Land Security and The Poor in Ghana
IS THERE A WAY FORWARD?

A Land Sector Scoping Study

A SUMMARY

Commissioned By

DFID GHANA'S RURAL LIVELIHOODS PROGRAMME

And conducted by

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Note: The opinions expressed in this document are those of the consultants and are not necessarily those of the Department for International Development (DFID).

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Abbreviations & Terms Used

Abbreviations

AgSSIP	Agricultural Services Sub-sector Investment Programme
CBO	Community Based Organisation
DFID	Department for International Development (UK)
GoG	Government of Ghana
GPRS	Ghana Poverty Reduction Strategy
IIED	International Institute for Environment and Development (UK)
KNUST	Kwame Nkrumah University of Science and Technology, Kumasi
LANDNET	Land Network
LAP	Land Administration Programme
LSTPC	Land Sector Technical Planning Committee
MLFM	Ministry of Lands, Forestry and Mines
NLP	National Land Policy
NGO	Non Governmental Organisation
OASL	Office of the Administrator of Stool Lands

Terms

Abunu	a customary share contract arrangement by which the harvest or the land is divided into two parts, one for the landlord, one for the tenant
Abusa	an older customary contract arrangement by which shares are divided into three parts; either the crop or the land or the tenant eventually receives a third of the land as his own in return for developing the whole
Adjudication	a formal process of determining who owns or occupies which parcel of land
Allodial title	the ownership of the land itself; also known as radical title or root title
Common property	an area owned by all members of a specific community
Compulsory acquisition	enforced purchase, only carried out by Governments and usually only when the land is needed for a clear public purpose such as to make a highway
Derivative rights	rights that derive from another level of ownership – e.g. tenant rights, seasonal access rights, the rights of dependants to land
Eminent domain	the power Governments give themselves to enable them to compulsorily purchase land for public purposes
Freehold	the highest interest in land that can be held after an allodial title and which is most distinguished by being able to be owned for an indefinite period. Common law freeholds have their origin in English law and are defined by state laws. Customary freeholds refer to the land right of a subject occupant of customarily allocated lands
Leasehold	a state law interest in land which is like a freehold but has a limited term
Ownership	owning the land itself or interests/rights in the land

Parcel	a plot of land the boundaries of which may be defined
Pro-poor	acting with the interests of poor people paramount
Proprietor	owner – could be an owner of the land itself (allodial owner) or owner of primary rights in the land (such as a common law freehold, customary freehold or leasehold)
Registration	a formal process of recording land rights in a Land Register and which then becomes the primary legal source of determining ownership
Statutory tenure	systems for holding rights that are defined in state laws
Tenant	a person granted the right to use another person's land (or part of it) under agreed terms
Tenure	the holding of rights or interests in land – may be based on state law (statutory tenure) or customary laws (customary tenure)
Title Deed	a paper certificate which, using the information in an official land register, indicates who is the owner of a described and mapped parcel of land
Titling	systematic adjudication of land interests, recording them in a register and issuing title deeds
Usufruct	the right to occupy and use land

PART ONE
PREFACE

1 OBJECTIVE

1.1 This paper is a ***summary*** of findings arising out of a Land Sector Scoping Study commissioned by the Ghana Rural Livelihoods Programme of the UK Government's Department for International Development (DFID) in cooperation with the Land Sector Technical Planning Committee of the Government of Ghana (LSTPC) of the Ministry of Lands, Forests & Mines.

1.2 The summary has been prepared to facilitate dissemination of findings. Detail, examples, evidential documentation and references have been deliberately excluded to allow for brevity. These are all found in the full report available from the DFID Ghana Rural Livelihoods Programme.

1.3 The findings of the Study were presented at a workshop held in Accra on 2nd October 2001, hosted jointly by the Ministry of Lands, Forests & Mines and DFID. Opening that workshop, the Minister emphasised that –

> *We must give ourselves the time and space to encourage input from citizens in all parts of the country and make sure that we can learn lessons as we go along.* (Dr. Kwaku Afriyie, Minister, MLFM).

1.4 The Minister also announced that a cross-sector committee within Government would be formed to assist tenure issues to be more thoroughly tackled. "We may also have to rethink the role of Government in relation to land". "We need to put our own house in order." The Minister's address represented an important turning point in the formal handling of land sector development in Ghana.

2 BACKGROUND

2.1 The background of the Land Scoping Study is that the Government of Ghana, for the first time in its history, prepared and published a ***National Land Policy (1999*)** that prompts the improvement of tenure administration in Ghana. This has been followed by preparation of a framework for implementation over the next fifteen years (**Land Administration Programme** or LAP). The first five-year phase of that programme is currently under preparation, with World Bank assistance (LAP-1).

2.2 DFID, along with other donors, has been invited to contribute to implementation. In line with Ghana's overriding commitment to poverty alleviation, DFID is concerned to assist in ways that will *improve the tenure security of the poor*. This Land Scoping Study was therefore commissioned specifically to examine how far policies and plans as so far designed will achieve this. It also makes recommendations for developing a strategy to implement land policy in Ghana in a way which ensures that the benefits are reaped by all.

3 METHOD

3.1 The Study was conducted during August 2001 by an external consultant, Dr. Liz Alden Wily, a land tenure and rural development specialist, and a representative from the Institute of Land Management and Development (ILMAD) in KNUST, Dr. Daniel Hammond, a senior lecturer in land economy.

3.2 Giving the limited time available, the study represented a review rather than research. Main contributions derived from –

- Close examination of public documents, research papers and legislation.
- Discussion with a wide range of individuals from within and outside Government.
- Field visits to four districts in Brong Ahafo Region and two districts in Central Region. Selection of these regions was made in consultation with the LAP-1 design team, which was fielding a concurrent review in six other regions.

4 CONCLUSIONS

Overall conclusions of the Study are that –

4.1 TENURE INSECURITY IS WIDESPREAD

4.1.1 Insecurity of tenure affects a *greater proportion* of society than is generally recognised and probably the majority. This extends beyond the *economic poor* and those who hold *derivative rights* – that is, those who access land belonging to others: tenants, sharecroppers, youth and women. The main body of ordinary occupants are also affected. Insecurity occurs in both state law and customary law systems and especially **at their interface**; that is, where customary rights come under formal or informal conversion. This is widely occurring in peri-urban areas.

4.2 The Sources of Insecurity are Complex

4.2.1 The sources of insecurity are more *complex* than generally acknowledged and need to be directly addressed if security is to be improved. Loss of rights is widely occurring. Both customary and statutory mechanisms for securing rights in land are *insufficiently effective* to protect the full range of land interests in modern circumstances. Those with least status, knowledge or means are least well served. Insecurity often occurs when the norms in customary tenure change. The State itself is a source of insecurity in the manner in which it acquires private property.

4.2.2 Given the importance of secure access to the social and economic fabric of society, instability threatens if these issues are not resolved. In some parts of the country this has already resulted in episodes of violence.

4.3 Current Strategies are Inadequate

4.3.1 Recognition of the need for action has existed for some time. Strategies have been modelled upon *improvement approaches* rather than a fresh examination of the factors driving insecurity and therefore identification of the most effective action.

4.3.2 Government strategies have concentrated upon *extending* classical titling processes as the route to improving tenure security with little analysis of these to ensure that the strategies adopted meet the requirements of the majority or reflect the complex character of rights. No attention has been given to developing *alternative routes* to tenure security.

4.3.3 The importance of *popular involvement* in determining land tenure development has not been taken fully on board.

4.3.4 Attention to the tenure status of the *poor* is weak in national land and other poverty reduction policies. The role of tenure insecurity in creating and sustaining poverty is not explored. The importance of securing the land rights of the majority to ensure *stable and lasting growth* is not well developed.

4.4 Promising Conditions Exist

4.4.1 Promising conditions exist for more inclusive and effective tenure management to be developed. These include the fact that governance in Ghana as a whole is entering a new and more democratic phase that will impact upon the way changes are promoted and implemented at all levels. The renewed commitment to decentralised government holds important potential for community level governance to be developed.

4.4.2 Whilst there is a need for further development towards a *pro-poor empowerment* approach rather than the current emphasis on social service delivery**,** an overarching commitment to poverty alleviation is well in place.

4.4.3 There is widespread *readiness* and *demand* in amongst Ghanaians to more satisfactorily secure interests in land, and *political will* to help people achieve this.

4.4.4 Advantageously, clear socio-institutional *constructs* of community exist in Ghana upon which local tenure development may draw and evolve. In the process, 'customary' tenure will have the opportunity to modernise into more fair and democratic modes. This will afford traditional systems as a whole an opportunity to retain their position in modern society.

4.5 Reform Rather than Improvement is Needed

4.5.1 Already the *National Land Policy* has served one of its important functions in generating thinking as to ways forward and prompting proposals for change. Arising out of this is the recognition that a more thorough overhaul of the tenure sector may be needed than was originally envisaged. Improvement and mitigation will not be enough if tenure security is to be widespread and durable.

4.5.2 Resting tenure security solely upon improving opportunities for rights to be registered and titled will not be sufficient. This approach is unlikely to be cost-efficient or successful in its current form, and may be an unnecessary investment in some cases.

4.5.3 A wider range of interventions to enhance security would be useful to consider. Significant differences may be achieved, for example, through new legal definition of rights, reform in local tenure procedures, development of more accessible dispute resolution mechanisms and tackling specific elements of insecurity such as those surrounding the rights of wives over productive land within the household.

4.5.4 At the same time, systems to enable people to have their interests expressed in written records that have integrity will remain one of the cornerstones of tenure management. Every aspect of the principles and process of registering rights need revisiting. This can be only achieved successfully if it is undertaken hand in hand with landholders themselves.

4.6 A Community-Based Approach is the Way Forward

4.6.1 In order to move soundly forward and place land relations and their management on a stable and lasting footing, a devolved and community-based approach will need to be fostered. A main objective of this approach will be to assist landholders in different localities to put locally-accountable and sustained systems in place. Ultimately, Government's role in such systems will be one of oversight, ensuring that procedures are fair, democratic and fully accessibly to all.

4.6.2 The scope for community-based approaches to tenure development is enormous. This will be particularly important in respect of two thirds of the population who operate within rural economies. It also includes those who live in peri-urban areas. Whilst developed urban settlements require different strategies, these also need to include the adoption of local participatory procedures in order to resolve the severe tenure constraints facing the poorer majority.

PART TWO
FINDINGS OF THE STUDY

1 LIMITED SUPPORT FOR ADDRESSING THE TENURE INSECURITY OF THE POOR

1.1 ANALYSIS OF POVERTY IS WEAK

1.1.1 Much work has been undertaken in Ghana to identify the poor in both the rural and urban areas and to develop a national strategy towards poverty reduction (*Ghana Development Strategy for Poverty Reduction* (March 2000) and *Ghana Poverty Reduction Strategy (GPRS) Policy Framework* (First Draft July 2001)).

1.1.2 So far definitions of poverty have centred upon *economic poverty* rather than socio-institutional disadvantage or examination of the factors that drive or sustain poverty, such as insecure access to land resources, so central in an agrarian economy.

1.1.3 Findings from this Study suggest that *land related vulnerability* extends a good deal further than those who have very low incomes or exhibit the symptoms of poverty. Predictably, the extreme poor and most vulnerable will bear the brunt of tenure insecurity. However, others who are also land vulnerable, may become impoverished when land administration reform is implemented. This second category is broader than the first and includes women and youth, and all those who live by using land belonging to others (tenants and sharecroppers). It also may include those with low voice or status in matters of tenure.

1.1.4 The facts of the *economic poor* alone are already startling. The GPRS identifies these as embracing more than 40 per cent of the population overall and sometimes more than 80 percent of populations in the north. Polarisation in wealth is evident with a rising

proportion entering 'extreme poverty'. Rural women and children are a dominant group, their poverty manifest by higher rates of illiteracy, child malnutrition and mortality.

1.2 A WELFARE RATHER THAN EMPOWERMENT APPROACH

1.2.1 Without clear investigation as to the linkages of tenure insecurity with economic poverty, the GPRS process has so far failed to offer structural remedy or to fully explain how its chosen overarching strategy – the promotion of private sector-led commercial production – will improve the resource position of the poor. There appears to be an assumption that polarisation in wealth and in resource access will not be accelerated.

1.2.2 With lack of attention to this likely trend, no strategy, no action, and no investment is presented to ensure that private-sector led growth will not have these results. Instead, welfare-centred mitigation is proposed with extension of health, education and other services to remoter and poorer areas of the country. With the important exception of supporting decentralised approaches to governance, the GPRS (July 01), does not offer adequate routes through which the poor may be empowered and supported to improve their plight themselves.

1.3 PRODUCTION WITHOUT ATTENDING TO LAND RIGHTS (AGSSIP)

1.3.1 Unfortunately, agricultural strategies as laid out primarily in the *Agricultural Services Sub-Sector Investment Programme* (AgSSIP) mirror these analytical inadequacies and so far do not make clear room for addressing the land security problems that entrench poverty and limit productivity among the poorer half of society. Nor indeed, are issues of tenure substantially addressed.

1.3.2 Ideally, AgSSIP should seek to directly improve the land security of a lead group of rural producers, women, through whom modernisation of agriculture in the smallholder sector will be largely reliant.

1.4 A National Land Policy that is not Pro-Poor

1.4.1 A contributing factor to wider shortfalls is that the *National Land Policy 1999* (NLP) does not itself offer a clear pro-poor vision of enhancing land rights and thus does not lay a sound foundation for growth with equity.

1.4.2 Two shortfalls of the NLP are -

- That it does not directly deal with the difficulties faced by the economically and institutionally poor experience in securing their land rights.
- That the thrusts of policy are diverse and by no means consistent.

1.4.3 The overall strategic direction of the NLP points to an expansion of existing land registration procedures in order to quickly facilitate investment. Again, the assumption is that titling procedures structured around the requirements of investors will ultimately benefit the majority, rather than exaggerate pools of insecurity and heighten poverty.

1.4.4 At the same time, the NLP is benign in many of its stated principles. It is also helpfully emphatic that further policy development will be required beyond its framework statements. In addition, the commitment of the NLP to **community participation** offers an opening for more inclusive and developmentally sound strategies to land security overall, including the establishment of locally founded land administration systems.

2 Weak Policy Process for Change

2.1 Policy process to date

2.1.1 It is not easy for any one set of institutional actors to know where and how change can be meaningfully and safely implemented, and particularly in matters as complex and important to people as land relations. Arguably, opening policy and strategy development to genuine participatory processes is the single most important challenge that faces those endeavouring to adopt more modern and democratic processes.

2.1.2 The history of arriving at the NLP is instructive. Officials were all too well aware of the grave centrality of tenure to social, and productive relations and took many years and much care towards devising the policy, beginning with the Law Reform Commission in 1973. A variety of experts were consulted. But at no time were the issues troubling officials passed to ordinary citizens to consider. No commissions of inquiry moved around the country finding out where people's concerns lay or asking what actions they believed were needed. Anxiety to avoid contention rather than to explore and resolve the sources of contention dominated. Even the major body of tenure administrators in the country – Chiefs – were not brought more than tangentially into the process of decision-making.

2.1.3 Unsurprisingly at the end of the day the Policy could only be presented as a *framework* for further policy development, and one which looks inevitably to improving the

instruments and procedures that already exist, as its strategy. This administratively bounded approach has tended to continue with action planning reaching little beyond the official ambit, a handful of consultative meetings aside.

2.2 Moving forward

2.2.1 With hindsight, and with a steadily more democratic environment opening opportunities, a gathering number of officials are themselves pondering the effects of such 'policy closure' upon the design of strategies and programmes. The danger now is to confuse dissemination and consultation on decisions made with genuinely participatory approaches. Therefore what is so important about Minister Afriyie's exhortations is not only that there be inputs from a wider range of society but that action itself be designed and implemented in a 'learning by doing' approach.

3 Shifting Customary Norms

3.1 Polarising interests

3.1.1 An important finding of the Study is that lack of registered title does not constitute the only or even major constraint upon land security of the poor. The hierarchy of rights currently considered fit for registration may well jeopardise a host of land interests, should their holders wish or be able to register interests. A more pervasive cause of insecurity may be detected in the way in which customary norms are shifting to support an elite capture of majority interests. Four major ways in which these norms are changing are outlined in Table 1. These are the main themes explored in sections 3.2 to 3.5 of this report.

3.1.2 Land shortage and the rapidly rising value of land as a tradable commodity have been central to this trend. Whilst this began long ago, it has seen pronounced development in recent decades. The result today varies from place to place but in some cases demonstrates quite marked departures from what is 'traditional' in the customary land sector. The State, through state law and policy, plays its role. Predictably, the poor and the institutionally weaker in society (those with least status or voice) have been the most adversely affected.

3.1.3 Table 1 examines the trend occurring in four different spheres of relations. The third column is indicative of a future trend should norms regain traditional values and thereby be modernised to tackle weakening majority rights.

Table 1: Changing power relations over time with respect to land rights

Sphere of relations	Past	Present	Future?
Chiefs-subjects (section 3.2)	Chief as custodian Subject has secure rights	Chief as landlord Subject rights may be overturned at will	Chief as custodian Subject rights secure
Communities-individuals (section 3.3)	Unallocated lands considered co-owned	Benefits of communal properties reaped by individuals	Communal rights redefined as private group property of defined groups of persons – commonhold tenure
Settlers- natives Tenants-landlords (section 3.4)	Settler/tenants could secure stable rights	Unstable rights	Stable
Men-women (section 3.5)	Women with secure access rights	Insecure access	Equitable security

3.2 Chiefs and Subjects

3.2.1 The framework for these shifts is the current formulation upon which land rights are defined in state law (*Land Titles Registration Law 1986*). This expresses a customary distinction between the radical ownership of the land itself and rights or interests in the land. In most countries ownership of the land is held by the Head of State in trust for all members of the nation (for example, by the Queen of England on behalf of her subjects, or by the Presidents of most African states on behalf of their citizens). In Ghana this radical title is referred to as **allodial title** and in stool and skin areas it is generally vested in Chiefs on behalf of their subjects. The main effective interest (ability to actually occupy and use the land) that may be held in customary lands in Ghana is termed a **customary freehold**. This is similar to a common law freehold.

3.2.2 The focus of current difficulty is in –

First the benefits being attributed land owners (**allodial owners**) as compared to those who are acknowledged as owning customary rights of occupancy and use (**customary freeholders**);

Second inattention to the implication of stool and skin ownership as ***communal* ownership** – that is, ownership of property in which all members of the stool community rightfully share; and

Third the meaning of **customary trusteeship** (held by the chief), often being re-made in ways that are unfavourable to the beneficiaries of the trust – the ordinary occupier.

3.2.3 **Peri-urban areas is where shifting norms are particularly marked.** The catalyst to the disadvantageous interpretation of norms referred to is the rising value of land and its establishment as a transferable commodity. This gives rise to questions as to who in

customary society is capturing these cash values and on what basis. Expectedly, this is most visible in the growing number of cases where ***rural lands are being transformed into urban settlements*** and where accordingly land occupancy is being dramatically reconstructed to maximise income benefit.

3.2.4 In sum, in many of these cases (but by no means all) the rights and values normally attributed to a freehold (in this case a customary freehold) and upon which transfer of values would expect to be normally based, are being lost in favour of the rights and benefits due the *owners of the soil*.

3.2.5 If the 'owner of the soil' was understood as meaning 'the community as a whole' then this would not matter as customary freeholders would eventually receive the benefits of sale of what is, at the end of the day, *the right to occupy and use land*. Where transfers have been undertaken on this basis – and there are many cases where this has been so – the main question confronting the trustee is how best and most fairly deliver the benefits to the owners. Use of the income for road and water service provision has been a main route.

3.2.6 However, in all too many cases, unfairness is exaggerated by, first, dismissing the value of the crucial right to occupy and use land (including even the primary freehold right) and placing all the value in the sale of the allodial title; and second, by forgetting that the real holders of the allodial title, are not Chiefs but their communities. In this way, some Chiefs may be seen to abuse the trust they hold for the owners/occupants.

3.2.7 It is unhelpful, in our view, that the *Land Titles Registration Law 1986* aids and abets this transition from communal trust vested in the chief, into an individualised and material interest by defining allodial title as an interest in land and arguably endowing it with virtually the attributes of freehold itself. The combined effect is that chiefs are given the freedom to reap undue benefit from the sale of the **central asset** of the land, the right to occupy and use the land for a potentially unlimited period (customary freehold). To help illustrate the point, it is as if the Queen of England as allodial owner were to sell the freehold lands of her subjects, and then, to add insult to injury, retain the benefits of these sales for herself.

3.2.8 Predictably, poorer persons and those with low status or voice are particularly adversely affected. When agricultural lands come under development as urban residential plots, some have found that their interest in the land is only compensated with payment of the value of the crops they have lost, and/or they may receive only one house plot whilst wealthier or better connected persons may receive two or more plots. Being poor already, and having lost some land which makes growing enough to feed the family more difficult, they are often unable to sustain the one plot they have received. In times of economic stress may sell this, becoming landless and even poorer.

3.2.9 In addition, those who hold rights in land that are *less* than the customary freehold often find themselves excluded from the land redistribution altogether. This mainly affects tenants and sharecroppers, including those who have farmed in the area for several

generations. Widows, divorcees and others who have occupied and used land as dependants of primary right holders also often lose that land and hence their main source of livelihood.

3.2.10 Whilst some Chiefs have been preoccupied with securing the values of land for themselves and have rewarded customary freeholders only with the value of the crops they have lost in the transfer of land rights, there are others who have been tangibly more equitable in their decision-making and redistribution of land. The Study also found a growing number of traditional leaders who are troubled by the change in customary tenure taking place as a result of commodification of land. Land officials increasingly urge chiefs to limit the amount of redistributed land they retain for themselves to one quarter or one third of the total area under their jurisdiction as trustees.

3.2.11 It is clear that a much more thorough re-examination of the matter is now due and one which will require the support of improved state law. Chiefs as a matter of course *must be involved in the decision-making* process and through this will have a long-needed opportunity to restore traditional values to the operation of customary tenure and in the process bring the system into a more democratic and modern mode. Without this, customary tenure as a whole runs a risk of being thrown out altogether as a workable regime, as ordinary landholders increasingly find ways to secure their land by alternative means.

3.3 Communal Lands and Communities

3.3.1 In a subtler way, the same effects of commodification of land are being felt in the handling of **local commons.** Generally these include common pasture, swamps and forestland.

3.3.2 Whereas tradition in most customary systems awards subject owner/occupants an automatic right to use these resources. Where these obtain high cash values, an elite is often capturing the benefits. This elite comprises commercial timber harvesters, the State itself, and Chiefs. State policy and law collude. These sets of actors are allowed to reap an undue level of benefit from the use of communal properties which should rightfully be controlled and obtained by the customary owners of these lands – ordinary community members.

3.3.3 Whilst state law supports the appropriation of these values, customary norms are also realigning themselves to make this acceptable. Specifically, the undisputed right of Chiefs to allocate lands may therefore become a right of ownership of unallocated lands, and hence receiver of its values.

3.3.4 Communal lands have a wide range of values (sand, stones, riverbed palms, timber, etc.) and an elaborate revenue collection system has been put in place for these through which injustices are being expressed.

3.3.5 **The values of forestland are particularly high and it is in the handling of these values that the problem is best illustrated.**

- First, is the fact that the State has taken over control of forestland as both manager and regulator of their use. This jurisdiction is exerted both in forest reserves and off-reserve forestland (Concession Act 1962).
- Second, revenue generated from their use goes first to the State (Forestry Commission). Having retained around 60 percent of the revenue (in order to cover management costs and to develop itself as a viable management institution), the remaining 40 percent is delivered to the Office of the Administrator of Stool Lands (OASL). The OASL retains ten percent to cover its administrative costs.

3.3.6 The remaining revenue is distributed by the OASL according to the following constitutional formula –

- 25 percent to the stool 'for the maintenance of the stool in keeping with its status';
- 20 percent to the traditional authority (generally the paramount Chief and his council); and
- 55 percent to the District Assembly (Constitution 1992 Article 267 (6)).

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3.3.7 It is in the construction of this formula that so great an opportunity is given for Chiefs to forget that they do not own the commons themselves but hold these in trust for the real owners, members of their communities (of which they are part).

3.3.8 The source of problems for communal owners will be obvious –

- *First*, in the implication that the stool in this instance is the Chief;
- *Second*, in the lack of any requirement that he distribute the revenue to the communal owners of the property from where revenue was generated. Instead it is actually encouraged to use this revenue to enhance his status (a common use of these funds is for building new palaces);
- *Third*, in that the paramountcy and/or council receives a share with similar lack of instruction to directly distribute this among communal owners; and
- *Fourth*, in the excuse provided for Chiefs to avoid any obligation to share the income with members of the community through the delivery of 55 percent to the local government (District Assembly). Chiefs may safely argue – and do – that the purpose of this is to channel benefit to residents of the District, if not specifically to the local owners of the communal property from which the revenue originally derived.

3.3.9 **These arrangements express and endorse profound upward concentration of authority over land, from people to Chiefs and from Chiefs to State.** The effects of these arrangements go beyond the diminishment in the real value of customary freehold interests in respect of the lands they own together as a community.

3.3.10 **The benefit sharing arrangements also contribute to severely weakening the security and management of the resources themselves.** This is illustrated in three ways –

- *First*, land grabbing is encouraged as individual members of the communal property-owning group seek to bring as much common property as they are able under individual

rights, thus circumventing the emerging orthodoxy that forestlands belong (only) to the Chief. Once customary freeholders become fully aware of the implications of new forest laws that all trees on farmland may be considered private property,[1] this trend may be expected to accelerate.

- *Second*, the Ghanaian state (and specifically, the Forestry Commission) is losing an invaluable opportunity to provide an incentive through which forestlands may be actively protected and managed at the local level – a direction increasingly recognised as imperative if these resources are to be sustained in cost-effective ways.
- *Third* and related, the natural evolution of commons into viable demarcated group-held properties (commonhold) is being truncated. Customary tenure itself is not being allowed to gain a modern face in this respect, contributing to the demise in its utility.

3.4 Natives and Strangers; Landlords and Tenants

3.4.1 It is not only customary freeholders who are affected by changing conditions and shifting norms. Secondary or 'derivative' rights – especially those of settlers and tenants – have also seen declining security and sharply rising costs.

3.4.2 Agricultural migration has a long history in Ghana and has played a crucial role in extending production, not least because a common objective of migrants is to farm as much as they can. Although figures are not known, migrant/settlers often represent the majority of farmers especially in forested zones. As land has become scarcer, migrants are less welcome and their land access has become less secure, with consequent effects upon productivity.

3.4.3 Custom in many parts of Ghana has long dictated a distinction between those who are historically members of the social group (**natives**) and those who come to settle in the area (**strangers**). In the past, it was relatively easy for migrant settlers to secure a 'virtual' customary freehold over land they were allocated, had paid 'fees' for, and have since farmed for several or more generations. This was less than a customary freehold in that migrants continued to pay an annual tribute to the chief as acknowledgement that they were not native to the area/society. Nor did they gain the benefits received by freeholders who were members of body of communal allodial owners. These benefits include the right to help themselves to more of the shared resource without permission (i.e. unallocated lands) or to harvest large amounts of timber or other products from those communal properties.

3.4.4 Today, new migrants find difficulty accessing land and do so on severer conditional terms, for shorter periods and for payments which are often equivalent to having purchased the land outright but which do not yield those results. The operating relationship is one of tenancy with the Chiefs acting more as *landlords* collecting 'rent' than *allocators* (collecting fees or exacting only customary tribute). This may be so even

[1] Timber Resources Management Act 1997; s.4 (2) and the Forest Plantation Development Fund Act 2000; s. 3 (3)).

where the land acquired derives from a local owner, so that a settler may have two landlords in effect, and be required to pay two sets of premia to access the right to be a tenant, and then pay two sets of rent annually, and in addition, annual tribute to the Chief. To add to difficulties, the agreement may itself be curtailed, either to allow the owner to make more money from another tenant or to extract higher fees.

3.4.5 Even tenants who derive from the local community (subjects) find the terms of their tenancy increasingly less stable and more expensive. Some who begin their farming enterprise as sharecroppers have more difficulty securing the share of land they were originally promised. Land they were allocated but have placed under fallow runs a particular risk of being retrieved once cleared. Changes in crops (such as from cocoa to oil palm, or use of a swamp area for paddy) may constitute an excuse for the landlord to retake the land or extract more shares or rent. Boundaries come under increasing dispute.

3.4.6 Site studies show that modern settlers fear to plant timber or shade trees on the land and are reluctant to invest in productivity in other ways. Input of labour as a whole may be constrained in knowledge that the agreement made with Chief and/or landlord (or the fathers of either) may not be upheld. For their part, landlords and Chiefs say that migrant tenants in particular are not paying their dues, not adhering to conditions agreed and may be found to be sub-letting the land to other migrants.

3.4.7 For some time now there has been public recognition of the tensions abounding in these relationships. A main objective of the *Land Titles Registration Law 1986* was to help settler/tenants secure occupation through registration of their interest on the proprietor's file in the Registry and for this to appear on the owner's title deed. Very few tenanted lands have been registered, not least because of costs. Still, the strategy was furthered by a public *Committee on Tenant/Settler Farmers* in 2000 which recommended that settler/tenants be awarded Contract Leases in their own right. The costs of realising this are substantial and involve not only survey, legal and administrative fees but in addition substantial payments to landlords/Chiefs to allow the interest to be registered in the first instance.

3.5 Shifts in Access to Land Rights for Women and Men

3.5.1 Conventional wisdom holds that Ghanaian women enjoy greater tenure security than their sisters elsewhere in the region and beyond. To an extent this is correct. Many agricultural systems allow for women to cultivate independently, some permit daughters to inherit land and there are few constraints in principle against women purchasing their own farms or house plots - if they have the means.

3.5.2 However, the fact that women *as a whole* have been identified as a generally *poorer* sector in the population than their male counterparts, gives pause for thought, and links directly to the lesser right and role the majority of women play in controlling what still remains in Ghana the primary means of production – land.

3.5.3 Any pretence that the above customary permissions to women constitute equity is being steadily swept away as the realities of the generally weaker position of women in productive relations manifests is clear disadvantage (the important *social* roles of queen mothers notwithstanding). Naturally, the adverse effects, as always, are mostly upon poorer women. The change in land rights has occurred slowly and is integral to changing land relations overall in which all rights to land have seen reconstruction.

3.5.4 Most directly affecting women has been the *emerging polarisation between rights of ownership and rights of access.* This is both driven and supported by acute individualisation in the holding of rights, and which has seen household heads (generally male) be perceived as the **owners**, and women as only **users** of that right. In this way the family context of owning the right to occupy and use land has been eroded. The result is that accustomed access to land has become more of a *benefit* than *right.* As land becomes scarcer and more valuable, even this benefit becomes less easy to secure.

3.5.5 The upshot of **declining security** for women has not gone unnoticed in Ghana. The 1980s saw two important laws promulgated to help women secure customary access.[2] These had little effect given (a) low dissemination and (b) because they sought to coerce social responsibility by the head of household or successor and did not tackle the structural basis of gender insecurity in tenure relations.

3.5.6 Meanwhile, manifestations of female land insecurity is evident. Lands previously reserved for women's access in some societies are now being reallocated to (male) cash cropping. It is becoming increasingly rare for daughters to inherit at least small plots of land as often meeting sons' needs is seen as more important. Where a daughter does receive land, she is rarely able to sell this but is holds it as a family reserve to be eventually given to brothers or other male relatives in need.

3.5.7 Even where land is available for females in migrant areas, demands upon their labour for the main (male) farm, limits their capacity to take up this opportunity. And, as both cause and effect of the above trends, few women exert equal control with their husbands over the cash returns from farming/their labour.

3.5.8 Widows and divorcees find it less easy to hold onto any part of the land they helped develop.

3.5.9 Nonetheless women remain in Ghana today a main source of land-based productivity, itself the primary source of economic growth. Upon this basis alone, it would seem desirable to assist these producers secure equitable interests in the means of production. This presents a critical avenue to growth and one that would at the same time address one of the underpinnings causes of poverty. An emerging route towards this is some countries is towards a legally enforced presumption of **spousal co-ownership** of primary household property. This is being backed up by laws that forbid the eviction of widows, divorcees, and disallow sales of household land without written agreement of all spouses.

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[2] Intestate Succession Law 1985, Head of Family Accountability Law 1985.

3.6 The Youth

3.6.1 Polarising shifts within domestic relations do not only re-align the rights of men and women. Generational distinctions to the disadvantage of especially the **youth** have also been noted. Broadly, the upshot is that young men as well as young women are finding customary rights to a share of the communal resource un-rewarded or at least a good deal more costly to secure from their elders. Even fathers may be unwilling to allocate a share of land to their sons where they may gain an income from leasing these instead to tenants. In succession, nephews who in the past could expect land, may now compete with their cousins. Being young and mobile tends however to lessen the impact upon livelihood. Young men in particular may travel to find land of their own to rent although this presents costs which defeat those from poor families. And, as noted above, even sharecropping in the local area increasingly requires a down payment to be activated.

4 The State as a Source of Insecurity

4.1 The role the State plays through policy and law in endorsing some of the less equitable shifts in customary norms has been noted above. There are in addition other ways through which the evolution of fair land relations is being constrained by the State, usually unwittingly so. For example these include -

- The slow development of institutions of *governance at the grassroots*, through which populations may gain voice and act in concert to secure their rights and livelihoods;
- The out-dated manner in which new policies and laws have been made and (not) widely disseminated; and
- General unawareness in the past towards the importance of participatory approaches to problem-solving on matters of tenure.

4.2 Compulsory Acquisition Procedures

4.2.1 The central issue of concern is the way in which the State has exercised its right to compulsorily acquire lands. Shortfalls and injustice in this area is acknowledged by the NLP as one of the nine main problems facing the sector.

4.3 Each case has its own origins and effects. At one extreme is the unusual situation of populations in 46 villages in the Twifo-Hemang area of Central Region who have been tenants on their own land for more than one hundred years, and where public failure over the last decade has been their lack of ability to act decisively rather than fail to acknowledge that these lands must be returned. At another extreme are cases of virtual ‘theft’ of occupied lands (such as in the case of Ofankor in Accra in 1978). Often public purpose is not even achieved.

4.4 More widely has been a practice of compulsorily acquiring lands for purposes that are not well thought through and not sustained, followed by failure to return the land to the original owners. Instead these may be reassigned, sometimes to private interests. Underlying most outstanding cases has been routine failure to pay compensation for lands acquired either in full, or promptly, or to pay interest on the amounts being withheld. This situation may continue for decades. Cases in the courts multiply. The Valuation Board estimates that claims go back sometimes 30 or more years. Backlog in payments runs into many hundreds of billions of Cedis.

4.5 Inevitably, those most affected by being evicted from their lands and losing the source of livelihood are the poor, who have least voice to secure some share of such compensation as has been paid. The fact that most rights are compensated for only in terms of the value of the standing crop adds significantly to distress and grossly under-compensates the real losses incurred.

5 Classical Titling Approaches are not Serving the Poor

5.1 Taking Steps

5.1.1 Problems being experienced in the customary sector towards honouring poorer people's majority rights have been outlined above. An important part of the statutory land law system is to provide other opportunities for tenure to be secured. *The Land Titles Registration Law 1986* was an important step towards this. It enabled a wider range of interests to be registered than had been the case previously. In addition, it added definition to some of these rights, and sometimes in ways that were advantageous to the majority/poor. In particular, the customary right of occupancy held by the majority of citizens was defined as a customary freehold.

5.1.2 Problematically, all too little attention has been paid to the *accessibility* of opportunities to register such rights, or to the mechanisms and investments that is needed *to operate and sustain* systems of registered rights in the first place. Added to this, doubts are arising as to the *appropriateness* of these imported regimes in agrarian conditions and particularly into those where land relations are exercised through customary norms. For up until at least the present, the conventions of titling against registration (issue of title deeds) has not had the effect intended, but has de-secured many rights and particularly those of the poorer majority.

5.2 Reconstructing and diminishing rights

5.2.1 Instead of legally entrenching rights arising out of customary patterns of landholding, what tends to have occurred (such as in countries like Kenya where formal entitlement procedures have been most widely implemented over the last 40 years), is that many rights are *reconstructed* in ways that either result in their loss (such as common property

rights, household rights and a host of derivative rights) or *conflict* with social norms (such as in matters of inheritance). Confusion and contention, injustice and dispute, commonly results. It is no surprise that the number of land cases reaching the courts have tended to increase rather than decrease with widening opportunities to register rights.

5.2.2 An underlying driver is the way in which conventional systems for titling encourage **individualisation** and may even coerce this through practice which sees the name of only one person registered as owner. All too little opportunity is afforded for spouses, households, extended families, clans, villages, communities or other entities to be registered as co-owners. The focus upon primary rights also results in a weakening of derivative rights such as those held by long term tenants, or permitted occupiers of different kinds, whose interests are not always recorded.

5.3 A COSTLY SYSTEM TO SUSTAIN

5.3.1 The system for securing and sustaining rights through registration is itself often unstable given the level of bureaucracy and expense needed to run it and the opportunities this provides for corrupt practices to emerge. Even where the costs of the process of initial registration have been borne by the state, often landholders do not have the means to collect titles that have been issued. Where survey and other costs are borne by the landholder, the situation is made worse. It is not surprising that even where registration has been made compulsory (such as in Kumasi and Accra) that the poorer half of the population is in reality unable to participate, or at least not on equal terms with those who are better off.

5.3.2 Even greater difficulty is encountered in keeping the system up-to-date and therefore trustworthy. Over time the proclaimed sanctity of 'title deeds' becomes hollow. This is not just because of the kind of systems needed to maintain records but because the costs of registering changes in ownership (such as through inheritance or gift, as well as sale), or tenants, or other shifts in the pattern of rights originally recorded, is beyond many people's means. In Kenya, for example, it is estimated that less than 20 percent of registered properties are still in the hands of those registered as the owner and whose name appears on the title deed. The legal and real owners are different. Disputes multiply and the courts are unable to rely upon the Register or Title Deeds. Those seeking to buy lands are similarly unable to rely on the Title Deed being offered. Instead they seek verification of ownership by interviewing neighbours and local leaders.

5.4 QUESTIONABLE RELIANCE UPON SITE PLANS

5.4.1 Unfortunately, the problem is made worse by the fact that the site plans upon which the parcel of land is defined in the register are rarely useable by farmers who do not have the survey equipment needed to verify the boundaries according to the readings indicated. The land actually sold may not mirror that described on the title deed, a problem which only increases over time.

5.5 A weak basis for getting loans

5.5.1 For any one of the above reasons, the claimed utility of title deeds as a basis upon which the farmer may secure a loan, can be severely curtailed. This is in any event decreasingly on offer with respect to smallholder properties, banks being understandably reluctant to evict those who default on their loans or to bear the substantial costs of enforcing this through the courts, a cost which can easily exceed the value of the property in the first place.

5.6 An Inequitable opportunity

5.6.1 In the Study, the issue of cost of establishing rights through statutory means arose repeatedly, and goes a long way to explaining why so few farmers have taken up the opportunity. It is self-evident that the high cost of registration of rights more or less automatically excludes the poor. The very act of establishing the right in state law (and getting a title deed) is coming close to the costs of buying the land, hardly an expense an existing owner will sensibly want to incur.

5.6.2 Importantly, the sources of these costs are by no means restricted to expected service fees (legal, survey, registration etc.). Just as great a cost may be incurred in payments to customary leaders (chiefs). Setting aside the issue of 'rent-seeking', the significance of this should not be overlooked; for what appears to be happening is that owners of land interests are paying *not* for that interest to be recorded, but for that interest to be *released from the customary domain.* Clearly, the system that is operating in Ghana today is competing for, rather than embracing customarily-defined rights in land, and in the process setting up a whole new host of insecurities.

5.6.3 This is far from the intention of land planners and suggests that a fresh look is needed to identify how the many millions of land interests of Ghanaians may be secured. Should the registration of land rights continue to be promoted as a route towards land security? It goes without saying that landholders themselves will need to be involved in this decision-making and that systems developed will need to be locally legitimate and locally managed. Not only the manner in which rights are identified and recorded, but also their nature, will need rethinking. Ultimately however, it will be necessary to recognise or provide for mechanisms of security that do not rely solely upon registration.

6 Useful Learning Experiences Elsewhere

6.1 Land Reform Underway

6.1.1 The Study found that many of the concerns facing tenure relations in Ghana today are being confronted by many agrarian states including those on the African continent. Therefore there is scope for learning from each other and avoiding some of the more expensive mistakes or unintended consequences.

6.1.2 Tenure problems are reaching a crisis point more or less all over Africa and for often similar historical reasons. Indeed, a wave of **land reform** is underway with more than twenty different states devising new land policies and laws. Instructively, the apparent catalyst for this is the forging of more democratic relations in society as whole. The effects are being felt across many sectors. Changes in systems of local level governance and natural resource management are proving to be particularly closely linked to changes in tenure management. A consistent direction is towards improving the right and role of ordinary members of society in determining and controlling how their resources are used and transferred. Community-based mechanisms to support this are slowly developing everywhere (eg Tanzania, Uganda, Eritrea, Ethiopia; planned in Malawi, Lesotho, Swaziland).

6.2 Process

6.2.1 Whilst the route to these changes are various, some of the more successful tenure developments are arising through public inquiry and consultation. Often commissions of inquiry have moved methodically through the country, and from stakeholder group to stakeholder group, to find where concerns lie and what people themselves want to be done. Making change in tenure is proving difficult at best and those who have failed to make decisions based upon locally-based resolution are finding themselves returning to the drawing board (eg Uganda, Zambia).

6.2.2 Even though each state has its own problems to address and its own agenda, the commonality of trends is worth noting. A traditional drive towards a single tenure system under state law is giving way to acceptance of *diversity*. Distinctions between rural and urban areas are often more tightly drawn, and the range of systems through which rights may be legally held and registered, expanded. Coercion is giving way to *voluntarism*. Centralised land administration is giving way to *locally-organised and sustained systems*. 'Big bang' approaches which seek to solve problems all at once are giving way to *incremental* and '*learning-by-doing'* approaches.

6.3 Substance of change

6.3.1 In accordance with these shifts, the role of the State in management of private land affairs is shifting towards one of facilitation and oversight. Longstanding orthodoxies as to how interests in land may be best defined, regulated and transferred, are breaking down. Rather than being squeezed into state law forms, customary systems are often being given new licence to operate but within more modern and democratic frameworks (eg Kenya).

6.3.2 Institutionally, many of the above are being expressed through the removal of tenure administration processes out of Government and into semi or fully autonomous institutions at the local level, set up and managed by landholders themselves. Keeping land cases out of the courts is also a primary objective with many countries providing for informal tribunals at the local level (eg Tanzania, Uganda, Namibia).

6.3.3 Issues of equity are widely to the fore, with enhanced regulation against customary or other processes that permit dispossession. The State itself is widely coming firmly under control in its powers of compulsory acquisition and rules for investors are being more carefully defined. Custodianship at all level is being strongly enhanced with limits being placed upon opportunities for extracting fees or taxes out of landholding. Weaker rights and especially those of women are sometimes being quite dramatically enhanced (eg Tanzania, Uganda, Ethiopia).

6.4 Lessons

6.4.1 Whilst all countries on the African continent are still at the beginning of what is anticipated to be a long process of reform, some are further along this road than others. Useful experiences are emerging. On the whole these so far confirm the importance of arriving at solutions in public participatory ways, of using existing institutions and processes as the foundation rather than creating new institutions, and of the need for constant vigilance as to costs of 'improved' systems or opportunities. Whilst political will to support reforms is proving essential, even more essential is for changes to have a popular base and to be driven by landholders themselves. Beginning at the local level and building upon good practice seems more effective than centrally devised solutions. The extent to which changes in law alone can enhance security, has been noted, so long as those changes are widely disseminated and systems are in place for those who break new terms, to be held accountable.

PART THREE
Suggestions For Moving Forward

1 Adopt New and Devolved Process

1.1 Making Community-Based Tenure Management the Objective

1.1.1 The outstanding need is for a rather different approach to tenure development to be adopted than has been the practice to date. This is particularly important with respect to the estimated 80 percent of Ghana's land area under rural production and customary management and involving the majority of the population (two thirds of all households). However the severe complications of land development in urban areas which have remained unresolved for decades despite repeated initiatives (including compulsory registration, notably unsuccessful so far in the Accra area), suggest that many elements of a devolved approach may be critical also in urban areas.

1.2 Adjusting the Role of Government from Service Delivery to Facilitation for Empowerment

1.2.1 A devolved approach requires a shift in strategy and process. In terms of strategy this means a shift in Government's objective from extending services to the population to an objective to promote client capability. In short to help landholders to help themselves. Concretely, this means assisting communities to set up and manage their own systems within broadly laid out parameters of fairness and accountability. It means that tenure development takes on an **area-based** foundation.

1.2.2 The **measure of success** becomes not how far a central system has been extended into the country but how many communities have brought their land relations under conscious, democratic and fair regulation and administration. If there is any service provision from the centre it is in the form of **facilitation**; providing guidance, action and actors that prompt and support local level developments. Issues of cost and local legitimacy become central concerns; that is helping communities put systems in place which they have both the vested interest in and capacity to **sustain.**

1.2.3 **Power-Sharing and Partnership.** Adopting a devolved, bottom-up approach to tenure change requires a re-positioning in relations between citizens and the State whereby communities emerge as actors. The Government becomes a facilitator, monitoring problems and progress. These new roles mean that some of the burden of difficult decision-making, problem solving, and ensuring concurrence to agreed new norms are shared by both citizens and the State.

1.2.4 Certain powerful regulatory functions need to be retained and redirected by the State. For example, it will be the duty of the State (including central and local Governments) to ensure that fundamental principles of transparency, fairness and inclusive processes characterise each system developed and operated.

1.3 Making a Pro-Poor Strategy Real

1.3.1 A primary task of facilitation will be to assist **local actors** to directly include those whose rights are vulnerable in decision-making and system management. In order for this to be effective, it is necessary to make local people, especially the poor, the first-line target of considerations, rather than merely including them under the aegis of those who already have the socio-institutional clout to secure their interests – heads of communities, clans, and families – or the economic capacity to do so – the wealthier and more mobile.

1.3.2 Without such a pro-poor positioning of objective and facilitation, the economically poorer or institutionally weaker half of society will not be properly heard or supported. Practical entry points could be attending to interests and building up local systems which first secure –

- the rights of **women** in general, and those who are social outcasts, widows and divorcees in particular
- **derivative rights**, those who occupy and use land only at the will of landowners
- the land interests of female and male **youth** to help local communities restructure their norms to ensure fair availability in land short circumstances to new generations
- or by defining and securing **collective rights** over specific areas of land resources (forests, woodland, swamps, pasture etc.) as a means of both limiting encroachment and loss of these resources, important to all members of the community but especially to poorer households.

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1.4 Shifting the Programmatic Framework and Process

1.4.1 Planning and investing in this approach require a shift away from a blueprint to a process approach. Fixed ideas as to what constitutes tenure security and how it may be achieved need to be replaced with a more open-ended and exploratory approach to developing partnerships with communities. In the process, dysfunctional systems or methods will be discarded.

1.4.2 A good example of the difference in approach is seen in respect of **mapping**. Particularly in rural areas, security systems are, if given the opportunity, likely to proceed without the production of site plans, given their cost and often doubtful value as evidence of boundaries. Instead, greater emphasis may be placed upon *demarcation of boundaries* on the ground and the development of *accountable record of agreement* as to where the boundary lies and has been agreed. The advantage of survey in determining size of estates in an exact way will be lost in such map-free processes and communities will need to work through how far this matters, and/or be assisted to decide upon one common tool within the community by which hectarage may be most accurately estimated. A great deal of commonality among devised systems may be expected. Relatively quickly common norms may be supported in state law and procedures.

2 Lay The Groundwork for Public Partnership

2.1 The limited involvement of the population thus far in determining national policy or processes of land administration has been outlined above. Still, the adoption of genuinely open approaches is not easy for institutions and especially those which have long-entrenched habits of command and control.

2.2 Going Beyond Token Consultation

2.2.1 The advantages of open debate to more widely owned and more practical development may need spelling out. The rewards are better designed decisions and processes. The credibility of Government is also directly enhanced. The burdens and responsibility for tenure change are shared beyond officialdom.

2.2.2 Adopting partnership modes is neither a matter of informing people of decisions and asking for their comments (consultation) nor acting solely on the basis of expressed needs. It is rooted in adoption of **a participatory approach**. Over time, the establishment of participatory process towards tenure reform will in itself be the conduit for public debate and planning in partnership.

2.2.3 Deliberate steps need to be taken to achieve this. The tendency to disseminate information to selected groups of stakeholders and ask their opinion of these already designed intentions needs to be avoided. It will also be helpful for Ghana to adopt a more effective process than can be achieved through fielding a commission of inquiry, and where decision-making rests upon the same group of individuals.

2.3 Going Local rather than National

2.3.1 A more lasting framework is deserved. Creating multi-representational contact forums in each district will be especially enabling. This will afford an opportunity not only for wider and more fairly distributed public consultation but also for a lasting route to be created through which *civil society may channel and sustain its participation*. This will allow for a **localised approach** to problem discussion and resolution.

2.3.2 It will in addition, provide a transparent and practical basis upon which the Ministry of Lands, Forestry and Mines (MLFM) may develop a clear and precise **Land Tenure Development Strategy** and within which basic objectives for operation and principles are laid out.

3 WIDEN THE BASIS OF POLICY AND PROGRAMMING SUPPORT

Five recommended avenues for attention are highlighted below.

3.1 MAKING ALLEVIATION OF TENURE INSECURITY A KEY PART OF NATIONAL PLANS

3.1.1 First there is a need to ensure that the *Ghana Poverty Reduction Strategy* (GPRS) and associated lead policies for the modernisation of agriculture (eg Accelerated Agricultural Growth and Development Strategy) include specific commitment to secure the property of the poor in Ghana and for the poor to participate in achieving this. Both the National Planning Commission and Ministry of Food and Agriculture will need practical support in working through the relationship of insecurity with poverty and how growth is thereby constrained. Already, arising in part out of the conduct of this study, the Minister for Lands, Forests and Mines (Dr Awaku Afriyie) announced the formation of a cross-sectoral committee to ensure that tenure issues are included in national planning and action. This will assist in mutual prompting and coordination.

3.2 REINFORCING ACTION THROUGH DECENTRALISED GOVERNANCE

3.2.1 Assistance to district governance and especially to sub-district levels, including local unit committees, presents an important opportunity to introduce participatory tenure management in conjunction with traditional mechanisms – and at the same time to reform the nature of these institutions to be more inclusive, democratic and task-centred. 'Village Land Committees' which involve chiefs and elected members of the community represent an institutional avenue worth exploring.

3.3 IMPROVING TENURE THROUGH NATURAL RESOURCE MANAGEMENT

3.3.1 Tentative moves have begun in the forestry, wildlife and livestock sectors toward community-based forest, range and pasture management. Working together with such initiatives is important. In particular these avail tenure management actors with opportunities to develop '**commonhold**' type tenure arrangements. These have the additional benefit of reducing random encroachment and restricting access to these resources by bringing them under working local level management systems.

3.3.2 Experience from other countries shows that legal provision and support for community based forest/woodland management may be particularly catalytic towards tenure reform, in that it may -

- Mobilise communities to act to secure their shared natural resources.
- Develop institutional systems at the community level for this, which in turn prompt wider governance development at the local level.
- Provide a concrete context in which managerial control over resources may be devolved.

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- Prompt the evolution of commonhold tenure and thus allowing customary mechanisms of communal property to become more defined and modernised.
- Link resource management directly with tenure development. And
- Act as a spur to local interest and activity to develop local level tenure management systems.

3.4 Encouraging non-Government actors as important players

3.4.1 Government's lead role in promoting action towards tenure security is undisputed and needs to remain central. At the same time, its capacity and role will mature through encouraging civil society actors (NGOs, academics, etc.) to freely involve themselves in tenure issues and actions. Differences of opinion and approach should not be avoided but handled constructively.

3.5 Supporting specific pro-poor actions in land relations

3.5.1 Finally, there are a host of avenues through which the land difficulties of the poor and very poor may be indirectly addressed. For example, direct support to women's self-help housing developments in urban areas may enable them, by working together, to secure rather than lose their minor or unstable plot allocations or squatter access, in times of social or economic stress.

4 Work with Traditional Authorities to Improve Informal Norms

4.1 Problems associated with changing customary norms were outlined above, and centred upon the meaning of allodial title, freehold interests, trusteeship, the stool and stool lands, and communal rights to land. The use of these concepts needs re-examination, in order for fairer principles and processes to result.

4.2 The role state law and administrative procedures have played in endorsing or turning a blind eye to deteriorating principles, has been noted above. Quick-fix resolution through applying new law may not however be appropriate or lasting. More effective will be providing clear opportunities for customary tenure administrators – Chiefs (House of Chiefs) together with the people who they represent need to deliberate on the issues confronting the rights of their subjects and adherents to custom.

4.3 It will be helpful to construct such deliberations and decision-making around concrete objectives, such as redefining how communal rights may be secured as a practical collective right, protecting the land rights of dependents within the household, and establishing acceptable norms for the conduct of land distribution during urban development.

5 ACT TO REGAIN CONFIDENCE IN THE STATE

5.1 Suggestions made above should contribute to setting land relations on a more stable and fairer footing and in the process re-locating the functions and powers of the State. It will be important for Government to more directly raise public confidence by acting promptly to refashion the manner in which is acquires private lands for public purpose. With the overall objective of discouraging unnecessary appropriation, the process needs to be more expensive and accountable. Confidence in the state could be done by taking a series of actions which may include the following -

- Reconstructing the real and legal meaning of *public purpose* through a public consultative process.

- Opening routes to develop public services other than through Government acquisition. There is no reason, for example, why communities themselves may not be assisted to create and manage wildlife or forest reserves, without these properties being first designated State Land. Definition of public service areas may be handled separately from issues of who owns those sites and develops them.

- Paying outstanding compensation and/or returning these lands to their previous owners, albeit through conditions which ensure the benefit is shared fully with the full body of owners.

- Widening the basis of compensation to cover all losses incurred by owners; including not only the value of the land and its fixed improvements at open market values but the costs of the dispossessed finding new accommodation or property of the same quality (disturbance allowance) and the loss of income over a reasonable time period induced by the disturbance.

- Developing mechanisms to ensure that the real value of lost occupation and use is properly compensated and not considered in terms of covering the value of standing crops; adjustment in the value of lost allodial title might need to be made accordingly. This means acknowledging the value of interests as accruing primarily to occupants. It also requires assessment of the loss of value resulting from being deprived of using common properties within the acquired estate.

- Improving the process of investigating interests to be more thorough and accountable and making it binding upon Government to assist each affected occupant to know the bases upon which compensation may be claimed and to assist him/her make formal application for compensation.

- Requiring those in whom allodial title is vested as trustees to specify how compensation for the loss of that level of interest will be shared among the owners upon whose benefit s/he holds that interest in trust.

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- Increasing transparency by obliging the Minister to visit the area in question and justify the intention and to hear and record the response of owners and occupants.

- Subjecting approval of proposed acquisitions to parliamentary approval for estates above a certain size or where more than a certain number of households will be dispossessed.

- Undertaking no evictions until the type, amount, method and timing of the payment of compensation has been agreed upon between representatives of those to be dispossessed appointed for this purpose and Government.

- Making failure to pay compensation after one year subject to additional payment of interest at commercial bank rates, recoverable until the compensation is paid.

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6 Programme Public Investment Around New Process

6.1 A New Objective

6.1.1 As described earlier, Government has already made a commitment to launch an implementation programme and is seeking a loan from the World Bank towards the cost of this. The first phase of this *Land Administration Programme* (LAP-1) is under preparation with appraisal prior to loan negotiations scheduled for 2002. The LAP has special importance because it will, for all intents and purposes, frame whatever strategy is determined as appropriate to support improved tenure management, or in the absence of a clear strategy, will itself establish this.

6.1.2 A perceived risk at this point is that design will encompass new and community-attuned approaches only in the form of a handful of (expensive) pilot projects whilst furthering more conventional centralised institutional developments. There will be a need to ensure that the proposed approach of the project *as a whole* is structured with clarity and consistency around a more democratic and therefore **devolved approach** which makes bottom-up learning by doing its mainstream source of change. The central objective of the programme would in this context become *the promotion and support for community-based approaches to land tenure management and development.*

6.2 A Programmed Process Towards Democratic Tenure Management

6.2.1 It will be desirable to structure LAP-1 around the kind of steps needed to make this objective possible. Therefore, *as a tentative example to illustrate the point,* the following 'components' could form the basis of such a programme:

Component One Making Tenure Development a Public Programme

Component Two	Developing a Land Tenure Development Strategy
Component Three	Trial Implementation in Ten Districts
Component Four	Resolving Public Acquisition Issues

Component One: Making Tenure Development a Public Participatory Programme

6.2.2 Ideally a good start on this will have been made during 2001-02 along lines suggested earlier; that is, introducing tenure issues into the public arena, and structuring constructive discussion around district-based contact groups. These would include representatives from the customary land sector (i.e. Chiefs), central land administration (Regional Land Commission), local government (District Assembly), NGOs and CBOs in the districts and representatives drawn from all categories of landholders – subject right-holders, migrants, tenants, sharecroppers. At least one third of the consultation group should be women.

6.2.3 Over time, this group may become a local reference group for the District, receiving information, discussing issues, feeding back views, and eventually practical experience from local developments. Assistance should be provided to enable these groups to consult directly with local communities of landholders. Additional assistance should be provided to enable some of the more active contact groups or interest groups within the district to investigate and report upon specific problems and positive practices.

6.2.4 In addition, the Ministry would create or work through existing stakeholder interest groups, such as the House of Chiefs, timber interests and private sector banking and other agencies. Other groups should have access to support through the programme to run their own consultative processes.

6.2.5 Assistance would need to be provided to promote active discussion and problem-solving in these forums and their gradual maturation into informal advisory bodies, rather than recipients of information upon which they are only able to comment.

Component Two: Developing a Land Tenure Development Strategy

6.2.6 An important first output of this participatory structure would be the development of a clear land tenure development strategy. This will need to be kick-started by relatively early development by MLFM of an initial outline strategy which lays out Government's own vision as to how it would like to see land relations structured, managed and regulated; and land rights administered in the year 2025.

6.2.7 This would evolve into more refined versions arising out of the public participatory processes outlined above. The strategy would become much more than a bald set of overarching objectives, increasingly including a gathering range of detailed ***provisional***

guidelines on a host of relevant subjects. For example, the following topics could be covered –

- The basic principles of natural justice upon which local level tenure administration may operate.
- Restatement (and restoration) of customary norms in landholding towards maximum equity and fairness.
- Steps towards creating Village Land Committees which are accountable to village members.
- Steps towards establishing records and a Register.
- Where to start if you want to record land rights in the community.
- Procedures for determining, agreeing and marking boundaries.
- How to determine rights without forgetting dependants and other rightful users.
- Principles upon which land can be fairly transferred (gifted, inherited, sold etc.).
- Useful steps to ensure that women do not lose land.
- Looking ahead – ideas for making sure there is enough land for the next generation.
- How to work in fully inclusive ways within the village.

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6.2.8 It goes without saying that Chiefs and other contact groups would have a highly significant input into the making of guidelines. So also would 'custom' form the basis of these guidelines and the character of the overarching strategy overall. However, optimally, custom as developed through these guidelines would take on a more modern and as necessary, accountable and democratic form.

6.2.9 Drafts of the emerging Land Tenure Strategy would be submitted to popular discussion and agreement through the above consultative mechanisms (Component One).

Component Three: Trial Implementation

6.2.10 This would be the focal activity. It would seek to directly assist interested communities in ten districts over the programme period to explore and put in place locally-based systems for securing rights within their locality and for dealing with problems and tenure changes (allocations, sales etc.) on a sustainable and locally accountable basis.

6.2.11 Implementation would need to begin at the most local level possible – that is, villages – thus initially avoiding some of the problems of wider paramountcy boundaries. Different approaches would obviously evolve, varying according to local circumstances (rural, urban and peri-urban localities and even within these).

6.2.12 Facilitation would be vested in the hands of small but inclusive District Teams supported by expert facilitators, working initially along provisional guidelines. They would operate in an incremental manner thus building up a body of practical experience and knowledge. Good reporting and monitoring will be needed to enable these lessons to be fed back into annually refined guidelines. Each of the ten teams would meet periodically for purposes of shared learning.

6.2.13 Depending upon perceived requirements, the current complex of rights would or would not be recorded and local level Registries would or would not come to be established for this purpose. Where community members consider that formal registration and issue of title deeds are needed, they would be guided to devise the cheapest and most sustainable means of implementing this in ways that ensure that the interests of poorer or more vulnerable sectors are not defeated in the process as outlined earlier.

6.2.14 It may be preferable to adopt a distinctive support programme for peri-urban and rural areas and to develop two sets of paradigms, guidelines and implementation programmes.

6.2.15 Likely common activities in situations where rural rights are not being transformed into urban plots would include steps based upon guidelines which promote transparency and inclusivity as outlined above. These may include -

- Deciding to adopt community-based tenure management.
- Setting up a provisional committee to lead.
- Working with neighbouring villages: agreement, demarcation and formally agreed record as to the boundaries of their respective jurisdiction.
- Identifying and agreeing the boundaries of common properties.
- Establishing community-agreed rules for accessing the commons and how any change in their status will be decided.
- Establishing the principles upon which new allocations may be made, land accessed by outsiders, transfers made.
- Defining the role and rights of a Village Land Committee and keeping it accountable.
- Electing the Village Land Committee.
- Setting up a Records System/preparing the Village Land Register.

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Component Four: Resolving public acquisition problems

6.2.16 Broadly this component would tackle all those cases noted earlier where unsatisfactory public acquisition has been made with resulting undue loss of rights and livelihood. Many of these cases will need time-consuming investigation and locally-based negotiation.

6.2.17 Institutional reform would be elements of all the above components. More and more land officials would take on facilitation rather than service roles. The role and functions of the OASL would come under review, but driven by practical change and demand from the local level. Legal reform would also arise out of and accompany the processes and development above. Practical experience will steadily increase of administering tenure and dealing with tenure problems through a participatory and localised framework. Overall, the programme would represent a gathering reform of land administration and land relations, effected however, through open-ended and democratic process.