

# IMPROVING TENURE SECURITY FOR THE RURAL POOR

## GHANA – COUNTRY CASE STUDY



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FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

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Improving tenure security for the rural poor –

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# **IMPROVING TENURE SECURITY FOR THE RURAL POOR**

**GHANA – COUNTRY CASE STUDY**

**TOWARDS THE IMPROVEMENT OF TENURE SECURITY FOR THE POOR IN GHANA: SOME THOUGHTS AND OBSERVATIONS**

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2006

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Most of the world's poor work in the "informal economy" – outside of recognized and enforceable rules. Thus, even though most have assets of some kind, they have no way to document their possessions because they lack formal access to legally recognized tools such as deeds, contracts and permits.

The **Commission on Legal Empowerment of the Poor** (CLEP) is the first global anti-poverty initiative focusing on the link between exclusion, poverty and law, looking for practical solutions to the challenges of poverty. CLEP aims to make legal protection and economic opportunity the right of all, not the privilege of the few. (see <http://legalempowerment.undp.org/>)

CLEP has identified specific tenure issues, including i) how to make property rights accessible to all, especially poor and marginalized communities, groups or individuals and ii) how to ensure that property rights of the poor function as means of achieving economic and social empowerment, particularly in the context of gender equity and those affected by HIV/AIDS.

There is growing empirical evidence that giving legal recognition to informal property rights in urban areas brings positive results. However, a similar body of evidence does not exist for the empowerment of people in rural areas. Instead, the signs are mixed, resulting in a largely sterile and divisive debate on formalization of rights.

FAO, with donor funding from Norway, has undertaken a set of activities for "Improving tenure security of the rural poor" in order to meet the needs of FAO member countries and, in turn, support the CLEP. This work falls within the FAO corporate strategy on "Sustainable rural livelihoods and more equitable access to resources". Recognizing that secure access to land and other natural resources (forests, water, fisheries, pastures, etc.) is a crucial factor for eradication of food insecurity and rural poverty, FAO's cross-departmental and cross-disciplinary work focused 2005-2006 activities on sub-Saharan Africa which has the world's highest percentage of poor and hungry people.

This paper is part of FAO's effort to inform the CLEP through its working group on property rights. It was prepared for the regional technical workshop on "Improving tenure security of the rural poor" held in Nakuru, Kenya, October 2006, at which issues relating to property rights were reviewed and actions were initiated to develop common strategies for improving the protection of rights to land and other natural resources of the rural poor.



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## LIST OF ACRONYMS

CLEP	-	Commission on Legal Empowerment of the Poor
CEPIL	-	Centre for Public Interest Litigation
EPA	-	Environmental Protection Agency
EIA	-	Environmental Impact Assessment
FAO	-	Food and Agriculture Organization of the United Nations
FOB	-	free on board
GOG	-	Government of Ghana
GPRS	-	Ghana Poverty Reduction Strategy
IIED	-	International Institute for Environment and Development
LAP	-	Land Administration Project
MDG	-	Millennium Development Goal
MINCOM	-	Minerals Commission
OASL	-	Office of the Administrator of Stool Lands
NRCDC	-	National Redemption Council Decree
PNDCL	-	Provisional National Defence Council Law
PCA	-	Programme Cooperation Agreement
TGL	-	Teberebie Goldfields Limited
USA	-	United States of America

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## GLOSSARY

<i>abunu</i>	-	sharecropping agreement, tenant gives half of produce to owner.
<i>abusa</i>	-	sharecropping agreement, tenant gives third of produce to owner.
<i>Fulani and Fulbe</i>	-	Fulani is an ethnic group of people spread over many countries in West Africa. They refer to themselves as Fulbe.
<i>stools and skins</i>	-	a stool is the traditional symbol of office for chiefs in southern Ghana and a skin is the equivalent symbol in the north. Hence, in terms of land tenure “stool” is the term used to refer to the chieftaincy or representative of the tribal system that owns land, in northern Ghana and “skin” is used for the same in southern Ghana.
<i>stool, skin and family lands</i>	-	lands vested in the appropriate stool, skin or family on behalf of, and in trust for, subjects of the stool or skin or family members.

## EXECUTIVE SUMMARY

This paper provides an overview of the land tenure situation in Ghana. It focuses on the rural poor in terms of their access to natural resources, their vulnerability to major threats and the causes of their tenure insecurity. It also suggests approaches to securing property rights as a means for improving their livelihoods. The paper, commissioned as part of the FAO-Norway Programme Cooperation Agreement (PCA) Project on Land Tenure and Development Law that supports the realization of the Millennium Development Goals (MDGs) in developing countries, is presented in five sections.

This introduction, section 1, provides an overview of the country, including location, vegetation and agriculture, and sets out key issues. Section 2 addresses the constraints and reforms of land tenure in Ghana, with particular emphasis on rural communities.

Section 3 focuses on the gender aspect of land tenure problems. Even though women represent about 52 percent of the agricultural work force and account for some 70 percent of subsistence crops production, they have limited access to and control over land compared to their male counterparts. The causes are discussed under five broad but related headings: inheritance, marital relations, lack of information, exclusion from decision-making, usufructuary user limitations and impact of modernization. Section 3 also addresses tenure insecurity faced by other vulnerable groups including settler farmers, sharecroppers and pastoralists.

Section 4 presents a country case study on tenure insecurity in rural Ghanaian mining communities, an issue largely ignored by governments and policy-makers over the years. It also addresses the ways in which the rights of the poor, vulnerable and marginalized have been successfully protected as well as ways in which their rights have been trampled upon, thereby aggravating existing problems.

Finally, section 5 draws on the preceding analyses to provide a summary of answers to the key issues addressed by this paper: Activities to enhance tenure security for the poor and vulnerable in Ghanaian rural communities require a comprehensive review of laws on the rights of women, protection of rights of the rural communities in the event of compulsory land acquisitions and enhancement of tenure security through formalization and registration.

In addressing the way forward in terms of proposed measures, modalities and constraints, the paper proposes, *inter alia*,

- policy and legislative reforms in inheritance and divorce laws to ensure gender equity,
- a cautious approach to mining in forest areas, and
- provision of prompt and adequate compensation and resettlement packages as conditions for the removal of communities from acquired lands.

The paper also advocates recognition of secondary rights as part of a comprehensive rural programme on formalization of holdings and as the prerequisite for any land titling programme.





## 1 INTRODUCTION

In 1957, Ghana became the first sub-Saharan African nation to attain independence from colonial rule. In ensuing years, the country's chequered path was largely dominated by military rule. However, since 1993, Ghana has been governed democratically on the basis of its 1992 Constitution, which was fashioned largely along the lines of the Constitution of the United States of America (USA).

Ghana has an area of about 239 400 km<sup>2</sup>, a population of 21.3 million and an average relief below 600 m. It is situated on the Gulf of Guinea, West Africa, with hot, humid climate in the south and hot, dry climate in the north. Ghana's neighbours, all francophone, include Côte d'Ivoire, Togo and Burkina Faso to the west, east and north respectively.

As in many parts of West Africa, vegetation tends to be banded in zones running approximately parallel to the equator and related to the position of the Inter-Tropical Continental Zone (ITCZ). The two major biomes in Ghana are tropical high forest and savannas – the southern half of the country supports closed forest while the northern half supports savannah and woodland vegetation. About two-thirds of the country is covered by savannah vegetation.

Agriculture contributes about 34.3 percent of GDP and serves as the livelihood basis for the majority of the population, particularly in the rural communities. The country has some 16 percent arable land, 7 percent of which is permanent crops, mainly cocoa. Traditional exports include cocoa, palm nuts and palm products, coffee and shea nuts. Non-traditional exports include pineapples, pepper and cashew nuts. The land is rich in minerals, such as gold, manganese and bauxite. Thus, issues of access to land and land tenure are of importance, as land tenure plays a vital role in achieving sustainable rural development and increasing technological change and economic integration (FAO, 2002).

In its focus on land tenure and development law, this paper: i) examines access of the rural poor to natural resources and their vulnerability to major threats, ii) defines causes of tenure insecurity for the rural poor, and iii) identifies innovative approaches to securing property rights as a means of improving livelihoods of the poor. The study is meant to provide empirical data that will serve as arguments for casting the messages of the Commission on Legal Empowerment of the Poor (CLEP). It should be noted that land tenure and development law comprise one of the five components in a project<sup>1</sup> under the FAO-Norway Programme Cooperation Agreement (PCA) designed to support the realization of the Millennium Development Goals (MDGs) in developing countries.

The paper, as a case study, examines the land tenure regime in Ghana, focusing on how issues such as gender, tenure insecurity and the government's granting of mining concessions in rural areas affect land tenure. With this information, the paper is able to address:

- ways in which poor, vulnerable and marginalized people of rural Ghana can gain access to land and natural resources and ways in which they can lose it;
- constraints of formalization as a tool for protecting rural property rights, in terms of how groups may benefit, lose or need to be protected;
- land tenure issues at local level, including existing informal property markets and the pros and cons of developing property markets where they do not exist;

<sup>1</sup> The project *Improving tenure security for the rural poor* supports the FAO corporate strategy and objective "Sustainable rural livelihoods and more equitable access to resources", and "Support to member countries and the Commission on Legal Empowerment of the Poor" (CLEP) respectively.

- field examples of situations in which the rights of the poor, vulnerable and marginalized have been protected and those in which problems have been aggravated; and
- practicalities of implementing formalization, including designing a registration system, building human resource capacity, raising public awareness and establishing a sustainable system that includes maintenance costs in rural areas with low valued land assets.

The report is presented in five sections. Section 1 introduces the issues to be discussed. Section 2 provides an overview of the land tenure regime in Ghana, looking at constraints and reforms with particular emphasis on rural communities. Section 3 discusses problems in land tenure with special focus on the gender aspect. Section 4 presents a country case study on tenure insecurity in mining communities in rural Ghana, an issue that has been largely ignored by governments and policy-makers over the years. The final section draws on the preceding analyses to provide a summary of answers to key issues and contemplates the way forward in enhancing tenure security of the poor and vulnerable in Ghana's rural communities.

## 2 THE REGIME OF LAND TENURE IN GHANA: AN OVERVIEW

### 2.1 Land law in Ghana

Land law in Ghana has grown from a complex mix of constitutional and legislative sources, judicial decisions, and customary and Islamic laws. Ghana's land rights and tenure systems result from the coexistence of these different systems in the regulation of such rights (Sarpong, 1999). Managing these systems to ensure tenure security for all levels of society has been a formidable challenge to Ghana's legal system. This plurality of systems regulating land in Ghana presents special difficulties, particularly for the more vulnerable, including women and the rural poor, with regard to the practical enjoyment of their land rights, even where those rights are guaranteed under the law. From the perspective of land tenure, two broad arrangements exist: customary tenure and public land tenure.

#### 2.1.1 Customary land tenure

The Ghana Law Reform Commission identified four categories for land interests, under Land Title Registration Law, 1986, PNDCL 152. The four categories are:

- allodial title
- freehold title
- leasehold title
- lesser interests in land.

**Allodial** title is the highest interest known to customary law and, in some traditional areas of Ghana, is recognized as being held or vested in traditional stools or skins. In other traditional areas, this interest is acknowledged to be held by subgroups such as substools, clans and families as well as individuals. Allodial owners hold their interest under customary law and are not subject to any restrictions on their user rights or any obligations in consequence of their holding except for those imposed by the laws of Ghana. The stool/skin in which the allodial title is vested has complete and absolute freedom in dealing with the land. However, this is subject to the rights of the subjects of the stool/skin who may be in possession. Stool/skin ownership means corporate ownership and not ownership under the personal fiat of an individual ruler.

**Freehold** title is broken down into customary law freehold and common law freehold. Customary law freehold, also called "usufructuary title", is an interest held by subgroups and individuals in land acknowledged to be owned allodially by a larger community that acquired it

either by being the first to cultivate it or by succession from the first owning group of which they are members. Originally, under customary law, subjects of a stool had an inherent customary right to a portion of the allodial land. Exercising this right by occupying or cultivating any portion of the allodial land was enough to establish their usufructuary interest without the necessity of a grant from the stool/skin.

Customary law freehold may be held on a corporate status by the substool, lineage, family or by individuals. In addition, it is perpetual and continues as long as the owning group or subject or successors acknowledge the superior title of the stool. The interest is also inheritable and devolves to the holder's family upon the death, intestate, of an individual holder. Holders of the usufruct have the right to relinquish their interest by sale, lease, mortgage or pledge, or to grant agricultural tenancies or shareholder agreements such as *abunu* (a half share) or *abusa* (a third share), but the recipient is obliged to recognize the superior authority of the stool and to perform customary services due from the subject grantor to the stool/skin.

The interest of the customary law freehold is secured because allodial owners cannot pass it to another person or group without the holder's consent. They have unrestricted use of the land but have no rights to minerals or "treasure trove" found on the surface of the land. However, they are required to perform certain services to the stool that owns the allodial title. Holders also stand to forfeit their titles if they deny the title of the allodial owner or if the stool's subject refuses to perform customary services to the stool when demanded. The interest also could be lost by abandonment (if there is a clear manifestation of intention not to use the land), sale, gift, compulsory acquisition by the state, or failure of successors to inherit the land.

The inherent right of the subject of the stool to occupy any vacant stool land and be protected from ejection by the stool appears to have given way, mainly because of socio-economic and political changes such as population increases and land scarcity. Now, the stool has the right to control grants of stool lands in order to prevent situations in which members with resources at their disposal could deprive those less endowed of the use or enjoyment of stool lands.

Common law freehold is an interest in land acquired through a freehold grant made by the allodial owner, either by sale or gift. The holder of a customary law freehold can create a common law freehold through a grant to another person out of his interest. This grant requires the parties to agree that their obligations and rights under such a grant will be regulated by common law and that common law and common law rules will govern any dispute that may arise over the land.

**Leaseholds** are rights granted a person to occupy specified land for a specified term. They are derived from the common law, not from customary law. A lease may be granted either by the holder of the allodial title or a customary freeholder. Unless there is a law to the contrary, the lease will be granted for a specific period of time. Under a leasehold, the lessee pays for the right to occupy the land, usually with an annual rent, and has covenants covering the manner in which the land is used. The lessee may create a sublease or assign the unexpired term of the lease, subject to the consent of the lessor.

Various **lesser interests in land** can be created by owners of allodial titles or customary freeholds. The two most widely used are *abunu* and *abusa*, which are usually sharecropping arrangements by which the tenant tills the land and, at harvest, gives a specified portion of the produce to the landlord. In general, the tenant farmer is entitled to a third of the produce from the land under *abusa* and half of the produce under *abunu*. This practice exists in various forms or arrangements in the farming communities and is gaining importance as a way of gaining access to scarce land.

Five broad categories of such “derived rights” to land have been identified in Ghana: open-ended, long-term loans; short-term loans; tenancies; sharecropping arrangements and contracts involving a share of the plantation. For example, in Ghana’s citrus and oil palm growing areas, sharecropping is the dominant means of gaining access to land (Delville, *et al.*, 2001).

However, there are a number of traditional groups in Ghana that do not recognize stools’ or skins’ rights to communal land ownership. In such places, the allodial title may be vested in a clan or family. This form of land ownership is common in the Volta Region and areas of Greater Accra and the Eastern, Central, Northern, Upper East and Upper West Regions. In these areas, the owning clan or family that holds the allodial title has complete and absolute freedom to dispose of it. They can sue and be sued in any dispute involving such lands.

### 2.1.2 *Public land tenure*

In addition to customary tenure arrangements, the state has powers granted through legislation such as the 1962 Administration of Lands Act, the 1962 State Lands Act, the 1963 Lands Act and the 1965 Public Conveyancing Act. These allow the government to acquire and hold land in the public interest or for public purposes. Although the 1992 Constitution left the state’s powers to acquire and hold land intact, they are subject to constitutional limitations.

### 2.1.3 *Constitutional inroads*

The 1992 Constitution vested all public lands in the President in trust for the people of Ghana (Article 257) but also freed all pre-existing public lands in the three northern regions from the clutches of state control. These lands were once again vested in any person who had been owner of the land before it was vested in the state or the appropriate skin without further assurance (Article 257-4). The effect of these provisions has been to make customary law the predominant basis for land tenure as is the case in the south. In keeping with customary law, the Constitution vested all stool lands in the appropriate stools or skins on behalf of and in trust for the subjects of the stool.

In general, land ownership is perceived as a corporate trust, belonging not only to the living, but the dead and countless generations of yet unborn. The Constitution acknowledges the corporate nature of land ownership and states (Article 36-8) that the state recognizes that ownership and possession of land carry a social obligation to serve the larger community and, in particular, recognizes that the managers of public, stool, skin and family lands are fiduciaries charged with the obligation to discharge their functions for the benefit of, respectively, the people of Ghana and the stool, skin or family concerned and are accountable as fiduciaries in this regard. The Constitution also prohibits the creation of freehold interest out of stool land in favour of a grantee (Article 267-5).

The Constitution bans creation of freehold interests in favour of aliens and states that a non-citizen cannot be granted leasehold for a term exceeding 50 years. The Constitution also bars disposition or development of any stool land unless the area’s Regional Lands Commission has certified that the disposition or development is consistent with the development plan drawn up or approved by the planning authority of the area concerned. Two institutions, the Lands Commission and the Office of the Administrator of Stool Lands (OASL), have been established to administer public and stool lands respectively.

However, the most significant constitutional innovation is the requirement that the government pay prompt, adequate and effective compensation as a pre-condition for the compulsory

acquisition of land for public use under Article 20.<sup>2</sup> This provision addresses the pre-constitutional position under which many compulsory acquisitions were carried out without payment of compensation.

## 2.2 Land administration and tenure: constraints and reform

Although the state established elaborate institutional and administrative machinery to govern land tenure and land administration,<sup>3</sup> it has not been effective. There is lack of complementarity and networking and even conflicts among some of the institutions. The National Land Policy identifies problems and constraints that have bedevilled land administration such as: a weak land administration system; general indiscipline in the land market; indeterminate boundaries of stool/skin lands; compulsory acquisition by the government of lands without payment of compensation; inadequate land tenure security due to conflict of interest among and within land-owning groups and the state; land racketeering and the slow disposal of land cases by the courts.

Several groups that are affected by land tenure are also identified by the National Land Policy document. These include indigenes of the stool who have customary freeholds but no written agreement confirming their interest in the land; women, whose rights are usually secondary to those of their husbands, fathers, brothers or sons; and migrants without firm written claims to land. Further, the poor, most of whom are women, find it difficult to gain access to land, given the need for substantial “drinks money” to confirm transactions.

To implement its National Land Policy and thereby address these problems, the government, in collaboration with its development partners, has drawn up a Land Administration Project (LAP) that is to be implemented over a 15-year period. The LAP’s overall objective is to establish a clear and consistent set of land administrative policies and laws including: a decentralized land administration system that is fair, efficient, cost-effective and enhances land tenure security; effective land records management; and a well-functioning land market in urban and rural areas.

It is expected that the LAP, by facilitating access to land and improving security of rights and interests in land, will help reduce the incidence of poverty in both rural and urban areas and strengthen income-earning capabilities of the poor and vulnerable. In this regard, the issues of insecurity of tenure, including gender equity, ought to be addressed in any programme of land reform. The subsequent sections of this paper address the subject.

<sup>2</sup> Article 20 of the 1992 Constitution provides that:

- (1) No property of any description, or interest in or right over any property shall be compulsorily taken possession of or acquired by the State unless the following conditions are satisfied:
  - (a) the taking of possession or acquisition is necessary in the interest of defence, public safety, public order, public morality, public health, town and country planning or the development or utilization of property in such a manner as to promote the public benefit; and
  - (b) the necessity for the acquisition is clearly stated and is such as to provide: reasonable justification, for causing any hardship that may result to any person who has an interest in or right over the property.
- (2) Compulsory acquisition of property by the State shall only be made under a law which makes provision for:
  - (a) the prompt payment of fair and adequate compensation; and
  - (b) a right of access to the High Court by any person who has an interest in or right over the property whether direct or on appeal from any other authority for the determination of his interest or right and the amount of compensation to which he is entitled.

<sup>3</sup> These institutions include: National Development Planning Commission (NDPC); Ministry of Lands, Forestry and Mines (MLFM); Forestry Department; Lands Commission; Deeds Registry; Land Title Registry; Survey Department; OASL; Department of Game and Wildlife (DGW); the Environmental Protection Agency (EPA); Town and Country Planning (TCP), district assemblies and various customary institutions.

### 3 INSECURITY OF TENURE IN GHANA: A GENDER PERSPECTIVE

The preceding sections have provided an overview of Ghana's land tenure regime including constraints facing the sector and LAP efforts to reform land tenure and administration. This section looks at problems of land tenure in terms of women's land rights. It draws on the *Review of Studies Conducted on Gender and Land in Ghana for LAP and Support for Developing Gender Policy on Land Matters* by Sheila Minkah-Premo and Christine Dowuona-Hammond (2004) hereafter called the "gender study", and the several reports, studies and other relevant literature it contains.

#### 3.1 Gender disparity in access to land

It is estimated that 80 percent of Ghana's lands are held under customary land tenure systems and that women constitute an overwhelming majority within the informal sector, especially in agriculture. It is further estimated that women account for 52 percent of the agricultural work force, 70 percent of subsistence crops production and 90 percent of the labour force involved in marketing of farm produce. Yet, women have more limited access to resources than their male counterparts, especially with regard to access to and control over land, education and credit. These limits restrict their ability to increase productivity and enhance their livelihoods.

Insecurity of tenure and access to land have been identified as major factors in creating and sustaining poverty. Poverty trends and patterns in Ghana point to a distinct "feminization of poverty", especially in areas of severe environmental degradation such as the savannah north. The Ghana Poverty Reduction Strategy (GPRS) notes that regions with the least reduction in poverty tend to have high female populations – in the range of 50 to 52 percent. Feminization of poverty has been attributed mainly to the unequal access of women to productive resources and economic opportunities. Generally, poverty in Ghana is extremely high among crop farmers, a sector predominated by women.

The multifaceted causes of tenure insecurity and gender disparity in access to land are shaped by Ghana's inheritance systems, tenure arrangements and land-use patterns. More specifically, this can be addressed under the following headings:

- inheritance;
- marital relations;
- lack of information;
- exclusion from decision-making;
- usufructuary user limitations; and
- impact of modernization.

A related tenure insecurity problem that affects both women and men is the phenomenal intrusion of cattle herders into areas considered as farmlands. This subject is given separate treatment in section 3.2 below.

##### 3.1.1 *Inheritance*

In many communities, lineage authority allocates land to the male household head. Women have secondary rights or cultivation rights that they obtain through male family members. Succession laws also affect women's access to land. Under customary law, one of the most important ways women acquire land is through inheritance, even though women's inheritance rights are severely limited in both patrilineal and matrilineal systems. However, the hierarchical nature of rights and responsibilities over land and other property that emerge 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 relations.

Among the matrilineal communities, upon the death intestate of a man, his individually acquired property becomes family property and is distributed to his family in accordance with customary law. Under the system, the composition of the man's matrilineal family does not include his wife and children. They are thus not entitled to succeed to any specific portions of the intestate's estate even though they have certain limited rights with regard to maintenance from the intestate's estate and residence in the matrimonial home. Thus, while women benefit in some cases from matrilineal inheritance, they generally do so as lineage members and not as wives or children, if the parent involved is a man.

Among the patrilineal communities, the right to succeed to property is derived from membership in the family through one's father. The children of the deceased are entitled to succeed to his estate, but the respective entitlements or specific shares allocated to them are subject to considerations based on gender. Even though the position of children in patrilineal societies is better than that of children from matrilineal communities, the rules on intestate succession in some cases are discriminatory against female children. Indeed, in the past, women were not entitled to succeed to rights in property except for chattels nor were they considered in the distribution of immovable property on intestacy. Even though the rule has now been relaxed considerably, in general, male children are still given preference over female children.

### 3.1.2 *Marital relations*

Marital relations and divorce have a powerful influence on women's property rights and economic empowerment. Under customary law, a woman is under obligation to assist her husband on his farm. This, coupled with her extensive domestic obligations, effectively reduces the amount of time and effort she can spend developing her own farm. Further, stability of marriage and good relations with male relatives are critical factors in maintaining women's land rights. A married woman may gain access to land with the permission of her husband, but it is not uncommon for a woman to lose her land and crops after a divorce or upon the death of her husband. A woman's right to land obtained through marriage may also change if her husband remarries under a polygamous arrangement.

### 3.1.3 *Lack of information*

Women have relatively little access to relevant information on their land rights and modes of enforcement of such rights. This has been attributed to the fact that women have a lower literacy rate than men but it also is the result of cultural norms, perspectives and gender-power relations at all levels of community life.

### 3.1.4 *Exclusion from decision-making*

In most customary land tenure systems, community-level decision-making about land is the exclusive preserve of chiefs or family heads who exercise that role on behalf of the community, clan or family. Thus, whether women are in matrilineal or patrilineal cultures, it is the men in their families who more or less preside over the allocation of family resources.

### 3.1.5 *Usufructuary user limitations*

Under customary law, all subjects of the stool and lineage members, regardless of sex, have inherent rights of access to, and use of, the lands held in trust by the stool or family head. However, women's access to the usufruct is constrained by a number of factors including patterns of marital residence, land scarcity, gender-based division of labour and organization of production, and gender bias in the size of land given to women among some groups. In addition, actually gaining these rights requires exercising certain processes. For example, land clearing, the principal means of establishing the usufructuary right to virgin land, is a role traditionally assigned to men and, thus, precludes the majority of women from acquiring the usufruct in virgin land belonging to their lineage.

### 3.1.6 *Impact of modernization*

Permanent crops, such as cocoa, have emerged as profitable and dominant enterprises in areas of Ghana. The fact that these crops require the use of land for longer periods gives men preferential access to land, because men tend to be more empowered economically to engage in their cultivation. Sharecropping as a source of land for women is problematic. Many sharecroppers complain about the arbitrariness of landlords who change the terms of the tenancy at will, a situation made easy for them by the verbal nature of many of these arrangements (Duncan, 2000). Other studies of sharecropping arrangements have found their terms disadvantageous to tenants, particularly the increasingly favoured practice of turning over half of the crop to the landlord as opposed to a third or a fourth. This is a problem faced by both men and women. With regard to sharecropping and settler farmers in general, the *White Paper of the Committee of Inquiry into the Problems of Settler Farmers in the Western Region in the Sefwi-Wiaso District* (1988) illustrates the sources of insecurity of tenure on the subject. It states:

- a. *Disputes between various Stools. An example here is the dispute between the Boinan and Mafia stools. The two chiefs are involved in a protracted litigation and each of them has placed tenant farmers on portions of the disputed land at different times resulting in different grantees claiming through the different disputing chief ...*
- b. *Grants and later re-grants by the same chief to different grantees.*
- c. *Forcible entry by chiefs, original grantors... [C]hiefs/landlords justified the subsequent grant on the grounds that the tenant farmers had "exceeded" the original grant.*
- d. *Newly installed chiefs at times disputed the title to and extent of lands granted by their predecessors. In such cases, additional drink money was exacted thus causing a conflict between the tenant and his grantor.*
- e. *[S]ome of the transactions involved in the grant of land were those of outright purchase from citizens but these were subsequently disputed either by the grantor or if deceased, by his next of kin or by a member of the grantor's family, sometimes supported by the chief in the area.*
- f. *Different lengths of measuring rope -[C]hiefs of the Sefwi area and their demarcators used different lengths of rope at different times to demarcate tenants' lands. This practice invariably caused a conflict between the tenant farmer and his landlord.*
- g. *Re-entry on Alleged Subletting - In certain cases re-entry of farms by landlords and chiefs was justified on the grounds of subletting by tenants. [I]n a majority of cases, [however], the sub-tenants were close relatives of the tenant who had been called in to assist.*

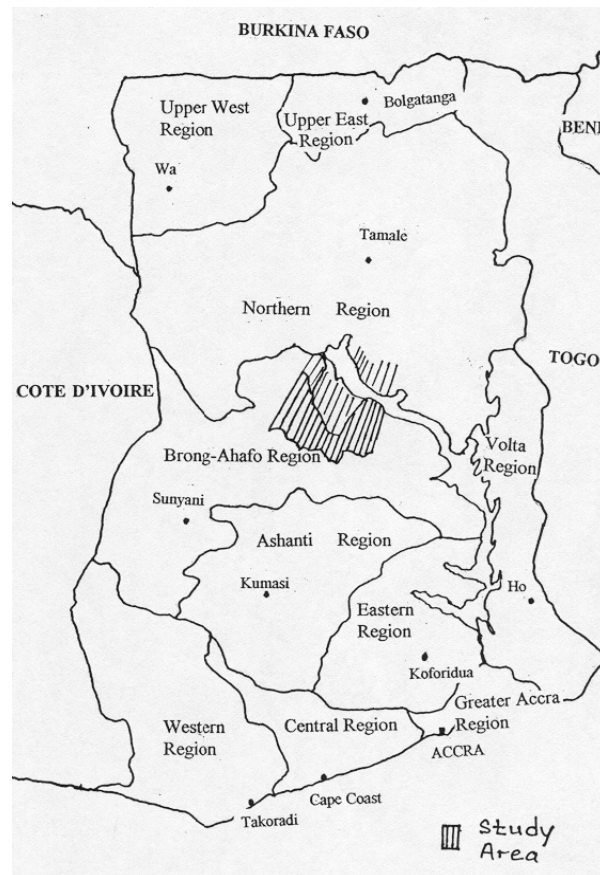


- h. *Grant by one chief and Re-grant by another chief. A case in point is where land granted by Mafiahene was later re-granted by Asuantaahene or Ajoafuahene, both subordinate chiefs who have now been elevated.*
- i. *Failure on the Part of Tenants to pay Rent/Tribute... [S]ome of the tenant farmers had refused to discharge their obligations under the terms of their grants, namely, payment of rent.*
- j. *Forcible Entry Under Act 107.*
- k. *Lack of Documentation and well defined Boundaries ... A frequent source of friction is the absence of documentation on lands acquired by farmers resulting in unceasing and unnecessary re-measurement of tenant's farms and sometimes culminating in litigation. Also boundaries of Stool Lands have not been properly demarcated, generating land dispute between two or more stools.*
- l. *Intrusion on Forest Reserves... [C]ertain landowners had, in violation of the forestry laws, allocated portions of forest reserves to tenant farmers.*
- m. *Ineffective Machinery for Collection of Stool Lands Revenue ... [T]he district and local offices of the Lands Commission are ineffective in the collection of stool land revenue.*
- n. *Injunction Orders by Courts ... [I]ndiscriminate grant of injunction orders by the Courts restraining tenants who find themselves as defendants is doing more harm than good to the economy. And that in certain cases involving tenant farmers, resulting in untold hardship.*
- o. *Lack of education on Land Administration. [A] sizeable number of the settler farmers was not aware of the law prohibiting chiefs from collecting stool land revenue. Some chiefs therefore, took advantage of the ignorance of these farmers and exacted all sorts of periodic payments from them. Some of the chiefs exact these sums of money and label them as customary drink or drink money ...*

The absence of written documentation on, and uniform units of measure for, land transactions in many customary transactions largely account for the foregoing.

### 3.2 Pastoralists and tenure insecurity

Another tenure insecurity problem that affects both women and men is the intrusion of cattle herders into areas traditionally considered farmlands. Many of these pastoralists originally hailed from neighbouring states in the Sahel to the north but the expansion of the Sahara into the Sahel has forced them to migrate south in search of greener pastures. In Ghana, many of these pastoralists have been able to acquire lands to nurture their animals. A 2002 study by Steve Tonah in the Atebubu district (see Map 1 below) found that most chiefs and landowners prefer to lease portions of their land to pastoralists and migrant farmers rather than to indigenes because the former can make substantial rent payments both in cash and in kind, while indigenes only make token payments for the use of land. Rent paid by migrant pastoralists for the use of pastureland has become a major source of income for many impoverished landowners in the district. Fulbe pastoralists may offer landowners in the district one or two mature cattle every two years for the use of pastureland, but indigenous farmers would reluctantly offer them a bottle of schnapps for the use of the same piece of land. Thus, renting land to migrant pastoralists often means landowners can begin accumulating their own herds of cattle with very little investment of their own time or labour. In addition, the landowner can leave the care and management of any livestock acquired to the Fulbe herdsman and members of his household. Indeed, in the Atebubu district where the study was conducted, some of these pastoralists have evolved into permanent residents.



**Map 1** of Ghana showing the Study Area (Tonah, 2002)

However, other pastoralists have ignored the rules on land tenure and ownership and grazed their animals with no regard to the interest of resident farmers. An article published in the Ghanaian Chronicle in July 2000 expressed the various problems attributed to the pastoralists: “The main complaint against these Fulani herdsmen was the danger they and their livestock posed to the environment. Their animals devastated farmlands, caused soil erosion through over-grazing and polluted water bodies which sometimes served as sources of drinking water for the host communities ... To make matters worse, the Fulani herdsmen, these days, are adding new dimensions of terror to their already destructive activities. Most of them go about armed with dangerous knives and sometimes even guns, which they use to intimidate those farmers who confront them. There have even been reports of these herdsmen raping some women they encounter in the bushes.”

In reaction to these negative reports, successive governments have mounted military style operations to drive the pastoralists from the country. However, it is doubtful whether such measures are appropriate for the situation. As Tonah rightly observes, rather than resolving the conflicts, the policy of forcibly expelling pastoralists merely has the effect of shifting farmer-herder conflicts from one region to the other or across national borders. The mass movement of cattle across regional and national boundaries has often increased damage to communities located along the regional or national borders. In 1988, Fulbe pastoralists expelled from northern Ghana moved across the border into southern Burkina Faso and the Bondoukou region in Côte d’Ivoire. They returned to Ghana after the sentiments that had led to their expulsion died down. There is increasing evidence that the 1999 expulsion of Fulbe pastoralists from Ghana worsened farmer-herder relations. As opportunities for an inter-ethnic dialogue decline, both groups have resorted to settling disputes through armed conflict.

In addition to gender inequality and forced migration, another issue with negative implications for the land tenure security in rural communities is compulsory land acquisition for the grant of concessions to mining companies. The next section focuses on this phenomenon, which, as the case study shows, has attracted little attention from government and policy-makers.

## 4 INSECURITY OF TENURE IN RURAL MINING COMMUNITIES: CASE STUDY

### 4.1 Background

The need to attract foreign direct investment into the economy has led the government to adopt liberal regulatory regimes, especially in key economic sectors. In the case of mining, the incentives generated by liberalization have led to renewed investor interest in minerals and mining during the last two decades. The consequence has been the proliferation of mining projects initiated mostly by foreign multinational corporations or their subsidiaries.

The state controls mineral rights in Ghana. The legislative framework is laid down in the 2006 Minerals and Mining Act (Act 703) and the Constitution (Article 257-6) which provides that “every mineral in its natural state in, under or upon any land in Ghana, rivers, streams, water courses throughout Ghana, the exclusive economic zone and any area covered by the territorial sea or continental shelf is the property of the Republic of Ghana and shall be vested in the President on behalf of, and in trust for the people of Ghana.”

Thus, regardless of who owns the land upon or under which minerals are situated, the exercise of any mineral right requires, by law, a licence granted by the Minister for Mines (the sector minister) who acts as an agent of the state for the exercise of powers relating to minerals. Mineral rights are legally defined as the rights to reconnoitre, prospect for and mine minerals. The sector minister is also authorized to exercise, within defined limits, powers relating to the transfer, amendment, renewal, cancellation and surrender of mineral rights.

The powers conferred upon the minister must be exercised contingent upon the advice of the Minerals Commission (MINCOM). Under the Constitution, MINCOM has authority to regulate and manage the utilization of mineral resources and coordinate policies that relate to minerals. The Minerals and Mining Act specifies the forms of mineral rights that the sector minister is empowered to grant, the duration of the grant, the size of the concessions and eligibility criteria for the grantee, as well as the procedure for application for mineral rights.

The Minerals and Mining Act (Act 703) also spells out the rights and obligations of the holder of mineral rights and the terms and conditions upon which the grant of each mineral right should be made. Act 703, Sections 72 and 73, provide, *inter alia*, as follows:

#### **Surface rights**

72. (1) *The holder of a mineral right shall exercise the rights under this Act subject to limitations that relate to surface rights that apply under an enactment and further limitations reasonably determined by the Minister.*
- (3) *The lawful occupier of land within an area subject to a mineral right shall retain the right to graze livestock upon or to cultivate the surface of the land if the grazing or cultivation does not interfere with the mineral operations in the area.*
- (4) *In the case of a mining area the owner or lawful occupier of the land within the mining area shall not erect a building or a structure without the consent of the holder of the mining lease, or if the consent is unreasonably withheld, without the consent of the Minister.*

**Compensation for disturbance of owner's surface rights**

73. (1) *The owner or lawful occupier of any land subject to a mineral right is entitled to and may claim from the holder of the mineral right compensation for the disturbance of the rights of the owner or occupier, in accordance with section 74.*
- (3) *The amount of compensation payable under subsection (1) shall be determined by agreement between the parties but if the parties are unable to reach an agreement as to the amount of compensation, the matter shall be referred by either party to the Minister who shall, in consultation with the Government agency responsible for land valuation and subject to this Act, determine the compensation payable by the holder of the mineral right.*
- (4) *The Minister shall ensure that inhabitants who prefer to be compensated by way of resettlement as a result of being displaced by a proposed mineral operation are settled on suitable alternate land, with due regard to their economic well being and social and cultural value, and the resettlement is carried out in accordance with the relevant town planning laws.*
- (5) *The cost of resettlement under subsection (4) shall be borne by the holder of the mineral right,*
- (a) *as agreed by the holder and the owner or occupier as provided under subsection (3) or by separate agreement with the Minister, or*
- (b) *in accordance with a determination by the Minister, except that where the holder elects to delay or abandon the proposed mineral operation which will necessitate resettlement, the obligation to bear the cost of resettlement shall only arise upon the holder actually proceeding with the mineral operation.*
- (6) *Subject to this section, the Minister and a person authorized by the Minister may take the necessary action to give effect to a resettlement agreement or determination.*

Section 74 lays down the basis for the determination of compensation:

**Compensation principles**

74. (1) *The compensation to which an owner or lawful occupier may be entitled, may include compensation for,*
- (a) *deprivation of the use or a particular use of the natural surface of the land or prior of the land,*
- (b) *loss of or damage to immovable properties,*
- (c) *in the case of land under cultivation, loss of earnings or sustenance suffered by the owner or lawful occupier, having due regard to the nature of their interest in the land,*
- (d) *loss of expected income, depending on the nature of crops on the land and their life expectancy, but no claim for compensation lies, whether under this Act or otherwise*
- (e) *in consideration for permitting entry to the land for mineral operations,*
- (f) *in respect of the value of a mineral in, on or under the surface of the land, or*
- (g) *for loss or damage for which compensation cannot be assessed according to legal principles in monetary terms.*
- (2) *In making a determination under section 73(3), the Minister shall observe the provisions of article 20(2) of the Constitution which states that, in the case of compulsory acquisition of property, prompt payment of fair and adequate compensation shall be made.*

**Access to the Court in respect of compensation**

75. (1) *The owner or lawful occupier of land affected by a mineral right shall not apply to the High Court for determination of compensation to which the person is*

*entitled unless the person is dissatisfied with the terms of compensation offered by the holder of the mineral right or as determined by the Minister ...*

*(3) In proceedings brought before the High Court [for a review of a determination by the Minister], the High Court shall be exercising its supervisory jurisdiction.*

Hence, once a concession has been granted by the government to a mining investor, persons living within the concession are only entitled to compensation for houses, crops and economic trees that are or will be affected by the mining venture. Communities are further entitled to surface rights such as grazing animals within the concession, if it does not interfere with mining operations. Simply put, communities are liable to eviction by mining companies to which the government has granted mining concessions.

The rapid expansion of the minerals and mining sector has witnessed the escalation of conflicts between communities living in and around mining concessions and mining companies. Conflicts have mainly revolved around:

- land user rights;
- acceptability of relocation or resettlement schemes for communities affected by mining;
- adequacy of compensation for houses, farms and crops affected by mining;
- pollution of communities' water sources by mining activities; and
- destruction of cultural sites for mining purposes.

These conflicts have neither augured well for profitable investment in minerals and mining nor for the maintenance of social, cultural and economic stability of communities affected by mining operations. Furthermore, these conflicts that have constantly and needlessly pitched the communities against mining companies in struggles for the control of resources have resulted in avoidable losses. Box 1 illustrates the devastating effect of mining on the chiefs and people of Teberebie in the Wassa District of western Ghana.

#### **Box 1**

##### **Company receives mining concession, local people receive empty promises**

When the American-Ghanaian gold-mining company, Teberebie Goldfields Limited (TGL), obtained a mining concession in the Teberebie area in 1990, the entire community was uprooted and transplanted. It was the first resettlement exercise carried out in the Wassa area. Today the people of Teberebie are tenants. The new settlement is like a tiny island in a vast ocean of mining concessions. The farmers have no farmlands to cultivate. Cultivated farms have been destroyed by TGL's bulldozers. Most of the local inhabitants are unemployed.

The agreement spelling out the terms of the resettlement was based on negotiations between the Wassa-West District Assembly and TGL. Under the agreement, the mining company was to provide 168 housing units, a school complex, a community centre, electricity, a medical clinic, potable water, access roads, a market, bath houses and toilets. The agreement was thumb-printed by the illiterate Teberebie chief, who did not understand the import of the document. The result has been disastrous. Although the agreement stipulated that 168 housing units would be ready within 12 months, seven years later, the target had not been reached. The housing units have no kitchens or bathrooms. Instead TGL constructed communal kitchens and bathhouses where residents wait in single-file for their turn to cook or wash. Even the chief's wife joins the long kitchen queue, waiting to prepare meals for her husband. When she has cooked the food, she will return to the "palace" built by TGL for the chief. It has three bedrooms but no sitting room, kitchen, toilet or bathroom.

Large cracks have developed in almost all the houses due to the frequent dynamite blasts from the nearby mine. Teberebie still lacks other amenities provided for in the agreement, including electricity, a market, access roads and a community centre. The company has constructed two bore holes for the 2 000 residents of Teberebie, but only one is functioning. With clean water in short supply, many have resorted to fetching water from streams although these are said to be heavily polluted with deadly chemicals used in the mining process, such as arsenic and cyanide. Many inhabitants complain of skin rashes, which they attribute to the contaminated water they drink. Though no tests have been conducted to confirm this, the rashes were not prevalent in the area before surface mining began. The Teberebie community is usually engulfed in dust from the mine, except when it rains. Then the people worry about flooding – the area has no drainage system and the slightest downpour converts it into a lake. They are helpless; all they could do was to demonstrate against the company.

The people blame the government for not being sensitive to their plight or responsive to their appeals. They do not understand why crooked mining laws should turn them into slaves on the land of their birth and they blame the government and TGL for reducing them to an endangered species.

from *Mining – Mourning the Future* by Daniel Mensah Brande

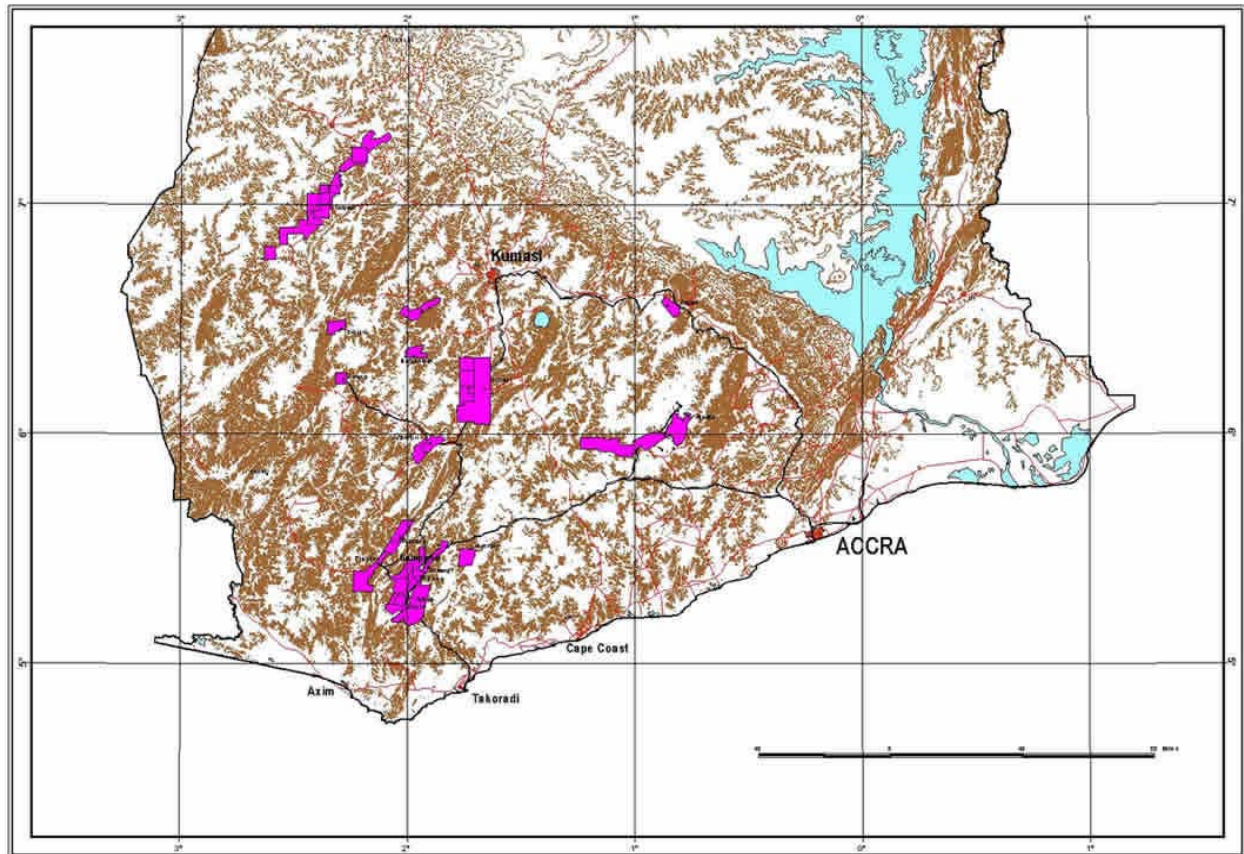
For communities living in and around mining concessions, the problem of land tenure security has become very intense. As noted, once a concession has been granted by the government to a mining investor, persons living within the concession are only entitled to compensation for houses, crops and economic trees affected or to be affected by the mining venture. They can exercise surface rights such as grazing of animals, but only if it will not disturb the mining operations. This means that communities can lose access to land for agricultural and other purposes.

Therefore, it is important to know to what extent such communities can secure title to alternative land for settlement, including land for agricultural use. This question is important because, after being evicted from mining concessions and paid compensation, most rural dwellers end up landless, especially when the compensation paid to them is insufficient to purchase alternative land or, even if sufficient, has been misapplied by the recipients. As an alternative to compensation, communities living in and around mining concessions can request to be resettled on alternative land purchased by the mining company that has been granted a concession. These communities would acquire secure title to the land after it has been purchased and apportioned to them.

However, the ability of communities to either secure the payment of prompt and adequate compensation as required by the Constitution or to obtain alternative land for resettlement depends largely on their capacity to enter into effective negotiations with potential mining investors. Most communities will have very little capacity for this, due to their inability to engage competent legal counsel or land appraisals. The availability of legal and appraisal expertise can and does make a difference in obtaining tenure security for affected communities. This is exemplified by an out-of-court resettlement and compensation agreement that was entered into between Goldfields Ghana Limited (a multinational mining firm) and the residents of Akuntanse and Atuabo in the Wassa West District in the Western Region of Ghana.

## 4.2 The case study

Plaintiffs were residents of Akuntanse and Atuabo farming communities near Tarkwa, a major mining centre in Ghana's Western Region. Plaintiffs had been in quiet enjoyment of lands in these villages as usufructuary holders until February 1994 when Goldfields Ghana Limited (the defendant-company) served notice that it had acquired the mining rights to the land they (the plaintiffs) occupied. After serving notices of the acquisition of mining rights and of its intention to carry out surface mining on the lands occupied by plaintiffs, the defendant-company proposed to the residents that they relocate on their own, on receipt of a monetary compensation package, or that they be resettled at another location by the defendant company. Following these proposals, all buildings, structures and some farms belonging to plaintiffs were surveyed at the instance of the defendant-company and given identification numbers. A financial compensation package was offered to those villagers who opted to relocate. Also, all residents who owned farms with specified crops were to be paid compensation for the loss of their farms irrespective of whether they opted for relocation or re-settlement.



**Map 2** Mining Leases Map - Southern Ghana (Minerals Commission, 2002)

Dissatisfied with the packages offered by the defendant-company, the plaintiffs sought professional assistance, asking the Centre for Public Interest Law (CEPIL) to negotiate or prosecute compensation claims for the disturbance of the enjoyment of their lands as occupiers, in accordance with the law. The villagers refused to move unless and until they were adequately and appropriately compensated. However, before the stalemate could be resolved, the defendant-company began its mining operations. As a result, farming activities on the lands occupied by the villagers were abruptly interrupted; and in the process, the villagers were effectively dispossessed of their lands.

Several villagers instituted legal action before the High Court seeking, among others, the enforcement of their rights to compensation under the Constitution and the then prevailing Minerals and Mining Law or, in the alternative, the enforcement of the obligation of the mining company to resettle them on suitable land on which they could continue their farming activities. The company also filed court actions against certain villagers who refused to move out of the concession for mining operations to commence. In all, five suits were filed, two by the affected villagers seeking the above mentioned and other reliefs against the Goldfields (Ghana) Limited and three by the company seeking to compel the villagers to quit its concession.<sup>4</sup> Consequently, between 1997 and 2001 the affected villagers were engulfed in legal battles with Goldfields.

<sup>4</sup> The cases were (1) Amissah Anthony v. Goldfields (Ghana) Ltd, suit no. CS. 47/97; (2) Robert Abban v. Goldfields (Ghana) Ltd, suit no. CS. 9/98; (3) Goldfields (Ghana) Ltd v. Adamu Ali, suit no. LS 4/2001; (4) Goldfields (Ghana) Ltd v. Cudjoe Kingston, suit no. CS 2/2001 and (5) Goldfields (Ghana) Ltd v. Simeon Thompson, suit no. LS 6/2001.

In 2001, the defendants proposed an out-of-court settlement in respect of all the pending cases. An important dimension of the settlement was agreement by the company to purchase land for the villagers on which they could resettle. The defendants, Goldfields Ghana Ltd, undertook to build houses and provide social amenities (including a clinic, potable water, electricity and a community cemetery) for the villagers in exchange for the villagers agreeing to withdraw the court actions and to move out of the mining concession. However, the company was not obligated to purchase additional farm lands for the communities in excess of those that were available within the purchased land.<sup>5</sup> The villagers were given individual plots of land on which to resettle.

### 4.3 Security of tenure for the rural poor: some observations in the light of the study

In the context of mining, the problem of tenure security arises from the design of the legal regime for mining investments. Existing law places the rights of the mining investor over and above those of current owners or users of the land that is subject to a mining concession. This becomes the basis for the displacement of the latter. Rural dwellers displaced from their land can have secure title to alternative lands, either by asserting their right to monetary compensation that can then be used to purchase alternative land or by asserting their right to be resettled on land purchased for that purpose by the mining investor. As the Goldfields case indicates, tenure is more secure if the company is compelled to purchase land for resettlement. This is because once individual villagers or households are given their plots of land, they can proceed to register them in their names with the Lands Commission thereby effectively securing their title.

The ability of rural communities to obtain prompt, adequate and effective compensation for lands compulsorily acquired for mining ventures depends to a large extent on the resources available to such communities. Land disputes tend to be slow, protracted and expensive, and many communities cannot afford them. In this particular case, the community was fortunate enough to have Centre for Public Interest Litigation (CEPIL), a public interest litigation entity, to handle the case *pro bono*. However, the Teberebie example, cited in Box 1, shows how the poor and vulnerable can be manipulated by multinational or endowed companies aided by public officials to sell their birthrights for a mess of potage. The CEPIL intervention points to a way in which rural communities could be assisted in asserting their rights – through legal aid. Unfortunately, the legal aid scheme is too stretched or under-resourced to offer effective assistance in this regard.

Ghanaian law does not recognize usufructuary interests in land as compensable interests. Usufruct holders are only entitled to be paid for the value of the crops on the land. Significantly, there are no formal mechanisms for ensuring that part of the royalties paid by mining companies to chiefs are paid, in turn, to usufructuary holders. Women tend to bear a disproportionate burden of the impact of such compulsory acquisitions. This is because, particularly in the rural areas and among the urban poor, women tend to be almost entirely dependent on the land for their livelihoods and have the fewest options when deprived of their land. Women also have a disproportionately high burden for the upkeep of the family (Dowuona-Hammond, 2003). Further, unlike their male counterparts, the mining companies do not employ them in several areas of their operations, particularly in underground mining. Thus, landless and without any secure source of subsistence or employment, they fall prey to many social vices with attendant health risks, including contracting HIV in their quest for survival.

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<sup>5</sup> Source: Terms of Settlement, dated June 20, 2001, filed by Centre for Public Interest Law (CEPIL), counsel for the villagers, and Kudjawu & Co., counsel for Goldfields, in the High Court, Tarkwa.



## 5 CONCLUSIONS AND WAY FORWARD

This section of the paper draws on the preceding analyses to provide answers to the issues discussed and identifies potential ways forward for the enhancement of tenure security for the poor and vulnerable in rural communities.

### 5.1 Conclusions

Land law in Ghana is a complex mix of constitutional and legislative material, judicial decisions, customary and Islamic laws. Of these, customary law predominates, accounting for about 80 percent of the subject matter. Managing these systems to ensure security of tenure for all sections of society, particularly for the poor and vulnerable, has been a formidable challenge to Ghana's legal system. Access to land in Ghana, including land for the poor and vulnerable, is based on four tenure arrangements: allodial title, freehold title, leasehold, and lesser interests, including the *abunu* and *abusa*.

Although the Constitution recognizes the customary system of tenure, it is subject to the right of the state to compulsorily acquire lands for purposes deemed to be in the public interest on the basis of prompt, adequate and effective compensation with the right to resettlement for displaced persons. Accordingly, any of these titles described above could be lost to the state on the basis of acquisition. In addition, all minerals and lands harbouring minerals are deemed vested in the President in trust for the people of Ghana.

Even though usufructuary holders have reasonably secure interest, they can lose their interest in the case of, for example, denial of the title of the allodial owner; refusal by the subject of the stool to perform customary services to the stool when demanded; sale or gift; abandonment; failure of successors to inherit the land; or compulsory acquisition by the state. Of these, compulsory acquisition is considered the most critical and is discussed further below.

In addition, there are other situations that could lead to loss of title to land such as: land disputes and attendant court injunctions, multiple grants by the same grantor to different grantees, re-entries, failure on the part of tenants to pay rent/tribute, absence of documentation on grants, and the lack of well defined boundaries. The absence of written documentation on, and uniform units of measurement for, land transactions in many customary transactions largely account for the foregoing.

Women make up about 52 percent of the agricultural work force, account for some 70 percent of subsistence crop production and comprise about 90 percent of the labour force in the marketing of farm produce. However, they have limited access to, and control over, land compared to their male counterparts. The causes, deeply steeped in custom, include issues of inheritance, marital relations, lack of information, exclusion from decision-making, usufructuary user limitations and the impact of modernization. Other vulnerable groups, such as settler farmers and sharecroppers, also face problems of insecurity of tenure. The activities of pastoralists also contribute to tenure insecurity through their various nefarious activities, including devastation of farmlands and rape of women.

## 5.2 Way forward

As a way forward, the following are proposed:

- comprehensive review of laws on the rights of women;
- protection of rights of the rural communities in the event of compulsory land acquisitions; and
- enhancement of tenure security through formalization and registration.

### 5.2.1 *Review of laws on the rights of women*

The Constitution, by providing that no spouse would be deprived of a reasonable provision out of the estate of a deceased spouse whether testate or intestate, brought an end to the era when a deceased husband's property became family property to the exclusion of the widow in matrilineal communities. Further, Article 22 of the Constitution enjoins Parliament to enact legislation to regulate the property rights of spouses. No such legislation has yet been enacted. However, a pre-constitutional enactment, the Intestate Succession Law (PNDC Law 111) was passed in 1985 to cater to surviving spouses and children of persons who die intestate.

Customary marriages in Ghana are potentially polygamous. The law has therefore been criticized, *inter alia*, for lumping the interests of surviving spouses together with the children and, thus, failing to give the widow(er) the priority it sets out to achieve. It has been suggested that in order to protect the interests of the surviving spouse in the estate of the intestate, the portion due the spouse should be separated from that of the children in the distribution of the estate. This could be done by amending section 4(b) of the law to provide that if the estate consists of more than one house, the spouse shall be entitled to one of them (the choice to be made by the spouse) and the children shall succeed to another house separately, before the distribution of the residue or remainder of the estate after all claims, debts and bequests have been satisfied. The provisions also could be modified to grant courts the discretion to give the spouses and different sets of children separate entitlements if the size of the estate permits it.

Any law reform exercise on the subject must also address property rights of spouses upon the dissolution of marriages. Indeed, it has been suggested that reforms in gender relations in land must be based on a legally enforceable presumption of spousal co-ownership of primary household property. This general position should be reinforced by laws that protect the property rights of women, forbid the eviction of widows and divorcees from their matrimonial homes, and disallow sale of household land and matrimonial property without the written agreement of both spouses.

Legislation alone will not create gender equity. Governmental policy interventions are needed to raise awareness, provide for education of rural girl children, and involve women in decision-making at the grassroots. In pre-colonial times, women held positions of dominance in certain communities. The Asantes' queen mother was consulted on all important matters of state and held the prerogative of nominating the heir to the stool. Neglecting the education of girls in favour of boys has tended to weaken the position and influence of women who remain illiterate in many rural communities. Conscious efforts to provide education for girls in the rural areas will help restore the status quo.

### 5.2.2 *Protection of rights of rural communities during compulsory land acquisitions*

Compulsory acquisitions of land must be guided by strict justification for the amount of land to be acquired, supported by feasibility reports and environmental impact assessments (EIAs), and have money available for compensation (Sarpong, 2001). In addition, the relevant project should not commence until the necessary compensation due the affected inhabitants has been

paid and, if resettlement is required, the affected persons have been fully resettled. The resettlement plans should be included in the EIA and the affected communities should be involved in the process. This would ensure that the land rights of individuals and communities guaranteed by the Constitution are not violated.

The case studies cited from Teberebie, Akuntanse and Atuabo illustrate the levels to which the rights of the poor, vulnerable and marginalized can be successfully protected or trampled upon. For example, the Teberebie case study shows how the poor and vulnerable can be manipulated by multinational or endowed companies aided by public officials to sell their birthrights for a mess of potage even where guaranteed constitutional rights exist. The CEPIL intervention in Akuntanse and Atuabo illustrated a case where rural communities were assisted in asserting their rights.

### 5.2.3 *Enhancement of security of tenure through formalization and registration*

Tenure insecurity in many customary transactions is largely the result of absence of written documentation on, and uniform units of measurement for, land transactions. However, as noted, derived rights are becoming an important source of obtaining access to land in many rural communities.

Therefore any exercise on documentation of titles should involve the entire range of varied interests – both primary and secondary – that exist in Ghana under customary tenure in rural communities. These should be identified, their scope, nature and incidents determined and procedures developed for their documentation. As for women, the most common methods of land acquisition and sources of land rights for women in rural areas include pledging, sharecropping, inheritance rights, licences and user rights of husband's land (Duncan, 2000).

Further, usufructuary interests in land should be recognized as interests worthy of compensation. In the event of compulsory acquisitions, usufruct holders need to be compensated for the value of their land and not just the value of the crops on the land, as is currently the case. This will ensure that entire communities are not dispossessed of their land and deprived of their means of livelihood with the resultant negative effect on the poverty situation in rural communities. The five categories of rights identified in Ghana – open-ended long-term loans, short-term loans, tenancies, sharecropping arrangements and contracts involving a share of the plantation – provide a good guide (Delville, *et al.*, 2001).

In devising mechanisms for documentation, care should be taken to address all issues that could lead to conflicts. This includes an inventory and documentation of all interests, and spelling out all vital terms and conditions of the transaction. For example, if there is a right to recover possession of the land, it should note when this could happen and under what conditions. In addition, it should note the quantum of rent and when it is payable, the exact area allocated and any restrictions on the use of the land. All terms should be put into writing, including local languages, where appropriate. The guiding principle should be to ensure that the land is allocated on the basis of arrangements that are both legal and perceived to be legitimate by the local community because they are founded on local realities (Delville, *et al.*, 2001).

Achieving harmony in the land sector in rural communities requires ensuring security of tenure for grantees while guaranteeing the title of their grantors. In looking at this issue, a 1999 Land Tenure Report suggests a collaborative effort is needed to fashion suitable agreements governing tenancies in the various districts. The effort should include input from various land agencies in close consultation with the district assemblies, the various traditional authorities and/or land owners and grantees (Sarpong, 1999).

These agreements, which could be in the form of by-laws, should take into account the peculiarities and practices of the various districts such as population density, topography, the regime of land tenure and the type of crops cultivated. However, in order to be in consonance with the 1972 Conveyancing Decree and other relevant laws, these agreements should contain:

- particulars of the parties and the capacities in which they are conveying and receiving grants of land;
- explanation of the nature of the interest to be granted and conveyed;
- description of the land as to its location and dimensions;
- survey of the property so that any document references a qualified surveyor's plan;
- amount of consideration, if any;
- specifics on duration of the term;
- list of covenants to which the parties might be bound.

In addition, the agreement must be put into writing in the form of a conveyance or lease and appropriately stamped, as required under the 1965 Stamp Act.<sup>6</sup> Grants of stool land should involve the stools and the substools or chiefs in whose localities the lands are situated so as to avoid conflicts or multiplicity of grants of the same land to different grantees. Provisions also should be made or arrangements put into place to ensure, as much as possible, that the indigenes have land available for use.

With regard to insecurity of tenure caused by pastoralists, Tonah (2002) has suggested that the solution lies in engendering co-existence between farmers and pastoralists. He sets out that livestock development and marketing have to focus on improving the conditions of the indigenous agro-pastoral households if there is to be any marked improvement in production. For instance, rather than antagonize them, the government might do well to tap the Fulbe's rich experience and expertise for the mutual benefit of both the indigenous farmers and the pastoralists. While there is merit in the argument, a clear distinction ought to be drawn between those pastoralists who have obtained lands for their activities from local chiefs or other landlords and those who roam the countryside without any tenure arrangements with the affected owners. The derived rights of the former must be respected and accorded protection as any other tenant farmer. However, the latter's activities ought to be curbed.

Much has been touted about land registration as a means of ensuring tenure security. This security of land rights through a clearer definition and enforcement of interests can reduce incidence of land disputes, increase land transactions, provide greater incentives for investments and enhance collateral value of land and, in turn, help access financing (IIED, Osman, *et al.*, 2005).

Ghana has two operational systems: deeds registration and title registration. Deeds registration dates from colonial times and calls for registration of instruments governing land transactions. Section 24-1 of the 1962 Land Registry Act (Act 122) provides that an instrument other than a will or a judge's certificate shall be of no effect until it is registered. According to Section 25-1, registration constitutes actual notice of the instrument and gives priority to the person who first registers his or her document. Title registration actually was introduced to address the weaknesses in deed registration but the two operate side by side. Deed registration is the predominant mode in rural communities while title registration is used more often in urban and peri-urban areas such as Accra, Tema and parts of Kumasi.

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<sup>6</sup> Ideally, the document must then be registered in accordance with the 1962 Land Registry Act. Although title registration is problematic in rural communities, failure to register any document affecting land is fatal as explained in the last paragraph on page 20.

The government introduced title registration throughout Ghana in 1986, through the Land Title Registration Law (PNDCL 152). Under this scheme, land is placed on the folio of the land register as a unit of property and transactions are recorded in reference to the land itself and not merely through instruments as is the case with deeds registration. Registration constitutes an indefeasible warranty of title for the person registered as a proprietor and ensures: certainty and proof of title to land; safe and simple dealings in land; provision of an economical system of land transfer; minimization of litigation; and protection of purchasers and lending institutions against fraud and clandestine dealings in land. However, registration under both schemes is laborious and expensive which many rural communities can ill afford.

Very few land rights have actually been registered, despite the fact that deeds registration has been in existence since 1883, and title registration since 1986 (Kanji, *et al.*, IIED, 2005). The Land Administration Project seeks to strengthen land rights and tenure arrangements through improved land administration systems and other activities including title registration. However, as the Gender Study notes, activities such as titling and registration may result in the loss of land rights for some people and the possible displacement of some families.

For example, secondary use rights, such as the rights of poor village women to harvest the fruits of certain trees or the right of the community to use an established path across a property or to collect fruits, fuel wood and other forest products, may be ignored in the process of establishing a system for registration. If all the multiple rights to the use of land are not recognized at the time of registration, it could affect poor rural women disproportionately. Tenant and sharecropping arrangements may be terminated immediately before titling to disencumber the property, or soon afterwards as land prices rise and properties are put on the market. Women may experience more difficulty in accessing land following the titling process, if increased land values lead to higher prices and land-use controlled by men. An IIED study looking at this issue determined: “... many potential reasons for the exclusion of poor rural farmers from land registration processes including limited awareness of the process, exorbitant fees, cumbersome procedures, and corrupt practices by officials in land agencies. Even at the village level where informal documentation seems to be cherished ... The financial cost involved is still restrictive and many farmers engage the services of unlicensed surveyors to draw up site plans because they cannot afford the costs charged by licensed surveyors” (Osman, *et al.*, 2005).

Any programme of land titling in rural communities must be preceded by a comprehensive programme that identifies and documents the nature, scope and incidents of the range of interests – both primary and secondary – that exist in Ghana under customary tenure in rural communities. The exercise should be based on a demarcation and registration of stool land boundaries, a process that, in itself, would help resolve boundary disputes. In the case of the resettlement of mining communities, the acquired lands could be registered for, and on behalf of, the communities with the cost borne by the investor as part of the cost of the acquisition. These are challenges that the implementers of the LAP will have to surmount in the quest to ensure security of tenure for the poor and vulnerable in Ghana’s rural communities.

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- Conveyancing Decree, 1972 (NRCD 174)
- Land Title Registration Law, 1986 (PNDC Law 152)
- The Minerals and Mining Law, 1986 (PNDC Law 153) as amended by the Minerals and Mining Amendment Act, 1993 (Act 475).
- Minerals and Mining Act, 2006 (Act 703).





## Annex B: COUNTRY FACT SHEET

Location:	West Africa – bordering: Burkina Faso 549 km; Côte D’Ivoire 668 km; Togo 877 km; and Gulf of Guinea 539 km
Area:	Total: 239 460 km <sup>2</sup> ; land: 230 020 km <sup>2</sup> ; water: 8 520 km <sup>2</sup>
Land/use:	Arable land: 16%; permanent crops: 7%; other: 77% (2001)
Population/people:	21 377 million (2004)
Independence:	6 March 1957 (from Britain)
Constitution:	Approved 28 April 1992, into force 7 January 1993
Legal system:	Based on English common law and customary law; has not accepted compulsory International Court of Justice jurisdiction
Political governance:	Constitutional democracy President: John Agyekum Kufuor (7 January 2001) Cabinet: Ministers appointed by the President Elections: Last held 7 December 2004 (next in December 2008) Election results: John Agyekum re-elected with 53.4%, defeating Evans Atta Mills 43.7%
Economy:	GDP purchasing power parity: US\$48.27 billion (2004 est.) GDP per capita: US\$434 (2004 est.) (source: Bank of Ghana) GDP growth: 5.4% (2004 est.) GDP composition: Agriculture (34.3%), industry (24.2%), services (41.4%) (2004 est.)
Budget:	Revenues: US\$2.17 billion; expenditures: US\$2.56 billion, including capital expenditure (2004 est.)
Trade: Exports:	US\$3.01 billion, FOB. (2004 est.); imports: US\$3.699 billion, FOB (2004 est.); current account balance: US\$ 83.87 mn. (2004 est.)
Import partners:	Nigeria 21.3%, China 8.7%, UK 6.7%, US 5.6%, Germany 4.4%, France 4.2% (2003)
Exchange rate:	Ghanaian <i>cedis</i> per US\$: 9 064.25 (2004); 7 932.7 (2003); 7 932.7 (2002); 7 170.76 (2001); 5 455.06 (2000)

## Annex C: COUNTRY INDICATORS

Demographic data	Year	Estimate	Source
Total population (thousands)	2004	21 377	UN Population Division database
Female population aged 15-24 (thousands)	2004	2 314	UN Population Division database
Population aged 15-49 (thousands)	2004	10 697	UN Population Division database
Annual population growth rate (%)	1992-2002	2.4	UN Population Division database
Percentage of urban population	2003	45.1	UN Population Division database
Average annual growth rate of urban population	2000-2005	3.22	UN Population Division database
Crude birth rate (births per 1 000 population)	2004	31.2	UN Population Division database
Crude death rate (deaths per 1 000 population)		9.9	UN Population Division database
Maternal mortality rate (per 100 000 live births)	2000	540	World Health Report WHO/UNICEF, 2004
Life expectancy at birth (years)	2002	57.6	World Health Report WHO, 2004
Total fertility rate	2002	4.2	World Health Report WHO, 2004
Infant mortality rate (per 1 000 live births)	2000	62	World Health Report WHO, 2004
Under 5 mortality rate (per 1 000 live births)	2000	105	World Health Report WHO, 2004
Adults aged 15-49 with HIV/Aids	2003	320 000	UNAIDS, 2004

