

MEMORANDUM

LAND BILL

OBJECT OF THE BILL

The object of the Bill is to revise and consolidate the laws on land, with the view to harmonizing these laws to ensure sustainable land administration and management, effective land tenure and efficient surveying and mapping regimes and to provide for related matters.

BACKGROUND TO THE BILL

The Bill is the outcome of reforms which were introduced in the land sector as a result of the implementation of the 1999 National Land Policy (NLP). The Land Administration Project (LAP) was initiated as part of the implementation of the key policy actions recommended in the NLP to address critical issues militating against effective land administration in this country. LAP is a long-term (15-25 years) land administration reform programme with the goal of stimulating economic development, reducing poverty and promote social stability by improving security of land tenure, simplifying the process for accessing land and making it fair, transparent and efficient. Phase I of the Project (LAP-1) was launched in 2003 and came to an end in 2011. The objective of this phase was to “undertake land policy and institutional reforms and key land administration pilots for laying the foundation for a sustainable decentralized land administration system that is fair, efficient, cost-effective and assures land tenure security”.

In order to complete the reforms started under LAP-1, LAP-2 was launched with the objective to “enhance land tenure security and improve efficiency and transparency in land services delivery in Ghana.”

One of the key activities commenced under LAP-I was the preparation of a new Land Bill to consolidate and update the legal framework for land administration in the country. As part of this process a legal and judicial review study was conducted by Kotey and Associates in 2004. This report was subjected to extensive stakeholder discussions, including review by the Judiciary. A national land forum was held in 2007 which identified critical issues for consideration in the new Land Bill. Three iterations of the draft bill were prepared which resulted in draft three (3) of the proposed Land Bill. An International Consultant, Landesa, reviewed the drafts and gave extensive comments. Additional international input was provided on legal issues concerning surveying and land information systems.

In parallel with the final stages of LAP-1, a Land Governance Assessment Framework (LGAF) was carried out, led by a team of land experts who examined the full spectrum of issues affecting land governance in Ghana and identified opportunities and priorities for reform. Many of the recommendations of the LGAF process were identified to have important implications for any effort to improve and modernize the legal framework for land.

LAP-2 recognised that a robust, consolidated and up-to-date legal framework that takes into account modern methods of land administration and conveyancing that helps better define the interface between land

management in the state and customary sectors is required as part of the new infrastructure to be laid for a good, transparent, cost effective and efficient land administration system.

Current State of the Law

The overall legal regime for land administration in Ghana consists of constitutional provisions, policy instruments, statutory enactments, judicial decisions, common law principles and customary laws and practices which have been enacted and developed over the years to regulate land rights generally. The courts have also ruled on customary law issues resulting in a body of legal precedents for some land related customs. Currently some 166 state laws that regulate land administration and establish different mandates for different agencies exist in the statute books.

There are many pieces of legislation and judicial decisions on land which have a significant impact on the constitutional, statutory, common law and customary laws on land. Whilst a number of these laws and decisions clarify the various legal rules, others confound them. Aside conflicts between various judicial decisions sometimes from courts of coordinate jurisdiction whose judgments are of equal legal force, there are also inconsistencies between some statutes and the 1992 Constitution. The result is a confusion that has contributed to increases in the incidents of land litigation as various parties contest the import and practical consequences of the varied interpretations of the land laws in Ghana.

The implications of this for security of tenure and the freeing of land for socio-economic development are clear. A review of all the legislation, key

judgments, the various judicial processes land cases go through was carried out, and the perspectives of land managers, judges and related personnel were submitted as part of the recommendations to improve the legislative and judicial framework for the administration of land in Ghana.

One of the fundamental defects identified by the National Land Policy (NLP) is the fact that the land administration system in Ghana is characterized by a lack of comprehensive land policy framework, reliance on inadequate and outdated legislation, lack of adequate functional and coordinated geographic information systems and poor capacity and capability to initiate and coordinate policy actions. Problems with the legislating regime for land administration in Ghana have been identified to include the fact that there are too many laws (creating confusion and uncertainty), gaps and overlaps in the laws; inconsistency with the Constitution, and duplication of provisions dealing with the same issues in different laws. In many areas, policy directions and goals need to be further elaborated and translated into law.

The process of enactment of land related laws has not been properly coordinated over the years to achieve clearly defined land policies. Officials involved in the implementation of land laws have noted that the practice of draftsmen of not specifically spelling out the effect of new statutory provisions on old laws leaves the public, lawyers, and judges in doubt as to the effect of new or amending legislation. Often, new legislation on land simply states that the new statute modifies any existing statute to the extent necessary to give effect to the new one. Poorly drafted and outdated land laws also contribute to the high incidence of land related

litigation and disputes, resulting in court judgments in some cases being inconsistent with national land policies.

Addressing the challenges

It is therefore to address these challenges that the Bill is being proposed. In furtherance of the above objective, the Bill seeks to complement the Lands Commission Act, 2008 (Act 767), the Administrator of Stool Lands Act, 1998 (Act 481) and the proposed Land Use and Spatial Planning Act to provide a comprehensive legal regime for the land sector in Ghana, and also to support decentralized land service delivery to bring about efficiency, cost-effectiveness and enhanced accessibility to land.

It also seeks to consolidate various land legislations into one enactment so as to provide a comprehensive statement in respect of the consolidated legislation. This will provide easy access to legislation on land and help remove the overlaps and inconsistencies that are currently associated with land legislation.

Additionally, international best practices on land management have been taken into account, the outcomes from the Rio Summit on Sustainable Development, the Africa Union Declaration on Land Issues and Challenges, the recent United Nations Sustainable Development Goals, other various United Nations Conventions and World Bank Policy Guidelines. Recent guiding principles such as the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forest (VGGT) developed by the Food and Agricultural Organisation and the Land Governance Assessment Framework have all found expression in the Bill.

Notably, it is further observed that the 1992 Constitution of Ghana in its Directive Principles of State Policy (Articles 34 – 41) embodies most of the principles covered by the international protocols and guidelines that have found expression in the Bill. The Bill has thoroughly been subjected to the overriding articles of the Constitution.

The Bill clarifies some of the issues which have been a source of doubt in the interpretation of land legislation. New concepts like the Customary Land Secretariats to provide a mechanism for a more efficient customary land administration have been introduced.

Hitherto, legislation on Customary Land Administration was confined to only stool and skin lands. To create a unitary form of Customary Land Administration, clan and family lands have been included in the provisions that deal with stool and skin lands. This is because they are all lands held in trust for the various corporate tenure and heads of these corporate groups are fiduciaries accountable to the people as indicated in Article 36(8) of the 1992 Constitution.

Electronic Conveyancing has also been introduced in the Bill to speed up conveyancing and make it more accessible. The Bill seeks to create a framework which will make it possible to transfer and create or register interests in registered land by electronic means. It is envisaged that, within a comparatively short time, it will be the dominant method of conducting the business processes of the land sector.

In respect to land registration clarity has been provided regarding the difference between Title Registration and Deeds Registration. ADR has been introduced in Land Title Registration to replace the non-functional Title Adjudication Committees in order to speed up the registration process. Offences in relation to the registration process have been introduced to ensure transparency and accountability. In order to avoid fraudulent practices by which sizes of land are manipulated and to avoid the difficulties associated with the implementation of judgments, the Bill provides for site plans to be attached to court judgments in relation to land. Furthermore, court judgments on land are required to state the specific interests granted which can be registered by the parties.

Under Compulsory Acquisition, the Bill seeks to delineate more clearly the purposes for which land may be compulsorily acquired and make the constitutional requirement of prompt, fair and adequate payment more effective. In this regard the Bill provides for an Escrow Account into which monies would be paid before acquisition commences. Clear timelines have been set for the various stages of the acquisition process and the interest of persons affected by an acquisition is safeguarded by provisions requiring notice and consultation. The Bill also makes provision for legal and other expert assistance to vulnerable persons.

The Vesting of land is discouraged in line with Article 267 of the Constitution and the decision of the Supreme Court in *Nii Ashong Omaboe v Attorney General and Lands Commission*. In furtherance of this provision is made for the progressive and structured de-vesting of vested lands in

appropriate cases. Limits have also been placed on the period for temporary occupation of land by the State.

PART ONE

IMPLEMENTATION AND INTERESTS IN LAND

Part One provides for the implementation of the Act and Interests in Land. Clauses 2 to 9 provide a general description of the interests in land in the country. Provision has been made in Clause 6 on the modes of acquisition of the usufructuary interest to enable a person or group of persons who have been given permission to settle on land by the owners of the allodial title and have lived on the land for a period of not less than fifty years, to be treated as holders of the usufructuary interest. This provision is informed by the fact that such a person or group of persons have been absorbed into the community and have nowhere else to go and need to be protected. Clause 10 emphasises the fiduciary nature and makes provision for stool, skin, clan and family land to be treated in the same way. Clause 11 applies the Office of the Administrator of Stool Lands Act, 1994 (Act 481) to clan and family lands. It however, provides a different formula for the distribution of revenue from clan and family lands.

Clause 12 provides for restrictions on acquisition of land by non-citizens. This Clause applies the restrictions imposed on land ownership by non-citizens to citizens in joint land ownership of citizens and non-citizens.

Clause 13 prohibits discriminatory practices in relation to land in accordance with Article 17 of the 1992 Constitution.

Clauses 14 to 20 provides for Customary Land Management. Clause 14 provides for clan and family lands in the same manner as stool and skin lands. Clauses 15, 16, 17, 18 and 19 provide for the establishment of Customary Lands Secretariats, their functions, structure, powers and funding respectively. Clause 20 provides for the creation of reserve areas for common use in communities.

Clauses 21 to 26 provide for survey and mapping. The contents are limited to survey and mapping activities relating to land administration. The majority of the provisions in the Survey Act, 1962 (Act 127) are therefore not reproduced in the Bill.

Provision is made in Clauses 27, 28 and 29 for the power to conduct valuation, certification of valuation and the forms of valuation. Detailed provisions in respect of rating valuation in Act 462 and the provisions on the organizational structure of the Land Valuation Division in Act 767 are therefore not reproduced in the Bill.

Conveyancing is provided for in Clause 30 to 70. The provisions here generally reflect the existing law. Clause 31 emphasizes that only legal practitioners can prepare conveyances. New provisions include Clause 32 which requires both the transferor and the transferee to sign a conveyance. Clause 36 sub-clause (3) provides for gender empowerment by requiring that a conveyance of property for valuable consideration during marriage shall be in the name of the spouses. Sub-clause 4 provides

that where property is conveyed to only one spouse, that spouse shall be deemed to be holding it in trust for the spouses.

Clause 43 provides for grounds for varying or setting aside a conveyance. The rights of spouses are further enhanced by Clause 45 which prohibits the transfer of land or interest in land acquired for valuable consideration during marriage without the written consent of the other spouse.

Clause 48 introduces new provisions in sub-clauses (8) to (18). Sub-clause (8) and (9) provide for automatic renewal of lease subject to the discharge of established customary duties in respect of bare land for indigenes where land has been developed for residential, perennial cash crop farming, commercial and industrial purposes. In the case of a citizen who is not an indigene of an area, sub-clauses (10) and (11) provide for an implied term for the renewal of the lease subject to terms agreed by the parties. Where the parties are unable to agree sub-clauses (12) and (13) provide first for settlement by Alternative Dispute Resolution and failing that settlement by court. Where a lease is between a citizen and a non-citizen sub-clause (15) provides that the lease is not subject to renewal unless the lease expressly provides for renewal.

Sub-clause (17) provides that a conveyance of a usufructuary interest to an indigene should not specify any duration of the interest. Under sub-clause (18) a holder of an allodial title is prohibited from alienating land which is the subject of a usufructuary interest without obtaining the consent of and paying fair and adequate compensation to the holder of the usufructuary interest, where the land of the usufructuary right holder has been taken for

development as a result of expansion of the town. The compensation shall in any case not be less than 25% of the plots or the market value of the plots being disposed of.

Clause 49 (2) provides that the consent of a landlord is not be required in respect of a transfer of an interest in land by virtue of a vesting assent pursuant to a grant of probate or letters of administration. Clause 49 (5) provides that the holder of a usufructuary interest should not alienate that interest without the consent of and adequate payment to the allodial owner. The consent is however, not to be unreasonably withheld.

Clause 55(2) provides for the service of notices by electronic mail where that is the normal mode of communication between the parties.

Clause 60(3) empowers the Minister in consultation with the Lands Commission and the Administrator of Stool Lands to make Regulations prescribing fees for consent in respect of assignment, subletting, parting with possession of, mortgaging, change of use, renewal of lease, surrender of lease and any other transaction relating to stool, skin, clan or family lands.

Clause 67(3) provides that customary drinks and other customary obligations paid by a lessee shall be stated in the conveyance.

The Bill for the first time introduces electronic conveyancing in line with current efforts in the country to move public business into electronic mode to ensure speedy processing and greater access to information relating to

land transactions. Clauses 71 and 72 provide for conveyances to be made electronically and for the structures that will enable electronic conveyances to be processed. Clauses 73 to 75 provide for persons who are qualified to undertake electronic conveyancing and the conditions for the conveyancing. Clause 76 stipulates the mandatory contents of an electronic conveyance.

The Bill provides for both Title and Deeds registration. Clause 80 to 193 deal with title registration. It generally reflects the current law. The registrable interests and rights are specified in Clauses 78 and 79. Provision is also made for the registration of condominiums, apartments and flats under Regulations to be made under the Act.

Clause 94(4) and (5) provides protection for spouses in the registration of land acquired during marriage.

Clause 95 abolishes the former Land Title Adjudication Committees. They have now been replaced by resort to alternative dispute resolution under the Alternative Dispute Resolution Act, 2010 (Act 798) for the settlement of disputes.

Clause 99 sub-clause (2) provides for reference of failure to obey an order of the Registrar to the District Court. This provision is to enable easier access to the courts and replaces the previous provision in which the reference was to be made to the High Court. Sub-clause (3) to (7) seek to regulate the disposition of large tracts of stool, skin, clan and family lands. Sub-clause (3) prohibits the Land Registrar from registering any large scale

disposition of stool, skin, clan or family land if the Regional Lands Commission has not granted consent. The grounds on which consent may be refused include unconscionability, size of the land and the fairness of the terms of the agreement. Sub-clause (4) defines a large scale disposition as a disposition which exceeds ten acres. Sub-clause (5) provides a time limit within which notice of grant or refusal of consent should be given to the applicant. The sub-clause further provides that where consent is not granted or refused within the specified time consent will be deemed to have been granted. Sub-clause (6) permits a person dissatisfied with the decision of the Regional Lands Commission to refer the matter for resolution by alternative dispute resolution under the Alternative Dispute Resolution Act, 2010 (Act 798). Sub-clause (7) gives the Minister power to make Regulations providing for matters relating to the grounds for the grant of consent. Sub-clause (9) makes it an offence for the Land Registrar to register a large scale disposition in contravention of the provisions of this clause.

Clause 100 discourages the use of statutory declarations for registration. Statutory declarations are only permissible in the case of stool, skin, clan and family lands where the original deeds or documents are not available, and in the case of a person other than a stool, skin, clan or family where that person can establish to the satisfaction of the Land Registrar that the original deed or document cannot be found. The same clause provides that instruments relating to the first registration of stool, skin, clan and family lands are exempt from the payment of stamp duty.

Clause 102 provides for rejection of applications for first registration by the Land Registrar and the grounds upon which an application may be

rejected. Clause 103 enjoins the Registrar to notify the applicant in writing of the reasons for the rejection and to give opportunity to the applicant to make further representation within thirty days. It empowers an applicant who is dissatisfied with the rejection of an application to refer the matter for settlement by Alternative Dispute Resolution.

Clause 106 makes provision for the conclusiveness of the land register. It however, provides for the acquisition of interests in land by prescription and under the Limitations Act, 1972 (NRCD 54). A person who claims to have acquired an interest in land by prescription or under NRCD 54 could apply to the Regional Lands Commission for an appropriate amendment of the land register.

Clause 107 makes provision for provisional registration. It further provides for an applicant who is dissatisfied with the decision of the Land Registrar to grant the applicant provisional registration to appeal to the Regional Lands Commission and specifies the period within which the appeal should be determined.

Clause 110 is a new provision which prohibits claimants from instituting action in court in relation to matters concerning land registration until claimants have exhausted settlement by alternative dispute resolution under the Alternative Dispute Resolution Act, 2010 (Act 798).

In Clause 112, provision is made for registration to comply with any development plan or scheme for the affected area, except in the case of allodial titles or where there is no planning scheme. The District Assembly

is therefore required to submit copies of development planning schemes to the Lands Commission. Registration contrary to the development planning scheme is void and the Land Registrar who is responsible for such a registration commits an offence.

In Clause 120, the issue of priority regarding registration is clarified. The priority of registered interests is made subject to fraud, notice or mistake.

Provision has been made for the registration of contractual licences issued by the Lands Commission for the use or enjoyment of public lands in Clause 154.

Clause 164 makes provision for the registration of Certificates of Allocation of public lands issued by the Lands Commission to Ministries, Departments and Agencies.

Clauses 194 to 219 make provisions for the registration of instruments affecting land. It generally reflects the current law.

New provisions include Clause 195(2) which prohibits the registration of an instrument which does not provide:

- a) adequate description,
- b) sufficient reference to the date and particulars of earlier registered instrument, and
- c) site plan that has been approved by the Director of the Survey and Mapping Division.

Clause 199 provides for the registration of Judge's Certificate and decisions of a Court. The clause requires judgment relating to land to be accompanied by site plans delineating the boundaries and signed by the Director of Survey and Mapping Division. It also requires the judgement to specify the interest in land covered by the judgement.

Clause 209(3) introduces sanctions for misconduct and disciplinary action for non-publication of lists of registered instruments by Land Registrars.

Clauses 220 to 254 deal with acquisition of land by the Republic. Clause 220 provides for the power of the Republic to compulsorily acquire land for public purposes and aligns the power with the provisions of article 20 of the 1992 Constitution. Provision is made in clause 221 for acquisition of land by means of purchase or gift. Clause 222 provides that public lands shall be allocated for the purpose for which the land was acquired or for purposes of public interest. It further restricts Ministries, Departments and Agencies that are allocated public lands from creating or transferring an interest in the land allocated.

Clause 223 prohibits unlawful occupants of public lands from acquiring an interest in or right over that land by reason of the occupation and imposes a sanction for contravention of the prohibition.

In order to ensure availability of funds for payment of compensation, Clause 225 requires the intended user of the land to be acquired to provide evidence in writing that the money intended for compensation has been paid into an escrow account managed by the Lands Commission.

Clauses 226 to 254 provide the procedure for compulsory acquisition of land by the Republic. Novel provisions include Clauses 230 and 231 which impose an obligation on the Lands Commission to consult owners, occupiers, traditional authorities and community leaders of lands to be affected by the acquisition and to publish a report of the consultation.

Under Clause 234, the Lands Commission is required to give notice where it intends to withdraw from a compulsory acquisition process and is empowered to forfeit an amount from the escrow account to cover the costs incurred before the withdrawal.

Clause 235 requires the Lands Commission to request for relevant information from the Town and Country Planning Department pertaining to the assessment of compensation.

Clause 236 provides that the effective date of acquisition is the date of the publication of the Executive Instrument and further provides that an acquisition under an instrument which is not published under the provisions of the Act is void.

Clause 237 specifies the persons who may submit claims for the payment of compensation. This provision is intended to enable persons who have interest in land which is to be acquired to be aware of their rights to submit claims.

In pursuance of transparency and awareness creation, provisions have been made for notices to be given to various stakeholders in Clauses 220, 236, 238 and 239.

In order to satisfy the constitutional requirement for prompt payment of compensation, Clause 240 requires the Lands Commission, where there is no dispute, to pay compensation immediately it is assessed and in any event not later than six months after the assessment. It also provides that a person who is dissatisfied with an assessment may apply to the Lands Commission for review and when not satisfied may submit the matter for resolution by alternative dispute resolution under the Alternative Dispute Resolution Act, 2010 (Act 798). The clause makes it clear that a person's right to apply or resort to the High Court under article 20(2)(b) of the 1992 Constitution is not taken away by the provision. Sanctions have been provided against an officer who overvalues or undervalues the compensation payable.

Clause 241 deals with conflicting claims and how those claims are to be addressed.

Clause 245 in providing for fair and adequate compensation protects the rights of a vulnerable claimant by ensuring that that claimant is adequately represented in the process of assessment of compensation. This clause accords with international best practice. It also provides that where the assessment made by the Lands Commission is higher than that claimed by the claimant, the former should be paid.

Disbursements which will amount to fair and adequate compensation to holders of interest in land in various situations have been specified in Clause 245.

Clause 248 makes provision for payment of interest when payment of compensation is delayed.

Under Clause 249 sanction is provided against an officer who knowingly makes payment to a person not entitled to compensation.

Consistent with article 20(3) of the 1992 Constitution, detailed provisions have been made for resettlement of persons displaced by compulsory acquisition under clause 254.

Clause 255 to 257 provide for the management of vested lands and de-vesting. Clause 255 provides that with the coming into force of the 1992 Constitution it is unlawful to vest stool and skin lands in the Republic. The clause further prohibits the vesting of clan or family lands in the Republic.

Clauses 258 to 262 provide for temporary occupation of land where the land is needed for the public welfare or the interest of the state. The temporary occupation is for a specified period of not more than ten years and is subject to renewal for a second period of ten years after which the land shall be returned to the owner or be compulsorily acquired. The temporary occupation is subject to the payment of market rent by the Republic. The Republic is also required to restore land which has been temporarily occupied to the state in which it was before the occupation and

to pay compensation for any damage done to the land during the period of occupation.

Various offences have been provided for in Clause 263 to ensure transparency and accountability. The Offences are in two categories, the first category are relates to those offences which can be found in the Bill because references to those offences will be found in the sections in which they occur. The second category is the general offences applicable to several sections and which have been grouped at the end of the Bill.

Clause 264 contains provisions protecting public officers in the performance of their functions under the Act.

Clause 265 provides for Regulations by Legislative Instrument to be made by the Minister in consultation with the Lands Commission or Office of the Administrator of Stool Lands.

Repeals and Savings of relevant enactments have been provided for under Clause 266.

Interpretation of this Act is provided for under Clause 267.