basis                           |
|---------|---|---------------------------------------|
| Laos    | <ul style="list-style-type: none"> <li>• Property acquired during marriage is jointly held and joint title is required. Customary law also</li> </ul> | <p>Family Law</p> <p>Property Law</p> |

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> Susana Lastarria-Cornhiel, Sonia Agurto, Jennifer Brown, & Sara Elisa Rosales (2003). Joint Titling in Nicaragua, Indonesia, and Honduras: Rapid Appraisal Synthesis.

<https://nelson.wisc.edu/lrc/docs/sl0301joi.pdf>, at 4.

<sup>49</sup> The World Bank Group (2016).

|              |  |   |
|--------------|--|---|
|              | supports co-ownership of land by marital couples. <b>b</b>   |   |
| Philippines* | <ul style="list-style-type: none"> <li>• Full community of property regime is the default regime.<sup>50</sup></li> <li>• Presumption is that if two people live together their land is jointly owned.<b>c</b></li> <li>• Alienation requires the approval of both spouses.</li> <li>• Even if one partner does not participate in the acquisition of property, s/he is deemed to have contributed jointly if s/he cared for and maintained the family and household.<b>d</b></li> </ul> | <p>Family Code <b>e</b></p> <p>Comprehensive Agrarian Reform Law</p>      |
| Vietnam      | <ul style="list-style-type: none"> <li>• Partial community of property regime is the default regime. All land acquired during marriage is considered to be a common asset, unless separately inherited, gifted, or acquired through a transaction made with separate property.</li> <li>• Names of both wife and husband must be registered on the Land Use Rights Certificate.<b>f</b></li> </ul>   | <p>Revised Land Law of 2003</p> <p>Law on Marriage and Family of 2001</p> |

---

<sup>50</sup> The World Bank Group (2016).

## ANNEX A

### **Analytical Framework for Marital Property Regimes**

#### *Legislating Equitable Marital Property Regimes as a Means to Secure Women's Rights to Marital Property.*

Marital property regimes govern how property rights and management powers are allocated during marriage and at the time of marriage dissolution due to death, divorce, or separation. The type of marital property regime a jurisdiction adopts impacts how these allocations are made within the household.<sup>82</sup> A 2014 World Bank study identified a tight link between marital property regimes and women's land or housing ownership.<sup>83</sup> The legal structure of the regimes greatly impacts wealth distribution within the household, and women's secure property rights are a critical factor in women's well-being.<sup>84</sup>

In general, there are three types of marital property regimes: separation of property regimes, partial community of property regimes, and full community of property regimes.<sup>85</sup> (See end of Annex A for a typology of marital property regimes and their definitions.) In separation of property regimes, all property—whether acquired before or during the marriage—continues to be held separately by the spouse who acquired it. This separate allocation continues to hold upon death or divorce.<sup>86</sup> Although protection of women's property rights may be weak in any of the marital property regimes, this is particularly the case under separation of property regimes because wives lack legal claim to marital property upon divorce.<sup>87</sup>

By contrast, community of property regimes are joint property regimes under which spouses enjoy equal access to property and land during the marriage, and after marriage dissolution, joint property is divided equally between the spouses.<sup>88</sup> In partial community of property regimes, “[a]ssets acquired before marriage are regarded as the separate property of the acquiring spouse, and assets and income acquired after marriage, with a few exceptions specified by law, are

#### **Underlying Theory of Separation of Property Regimes.**

“The theory underlying [separation of property, arising from common law models historically] is that each spouse is a separate individual with separate legal and property rights.”

Source: [IRS, Part 25.18, Basic Principles of Community Property Law.](#)

<sup>82</sup> World Bank Group (2015), at 13.

<sup>83</sup> *Id.* at 30.

<sup>84</sup> *Id.* at 30.

<sup>85</sup> Agnes R. Quisumbing et al. (2014). [Gender in Agriculture: Closing the Knowledge Gap](#), at 120; World Bank Group (2015).

<sup>86</sup> World Bank Group (2015), at 52.

<sup>87</sup> Quisumbing et al., at 121.

<sup>88</sup> World Bank Group (2015), at 13, 52.



regarded as joint property of the couple.”<sup>89</sup> (See Annex A for another variant.) In full community of property regimes, all property and income, regardless of when it was acquired, converts to joint property (except for a few exceptions).<sup>90</sup> Community of property regimes largely benefit women (so long as other laws do not counteract their positive effects).<sup>91</sup> The World Bank Group’s 2015 study of 173 jurisdictions finds that 79 have established a (full or partial) community property regime as their default.<sup>92</sup>

As a matter of law and policy, a jurisdiction can establish a default marital property regime. The default prescribes “the set of rules that apply to the ownership and management of property within marriage and when the marriage ends, when there is no prenuptial agreement.”<sup>93</sup> UN Women recommends the “[l]egislation should provide for compulsory joint tenure as the default regime . . . when spouses marry.”<sup>94</sup> Moreover, it also recommends that non-formal unions should be governed by compulsory joint tenure or co-ownership, which necessitates the repealer of default regimes based on optional joint tenure.<sup>95</sup>

**Underlying Theory of Community of Property Regimes.**

“The theory underlying community property is analogous to that of a partnership. Each spouse contributes labor (and in some states, capital) for the benefit of the community, and shares equally in the profits and income earned by the community. Thus, each spouse owns an automatic 50% interest in all community property, regardless of which spouse acquired the community property. Spouses may also hold separate property, which they solely own and control, but the law in the community property states does not favor this.

Source: [IRS, Part 25.18, Basic Principles of Community Property Law.](#)

*Legislating Compulsory Joint Titling to Safeguard Equitable Division of Marital Property.*

Women who seek joint titling for their marital property may reduce uncertainties around equitable division of marital property. However, women are seldom in a position to demand it. Therefore, it is beneficial to have legal provisions requiring compulsory joint titling of marital property. UN Women recommends that when states “reform marital property systems, legislation should provide for compulsory joint titling of marital property, particularly in societies that bequeath land through the patrilineal side.” Further, these reforms should extend compulsory joint titling to “where documentation or fee requirements hinder such

<sup>89</sup> *Id.* at 52.

<sup>90</sup> *Id.*

<sup>91</sup> *Id.* at 13.

<sup>92</sup> *Id.*

<sup>93</sup> *Id.* at 52.

<sup>94</sup> UN Women (2012). Joint Tenure and Titling for Spouses.

<http://www.endvawnow.org/en/articles/771-joint-tenure-and-titling-for-spouses.html?next=772>.

<sup>95</sup> *Id.*

registration.”<sup>96</sup> Compulsory jointing titling provisions play a key role in helping women retain a share of the property in the event of marriage dissolution, be it from divorce, separation, or death.<sup>97</sup>

### **Typology of Marital Property Regime and Definitions**

- The **default marital property regime** is the set of rules that apply to the ownership and management of property within marriage and when the marriage ends, when there is no prenuptial agreement. Default marital property regimes are classified as follows:
  - **Separation of property:** All assets and income acquired by the spouses both before they marry and during the marriage remain the separate property of the acquiring spouse. At the time of divorce or the death of one of the spouses, each spouse retains ownership of all assets and income brought to the marriage or acquired during marriage by that person and any value that has accrued to that property
  - **Partial community of property:** Assets acquired before marriage are regarded as the separate property of the acquiring spouse, and assets and income acquired after marriage, with a few exceptions specified by law, are regarded as joint property of the couple. This regime also applies to cases where assets acquired before marriage and assets acquired during marriage are regarded as the separate property of the acquiring spouse but the accrued value of the property acquired by any of the spouses is considered joint property. At the time of dissolution of the marriage by divorce or death, the joint property or its accrued value is divided equally between the spouses.
  - **Full community of property:** All assets and income whether brought into the marriage and acquired during the marriage, with a few exceptions specified by law, become the joint property of the couple. If the marriage is dissolved, all joint property is divided equally between the spouses.
  - **Deferred full or partial community of property:** The rules of full or partial community of property apply at the time the marriage is dissolved; until then, separation of property applies.
  - **Other:** This occurs in economies where the default property regime does not fit any of the four descriptions above.
  - **There is no default marital property regime:** This alternative applies in economies where the law requires the spouses to opt into the marital property regime of their choice—with legal alternatives provided—before or at the time of

<sup>96</sup> UN Women (2012).

<sup>97</sup> Hallward-Driemeier & Tazeen Hasan, at 147.

marriage. In economies where there is no default marital property regime, the most common regime is used instead.

Excerpted in full from World Bank Group (2015). [Women, Business and the Law 2016: Getting to Equal](#). Washington, DC: World Bank.  
doi:10.1596/978-1-4648-0677-3. License: Creative Commons Attribution  
CC BY 3.0 IGO, 52.

ANNEX B

**Comparison of State Law Differences in Community Property States<sup>98</sup>**

**Exhibit 25.18.1-1: Comparison of State Law Differences in Community Property States**

|   | <b>Arizona</b>   | <b>California</b>  | <b>Idaho</b>   | <b>Louisiana</b>   | <b>Nevada</b>   |
|---|--|--|--|--|---|
| 1. When do spouses become subject to state community property laws?   | When the spouses are married and domicile in the state.  | When the spouses are married and domicile in the state.  | When the spouses are married and domicile in the state.  | When the spouses are married and domicile in the state.  | When the spouses are married and domicile in the state.                     |
| 2. Does the state recognize common law marriage?  | No, but it recognizes a common law marriage legally established elsewhere.   | No, but it recognizes a common law marriage legally established elsewhere.   | No, but it did until 1/1/96. It recognizes common law marriages established in Idaho before 1/1/96 or legally established elsewhere. | No, but it recognizes a common law marriage legally established elsewhere.                         | No, but it recognizes a common law marriage legally established elsewhere.  |
| 3. Does the state recognize some form of domestic partnership as an alternative to marriage?  | No.  | Yes.   | No.  | No.  | Yes.  |
| 4. Does a domestic partnership under state law create community property rights and obligations?  | Not applicable.  | Yes.   | Not applicable.  | Not applicable.  | Yes.  |
| 5. When does the community property regime terminate (causing subsequently acquired assets or future income to no longer be characterized as community property)? | Change of domicile, death, decree of divorce or decree of legal separation. Also, property acquired after a petition for dissolution or separation or annulment is separate property, if the petition results in a final decree. | Change of domicile, death of spouse, living separate and apart before dissolution with no present intent to resume marital relations and conduct evidencing a complete and final break in the marital relationship, legal separation or judgment of dissolution. | Change of domicile, death or decree of divorce.  | Change of domicile, death or entry of a judgment of separation of property or judgment of divorce. | Change of domicile, death, decree of divorce or decree of legal separation. |

<sup>98</sup> Charts excerpted in full from the IRS, Part 25.18, Basic Principles of Community Property Law, [https://www.irs.gov/irm/part25/irm\\_25-018-001.html](https://www.irs.gov/irm/part25/irm_25-018-001.html).

|  | <b>Arizona</b>   | <b>California</b>  | <b>Idaho</b>   | <b>Louisiana</b>   | <b>Nevada</b>  |
|--|--|--|--|--|--|
| 6. How is post marital income generated from separate property (e.g., rents, dividends, interest) characterized?                     | Separate property unless a portion is derived from CP time, effort and skills. If so, an allocation must be made.  | Separate property unless a portion is derived from CP time effort and skills. If so, an allocation must be made.   | Community property.  | Community property.  | Separate property unless derived from a spouse's labor or community property funds. If so, an allocation must be made.   |
| 7. How does the state characterize appreciation in the value of separate property?   | Separate property. If a spouse's labor or community property funds are used to acquire or improve the asset, a right to reimbursement exists, but this does not change the character of the asset. | Separate property where appreciation is a "natural enhancement of SP" and spouse has expended a minimum of effort or effort has insignificant value. If spouse's labor or CP funds are used to acquire or improve the SP, a right of reimbursement exists, but does not change the character of the SP. A federal tax lien attaches to the right of reimbursement. | Separate property unless a portion is derived from community property. If so, an allocation must be made. A federal tax lien attaches to the right to reimbursement.   | Separate property. If a spouse's labor or community property funds are used to acquire or improve the asset, a right to reimbursement exists, but this does not change the character of the asset. | Separate property unless derived from a spouse's labor or community property funds. If so, allocation or reimbursement issues must be dealt with. A federal tax lien attaches to the right to reimbursement. |
| 8. How does the state characterize property taken by spouses under a deed reflecting that the property is held in joint tenancy?     | Strong presumption that it is community property. To be a joint tenancy, deed should have language negating the possibility that it is held as community property.                                 | The property is rebuttably presumed to be a joint tenancy. Factors rebutting the presumption include: If acquired during marriage, if acquired with CP funds, if parties knew the legal consequences of JT vs. CP, if loan proceeds deposited into CP account.   | Community property unless there is clear and convincing evidence that the spouses intended to hold the property in joint tenancy rather than as community property. . Holding title in joint tenancy is not sufficient by itself to overcome CP presumption. | Community property.  | The property is rebuttably presumed to be a joint tenancy.   |
| 9. How does the state characterize property taken by spouses under a deed reflecting that the property is held in tenancy in common? | Strong presumption that it is community property. To be a tenancy in common, deed should have language negating  | The property is rebuttably presumed to be separate property. Very uncommon form of   | As a tenancy in common, if deed uses specific language "as tenants in common." It may also create a tenancy in common if separate property of  | Community property.  | The property is presumed to be community property.   |

|   | <b>Arizona</b>  | <b>California</b>   | <b>Idaho</b>  | <b>Louisiana</b>   | <b>Nevada</b>  |
|---|---|---|---|--|--|
|   | the possibility that it is held as community property. Rare form of ownership between spouses.                  | ownership between spouses.  | both spouses is used to acquire the property. Otherwise it is community property.                               |  |  |
| 10. Does a deed taken in the name of one spouse as sole and separate property create separate property? | No. Title does not determine the character of the property. It is rebuttably presumed to be community property. | No. Title does not determine the character of the property. It is rebuttably presumed to be community property.   | No. Title does not determine the character of the property. It is rebuttably presumed to be community property. | No. Title does not determine the character of the property. It is rebuttably presumed to be community property.  | No. Title does not determine the character of the property. It is rebuttably presumed to be community property.  |
| 11. Does the state recognize pre or post marital property characterization agreements?                  | Yes.  | Yes.  | Yes.  | Yes.   | Yes.   |
| 12. What are the property characterization agreements called?   | Premarital, post marital, prenuptial or postnuptial agreements,   | Premarital, post-marital, prenuptial or postnuptial agreements.   | Premarital agreements and marriage settlement agreements.   | Matrimonial agreements. (but, post marital agreements require court approval).   | Premarital or ante nuptial agreements or post marital contracts.   |
| 13. Are property characterizations agreements required to be in writing?                                | Premarital agreements must be in writing.   | Premarital agreements must be in writing. Postmarital agreements need only be in writing if they involve real estate.   | Agreements must be in writing.  | Agreements must be in writing.   | Agreements must be in writing to be effective against the Internal Revenue Service.  |
| 14. Are property characterization agreements valid against creditors?                                   | Yes, but fraudulent conveyance statutes can be applied.   | Yes. Premarital contracts before 1986 required to be recorded. After 1986, no need for recording to be valid. Premarital not subject to fraudulent conveyance laws. Post-marital need not be recorded, but are subject to fraudulent conveyance laws. | Yes, no notice is required.   | Yes, but only if the agreement is recorded (As to real property, with parish registry where real property is located, and as to personal property, with parish registry where spouses domicile). | Yes, but case by case analysis required. Agreement must conform to required state law formalities, and terms of agreement must be mutually observed by parties. Fraudulent conveyance and nominee/alter ego laws can be applied. |

|   | <b>Arizona</b>   | <b>California</b>  | <b>Idaho</b>   | <b>Louisiana</b>   | <b>Nevada</b>  |
|---|--|--|--|--|--|
| 15. What property is available to satisfy a premarital federal tax obligation assessed against only one spouse?   | All separate property of liable spouse. Also, 100% of community property traceable to or contributed by the liable spouse and 50% of all other community property. | 100% of all community property and all separate property of the liable spouse. | 100% of all community property and all separate property of liable spouse. | 100% of all community property and all separate property of liable spouse. | 50% of community property and all separate property of liable spouse.      |
| 16. What property is available to satisfy a post marital federal tax obligation assessed against only one spouse? | 100% of all community property and all separate property of the liable spouse.   | 100% of all community property and all separate property of the liable spouse. | 100% of all community property and all separate property of liable spouse. | 100% of all community property and all separate property of liable spouse. | 100% of all community property and all separate property of liable spouse. |

|   | <b>New Mexico</b>   | <b>Texas</b>  | <b>Washington</b>   | <b>Wisconsin*</b>   |
|---|---|---|---|---|
| 1. When do spouses become subject to state community property laws?   | When the spouses are married and domicile in the state.   | When the spouses are married and domicile in the state.   | When the spouses are married and domicile in the state.                     | On the determination date, which is the first day after marriage, both spouses domicile in Wisconsin and January 1, 1986 (the effective date of the Marital Property Act in Wisconsin). |
| 2. Does the state recognize common law marriage?  | No, but it recognizes a common law marriage legally established elsewhere.  | Yes. To qualify, spouses must cohabit in Texas, agree to be married and represent that they are married. Parties to a common law marriage must obtain a divorce or annulment to terminate the marriage. | No, but it recognizes a common law marriage legally established elsewhere.  | No, but it recognizes a common law marriage legally established elsewhere.  |
| 3. Does the state recognize some form of domestic partnership as an alternative to marriage?                      | No.   | No.   | Yes.  | Yes.  |
| 4. Does a domestic partnership under state law create community property rights and obligations?                  | Not applicable.   | Not applicable.   | Yes.  | No.   |
| 5. When does the community property regime terminate (causing subsequently acquired assets or future income to no | Change of domicile, death, decree of divorce or decree of legal separation. Upon separation, spouses may also ask court for | Change of domicile, death, decree of divorce or annulment.  | Change of domicile, death or a separation that is intended to be permanent. | Change of domicile, death, decree of divorce or decree of legal separation or decree of separate maintenance.   |

|  | <b>New Mexico</b>  | <b>Texas</b>   | <b>Washington</b>  | <b>Wisconsin*</b>   |
|--|--|--|--|---|
| longer be characterized as community property)?  | division of property, which may affect subsequently acquired property.   |  |  |   |
| 6. How is post marital income generated from separate property (e.g., rents, dividends, interest) characterized?                     | Separate property unless derived from a spouse's labor or community property funds. If so, an allocation must be made.   | Community property.  | Separate property unless derived from a spouse's labor or community property funds. If so, an allocation must be made.   | Marital (community) property.   |
| 7. How does the state characterize appreciation in the value of separate property?   | Separate property. If a spouse's labor or community property funds are used to acquire or improve the asset, a right to reimbursement exists, but this does not change the character of the asset. | Separate property. If community property funds are used to acquire or improve the asset, when the marriage is terminated by death or divorce, a claim for economic contributions exists.   | Separate property unless derived from a spouse's labor or community property funds. If so, allocation or reimbursement issues must be dealt with.  | Market appreciation is individual (separate) property. Appreciation due to the efforts of either spouse or application of marital (community) property is marital (community) property.                             |
| 8. How does the state characterize property taken by spouses under a deed reflecting that the property is held in joint tenancy?     | Community property unless the deed also specifically designates it as separate property.   | Depends on source of funds used to acquire property. Community property remains CP unless a written agreement to partition is first executed. Otherwise property is CP with a right of survivorship. Property purchased with separate funds may be held as joint tenants, with undivided 1/2 interest being separate property. | Community property unless there is a written agreement between the spouses which clearly evidences the spouses' intent to hold the property in joint tenancy rather than as CP. Holding title in joint tenancy is not sufficient by itself to overcome CP presumption. | Marital (community) property with right of survivorship, which in Wisconsin is called survivorship marital property, unless the deed was executed before 1/1/86. If the deed predates 1/1/86 it is a joint tenancy. |
| 9. How does the state characterize property taken by spouses under a deed reflecting that the property is held in tenancy in common? | Community property unless the deed also specifically designates it as separate property.   | Community property, unless a written agreement to partition is executed. Property purchased with separate and community funds is owned as tenants in common.   | Community property unless there is clear and convincing evidence establishing the spouses' intent to hold the property in tenancy in common. Title in tenancy in common is not sufficient by itself to overcome CP presumption.  | Marital (community) property unless the deed was executed before 1/1/86. If the deed predates 1/1/86, it is a tenancy in common.  |
| 10. Does a deed taken in the name of one spouse as sole and separate property create separate property?                              | Yes. The property is rebuttably presumed to be separate property.  | Only if the deed also contains a recital that the consideration was paid from separate funds of that spouse. If so, the property is then presumed to be separate.  | No. Title does not determine the character of the property. It is rebuttably presumed to be community property.  | No. Title does not determine the character of the property. It is rebuttably presumed to be community property.   |



|   | <b>New Mexico</b>  | <b>Texas</b>  | <b>Washington</b>  | <b>Wisconsin*</b>  |
|---|--|---|--|--|
| 11. Does the state recognize pre or post marital property characterization agreements?                            | Yes.   | Yes.  | Yes.   | Yes.   |
| 12. What are the property characterization agreements called?   | Premarital, post marital, prenuptial or postnuptial agreements,  | Premarital and marital or post nuptial agreements.  | Separate property agreements.  | Marital property agreements.   |
| 13. Are property characterizations agreements required to be in writing?  | An oral agreement will be recognized, but the claim of one will be strictly scrutinized.   | Agreements must be in writing.  | An oral agreement will be recognized, but the claim of one will be strictly scrutinized. | Marital property agreements must be in writing.  |
| 14. Are property characterization agreements valid against creditors?   | Unknown. State law requires agreements to be in writing and be acknowledged. There is no case law on the effect of a valid agreement on creditors. | Yes, unless existing creditor's rights are intended to be defrauded by agreement.   | Not against existing creditors.  | If incurred after the determination date, no, unless creditor has actual notice of the agreement before the obligation is incurred. If incurred before the determination date, yes as to future income or property.  |
| 15. What property is available to satisfy a premarital federal tax obligation assessed against only one spouse?   | 50% of all community property and all separate property of liable spouse.  | All separate property of liable spouse, 100% of joint management community property, 100% of liable spouse's sole management community property, and 50% of nonliable spouse's sole management community property. If a homestead is involved, contact counsel. | 50% of community property and all separate property of liable spouse.                    | All individual (separate) property of the debtor spouse, 2. Half of marital (community) property and 3. all marital (community) property that would have been debtor spouse's individual (separate) property but for marital property law or the marriage. |
| 16. What property is available to satisfy a post marital federal tax obligation assessed against only one spouse? | 100% of community property and all separate property of liable spouse,   | All separate property of liable spouse, 100% of joint management community property, 100% of liable spouse's sole management community property, and 50% of nonliable spouse's sole management community property. If a homestead is involved, contact counsel. | 100% of community property and all separate property of liable spouse.                   | Assuming the obligation is incurred in the interest of the marriage and family, 100% of marital (community) property and all separate property of liable spouse.   |

\*Wisconsin law refers to community property as "marital" property and separate property as "individual" property.

# ANNEX D: INTEGRATED WATER & AGRICULTURAL DEVELOPMENT GHANA LTD. INVESTOR CASE STUDY

Integrated Water & Agricultural Development Ghana Ltd. (IWAD) is 100% owned by the African Tiger Holding Ltd and responsible for the implementation of the Silili – Kulpawn irrigation Project (SKIP) in Northern Ghana, together with its strategic partners i.e. Wienco Ghana Ltd., SADA, Wageningen University and Rebel International. IWAD is a private company and the SKIP is funded in part by the Dutch government as a flagship public-private partnership. Tom Durang, the Managing Director of IWAD Ghana Ltd, met with Walter Nuñez and Kwaku Owusu - Baahof the Feed the Future Agriculture Policy Support Project (APSP), and Jennifer Duncan of Landesa, on June 8, 2016, to discuss IWAD's experience with land rights for investment in Northern Region.

IWAD is developing a 400 ha irrigation scheme on an 800 ha of land in Yagaba, a very remote part of the Northern Region—about four hours by car north of Tamale—known as the “Overseas” area. In addition to the 400 ha that will be developed into an irrigated area, IWAD plans to provide support for conservation farming services to farmers in a broader area (of approximately 6,000 ha). Services will include provision of seeds (including those of local variety), rotation crops to support sustainable soils, and fencing. IWAD's investment in the 400 ha irrigated area required families farming on this area to relocate for one cropping season, during development of the irrigation grid. IWAD told relocated farmers that they could come back to farm under the developed irrigation area once established (note: of the 400 ha irrigation developed, 150 ha is reserved for the smallholder farmers). IWAD entered into an agreement with the three villages for the use of their land, which includes establishing a fund for community development.

Prior to beginning development, IWAD conducted an extensive land tenure study of the investment area. This helped IWAD to understand the customary systems, social hierarchies and tenure relationships, and Tom Durang considers this to have been an essential part of the due diligence process leading up the investment. IWAD also conducted a full hydraulic study, a soil and forest inventory, an environmental scoping and, at a later point in time, a formal Environmental Impact Assessment under Ghanaian law. Based on preliminary studies, IWAD identified an area of land suitable for the investment, then began negotiation processes with Traditional Authorities, beginning with the highest-level allodial title holder (the Nayiri, the King and overlord of the Mamprusi) and ending with the village-level sub-division

chiefs. They walked the land with the sub-division chiefs to identify parcels belonging to different land-owning families and tenants, and compensated them for being temporarily displaced from their land.

The land in the 800 ha estate is from three villages, all within the authority of one paramount chief. The land for the expansion conservation farming area of support to small farmers is within the authority of another paramount chief. The chiefs are brothers and have good relations, which has been a significant positive factor for the investment. IWAD asked the villages to conduct a participatory mapping exercise to determine the village boundaries, which raised historical conflicts. These were resolved by the chiefs and land holding families, who eventually presented a resolution to IWAD.

Two other conflicts have arisen. The first has to do with incursion of cattle into the project area. The second conflict has to do with Town and Country Planning Department (TCPD) from Tamale demanding at the final stage of the process to move the entire concession 1 km further to the East, to build a District Assembly facility on part of the agreed land leased to IWAD. This came as a surprise to IWAD, and did not seem to be coordinated in any way with Lands Commission authority or with the Traditional Authorities. IWAD eventually negotiated with the District Assembly to move the irrigation design (a 500 metre—rather than one kilometer—swath) and keep the concession border as initially agreed, in order to accommodate for a cattle corridor that would help to divert cattle off of the township land and IWAD's land. A new plot of land was negotiated with the traditional authorities for the new District Assembly facility outside the SKIP concession border.

### **Lessons learned and suggestions for improvements to the land rights framework in Ghana from an investor perspective:**

1) Investors must be prepared for long-term investment ramp-up, and to invest significant time and resources into understanding and engaging with customary systems in relevant geographic areas. The long lead time is an impediment in attracting and leveraging capital, and it can be hard during this time period to avoid rumors and expectations in local communities about anticipated project development.

2) Investing in land in Ghana requires on-the-ground presence and the willingness and knowledge necessary to develop a strong social contract with customary communities in the project area. Investors need to engage at the correct level in the customary hierarchy, which means approaching the highest level allodial title holder. The next step is to work very closely with the lowest-level village (sub-division) chiefs, ensuring an open channel of communication that will keep messages channeling up to higher level chiefs. It is also important for investors to understand as much as possible about the local social/customary relationships in the investment area, such as the identity of the major land owning families. The pay-off for investors of nurturing good relationships with traditional authorities at each level is a strong mutual trust that creates a foundation for profitable long-term

investment. Tom Durang has a high level of confidence that IWAD's interests are aligned well with community interests, and will be protected well by community authorities. There has not been a single incident of theft of IWAD property to date.

3) Participatory mapping by local communities is an essential tool to clarify land rights in investment areas, and may expose conflicts that need to be resolved. Resolution can take time, and it is important for investors to encourage this process to move forward.

4) Obtaining a formal lease can take a very long period of time. Lands Commission procedures and community consultation processes were not very clear and needed to be repeated. It would be helpful if timelines for government action at each step were specified in the law (or regulations).

5) Town and Country Planning needs to be better linked to Traditional Authorities and to the Lands Commission, and investors need better guidance and instructions about how the government agencies work, including relationships between agencies, what the relevant points of contact should be, and what the steps should be in the event of a dispute.

6) Investors need to have a more robust participatory process for negotiation with communities (rather than, e.g., negotiating just with the chiefs). But they need guidance for how to do this, which should be written into the law/ Guidelines.

7) Compensation to community for loss of access to shea nut trees and other important economic trees should be better provided for in both customary and formal compensation guidelines and regulations.

# ANNEX E: POWER POINT PRESENTATION TO THE LAND BILL WORKING GROUP ON 6-7 JUNE 2016

# Land Bill Draft 4

## Comments and Recommendations

Jennifer Duncan (with input from Beth Roberts and My-Lan Dodd)

Working Group Meeting, Accra  
6 June 2016



## Background to Consultancy—Scope of Work

1. Mark-up of Bill
2. Specific issue areas
  - Emerging international innovations in compulsory acquisition law.
  - Transparency and consultative mechanisms, particularly in the context of large-scale investments.
  - Legal aspects of electronic conveyancing and digitization of land-related information and evidence.
  - Institutional and procedural arrangements for governance of customary land, including common property resources.
  - Gender dimensions of land rights.
  - Other areas that the Working Group and Consultant may jointly decide would benefit from attention, including as needed, providing overall textual scrutiny of Draft 4 for consistency, identifying gaps, preparing commentary, developing materials for consultations on the Draft, etc.
3. Draft Trip Report (with issues, options and recommendations)
4. Final Trip Report (with issues, options and recommendations)

## Primary Issues: Overview

1. Customary rights
  1. Vision and mechanics for recording customary rights
  2. Role of CLSs—risks
  3. Rights of usufructuary—alienation
  4. Anti-discrimination—clause 13
  5. Common areas—purpose of clause 20
2. Transparency and accountability in land governance institutions
3. Formal registration
  1. Vision for deeds v. titles (or dual system)
  2. Allodial interests
  3. Other registration issues
4. Electronic conveyancing and registration
5. Legal framework for large-scale investment in land
6. Compulsory acquisition
7. Gender/ spousal provisions



## 1. Customary rights

80% of Bill relates to transaction of private lands. But 80% of the land in the country is within customary communities. Does Bill create sufficient legal framework and safeguards for customary lands?

1. Vision and mechanics for recording customary rights
2. Role of CLSs-risks
3. Rights of usufructuary-alienation
4. Common areas-clause 20
5. Anti-discrimination clause 13

## Customary lands: recording rights and CLSs

1. Bill establishes legal framework for CLSs and recording of customary rights based on secondary transactions (and some oral grants—CI 35)
2. But does it create framework/ vision for systematic and comprehensive registration/recording of customary rights? (CI 16(b)—what does it mean to catalogue?)
  1. Political will?
  2. Practical mechanics of efficient, low-cost registration of customary land?
    1. Ulassa Akropong , Western Region
    2. RWANDA/ ETHIOPIA
3. If no comprehensive first recording, heightened vulnerability of those with non-recorded rights.
4. Legal meaning of recorded customary rights?
  1. Vis-à-vis registered rights?
  2. Vis-à-vis other customary rights?

## Customary Land Rights: Alienation

CI 48(19): Allodial title holder cannot alienate usufruct land without (1) consent and (2) compensation.

Issues:

1. 25% appears too low
2. Could it be paid with in-kind equity?
3. Would it be in addition to, or instead of, customary re-allocation of land? Risk of undermining that customary practice to detriment of vulnerable?

## Customary Land Rights: Common Areas

Clause 20:

A community may set aside or recognise one or more areas of land and water resources within the community for common use by the members of that community.

Purpose of the clause?

Does it fulfil purpose?

## 2. Transparency and accountability in land governance institutions

Improvements in the Bill? Penalties for misbehavior, disclosure of “drink money” payments, etc.

But does Bill address primary concerns of land-sector investors, large and small, about corruption and service-related challenges?

There is room for stronger coverage:

1. Call for regulations clearly stating step-by-step registration procedures, time limits, and fees
2. Mandate that these be posted prominently and distributed through the media, etc.
3. Increase public participation in compulsory acquisition processes
4. Consider establishment of ombudsman agency.

### 3. Registration

#### 1. Titles and deeds

1. Title sections apply only within titling districts?
2. Conclusive proof of ownership/ indefeasible interests: how does this work given existence of deeds and customary interests?
3. Mechanics for converting deeds to titles, bringing deed records into title registry?

#### 2. Plan for registering allodial interests

1. Within a given time frame?
2. Systematic?

#### 3. Other issues

1. Accountability of Registrar—time limits, fees, procedures

## 4. Electronic conveyancing (and registration)

### Electronic conveyancing—considerations

1. Need to define exact legal effect of electronic conveyance (e.g., equivalent to a deed)
2. May need to repeal attestation requirements
3. Takes time to implement

## E-conveyancing: international experience

*England and Wales, Land Registration Act (LRA), 2002*

- The LRA provides the “statutory provisions necessary for gradually introducing and regulating a system of electronic conveyancing.” ([Mosert 2011](#), 97). After successful pilot projects in 2006 and 2007, the government “rolled out” its e-conveyancing process (*Id.*).

The e-conveyancing system:

- Eliminates the registration gap (i.e., the gap between finalizing the real property transaction and registering the property);
- “[G]radually makes registration compulsory”;
- Permits e-settlement of accounts; and
- Authorizes conveyancers to directly change the register, which requires “strict rules on secure electronic networking and regulated access” as well as early involvement by the Registry (*Id.*, 97-98).



## E-registration/ digitalisation

### Overview

1. "Developing a digital Land registration system requires re-engineering processes to enable e-submission of records and verifying the authenticity of such records. This requires changes at both technical as well as legal levels." ([Tembo, Nkwae, and Kampamba 2014](#), 1)
2. Primary challenges= identifying parties, authenticating documents
3. Computerizing land registration systems can occur in conjunction with or parallel to paper formats and processes. See South Africa, Taiwan, Japan, France, Germany, England and Wales, and the Canadian provinces of British Columbia and Ontario. E- registration can take a variety of forms (e.g., uploading paper-based forms or populating electronic form), which can occur side-by-side with paper-based entries.

## E-registration/ digitalisation—South Africa

2016 South African Bill provides for:

- “an electronic deeds registration system;
- the electronic keeping of registers;
- the electronic lodgement of proof in paper and electronic form;
- the electronic issuing of deeds for information and judicial purposes only;
- the making of regulations in respect of electronic lodgement of deeds and documents and requirements relating to electronic or digital signatures;
- conveyancers to register as authorised users of the electronic deeds registration system;
- the electronic preparation of deeds and documents and the safe - keeping and filing thereof by conveyancers.”

## 5. Large-scale investments in land

1. Consider “land-based” framework
2. Overview of issues: LSAL in Ghana
3. Recommendations
  1. Incorporate reference to national framework/ guidelines
  2. Incorporate reference to international best practices
  3. Consider establishing and referring to single institution
  4. Consider adjusting the 10-acre minimum
  5. Address investor concerns related to accountability and transparency in land sector

## LSAL in Ghana

The Land Governance Assessment Framework identified the following LSAL issues in Ghana:

- Land deals done exclusively between investors and chiefs damages community livelihoods
- Environmental and social impact assessments are not carried out
- Companies do not fulfill CSR commitments
- Investors, government, and communities need clear guidance to follow in the LSLBI context

## LSLBI in Ghana

### Additional issues:

- Disadvantages caused by LSALf all disproportionately on vulnerable groups, including women and settlers
- The nature of rights to land use and ownership within customary tenure systems results in a lack of clarity for investors and a lack of recourse for people deprived of land because of LSAL

## **LSLBI: Existing Domestic Guidance**

- Lands Commission Guidelines on Large Scale Land Acquisition
- Ghana Commercial Agriculture Project (GCAP)
  - Model Lease Agreement
  - Community/Investor Guidelines

## LSLBI - Recommendations

- Include sections in Draft 4 of the bill to address LSLBI issues:
- **Reinforce existing domestic standards**
- Example language: “Investments in land, whether made by foreign, domestic, or government actors, must comply with existing domestic legislation, including permitting and environmental protection regulations, and must comply with guidance on LSLBI issued by government agencies.”

## LSLBI - Recommendations

- Reference and explicitly adopt international best practices
- Example language: “Investments in land, whether made by foreign, domestic, or government actors, must conform to international best practices, including Free, Prior and Informed Consent (FPIC), the African Union Guidance on LSLBI, and the Voluntary Guidelines on the Responsible Governance of Tenure.”



## LSLBI - Recommendations

- Establish a single government entity responsible for screening investors at the start of the LSLBI process
- Example language: “Investments in land, whether made by foreign, domestic, or government actors, must be registered with the Ghana Investment Promotion Centre. Any investment not registered will not be granted a license by any other government entity.”

## 6. Compulsory Acquisition

1. Public purpose
2. Additional issues
3. Recommendations
  1. Compensate all members of household
  2. Compensate occupants of public land (within limits)
  3. Address “public purpose” breadth
  4. Strengthen access to justice--appeals

## Compulsory Acquisition—Public Purpose

- The VGGT urge states to clearly define the concept of expropriation for public purpose
- The definition of public purpose in the Bill is broader than that in the Const (Art. 20)
- Could CI 220 (1)(b) be deleted?

## Compulsory Acquisition Additional Issues

- The Constitutional provision requiring compensation has not been adhered to
- The Constitutional provision requiring that land be used for the stated acquisition purpose has not been adhered to
- Squatters on public lands should be compensated when their livelihoods are affected by an acquisition

## Compulsory Acquisition Recommendations

- Mandate that compensation for compulsory acquisition be paid to all members of the household whose rights have been affected
- Example Language: “Compensation must be assessed in accordance with the results of an investigation that identifies all community members who will be affected by loss of land use, including women, children, and tenants.”

## Compulsory Acquisition Recommendations

- Increase access to justice by providing clear and accessible channels for appeal not just based on compensation, but also on the merits (e.g., as defined under CI 220)

## 7. Gender

1. Issues outstanding in the Bill
  1. Section 13
  2. Spousal registration and consent for conveyances—polygamous context?
  3. Informal marriages
  4. Joint ownership v. tenancy in common
2. Defence/ justification for spousal rights provisions

# Questions and Discussion





# FEED THE FUTURE

The U.S. Government's Global Hunger & Food Security Initiative

[www.feedthefuture.gov](http://www.feedthefuture.gov)