

Governance, Land Rights and Access to Land in Ghana

– A Development Perspective on Gender Equity

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SUMMARY

The paper sets out the **Governance, Land and Gender Legal Framework** for Land Rights and Access to Land and Justice in Ghana. Ghana is signatory to the major international instruments that protect and try to enhance the legal position of women. Part of the legal framework is the complexity of land rights and tenure systems which is the result of the co-existence of different systems (customary law, statutory law, constitutional provisions, and religious law) in the regulation of such rights. This legal pluralism has presented special difficulties, particularly for the more vulnerable sections of society, including women and the rural and urban poor for a number of reasons, as discussed in the paper. In addition, access to formal procedures for women to claim their rights has been extremely cumbersome and costly.

The paper further presents a **Situational Analysis on Gender and Land Rights in Ghana**. Access to land for women is mainly mediated through their lineage, inheritance, marriage or by contractual arrangements, in limited cases through gift or purchase. While according to customary law principles each subject of a lineage, regardless of sex, has an inherent usufructuary right of access to land of his or her community, in practice women's access to the usufruct is affected by a number of factors including patterns of marital residence, land scarcity, production relations and gender bias in the size of land given to women among some groups, the most crucial determinant being the sexual division of labour and the organization of production in both patrilineal and matrilineal areas. This reflects on the matrimonial property regime, the unfairness of which is long recognised and was and still is to be changed under the 1992 Constitution. Intestate inheritance was de lege changed in 1985, but with little effect, and both the inadequacy of the legal provisions as well as their non-enforcement leave women with precarious land rights. Further problems regarding access to land for women stem from compulsory acquisition, the impact of peri-urbanism, and deeds and title registration.

It recommends gender mainstreaming into the LAP, a gender strategy for land tenure reform and development activities, the involvement of the legal capacities and channels in Ghana, especially the Attorney-General and Ministry of Justice with the Ghana Law Reform Commission as well as the Judiciary to partake in that larger-than-land administration reform.

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1. THE GOVERNANCE, LAND AND GENDER LEGAL FRAMEWORK

In Ghana, as in many African countries, gender and kinship relations play a central role in the way in which land rights and production relations are determined. Under customary land tenure systems, control over resources generally follows clearly defined gender-segregated patterns based on traditional norms, which operate in such a way as to limit the land rights of women as compared to men. To a large extent, women's access and control over productive resources including land are determined by male-centred kinship institutions and authority structures, which tend to restrict women's land rights in favour of men¹. In principle, customary norms in both matrilineal and patrilineal kin groups are designed to ensure that women are not arbitrarily deprived of basic resources for their production activities. However because of the lopsided control that men exercise over decisions concerning the allocation of resources both at home and in the public sphere, there is considerable room for gaps to develop and widen between the norms and actions that follow².

1.1 International and Domestic Legal Framework on Women's Land and Property Rights

The need to guarantee equity in the regulation of access to property is recognised internationally as an important pillar of social justice and equity. As a State Party to the Universal Declaration on Human Rights, 1948, the International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966³, the Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (CEDAW)⁴ and the African Charter on Human and People's Rights (the African Charter)⁵ to name a few, Ghana is bound by the express provisions of these instruments to protect and promote women's rights to property. This it must achieve through legislation and the institution of support services to make the right accessible and attainable to all women in Ghana.

¹ See, Bortei-Doku Aryeetey, E., "Behind the Norms: Women's Access to Land in Ghana", in C. Toulmin, Phillippe Lavigne Delville, & Samba Traore eds, *The Dynamics of Resource Tenure in West Africa*, IIED, 2002, p 86.

² Ibid.

³ International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3. The ICESCR was ratified and signed by Ghana on September 7, 2000.

⁴ Convention on the Elimination of All Forms of Discrimination against Women, Mar 1, 1980, 1249 U.N.T.S. 13. Ghana signed CEDAW on July 7, 1980 and ratified it on January 2, 1986. Ghana also signed the Optional Protocol to CEDAW on February 24, 2000.

⁵ African (Banjul) Charter on Human and People's Rights, June 27, 1981, OAU Doc. CAB/LEG/67/3 Rev. 5, 21 I.L.M. 58. Ghana acceded to or ratified the African Charter on January 24, 1989.

Under the Beijing Declaration & Platform for Action, *Covenant for the New Millennium (Fourth World Conference on Women, Beijing, September 4-15, 1995)* it is recognized that women's poverty is directly related to the absence of economic opportunities, lack of access to economic resources including land ownership and inheritance, credit, lack of access to education and support services and their minimal participation in the decision-making process. Under the Platform for Action, *Strategic Objectives and Actions on Women and Poverty* (Chapter IV.A) Ghana is required to *formulate and implement policies and programmes that enhance the access of women, especially subsistence farmers in rural areas, to ...f. provide access to and control of land, etc. in order to increase women's incomes and promote household food security.*

1.2 Ghana Constitution 1992

Article 17 of the 1992 Republican Constitution of Ghana provides that all persons shall be equal before the law, and further that a person shall not be discriminated against *inter alia* on grounds of gender, ethnic origin, social or economic status. In affording equality of economic opportunity to all citizens, the state is specifically required by the Constitution to take all necessary steps so as to ensure the full integration of women into the mainstream of the economic development of Ghana⁶.

1.3 Ghana Growth and Poverty Reduction Strategy Paper I and II

The Ghana Poverty Reduction Strategy I (GPRS I - 2002) acknowledges that insecurity of tenure is endemic and has a bearing on poverty reduction and economic growth. The GPRS I document states that failure to provide for the protection of land rights and prevention of abuse of traditional and institutional procedures place the poor, the illiterate and women most at risk. Whilst the GPRS document advocates for land tenure reform, it also recognizes that such reform should be accompanied by close monitoring to detect adverse effects on the poor and women for whom safety nets may be required. In fact, the feminization of poverty has been attributed mainly to the unequal access of women to productive resources and economic opportunities (GPRS 2003-2005). Generally economic poverty in Ghana is deemed to be extremely high among crop farmers, and women have been found to predominate in this sector.

The GPRS II (2005) hence proposes to ensure women's access to and control over land and agricultural inputs⁷ and therefore to re-examine the existing variations in access and control over land in different communities in order to promote easy access and ensure equity to all, especially to usufructuary holdings⁸. In particular, the Land Administration Project of Ghana will be reviewed to recognise the importance of property rights to MSMEs and the Land Title Registration Law of 1985 will be enforced as a means of ensuring security of tenure of small land holders, especially women and the poor.

⁶ Article 36 (6) of 1992 Constitution.

⁷ GPRS II, p. 25

⁸ *ibid.*, in particular p. 32

In the framework of GTZ support to the Land Administration Project, especially through the Office of the Attorney-General and Minister for Justice and the Ghana Law Reform Commission (LRC) the preparations for the ascertainment of customary law have started in May 2005, in collaboration with the National House of Chiefs (NHC) to provide legal certainty and security of tenure. It also could lead to a harmonisation of customary laws under the NHC.

1.4 Ghana National Land Policy

The National Land Policy (1999) has identified a number of difficulties relating to land tenure and administration, e.g. insecurity of tenure of certain groups. The interests and the impact of land administration and land tenure on women has not been mentioned. However, the following LAP inception and preparation documents have been gender-conscious and attempt at correcting the policy document through the implementation documents and studies.

1.5 Women's Land Rights and Legal Pluralism

Ghana, as many African countries, maintains a plural system of land tenure, comprising mainly of the customary land tenure systems and the formal land administration systems, which often overlap and contradict each other. Article 11 of the 1992 Constitution firmly enshrines legal pluralism within Ghana's legal system. In order to spell out the various problems deriving from legal pluralism, GTZ has implemented a Sector Project on Strengthening the Rights of Women in Plural Legal Systems in West Africa. The main results have been discussed in a Regional Conference⁹. The main results of the Ghana Gender and Law Project especially as one of the Sector Projects outcomes as to Land and Family Law and Access to Justice are presented there¹⁰.

Much of the complexity of land rights and tenure systems is the result of the co-existence of different systems (customary law, statutory law, constitutional provisions, and religious law) in the regulation of such rights. Managing these systems to ensure security of tenure for all sections of the society has been a formidable challenge to the legal system in Ghana. The co-existence of plural systems of law regulating land in Ghana has presented special difficulties, particularly for the more vulnerable sections of society, including women and the rural and urban poor for a number of reasons.

Generally, rural people, majority of whom are women, rarely have access to formal legal procedures due to the complexity and cost of procedures involved and the lack of awareness of legal provisions. As a result, their rights exist in a state of legal limbo, which places them in a position of considerable insecurity with regard to their land rights. Women generally have

⁹ West African Regional Conference on Legal and Judicial Reform to Promote Improved Women's Rights in Land and Family Law within Plural Legal Systems, Accra, 10-12 February, 2004, Conference Proceedings are published as Ruenger (ed.), Access-to-Justice Paper No. 9, Attorney-General and Ministry of Justice, 2005, 303 p.

¹⁰ Kotey, Minkah-Premo, Ruenger, *ibid.* p 64.

limited resources and very little access to relevant information on their rights under the law, and are therefore often incapable of taking steps to assert their rights, especially when such rights are threatened by powerful developers with the full backing of political authorities or the local elite.

In the public or formal sphere, women tend to have a more limited ability to benefit from the formal structures established by the state for ensuring security of tenure, including registration systems and other land sector services. Formal procedures for ensuring security of tenure, including registration processes are often cumbersome, expensive and time-consuming.

2. SITUATIONAL ANALYSIS ON GENDER AND LAND RIGHTS IN GHANA

2.1 Women's Access to Land and Security of Tenure under Customary Law – an Overview

With regard to women's security of tenure, it is noted that to a large extent, women's land rights under customary law, especially for women in the rural areas, tend to be secondary rights, derived through their membership in households and lineages and secured primarily through marriage¹¹. Such secondary rights of women tend to be very insecure since they are often not clearly defined or documented and also tend to be subject to change, are of uncertain duration and are often subject to the maintenance of good relations between the parties involved¹².

The principal ways in which women acquire land is through their lineage, inheritance, marriage or by contractual arrangements. It is well established that according to customary law principles, all subjects of the stool and lineage members, regardless of sex, have inherent rights of access to the lands held by the stool or family head in trust. This interest, to which all subjects are entitled, is referred to as the *usufructuary interest or customary freehold*. Studies have shown however that women's access to the usufruct is affected by a number of factors including patterns of marital residence, land scarcity, production relations and gender bias in the size of land given to women among some groups, the most crucial determinant being the sexual division of labour and the organization of production in both patrilineal and matrilineal areas¹³.

Bortu-Doku also describes some of the less obvious ways in which women are restricted in their control of resources, and how, despite these limitations, they manage to widen their claims to resources¹⁴ and the extent to which rituals control women's access to agricultural resources and how policy measures could strengthen the rights of access of women to land.

¹¹ See, Hilhorst T., "Women's Land Rights: Current Developments in Sub-Saharan Africa", in Toulmin C. & Quan J (eds) *Evolving Land Rights, Policy and Tenure in Africa*, DFID/IIED/NRI (2000) p 182.

¹² Ibid.

¹³ Kotey E.N.A. & Tsikata D., "Women and Land Rights in Ghana" in Kuenyehia A, (ed.), *Women and Law in West Africa: Situational Analysis of Some Key Issues Affecting Women*, Accra, WaLWA, (1998), p 203, 216.

¹⁴ Bortei-Doku Aryeetey, "Behind the Norms: Women's Access to Land in Ghana", in C. Toulmin, P. Lavigne Deville & Samba Traore eds., *The Dynamics of Resource Tenure in West Africa*, IIED (2002), p 86.

With regard to contractual arrangements for land, Duncan found that share cropping as a source of land for women was largely problematic. In her study, many share croppers complained about the arbitrariness of landlords in changing the terms of the tenancy at will, a situation made easy for them by the verbal nature of many of these arrangements¹⁵.

One important traditional channel for women to own land is the transfer of land as gifts from families or spouses. The important point here is that women have rights of disposal over such land. But evidence on the extent to which families take advantage of this option to give women control of land is lacking. Furthermore, the practice is subject to land availability and the benefactor's personal wealth¹⁶. It appears that in most cases it is the contribution that a wife or female relative has made to the benefactor's wealth that prompts the gift of land, which supports the fact that this option is not generally available to everybody. The practice is therefore more commonly associated with export crop or other cash crop areas¹⁷.

Other potentially more open channels offer women the opportunity to acquire land or to own it directly through purchase. Generally, no formal laws or customs exist to prevent women from purchasing land if they have the money to do so. Although this opportunity exists, relatively few women can take advantage of it because of the costs involved and the need for already accumulated capital. Women's weak economic and social position tends to hinder their independent access to private freehold land, as evidenced by studies conducted on the extent of access of women to the title registration system¹⁸.

2.2 Property Rights of Spouses during marriage and upon divorce

Ghanaian law recognizes three different kinds of marriage: marriage under the Marriage Ordinance (127), Customary Marriage and Marriage of Mohammedans Ordinance (Cap 129). It has been noted that one of the peculiar features of marriage under customary law is the concept of separateness of identity and property acquisition. As a general rule of customary law, marriage has no effect on the property of spouses. The legal incidents of marriage under customary law permit couples to maintain their separate identities and are seen in theory as two separate individuals. The basis for this rule is the fact that even during marriage, the wife does not in a strict sense become a part of the customary family of the man and the converse is also true for the husband¹⁹. This explains why she is precluded from laying any claim to her husband's lineage farms even in cases where she assisted to make improvements.

Generally, no problems arise in situations where parties acquire properties absolutely out of separate resources belonging exclusively to them. However in cases where a spouse makes a

¹⁵ Duncan, B.A., *Women in Agriculture in Ghana*, Friedrich Ebert Foundation (2000) xviii.

¹⁶ Kotey & Tsikata, "Women and Land Rights in Ghana" in Kuenyehia A, (Ed), *Women and Law in West Africa: Situational Analysis of Some Key Issues Affecting Women*, Accra, WaLWA, (1998) p 219.

¹⁷ Ibid.

¹⁸ See, C. Dowuona-Hammond, *GTZ Report on State Land Management and Its Impact on Women and the Poor in Ghana* (2003).

¹⁹ Daniels, W.C. E., "Towards the Integration of the Laws relating to Husband and Wife in Ghana" (1965) II U.G.L.J. 20, 38.

form of contribution to the acquisition or improvement of the property of the other, the issue arises as to what beneficial interest must be given to her upon dissolution of the marriage. Section 20(1) of the Matrimonial Causes Act vests in the court a discretion to determine what interest if any, a spouse has in property acquired during the marriage upon the breakdown of the marriage. It however does not provide any guidelines for the exercise of the discretion by the courts and this introduces a level of unpredictability in the way the courts will decide each case.

The courts have in recent years attempted, in the absence of legislative provisions, to use the general principles of equity to do justice as between spouses, in the matter of their rights to property acquired by them during the marriage, when the marriage breaks up. The cases show that to succeed in a claim for beneficial interest in property acquired during marriage the claimant spouse has to prove that there was agreement between the spouses to the effect that he/she would have a beneficial interest in the property, or that the claiming spouse made a substantial financial contribution to the acquisition of the property.

It has been ascertained in a survey conducted on agrarian women in Ghana that about 25% of all the respondents were not living in regular marital unions and yet were actively involved with their partners in the acquisition of property during the period of the union. They do not fall within the jurisdiction of the MCA and have no protection.

It is noted that Article 22 of the Constitution requires that Parliament shall enact legislation to regulate the property rights of spouses and states that spouses shall have equal access to property jointly acquired during marriages and that assets that are jointly acquired during marriage shall be distributed equitably between spouses upon dissolution of the marriage. Such a law is however yet to be enacted. The absence of regulatory legislation to govern the property rights of spouses on divorce tends to create inequity and insecurity particularly for the property rights of women²⁰. Specific emphasis must therefore be placed on this issue in any programme aimed at achieving gender equity in land administration.

Enhancing Women's Property Rights on Dissolution of Marriage should comprise:

1. Introducing Legislation on Property Settlement upon Divorce
2. Spousal Consent for Disposal of Matrimonial Property

2.3 Inheritance Rights of Women

In Ghana, women's land rights are significantly influenced by inheritance systems as well as tenorial arrangements and land use patterns. One of the most important ways in which women acquire land is through inheritance both as wives and as daughters or sisters. However the hierarchical nature of rights and responsibilities over land and other property, which emerge

²⁰ See, Kuenyehia A., "Distribution of Matrimonial Property on Dissolution of Marriage: A Re-Appraisal", (1990-1992) Volume XVIII, University of Ghana Law Journal, page 94; and Kuenyehia A. & Ofei-Aboagye E., "Family Law in Ghana and its Implications for Women in Ghana", in Kuenyehia A (ed), *Women and Law in West Africa: Situational Analysis of Some Key Issues Affecting Women*, Accra, WaLWA, (1998) p 23.

as a result of gender-differentiated rights and roles, are skewed against women and girls in favour of men and boys.

By granting men and boys primary rights of inheritance of land and property, and granting women and girls user rights mediated through their relationship to men, a situation of unequal power relations, drawn along gender lines, is entrenched in land tenure and production relations²¹. In discussing gender and land rights therefore, specific attention must be paid to the impact of the laws on inheritance on women as compared to men, both under the customary law as well as statutory law²².

The Intestate Succession Law, 1985 (P.N.D.C. Law 111) was designed to eliminate all forms of gender discrimination in the distribution of property upon intestacy by granting equal rights of succession to all children of the intestate, irrespective of gender or age. There is however an urgent need for a review of the law after 20 years of its operation to ensure that its practical implementation is in fact achieving equity for spouses, especially widows of persons who die intestate and their children.

Research Studies on the impact of the P.N.D.C. Law 111 have revealed that in certain sections or communities in Ghana, the provisions of the Law are considered to be unworkable. Studies conducted in certain Moslem communities in the urban areas have shown that community leaders, opinion leaders, chiefs etc. continue to insist that the estates of persons who die intestate should be distributed in accordance with Islamic rites and not the prescriptions of P.N.D.C. Law 111²³. In other communities the Law is completely disregarded and intestate estates continue to be distributed according to the relevant customary law rules on intestate succession²⁴.

Even though the Intestate Succession Law seeks to offer more protection to women than customary law, its impact in enhancing the position of women with regard to inheritance rights has been limited by a number of factors. The ability of women to enforce their inheritance rights under the Intestate Succession Law has been hampered by factors such as high levels of illiteracy and ignorance of the law, high cost of enforcement of the law, interference by extended family, fear of extended family and limitations in respect of access to justice²⁵.

²¹ See, Ollennu, *The Law of Testate and Intestate Succession in Ghana* London, Sweet & Maxwell (1966) p 144. See also *In Re Antubam (dec'd); Quaicoe v. Fosu & Anor.* [1965] G.L.R. 138.

²² See, Kludze, *Modern Law of Succession in Ghana*, Netherlands, Foris Publications (1988) p 267.

²³This is based on the records and results of studies conducted by Legal Resources Centre, a non- governmental organisation based in Accra.

²⁴ See, Kotey, E.N.A., "Land and Tree Tenure and Rural Development Forestry in Northern Ghana" (1993-95) XIX U.G.L.J. 102, 120.

²⁵ See, Mensa-Bonsu, H.J.A.N. "The Intestate Succession Law of Ghana: Practical Problems in Application" (1994) 8 Yearbook of African Law, p 105.

Duncan in her study on *Women in Agriculture in Ghana* has noted that the Intestate Succession Law has been described as weak in its current form for the following reasons²⁶:

- The law does not protect women who live in non-marital situations (*mpana aware* or common law relationships). Such women in many cases contribute significantly to the acquisition of property by their partners, but are denied any interest in the property of the partner because they do not qualify as a *spouse* under the law.
- The law does not address the position of childless widows who need more protection than widows with children in the sense that they will benefit in unequal proportions especially in the context of polygynous relationships.
- According to section 4 of the Law, the spouse and children will be entitled to the whole estate where it consists of one house. The section however does not cover situations where the estate consists of only one farmland. The law will therefore have to be amended to take into consideration and reflect agrarian situations.

It must also be noted that family land does not fall within the ambit of the Intestate Succession Law. Wives and children therefore cannot inherit family property, no matter their contribution to its development. Thus even though the farm may have been made by the nuclear family's labour, it is ownership of the land which determines its inheritance. Once the land was appropriated by a member out of the family's land it reverts to the family on his death.

A number of studies have already been conducted on the review of the Intestate Succession Law to improve the inheritance rights of women. It is proposed that LAP could consider the findings and recommendations made by these studies in fashioning its own project activities with regard to the inheritance rights of women. Some of the recommendations are detailed below. The GTZ study commissioned by the Family Law Focal Area in 2002 resulted in a Memorandum for the Reform of the Intestate Succession Law 1985 (P.N.D.C. L 111) makes a number of recommendations for the enhancement of gender equity in the distribution of property upon death intestate of a spouse and to better promote the inheritance rights of women under the law.

In Ghana, there is absence of the culture of testacy in the country, especially in the rural areas, although some forms of customary law wills are known, but their ambit and enforceability are unclear. The promotion of will making has therefore been proposed by legal NGOs as one of the effective means of enhancing the inheritance rights of the general population by ensuring that one's estate is distributed according to one's wishes – which may, however, not necessarily result in the desired gender equity.

The Family Law Focal Area of the Forum of the GTZ Legal Pluralism and Gender Project in 2003 commissioned a study on the review of the law on wills and the design of a model will to be administered at the community level as a means of promoting will making especially in the rural areas. The long term objective was to encourage people to use such simplified model will forms which could be administered by the trained paralegals at the community level.

²⁶ Duncan B.A., *Women in Agriculture*, supra, p 15-16.

Recommendations are made by the GTZ Study on *Strategies for Promoting Will Making in Ghana, 2003*²⁷.

2.4 Protecting the Land Rights of Women upon Compulsory Acquisition of Land

In Ghana, large-scale compulsory acquisition was executed for public purposes, as the land belonged to the traditional authorities, and not to the State. The gender impact has not been examined prior of after such acquisitions. The review of the process of compulsory acquisition to ensure equity for affected persons should consider to:

- *Document the Impact of Compulsory Acquisition on Women*

Deliberate efforts should be made to assess the impact of such initiatives on women and men, determine the differences in impact as well as the specific issues which affect women in particular and integrate such issues into the design and implementation of the project activities. A fact-finding study would provide the basis for the making of recommendations for affirmative action or special land security measures.

- *Review of Legal and Administrative Processes for Compulsory Acquisition*

In order to minimize the adverse effects of compulsory acquisition on the lives of community members, particularly women, the constitutional requirement of resettlement in cases where the compulsory acquisition results in the displacement of inhabitants, should be specifically included in the law on compulsory acquisition and scrupulously enforced. Further, it is suggested that the procedure for compulsory acquisition should be changed to involve the participation of original land owners in the determination of the mode and quantum of compensation payable for the acquisition.

2.5 Impact of Peri-urbanism on Women's Land Rights

General demographic growth, urban growth, lower land prices and the need for more affordable accommodation have caused growing numbers of the population within the cities to move into areas around the cities referred to as the peri-urban interface, resulting in the phenomenon referred to as *peri-urbanism*.

Owusu-Yeboah/Nii Ashie Kotey, in a study commissioned by GTZ on *Peri-Urbanism, Land Relations and Women in Ghana*²⁸, enumerates some of the emerging problems of peri-urbanization to include landlessness, homelessness, rising unemployment and asserts that changes to the peri-urban communities have created increased vulnerability for the inhabitants of such areas, especially women.

²⁷ See, Dadzie C., GTZ Report on *Strategies for Promoting Will Making in Ghana*, (2003).

²⁸ published as Owusu-Yeboah/Kotey, Ministry of Justice Access to Justice Series No. 1, Accra, (2005)

Odame-Larbi in his study on *Changing Livelihoods in Peri-Urban Accra: Breakdown of Customary Land Ownership*, finds that the pressures arising from peri-urbanism have resulted in changes in land and property relations in such areas, with communal heads, chiefs and family heads now tending to consider themselves more as landlords than trustees of land for the benefit of the entire community²⁹.

In theory, anyone may buy a plot. However it has been ascertained that because indigenes could not be charged as much as strangers, Chiefs tend to be reluctant to sell to them. The picture which emerges is one of rapid loss of land from agriculture, mainly for housing and speculative purposes³⁰.

Protecting the Land Rights of Women in Peri-Urbanism could be effected by way of assisting Proposed Customary Land Secretariats to Protect Interests of Women and Poorer Members of Communities. In assisting the customary land owners to establish administrative structures and procedures for management of their land, it would be important for LAP to ensure that specific concerns of gender equity in situations of land conversion etc. are properly reflected and taken into account.

2.6 Impact of Deeds and Title Registration on Women's Land Rights

From 1962, the machinery for recording and ascertaining transactions in land was limited to the Registry of Deeds, which was responsible for implementing the law for the registration of deeds. The empirical evidence shows clearly that women form a smaller proportion of persons who have accessed both the Deeds Registry and the Land Title Registry for registration of title since its establishment. The GTZ Study on *State Land Management and its Impact on Land Rights of Women and the Poor* (2003)³¹ found that significant disparities exist with regard to the numbers of women and men who access the services of the Deeds Registry and the Land Title Registry for the registration of all categories of land. The study found that the incidence of registration of both deeds and titles by females solely was considerably lower than males for each year reviewed. The same was found in the case of the Deeds Registries in both Accra and Kumasi.

One of the most significant impacts of the land title registration scheme is the fact that it tends to exclude the most vulnerable, who are basically holders of customary usufructs, majority of who are rural women. The study noted that even though the law makes provision for the registration of customary usufruct interests³², there were very few records of registration of customary freeholds at the Land Title Registry in Accra.

²⁹ See, Larbi W.O. *Changing Livelihoods in Peri-Urban Accra: Breakdown of Customary Land Ownership*, DPU International Conference on Rural-Urban Encounters: Managing the Environment of the Peri-Urban Interface, London.

³⁰ Owusu-Yeboah M./Kotey N.A., *GTZ Report on Peri-Urbanism, Land Relations and Women in Ghana* (2003), p 27.

³¹ published as Duwuona-Hammond, Ministry of Justice Access to Justice Series No. 2, Accra, (2005)

³² See section 19(1) b & e of P.N.D.C. Law 152.

The evidence shows that the existing system of registration fails to secure the land rights of the poorer and more marginal groups due to issues of cost, language, information, need for good contacts, among others.

LAP project activities such as titling and registration may result in the secondary rights of women being swallowed by the broader categories recognised by the law. Secondary rights of women including rights to collect fruits, fuel wood and other forest products may be ignored in the process of establishing a system for registration. Thus all the multiple rights to the use of land may not be recognised by formal legislation on registration.

One such study is the IIED Study Report on *Securing Secondary Rights to Land in West Africa: The Dynamics of Derived Rights to Land and Natural Resources and Implications for Land Tenure Policy* by Delville, Toulmin, Colin and Chaveau, June 2001, which notes that legal and institutional uncertainty are two major causes of insecurity which affect derived and secondary rights. The study makes a number of important proposals for securing secondary rights in land including the following:

1. Drawing up an inventory of the recognized arrangements and interests which exist in specific areas.
2. Spelling out what are the legitimate arrangements in each community.
3. Encouraging people to put things into writing in a simple form.

Some preliminary pilot activities have been undertaken by the GTZ Legal Pluralism and Gender Project (Land Law Focal Area) in selected communities on procedures and mechanisms for the documentation and recording of simple land transactions for the benefit of vulnerable groups, whose land rights may not be secured by reason of the lack of documentation or recording. Such pilot activities involved the development of the “Model Land Agreement Card (LAC)” as a simplified process for the documentation of simple customary law land transactions including grants, customary law freeholds, and other contractual arrangements³³.

The lessons and experiences gained show that the efforts were well received and customary land owners gave their full support to the efforts of the Pilot Project. Customary land owners could therefore be assisted under LAP to develop acceptable forms of documentation for simple land transactions to ensure greater security of tenure for vulnerable groups in the communities including women. The LAP could build on the experiences of the GTZ Pilot Project to institute similar mechanisms on a pilot basis under the Customary Land Secretariat projects as an integral part of the processes of recording and documentation of land transactions.

³³ See 2nd and 3rd Reports of the GTZ Legal Pluralism and Gender Project (Land Law Focal Area) to the Legal Pluralism Policy Forum (LPPF), September 2002 and June 2003.

3. CONCLUSION

This situational analysis clearly establishes the fact that gender inequalities exist in land administration both under the formal law and customary law and shows that women, because of their gender, face different and more severe constraints than men when it comes to access to and control over productive resources such as land. The need to address gender inequities in land administration has been emphasized in numerous national and international legal and policy documents. However, more concrete and focused mechanisms have to be developed and implemented to translate the stated ideals into meaningful and tangible terms for the majority of Ghanaian women.

Gender mainstreaming is a strategy for making women as well as men's concerns and experiences an integral part of any development plan, by addressing their specific identified needs. The process requires extensive gender analysis and planning, taking into account current and past information and experiences. It serves a point of reference to determine the judicious use of resources, provides a basis for analysis to improve upon the nation's efforts in dealing with gender, poverty and development issues and helps in bridging the existing gap between men and women and ensures gender equitable and sustainable development³⁴.

1. Enhancing and affirming the legal rights of women through the channel the Ministry of Justice/ Ghana Law Reform Commission, involving Parliament at an early stage both being part of LAP
2. Developing a Gender Strategy for LAP including the Ministry of Women's and Children's Affairs, which is part of LAP
3. Reaching out to Women for affordable access to justice to claim their rights.
4. Improving Women's Access to Information on Land Rights
5. Enhancing Women's Security of Tenure by Enhancing Access to Law Enforcement Structures
6. Ensuring Effective Representation of Women³⁵ in Land Policy Implementation Agencies³⁶
7. Gender Sensitization and Training for Officials of Land Sector Agencies

³⁴ See, Gender and Agricultural Development Strategy (For Action), Directorate of Agricultural Extension Services, Ministry of Food and Agriculture, Accra (2001).

³⁵ Article 36(6) of the Constitution also enjoins the state to take all necessary steps so as to ensure the full integration of women into the mainstream of the economic development of Ghana.

³⁶ the nineteen (19) - member Lands Commission as currently constituted does not include any women, see Report on NETRIGHT Public Forum, May 26, (2004).

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- 9th International Anti-Corruption Conference, Durban, October 1999, member of Namibian delegation
- 10th International Anti-Corruption Conference, Prague, October 2001, workshop co-ordinator and co-chair for e-governance
- Global Forum II on Fighting Corruption and Safeguarding Integrity, The Hague, May 2001,
- All Africa Justice Ministers Conference on Law, Justice and Development, Abuja, February 2003, Member, Technical Committee
- 11th International Anti-Corruption Conference, Seoul, May 2003, stream advisor for 6 workshops “law enforcement”, workshop co-ordinator for “Anti-corruption agencies vs. Mainstreaming Anti-Corruption”
- Global Forum III on Fighting Corruption and Safeguarding Integrity, Seoul, May 2003.
- World Bank Legal Forum, Washington

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