

## **GHANA**

### **PARTNERSHIP FOR GROWTH INTERAGENCY LAND TENURE WORKING GROUP<sup>i</sup>**

#### **ANALYSIS AND RECOMMENDATIONS ON CONSTRAINTS ANALYSIS**

##### **EXECUTIVE SUMMARY**

The Partnerships for Growth (PfG) constraints analysis identified land tenure insecurity as a binding constraint on economic growth in Ghana. The purpose of this document is to provide a more detailed analysis of the issue, as well as recommendations for USG assistance in overcoming this constraint.

As in many developing countries, insecure property rights in Ghana deter investment and inhibit broad-based economic growth. Land tenure in Ghana is primarily the domain of the customary system, with traditional authorities holding legal ownership rights on behalf of their communities, and bearing responsibility for decisions concerning land allocation and use. Land rights can be legally registered and documented under the formal legal system, but state land administration tends to be weak and in practice most rights are undocumented.

Insecure tenure, conflicts over land, and multiple allocations of the same piece of land to different parties by traditional authorities are common occurrences in Ghana. The economic implications are significant. Both in rural and urban areas, issues related to acquiring and maintaining rights to land appear to significantly reduce the level of commercial investment. Land tenure insecurity also deters fallowing and reduces agricultural investment and productivity for smallholder farmers.

Our recommendation is that the USG could play an important role in addressing land tenure issues in Ghana through a series of small-scale, targeted interventions. We do not recommend a large-scale, “transformational” investment at this time for two reasons: first, it is not clear that such an investment could be effective in eliminating the constraint of land tenure insecurity, and secondly, other donors (particularly the World Bank) are active in a variety of areas and are already working with the Government of Ghana to address many of the key issues. Nonetheless, there are a number of avenues where USG assistance could make a significant impact. We identify four of these areas as follows: 1) support to Customary Land Secretariats, a promising new institution that improves the clarity, accuracy, and efficiency of the customary system, 2) wider implementation of training, outreach, and dispute resolution tools developed by the MCC-funded MiDA project, 3) training for traditional authorities related to negotiating large-scale land transactions, and 4) participatory community boundary demarcation.

## I. BACKGROUND

- 1.1 This document is intended to provide the United States Government’s Partnership for Growth (PfG) Interagency Team with a more detailed analysis regarding the constraint that insecure land tenure imposes on economic growth and poverty reduction in Ghana. The document is the result of a collaboration of USG specialists in land tenure; it seeks to provide the PfG Team with: (i) additional information regarding the underlying causes of the land tenure constraint; and (ii) a recommended scope for USG involvement in land tenure issues, including some specific interventions/investments that could be brought to bear on addressing the constraint.
- 1.2 As in many developing countries, insecure property rights in Ghana deter investment and inhibit broad-based economic growth. Insecure land rights impose added risk on investments in land, whether in the form of land purchases or through the application of labor and capital to improve the soil, plant perennial crops, build structures, or otherwise increase the value of the land. The risk arises from the threat that one’s rights to the land will subsequently be usurped or challenged, either in use or when leased or rented to another. The end result is to reduce the risk-adjusted return to investments in land, and thereby to deter such investments. The underlying causes of tenure insecurity in Ghana originate with ambiguities within the customary system over who has rights to what land, and the boundaries of the claims of both individuals and communities. This ambiguity is exacerbated by a lack of documentation and record keeping, which is in part the result of a weak land administration system. As a result of these factors, the PfG Constraints Analysis identified insecure property rights as a binding constraint to economic growth in Ghana.
- 1.3 Concerns regarding land tenure insecurity are further illustrated by the results of a recent survey of current foreign investors in Ghana.<sup>1</sup> A variety of foreign business owners were asked to identify the most difficult obstacles facing their firms in the Ghanaian business environment. The most common concern cited was access to land, with 62% reporting this as a major obstacle. In addition, the second most common response was registering property, with 38% expressing concerns in this regard<sup>2</sup>

### A. Land tenure systems in Ghana

- 1.4 All land in Ghana falls under one of four distinct property rights regimes. The most prevalent is *stool lands* (termed *skin lands* in the North), under which property rights are vested in a traditional chief called an overlord, in the form of a land title called an allodial<sup>3</sup> title; the chief administers the land on behalf of the community. *Family lands* are similar, but here title is held by extended families with some historical claim to the

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<sup>1</sup> Barthel, Fabian, Matthias Busse and Robert Osei (2011) “The Characteristics and Determinants of FDI in Ghana” *European Journal of Development Research* 23(3) pp. 389-408

<sup>2</sup> This is in contrast to the World Bank’s Doing Business Indicators, which ranks Ghana as the top sub-Saharan African country in terms of the time and cost to register property. However, Doing Business evaluates time and cost for a typical property that has previously been registered. As the vast majority of land in Ghana is unregistered, the survey results suggest that new registration of land poses significant problems that are not accounted for in the Doing Business index.

<sup>3</sup> The allodial title means that the chief or family head is the legal holder of the property right, though this right is sharply circumscribed both legally and in practice in recognition of the legitimacy of the claims of the day-to-day users of the land.

land rather than by chiefs, usually because there has not traditionally been an overlord with authority over land in the area. Stool lands and family lands comprise approximately 80% of the land in Ghana. The majority of the remainder is ***state-owned land***, with pockets of land under ***freehold title*** primarily in Greater Accra and Kumasi, and where chiefs sold or gave stool lands to private parties prior to the 1992 Constitution, which forbids this practice.

- 1.5 In the context of stool and family lands in particular, the law allows for a number of secondary property rights or arrangements. One such arrangement on stool and family lands is referred to as “customary freehold,” which is a right in perpetuity that can be transferred, bequeathed, and held in private. Another, similar form of landholding on stool and family lands is called “stranger usufruct rights.” These rights are granted to migrant households, as well as to descendants of migrant households. There also exist sharecropping arrangements which are referred to as *abunu* or *abusa* depending on the percentage of land or production that is divided between the original rights holder and the temporary land user. Finally, allodial title holders may enter into formal leasehold agreements of up to 99 years in duration with other Ghanaians or up to 50 years with non-Ghanaians.
- 1.6 The legal basis for formalization of rights is the Land Title Registration Act of 1985, which allows for the following rights to be registered: allodial title, usufruct/customary freehold, freehold, leasehold, customary tenancies, and mineral licenses. Partly due to the predominance of customary tenure administered by customary authorities, only a small proportion of land is registered. Land registration is further hampered by the high costs and time required to complete the relatively complex process. As a result, individual landholders typically do not have documentation for the land they occupy, making it more difficult to resolve border disputes or competing claims to the same property. In addition, because the majority of allocations are verbal in nature it is not uncommon for Chiefs to make multiple allocations of the same property, and/or to be in a position to take advantage of this ambiguity to the detriment of the land holders with weaker claims to use rights (e.g., tenants, women and settlers). Finally, insecurity of tenure acts as a binding constraint for agricultural land holders who would otherwise make longer-term investments on the land including planting tree crops, irrigation, or mulching, thereby deterring soil conservation and natural resources management efforts.

#### B. Weak land administration

- 1.7 Within the “formal land rights system,” a broad yet fundamental and commonly accepted definition of land administration is “the processes of recording and disseminating information about ownership, value and use of land.”<sup>4</sup> While other aspects of land policy, land tenure, land legislation, and land information management have been added to this definition over the years, at its most fundamental level this United Nations definition from 1996 accurately describes the function of land administration in Ghana in 2011. Although the Government of Ghana is actively engaged in a process of institutional reform and modernization (primarily through the on-going Government and World Bank funded Land Administration Projects (LAP) I and II) the current institutional

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<sup>4</sup> United Nations Economic Commission for Europe Land Administration Guidelines (1996).

nature of land administration in Ghana must be seen as weak, overly centralized, difficult to access, costly, and lacking in transparency. The current limitations on management and technical capability and the lack of institutional commitment to reform at the line management level not only frustrate the individual land owner seeking land administration services, but also complicate the implementation of well-designed and fully-financed development assistance projects.

- 1.8 As a legislative result of the LAP, the Land Administration Act of 2008 brought four separate land agencies previously responsible for different aspects of land administration under the authority of the new Ghana National Lands Commission. As regulated by the new legislation, these previously separate agencies became line-divisions of the Commission, specifically, the Land Title Registry Division, the Lands Commission Secretariat, the Survey and Mapping Division, and the Land Valuation Division, all under the overall management of the Lands Commissioner and the government authority of the Minister of Lands and Natural Resources. Although a reform in the right direction, the practical short-term result and the long-term outcome of the reorganization of formal land administration in Ghana is yet to be determined. Certainly for the implementation of the MiDA Land Tenure Facilitation Activity, while there was broad institutional acceptance and collaboration, daily interaction with the line-divisions to process project work posed a challenge and required continual application of pressure and incentive. To this end, the Lands Commission as an institution still cannot be considered fully and effectively reliable to meet the needs of a project-based intervention which places additional and time-sensitive workload on line agencies.
- 1.9 Within the “customary land rights system,” the structure of authority over land varies by location in ways that have important implications for land tenure security. Typically, there are three “tiers” of traditional authorities: (i) local chiefs or headmen at the community level; (ii) paramount chiefs with authority over a number of local chiefs; and (iii) overlord chiefs who hold the allodial titles over their peoples’ lands. Allocations of land and transactions in the community are typically completed at the level of the local Chiefs with some direct or indirect approval of the overlord Chief. However, as recently demonstrated in the MiDA Ghana tenure pilot projects in both the south and north of the country, there are historic and on-going disputes over the allodial boundaries between communities. When combined with the concerns presented in paragraph 1.7, the uncertainty of community boundaries often leads to contestation and the inability to allocate these lands or to fully clarify and register land rights in the formal system and to fully develop these lands.
- 1.10 A more recently established institution in the customary system is the Customary Land Secretariat (CLS). In an effort to improve efficiency and record-keeping in the customary system, the LAP created 38 CLSs throughout the country beginning in 2004. The CLSs have the responsibility to manage and record land allocations and transactions made by customary authorities within traditional areas. The CLSs are a potentially promising avenue towards bringing greater clarity and transparency to the customary system, as similar institutions have played an important role in this regard in other African countries (for example, the Communal Land Boards in Namibia and Botswana).

However, implementation of the CLS model has been uneven. The capacity of the CLSs ranges from fully operational in some jurisdictions to barely functional in others. The effectiveness of the CLSs depends on a number of factors, including the chief's willingness and ability to pay staff as well as the level of training and support provided by the original LAP funding during their creation. The 2<sup>nd</sup> Phase of the World Bank's Land Administration Project includes substantial support for institutional strengthening of the CLSs, which is perhaps an indication of both the promise of the CLS model, and the fact that support has thus far been inadequate.

C. Donor activities in the land tenure and property rights sector:

- 1.11 The following table presents a short list of the most recent activities in the land tenure and real property sector in Ghana as financed by the U.S. Government or the multilateral development organizations.

<b>DONOR</b>	<b>NAME OF PROJECT</b>	<b>BRIEF DESCRIPTION</b>
Government of Ghana and World Bank	Land Administration Project (LAP) – US\$50 million, completed	The LAP was designed to lay the foundation for the implementation of a long-term land administration reform. Under LAP four land sector agencies were brought into a single government body – the Ghana Lands Commission. Additionally, LAP I (i) decentralized the deeds registry to all nine regions, reducing the time required for land registration, (ii) established 38 customary land secretariats to facilitate management and record keeping of customary land allocations and transactions, (iii) conducted land use planning at three levels, (iv) reduced the backlog of land dispute cases, (v) tested land title registration in urban areas and demarcation of customary land boundaries, and (vi) codified land rights in 20 traditional areas.
Government of Ghana and World Bank	Land Administration Project Phase Two (LAP2) – US\$72 million, 2011-2016	LAP2 focuses in four key areas: (i) strengthening the policy, legal and regulatory framework for land administration; (ii) decentralizing and improving business and service delivery processes; (iii) improved maps and spatial data for land administration; and (iv) human resource development and project management.
Millennium Development Authority Ghana (Millennium Challenge Corporation)	Land Tenure Facilitation Activity - US\$3.9 million, ending February 2012	The primary purpose of the Land Tenure Facilitation Activity is to develop an effective and efficient methodology for registration of rural land rights (primarily lease rights) as a means to improve land tenure security of small rural land holders. The activity also includes significant efforts in public information, institutional strengthening of the Ghana Lands Commission and the Ghana Judicial Services so as to improve local level land administration and reduce the backlog of pending land case in the circuit courts.
USAID	Ghana Land titling reform Project – US\$300,500, 2009-2012	The project aims to provide the poor with the opportunity to cost effectively obtain paralegal title to their property while strengthening Ghana's land title processes. The project is increasing the working poor's access to affordable, improved housing through scalable lender/housing organization partnerships and client-centric housing finance products. It has also initiated the creation of a viable business model allowing the poor to

DONOR	NAME OF PROJECT	BRIEF DESCRIPTION
		use their own property to build asset value and real net worth which can then be leveraged to access housing credit.

## II. ECONOMIC ANALYSIS

### A. Roots of the problem

- 2.1 A World Bank study states that 78 percent of Ghana's land is controlled by customary owners, while the remaining area is owned by the state either directly (20 percent) or indirectly on behalf of a local community (2 percent) (Deininger 2003, citing Kasanga and Kotie 2001.) In this context, "customary owners" refer to clan heads or chiefs (of "stools" in the south, of "skins" in the north), who hold allodial (root) title to the land but are expected to manage it on behalf of the members of their community.
- 2.2 Although these arrangements differ in detail, they share common roots in an era when land was not economically scarce: with population density held down by high rates of mortality, with little or no access to foreign markets, and with a lack of access to mechanical or animal power to enlarge the area that could be planted, additional land was always available. Soil fertility was maintained through shifting cultivation, wherein a plot is planted for one season and then left fallow for several seasons until its fertility is restored and it can be planted again. A key responsibility of the clan head or chief was to reallocate access to land as needed so that no member of the community would be landless (Onoma 2010; Udry 2011). These arrangements helped prevent the emergence of a class of landless labourers (Udry, 2011). However, over time the cost of these arrangements has grown, and seems likely to continue to grow as Ghana continues to develop.
- 2.3 The situation began to change in the mid-1800s, with the emergence of cocoa and oil palm as major cash crops, the expansion of gold mining, and rapid population growth. Land became scarce – particularly in the southern half of the country – with rapidly rising land prices and rapidly increasing land sales. Cities such as Accra, Kumasi, and Sekondi-Takoradi began to grow (Onoma, pp. 65-66.) In 1897, the colonial government of the Gold Coast attempted to convert land belonging to various communities into crown land – the property of the British crown – but were forced to back down in the face of stiff opposition from the chiefs and from western-educated elites. Thereafter, the colonial government gave up trying to interfere with the chiefs' control over the land, confining their attention to enforcing secure property rights in a few enclaves such as areas containing gold mines. According to Onoma, this neglect of property rights enforcement continued after Ghana gained its independence in 1957.
- 2.4 In the meantime, the rapid rise in land prices prompted many chiefs and other traditional leaders to sell plots of land that they had previously allocated freely or for nominal payment by community members. Without previous documentation of which land belonged to which group, this process acquired a free-for-all character, with many plots sold to multiple buyers, or sold by chiefs who knew it belonged to other chiefs. By the early 1900s, the West African Land Committee Draft Report stated that "the Chiefs of the

Gold Coast alienated an area which actually exceeded the total area of the territory itself” (quoted by Onoma, p. 114.)

- 2.5 With this chaotic situation in the background, it would have required sustained and concerted effort to clarify who owned which plots of land, especially in Greater Accra and other urban areas where the demand for land was relatively high. However, it appears that no such vigorous effort has ever been made, either before or after independence. Onoma attributes this lack of effort to the desire to retain political cooperation from the chiefs, along with a desire to maintain a source of potential pressure on those chiefs. Whether or not this explanation is accepted, it is widely acknowledged that efforts to clarify land titling have proceeded very slowly and have been subject to tampering within the Lands Commission. Meanwhile, the pattern of multiple sales, fraudulent sales, and other abuses has continued. As a result, the situation that prompted a colonial official to state in 1926 that “land litigation is the curse of the country” remains true today: the courts are choked with lawsuits over land.

B. Urban areas

- 2.6 Although around 40 percent of urban and peri-urban land is owned by the state, the remainder continues to be held under customary tenure arrangements that are generally not documented and therefore subject to serious dispute. Aryeetey and Udry describe a land market beset by numerous problems including protracted litigation and adjudication failures, documentation bottlenecks, and uncertainty. Land legislation in Ghana is perceived as incoherent, conflicting, and often outdated. An unwieldy public land sector dominates the documentation of land rights, revenue collection and distribution. Land conflicts are becoming more frequent, judicial processes are overburdened, authority is over centralized and replete with opportunities for information hoarding and control and rent-seeking. Conflict over multiple claims to particular plots occasionally becomes violent. (Aryeetey and Udry, 2010.)
- 2.7 Aryeetey and Udry (*ibid.*) describe a situation in which individual chiefs rent out the same plot of land to multiple tenants, while tenants who have paid one chief for a lease allowing them to build on a particular piece of land are served an injunction filed by another chief claiming to own the same piece of land. This latter phenomenon was regarded as commonplace in discussions among the constraints analysis team, with the example cited of a large multinational that was forced simply to pay twice for the same piece of land on which it planned to build a local headquarters.

- 2.8 Nor are land disputes confined to the courts. Within the Greater Accra Region, chiefs enlist armed gangs of “landguards” to protect some land users, while forcing others to pay again for land they have already bought, or blocking efforts to develop purchased land and thereby triggering development covenants that allow the land to be repossessed. In some cases, these groups physically assault developers or burn down partially completed buildings (Onoma, pp. 129-132.)

C. Economic impacts of insecure land tenure

- 2.9 In urban areas, the costs of insecure land tenure are almost certainly borne by Ghanaian households and businesses, in the form of higher prices for housing and business premises than would be the case if property rights to urban land were clarified. In

addition, lack of clear title poses a barrier to the emergence of a residential mortgage market in Ghana, restricting the supply of housing and fueling inflation in housing prices (IMF 2011).

- 2.10 In rural areas, the most serious economic impact of tenure insecurity is on agricultural outcomes, most significantly through its tendency to deter investment in land, in such forms as planting tree crops, irrigation, soil amendments to improve fertility, and the like. Insecure land tenure reduces the likelihood that the user will reap the benefits of such investments either through higher yields or through subsequent sale of the land at a higher price, and thereby reduces the incentive to make those investments in the first place. Besley (1995) shows that in rural Ghana, the security of tenure on a particular plot strongly affects the likelihood that individuals plant trees and undertake a wide range of other investments such as drainage, irrigation, and mulching. Twerefou, Osei-Assibey, Agyire-Tettey (2011) reach similar conclusions for a broader range of agricultural investments. It is important to note that the deterrent effect of tenure security on investment affects both smallholders and larger commercial producers.
- 2.11 A more subtle problem of this type is documented by Goldstein and Udry (2008), who find that in one area of Ghana where soil fertility is maintained through shifting cultivation, insecure land tenure contributes to the progressive depletion of soil fertility. In the area studied, individual claims to occupy a particular piece of land can vary widely in their security, depending on the position of the claimant within the local political hierarchy. Individuals with greater political or social power in local hierarchies can follow this strategy with confidence that their subsequent access to the land will be respected.<sup>5</sup> In contrast, less powerful farmers face a high risk of losing access to any piece of land they allow to lie fallow, creating a strong incentive to cultivate the land continuously despite the adverse impact on fertility. In the area studied, female farmers were twice as likely to lose access to fallowed land as male farmers, but even the most secure plots – those occupied by men holding political offices – were likely to be lost around 20 percent of years they were left fallow.
- 2.12 A second problem with insecure tenure on agricultural land is that it prevents farmers from pledging their land as collateral for borrowing. As is the case in many African countries, most land in Ghana is not a viable form of collateral. Since financial institutions would not be able take possession of and freely transact customary land in the event of default by the borrower, land should not be prioritized as acceptable collateral for a loan, especially since 80% of the land is held customarily. This contributes to broader problems related to credit access in Ghana: A recent survey of communities in 24 districts identified lack of credit -- particularly for input purchase – as the most prevalent constraint to agricultural development (Ghana MoFA, 2007).
- 2.13 Finally, attention has been directed toward the impact of insecure tenure on the decisions of multinational companies contemplating direct foreign investments in Ghana. For those like the multinational cited above, the desire to participate in Ghana's oil industry may

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<sup>5</sup> In this context, political or social power is measured on the basis of holding an office in the village or matrilineage, including lineage head, chief's spokesman, lineage elder, or subchief (caretaker chief).

make the prospect of paying twice for the same plot of land seem like a cost worth paying. But for other foreign investors, for whom Ghana is only one among many potential sites in which to establish operations, Ghana's insecure property rights are more likely to pose a serious deterrent to investing in Ghana. In fact, Ghana receives very small inflows of FDI outside of mining and oil, which has recently boomed. To the extent that insecure property rights play a role in deterring FDI inflows, they slow the growth of non-oil production, productivity, and employment by restricting Ghana's access to modern production and marketing technology from abroad.

### **III. LESSONS LEARNED FROM RECENT EFFORTS IN LAND TENURE AND PROPERTY RIGHTS SECTOR**

- 3.1 From this background and analysis, it is clear that ambiguities under the customary system constrain investment, inhibits land markets, and reduces access to credit. Also, while the Ghana Lands Commission is currently engaged in a process of institutional reform and modernization, the technical and absorptive capacity of the key land administration agencies (including the Land Registry, the Land Valuation Division, and the Survey and Mapping Division) is still quite limited and is thus also constrained in its ability to improve land tenure security for broad segments of the population. Finally, the Government of Ghana received in May 2011 a loan from the World Bank of approximately US\$72 million which represents the second phase of the 25 year Ghana Land Administration Project, a comprehensive initiative to consolidate the modernization and reforms of the land agencies and also to continue land tenure regularization (title registration) efforts in urban and rural areas.
- 3.2 During the past decades, most countries thought that with time and “modernization” they could simply erase customary tenure systems, replacing them with statutory systems based on titled private property. Experience now shows that this is not realistic (at least in the short term) and neither may it be desirable since customary tenure systems have attributes and strengths that respond to real needs in many countries. These include, for example, separating bundles of rights to ensure that stakeholders maintain access to those most critical to their livelihoods, rather than indiscriminately according all rights to a given space to a single user. This is particularly important for women. Furthermore, as customary systems are undermined, they leave a void that statutory administrative systems are ill equipped to fill, given the limited administrative capacity in many countries. For these reasons, policymakers now seek some sort of accommodation with customary tenure, where policy and law recognize these “legal” arrangements, and work to record rights held under customary law.
- 3.3 The Customary Land Secretariats serve as a useful model for an accountable, harmonious and transparent customary land administration system that utilizes simple and cost-effective land rights documentation practices that are suitably attuned to the interests held by subjects. This would obviate the excessively high cost and complex system of title documentation processes which currently acts as a barrier and prevents many customary land rights holders from obtaining documented rights.
- 3.2 In regard to the MiDA Ghana Land Tenure Facilitation Project funded by the Millennium Challenge Corporation, one of the most significant lessons learned from the

implementation to date is the need to reduce the vulnerability of tenant farmers and holders of secondary rights, including sharecroppers. The vulnerability of these groups has also been recognized by U.S. Department of Labor, which funds technical assistance programs to improve their livelihoods and working conditions while reducing worst forms of child labor, particularly in the cocoa sector.. To address this situation, MiDA Ghana has developed and implemented a systematic approach to convert verbal customary agreements to written agreements (indentures/leases) and register these documents in the formal land title registry.

This systematic approach has been initiated in the Awutu-Senya District in the southern part of Ghana (approximately 64km west of Accra) since early 2010 and to date over 3800 parcels have been surveyed and mapped, with lease titles registered and issued to approximately 700 small famers and peri-urban dwellers at a cost of approximately US\$170 per parcel. An additional 1,335 parcels/land holders are in process and it is expected that lease titles will be registered for a total of 2,000 parcels in the Awutu-Senya District before the MCC Compact closes in February 2012. A comprehensive systematic land title registration manual has been prepared by MiDA which will be the primary lasting legacy of the MiDA land effort and is expected to be used by the Lands Commission in their continued systematic land title registration efforts on rural land as part of the LAP2.

Some of the difficulties that MiDA encountered also hold important lessons for land tenure programming in Ghana. These include:

- (i) the considerable lack of staff capacity within the Ghana Lands Commission, combined with a general lack of commitment to reform land policies and operational procedures among line managers, in an effort to protect the status quo and generally control land information and transactions;
- (ii) significant non-cooperation from “caretaker” Chiefs to the noteworthy approach taken by MiDA to ensure the formality of secondary use rights through the registration of leases to agricultural and peri-urban land;
- (iii) the continued need to rely on ad-hoc measures and workarounds to ensure that project-based activities are implemented on time and at an acceptable cost using limited U.S. assistance funds;
- (iv) a lack of readiness within communities for proactive solutions to land tenure insecurity, as demonstrated in the Awutu-Senya District<sup>6</sup> and more recently in the northern community of Tuunayili in the Savelugu-Nanton District<sup>7</sup>; and

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<sup>6</sup> The MiDA systematic land title registration effort in the District of Awutu-Senya was significantly limited by an unexpected unwillingness and/or a lack of interest of land holders, Chiefs and communities to engage in the land tenure facilitation process. Although a full information and publicity campaign was developed and implementing in the region and also at the individual community level a full 31% of land holders did not take advantage of the opportunity to receive a fully subsidized registered land title certificate.

<sup>7</sup> Recently (July 2011) MiDA systematic land title registration efforts in the community of Tuunayili in the Savelugu-Nanton District had to be suspended as a result of inter-community disputes over allodial land boundaries. Although MiDA had taken full care to reach a consensus agreement on the community

- (v) a lack of overall public awareness of land tenure/land administration issues, policies, procedures, rights, and responsibilities.

#### **IV. RECOMMENDATIONS FOR USG SUPPORT IN THE LAND TENURE AND REAL PROPERTY RIGHTS SECTOR**

- 4.1 Concerning the appropriate response for the USG, our recommendation is that USG assistance could effectively contribute towards relaxing the constraint of land tenure insecurity in Ghana. However, a large scale effort aimed at transforming the property rights system would not be appropriate or effective at this time. Rather, we would advocate a more limited set of targeted interventions focused on select key areas where USG assistance could have the greatest impacts, which would also serve to complement and amplify the impacts of other donor investments in this area.
- 4.2 An important argument against a large scale USG investment is that there is no simple solution to the problem of land tenure insecurity in Ghana. In the decades since independence, many African governments have attempted to rapidly “modernize” their property rights systems by embarking on large-scale land titling and registration efforts to bring land out of the realm of customary authority and into the domain of the state. The results of these kinds of initiatives were disappointing. Weak state institutions proved either unable to supplant the traditional system, or less able to enforce property rights where it could. Current thinking suggests that achieving greater security of property rights will need to be a complex, evolutionary process that must take cognizance of, and work in concert with, the traditional system. Hence, while there is scope for donor funding to play an important role, it is important to bear in mind that tenure insecurity in Ghana cannot be attributed simply to a lack of resources that could be overcome with sufficient donor commitment.
- 4.3 In addition, the scope for effective USG engagement is further limited by the fact that many of the areas where assistance could be effective are already being addressed by other donors, particularly the World Bank’s LAP-2 project. As described above, the LAP-2 is a planned \$72m program to be implemented over the period 2011-2016 that includes policy reform as well as material and institutional support at a variety of levels. The design of the LAP-2 reflects not only a considerable commitment of resources, but also the Bank’s significant history of engagement on land tenure issues in Ghana.
- 4.4 While we do not recommend a large scale investment, there remains substantial scope for USG funding for land tenure programming in Ghana to have a meaningful impact. As Ghana is a major recipient of USG assistance related to food security and agriculture, USG assistance could prioritize land tenure issues in this context to leverage and protect the USG’s other investments in these areas. Targeted interventions could be designed reflecting the experiences of the MCC’s MiDA project, as well as a recent USAID land tenure assessment in Ghana, in coordination with LAP-2 and other donor activities.
- 4.5 We identify the following four priority areas as having particularly high potential for such targeted interventions:

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boundary prior to beginning survey work, the catalyst for conflict was the actual presence in the field of survey teams assigned to physically mark and georeference the boundary.

- i. Support for Customary Land Secretariats: Developed as part of the World Bank’s LAP, the Customary Land Secretariats are a promising institutional innovation that have had some successes but have also been under-funded. USG assistance could be used to develop and implement a methodology for “best practice” Customary Land Secretariats, which could include training in surveying, record-keeping, and dispute resolution, as well as material support.
- ii. Wider implementation of MiDA-developed tools: The MCC-funded MiDA project developed a number of useful tools that could be implemented on a wider scale. These include: a public awareness and education campaign, community-based trainings related to gender issues, as well as alternative dispute resolution (ADR) methods.
- iii. Training for Traditional Authorities on Large Scale Land Acquisition: Large scale acquisition of land for commercial and agricultural investment is an issue of growing importance in Ghana. In some cases, traditional authorities are not well placed to negotiate fair deals on behalf of their communities. Training could be provided to chiefs, customary land secretariats, and other traditional authorities related to the process of negotiating large-scale acquisitions for agricultural investment. This would help to ensure that social and tenure safeguards are in place, and also that land deals are structured in a way that both benefits local communities and ensures security of tenure for investors.
- iv. Community Boundary Demarcation: In many instances, significant problems have arisen because the boundaries between communities- and hence the jurisdictions of the traditional authorities who are allowed to make land allocation decisions- have not been defined. As population pressures continue to grow, the incidence and severity of these kinds of disputes is liable to increase as well. Building on lessons learned through MiDA, a participatory community process of identifying and demarcating community boundaries could be developed and implemented.

4.6 In addition, targeted interventions could also be fruitfully undertaken in the following areas:

- Funding the finalization of the Ghana Lands Commission social/gender and environmental strategies, as well as supporting the placement of social and environmental specialists in the Lands Commission Headquarters in Accra and in the new Regional Lands Offices
- Fully testing the USAID-funded concept of private-sector-led, on-demand land tenure regularization in urban areas through the use of social engagement, innovative technology, and links to micro-credit programs
- Building upon UN-Habitat and Cities Alliance efforts to complete a thorough diagnostic of the land tenure issues facing the urban poor –particularly the squatting and over-crowding of rental units – as these issues relate to the lack of an overall policy and strategy for the provision of urban housing;
- Complementing USDA’s technical assistance efforts in integrated water and natural resources management (agroforestry, watershed management, and reforestation) by completing a thorough diagnostic of the environmental impact and natural resource management aspects of informal land occupation in environmentally sensitive and protected areas;

- Building on recent research in land tenure and markets, facilitate the development of land bank or land broker institutions that can link outside investors to available lands and help to reduce the uncertainties and ambiguities related to land rights and access that currently deter such investment.

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