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Feed the Future Ghana Agriculture and Natural Resource Management Project

Land Tenure and Natural Resource Access Issues in Northern Ghana – With a focus on women



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Prepared by AgNRM Implementing Partner – CECOTAPS

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Acronyms and Abbreviations

ADF	Degraded and Fragile Lands
ADR	Alternative Dispute Resolution
AgNRM	Agriculture and Natural Resource Management
CBNRM	Community Based Natural Resources Management
CBO	Community Based Organization
CEC	CREMA Executive Committee
CECOTAPS	Center for Conflict Transformation and Peace Studies
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
CEDEP	Centre for the Development of People
CFC	Community Forest Committee
CFM	Collaborative Forestry Management
CICOL	Civil Society Coalition on Land
CLS	Customary Land Secretariat
CPR	Common Property Resources
CREMA	Community Resource Management Area
CRMC	Community Resources Management Committee
CSA	Climate Smart Agriculture
CSAU	Clients Service Access Units
CSO	Civil Society Organization
DA	District Assembly
DRC	Dispute Resolution Committee
DSPC	District Spatial Planning Committee
EPA	Environmental Protection Agency
FC	Forestry Commission
FSD	Forest Services Division
FtF	Feed the Future
GAPVOD	Ghana Association of Private Voluntary Organization
GOG	Government of Ghana
GTZ	German Development Cooperation
IGSGDA	Ghana Shared Growth Development Agenda
LAP	Land Administration Project

LC	Lands Commission
LMC	Land Management Committee
LUPC	Land Use Planning Committee
MESTI	Ministry of Environment, Science, Technology and Innovation
MLGRD	Ministry of Local Government and Rural Development
MLNR	Ministry of Lands and Natural Resources
MMDA	Metropolitan, Municipal, and District Assemblies
MoFA	Ministry of Food and Agriculture
MTS	Modified Taungya System
NAID	Northern Accelerated Interventions for Development
NCRC	Nature Conservation Research Centre
NDPC	National Development Planning Commission
NFPDP	National Forest Plantation Development Programme
NGO	Non-Governmental Organization
NRP	Natural Resource Product
NTE	Non Traditional Export
NTFP	Non-Timber Forest Product
OASL	Office of the Administrator of Stool Lands
PNDC	Provisional National Defense Council
PVLMD	Public and Vested Lands Management Division
RECA	Rural Environmental Care Association
RSPC	Regional Spatial Planning Committee
RUDEYA	Rural Development & Youth Association
SADA	Savanna Accelerated Development Authority
SFM	Sustainable Forest Management
TA	Traditional Authority
TCPD	Town and Country Planning Department
TNS	TechnoServe
USAID	United States Agency for International Development
WCCLS	Wa Central Customary Lands Secretariat
WD	Wildlife Division

Executive Summary

The USAID Feed the Future (FtF) Ghana Agriculture and Natural Resource Management Project (AgNRM) seeks to reduce poverty through sustainable increases in wealth and nutrition from natural and non-traditional agriculture products by addressing environmental, agricultural, governance, and natural resource management challenges. Using an integrated landscape approach that aligns development with conservation and responds to the interdependencies of ecosystems and livelihoods, AgNRM ensures integration of food security and water systems and highlights the importance of these factors to nutrition and resilience. The project is implemented under four outcomes: 1) Increased Incomes from Natural Resource Products; 2) Improved Food and Nutritional Security; 3) Increased Farmer and Community Security/Access to Land and Natural Resources; and 4) Strengthened Environmental Stewardship.

Fundamental to the success of the project is secured access and rights to land and other natural resources. Tenure security is the precondition for sustainable development, protection of the environment and wealth creation, yet many women, migrants and settler farmers are denied access due to local land tenure practices. Insecure tenure rights and poor demarcation of land boundaries are the primary cause of the numerous land and chieftaincy conflicts. Increased demand for land, inappropriate regulatory frameworks, bureaucratic inertia and political exploitation have contributed to the insecure and contested land tenure systems in northern Ghana. Misperceptions of what constitutes “customary” land tenure practices have concealed the plethora of customary land tenure systems, and the diversity of legal, cultural, economic and political systems within which land tenure and property rights operate in a multi-ethnic rapidly changing environment like in northern Ghana. The institutional and normative plurality, and competition over access to land is as much about the scope and constitution of authority as about the availability of and access to resources. The aggrandizement of culture, tradition and custom conceals the inherent injustices to women and minority groups of the patriarchal system of inheritance. The male dominated system works against the interests of women in accessing and controlling land. All these factors conspire to exclude many people, especially women and vulnerable farmer groups, from secure access and rights, with dire consequences for sustainable livelihoods and biodiversity conservation natural resource management practices.

Women, migrants and settler farmers form the bulk of the work force in food production in northern Ghana. Women make up about 50 to 70% of the work force in the agriculture sector, produce 50 to 70% of the food crop within the sector but earn less than 10% of its income (GSS 2015). Despite the enormous contributions of rural women, they do not have equal access to, control over, and ownership of land and other assets on which their livelihoods depend. The insecure tenure system inhibits their full participation in improving food security at both the household and community levels, as well as safeguarding natural resources. It is widely hypothesized that if women were able to obtain greater access to and control over land, they would increase their productivity, contribute even more to household food supply, increase their incomes and improve their general well-being as well as that of their families. In addition, secure land rights are generally accepted to be a motivation for making greater investments in the land; secure land rights also improve a land holder’s access to credit, local and regional markets, bargaining power and status within the community.

The marginalization of women with respect to the denial of their political, social, economic and cultural rights affects their access to services such as health and education and resources including land and water, leading to high poverty and fewer economic opportunities. The key to reducing poverty, increasing wealth, food and nutritional security is to provide all community members to greater and more secure access to services and natural resources.

In terms of intervention strategies, AgNRM aims to make a positive contribution by finding ways to support and promote the enforcement of legal provisions protecting women's rights, particularly their right to access and securely use land and other natural resources. The project will support the review of traditional practices affecting women land rights in rural communities across parts of northern Ghana and advocate for positive and more equitable changes within local society.

This assessment presents a summary of the local systems and broader laws that affect land and resource tenure practices in northern Ghana. It offers a framework for understanding the nature as well as the extent of the issue, describes some of the methods to which people resort to improve their tenure security, identifies some of the main actors involved and reviews current policies and practices which claim or seek to address the current realities. The assessment presents the findings of several studies and published sources, but also draws on extensive personal knowledge and field experience. The findings from AgNRM's recent participatory field-level assessment in northern Ghana validate many of the findings presented in the broader body of literature on access and rights to land and other natural resources.

Women and vulnerable farmer groups do not have access

Women's ownership of property extends their capabilities, expands their negotiating power, and enhances their ability to address vulnerabilities. A woman's rights to productive resources, including land, is a human rights issue and a critical factor of social protection against gender-based violence. A gendered approach to land rights can enable shifts in gender power relations, and assure that all people, regardless of sex, benefit from, and be empowered by enhanced access and more secure rights to land and other natural resources. Migrant and settler farmers experience a predicament similar to that of women in the rural communities. Their access and rights to land is often very limited because they are treated as "outsiders" – people who do not belong to the community – and therefore cannot own land or participate in decision-making processes. Even though, in many cases, they are the main producers of food crops in the community.

AgNRM promotes women's right to land by building the capacity of women to participate in advocating for changes to the local land practices and policies to increase their rights to land and other natural resources. AgNRM will focus on working with and through the emerging female leadership (*Pognaa* and *Magazia*)¹ and women's groups in the project's targeted Community Resource Management Areas (CREMAs).

¹ The *Pognaa* or Queen Mother concept comes from Southern Ghana where these women play a significant role in the selection of a chief because of the matrilineal system of inheritance. Recently the chiefs in northern Ghana have adopted the concept, modifying it a little. Today, Queen Mothers represent women in the traditional council in many places in northern Ghana. The *Magazia* is a system of leadership among market women and an historic example of organized leadership among women.

Legal and regulatory framework

Ghana has made tremendous strides in developing a comprehensive legal framework that offers equal opportunity to all to access land. The Land Administration Project, and Ghana's Women and Children Ministry have enacted several regulations on marriage and inheritance. However, laws alone are not enough to secure women's right to land. The effectiveness of laws depends on society's awareness, its abilities to invoke, as well as the social acceptance of the laws, including the extent to which cultural norms and traditions are practiced and followed instead of the formal laws.

Enforcement of the laws is a challenge because most disputants do not even know there are laws defending their right to land. When a dispute arises, parties do not have the ability to make a claim, have no access to legal aid and the services of lawyers are very expensive. The law courts do not have the capacity or the will to handle these cases, due to corruption and biased courts. Furthermore, the adversarial nature of the court system does not auger well for reconciliation and coexistence of customary practices and newer, formal laws and policies.

AgNRM will contribute to changing the current state of affairs by building women's capacity, and that of CREMA members, in Alternative Dispute Resolution (ADR), and by supporting the capacity building of law enforcement and judicial institutions, including courts, local councils, and police, through gender sensitization training, and by raising awareness of existing laws and tools that support women's right to land and other productive resources.

Customary Land Administration

The technical rules and regulations of land administration dealing with land delimitation, titling and registration of land and user rights, play an important part in creating equal rights to land in different systems of land tenure. Formal recognition of private tenure rights, land titling and/or registration are often prerequisites for land owners to use their land as collateral. The Customary Lands Secretariat is in its initial states and not all the traditional councils have established this institution to manage their lands. AgNRM will support targeted CREMAs to establish the Customary Lands Secretariats so that land delimitation, titling and registration can be carried out in a transparent manner in a way that does not discriminate against women or other marginalized groups.

Chapter One: Introduction

1.1 Background

The Agriculture and Natural Resource Management (AgNRM) project is a five-year (May 2, 2016 – April 30, 2021) grant funded by USAID|Ghana under the Feed the Future Initiative to provide technical assistance and capacity-building services to improve incomes and nutrition while holistically addressing the related challenges of the environment, agriculture, governance, and natural resource management. AgNRM is implemented by Winrock International in partnership with TechnoServe (TNS), Nature Conservation Research Centre (NCRC), and Center for Conflict Transformation and Peace Studies (CECOTAPS). AgNRM takes an integrated landscape approach to align development with conservation and to respond to the interdependencies of ecosystems, livelihoods, and health, while building on private sector partnerships. The AgNRM conceptual framework incorporates health in the Nature, Wealth, and Power (NWP) Framework as part of a systems approach to build capacity and enhance resilience. AgNRM draws on the Government of Ghana's Wildlife Division and Nature Conservation Research Centre's (NCRC) experience with Community Resource Management Areas (CREMAs) in Ghana. The program seeks to build capacity for community-based natural resource management (CBNRM) of the next-generation CREMA model at the landscape level by expanding community responsibilities for conservation and NRM in existing corridor reserves. The project is implemented under four outcomes: 1) Increased Incomes from Natural Resource Products; 2) Improved Food and Nutritional Security; 3) Increased Farmer and Community Security/Access to Land and Natural Resources; and 4) Strengthened Environmental Stewardship.

Fundamental to the success of the project is secured access and rights to land and natural resources. Tenure security is the precondition for sustainable development, protection of the environment and wealth creation, yet many women, migrant and settler farmers are denied access due to poor land governance systems. Insecure tenure rights and poor demarcation of land boundaries are the primary causes of the numerous land and chieftaincy conflicts. Increased demand for land, inappropriate regulatory frameworks, bureaucratic inertia and political exploitation have contributed to insecure land tenure systems in northern Ghana. Misperception that there is a static 'customary' land tenure system has concealed the plethora of customary land tenure systems, and the diversity of legal, cultural, economic and political systems within which tenure systems operate in the multi-ethnic environment of northern Ghana. The institutional and normative plurality, and competition over access to land, are as much about the scope and constitution of authority as about access to resources. All these factors conspire to exclude many people, especially women and other vulnerable farmer groups, from secure access and use rights, with dire consequences for sustainable livelihoods and conservation practices.

Women, migrant and settler farmers form a bulk of the food producers in northern Ghana, yet they do not have secure access to and control over land and other assets; rarely are they land owners. The local tenure practices inhibit their full participation in improving food security at the household and community levels and their commitment to safeguarding natural resources. Increasing secure access to and use of land and natural resources is important. Understanding the legal and regulatory frameworks that dictate access and use rights to land and natural

resources, understanding the cultural worldview and knowledge of the local social hierarchy of resource access and use rights, land boundaries and demarcation, and adjudication processes will help farmers and vulnerable groups in their negotiations for secure access to and use of land and natural resources.

1.2 Purpose and Scope

The AgNRM project, under Outcome 3, aims to increase access to, control over, and ownership of land and natural resources for women, vulnerable groups and farmers in the three northern regions of Ghana, to enable them to participate fully in improving food security at the household and community levels in a sustainable manner. AgNRM seeks in this outcome to increase women's access to land through documented, secure and long term agreements for dry season vegetable gardening, agroforestry, natural resource products based enterprises, and livestock/fodder production. The project seeks to demonstrate the value of providing equal rights and access to land and natural resources for all stakeholders to enhance sustainable economic growth. Secured access and rights to land and natural resource (Outcome 3) is the precondition for increasing incomes from natural resource products (Outcome 1); improving food and nutritional security (Outcome 2); and strengthening environmental stewardship (Outcome 4).

The assessment seeks to gather data on gender differences regarding access and rights to land and natural resources and the implications of insecure land tenure systems on wealth creation and food security in the three northern regions. The findings will inform project implementation strategies going forward. The team will design address critical issues through capacity building, such as the developing and implementing training sessions on Alternative Dispute Resolution (ADR) for the CREMAs as well as other topics. The assessment explores the historical, religious, socio-cultural and political conditions leading to the current land tenure system in northern Ghana, the current structure of tenure system and practices, and the gender disparities in land access rights and rules. The information from this assessment will help improve women and vulnerable group's rights and access to land and natural resources, increase the decision-making power of women in their communities and enhance sustainable food security and wealth creation.

1.3 Methodology

A desk review of literature on tenure security in northern Ghana and women's access and rights to land and natural resources informed the design of a participatory field assessment during which the team collected data. Resources included published journals, policy documents (e.g., acts, bills) and technical reports on existing land management and tenure practices, mechanisms, policies, and challenges. Consultations included officials from the Land Administration Project (LAP); Coordinating Unit of the Town and Country Planning Department; Office of the Administrator of Stool Lands (OASL); Traditional Authorities and the Lands Commission. The desk review evaluated the context of land security in northern Ghana, legislation and policies on gender and land tenure, as well as reviewed land reform project reports.

Through interviews, observations and focus group discussions, the research team gathered data from the communities and local government agents working in related fields, e.g., Forestry Commission, Wildlife Division, Lands Commission, Customary Land Secretariat, etc. The

research team evaluated, synthesized and analyzed the various interviews and focus group discussions to fill in the gaps and enrich the desk review. The findings were presented in several stakeholder forums for validation. This report presents a summary of the key land and natural resource tenure issues confronting northern Ghana today. It offers a framework for understanding the nature as well as the extent of the issue, describes some of the methods to which people resort to improve their tenure security.

Chapter Two: Land and Natural Resources in Northern Ghana

2.1 Background to the Land Tenure System in Northern Ghana

Northern Ghana, comprised of the Northern, Upper East, and Upper West Regions, occupies a total land area of about 9.7 million hectares, covering the northern two-fifths of the country. Most of the northern communities speak the same or related languages and share similar cultures, which are mainly patrilineal. Most land in the north, as in the rest of the country – especially in rural communities, is held under customary rules and practices.

The various ethnic groups and communities can be broadly categorized into two groups: chiefly and non-chiefly groups.² The chiefly groups are ethnic communities with a centralized, hierarchical system of governance (chiefs), and the non-chiefly are those with a devolved system of governance involving family heads. The Gonja, Dagomba, Mamprussi, Nanumba and Wala communities have a hierarchical system of leadership with the paramount chief at the top of the hierarchy, along with divisional and village chiefs below. They claim indigeneity and ownership of land by conquest. The non-chiefly communities claim the status of indigenes and landowners, as first settlers on the land.

The colonial policy of amalgamation of tribes in which groups of “minority tribes” were put under “majority tribes”³ for administrative purposes in the 1930s, was resisted in what is today the Upper East and Upper West Regions but accepted in what is today the Northern Region. As a result of this arrangement, the four (4) chiefly tribes out of the seventeen (17) tribes in the Northern Region, claim ownership of their lands by conquests. The remaining thirteen (13) indigenous tribes are considered settlers on the land. In the Upper East and Upper West Regions, every tribe has its lands and its associated chief. The challenge in these two regions is that land administration was traditionally in the hands of the earth priests (*Tindanas*), an authority the chiefs are slowly claiming for themselves. This historical detail, often glossed over in many documents, is key to understanding many of the challenges of customary land administration in the three regions of northern Ghana.

In 1979, all northern lands that had been vested in the President of the Republic of Ghana since independence, were returned to their “rightful owners” without indicating who the rightful owners were. Chiefs immediately claimed allodial ownership of the lands, which they held in trust for their people. In the Upper East and Upper West Regions, each tribe’s chief held the communal lands in trust for the community. In the Northern Region, however, the four (4) chiefly tribes claimed ownership of the land, which they held in trust for their people. The problem with the 1979 ruling is that most chiefs understood ownership of the land in terms of private property and acted accordingly by selling lands indiscriminately, much to the chagrin of the *Tindanas*. In multi-ethnic communities, the ethnic group of the chief declared itself the indigene and owner of the land, excluding the other resident ethnic groups in the process. Land became associated with chieftaincy, political and economic power, and ethnic groups without recognizable chiefs became settlers on their own land and excluded from traditional, political and economic power and decision-making processes. In 1980, the first ethnic violence erupted

² This chiefly/non-chiefly distinction is a colonial creation and not an indigenous/local form of self-identification.

³ The distinction between minority and majority is in terms of chiefly and non-chiefly status.

between the Gonjas and Vaglas; in 1981 between the Nanumba and Konkombas; and between 1980 and 2003 northern Ghana experienced over 35 violent conflicts.

2.2 Conceptualization of Land

Land is traditionally conceptualized in northern Ghana as a living entity whose fertility is in both human and animal spheres. Good harvests, good health and prosperity are only possible from ensuring people are in harmony with the land, which is established by rituals performed by the earth priest. He is the traditional authority in land matters, with the power to guarantee protection by his rituals to the earth.⁴ Land is fundamental in the economic, political, and religious lives of the community. Without land, there would be no food, no shelter, no life and consequently no meaningful human existence. Land is both the judge and home of the dead; it is imbued with life, a being that assumes the two fundamental axes of human existence: life and death, hence land inspires both reverence and awe.⁵ In this anthropomorphized and spiritual conceptualization of land, the idea of an individual claiming ownership to a piece of land was unfathomable.

Land as a means of social identity and wealth is a later development. The family constituted the basic family unit, with the oldest male, as the head of the family, regulated and controlled relationships and social behavior within it, as well as administered the family with moral and ritual authority. The second level of social identification was that of ritual, associated with a particular earth shrine. The ritual space was known as *Tengan*, and the priest, *Tindana*. The first family to settle on a piece of land established a relationship with the gods of the land. The land and the earth shrine formed a “ritual parish,” a temporary dwelling for the sojourners. This characterization reflects the migratory nature of the people and the temporal quality of the settlement and their relationship with the land. The land belonged to the earth shrine and, in the understanding of the early settlers, no land existed that did not belong to such a shrine. People did not identify with the land nor claim possession of the land; they used the land for their livelihood and moved on when the land was no longer serving them.⁶ The family head controls the means of production and distribution, and takes care of the ritual life of the family. Land is leased out to the farmer, who in turn offers gifts from his farm produce to the earth shrine.

2.2.1 Chiefs and Land Tenure in Northern Ghana

The earliest information on pre-colonial social organization and power structures acknowledges the existence of a dual system of centralized leadership: the institution of chieftaincy and the indigenous earth shrine priests (*Tindana*). The chiefs rarely interfered with the life of the masses. The *Tindana* continued to assert his original title to be the custodian and trustee of the land for his people, a claim that few, even the most arrogant secular chiefs, ever dared to dispute.⁷ The office of the *Tindana* gradually declined in effectiveness as colonial legislation removed from the *Tindana* the economic and political control of the land. The Native Rights Ordinance⁸ declared that all lands in the Northern Territories, whether occupied or unoccupied, as ‘native lands’ that were to be placed under the control of the Governor. At

⁴ Tengan 1991:19

⁵ Ibid, p. 38

⁶ Goody 1967, p. 91 in Aapengnuo 2013: 98

⁷ Rattray 1932, p. xv in Aapengnuo 2013: 99

⁸ Metcalfe 1964: 143

independence, on March 6, 1957, all northern lands were vested in the President of Ghana. In the 1979 Constitution, the State divested its trusteeship over most of the lands in northern Ghana. The question of to whom these lands were to be given became acute. Christian Lund writes, “the new legal situation provided an opportunity for reassessing the past, resettling old accounts, renegotiating ownership to land. At this juncture, Chiefs and Earth Priests intensified their competition over the control of land.”⁹

The issue of “Skin” lands as it pertains to “Stool” lands in the south must be understood in the context of the customary and statutory or legal systems operating in parallel in the three regions in northern Ghana, along with the roles of both the chief and the *Tindana* in land administration. In the “non-chiefly” tribes such as the Tallensi, the Lobi–Dagarti, the Builsa, the Sisala, the Kusasi and the Frafra,¹⁰ the earth priests, as well as village, clan and lineage heads are responsible for land administration. The allodial title is vested in the earth priests on behalf of the community. The earth priests allocate land to groups; the group leaders are then responsible for allocating lands to families and individuals. In communities where the earth priest has the authority to allocate access and use rights to land, individual rights are inheritable and appear secure, and land disputes are reportedly rare. Land cannot be transferred by individuals to migrants without informing the family head.¹¹

Increasingly, the role of the earth priests is limited to performance of rituals intended to keep the land peaceful and productive. Some reports indicate that although chiefs maintain that they hold land on behalf of the community, in many cases the land is attached to specific families, with chiefs having little control over land management. This does not appear to be the case on Skin land, but rather on family land, where the chief’s role is limited to community governance and the heads of individual families hold the land.¹² Within the customary land tenure system in northern Ghana, there are plural legal regimes and land boundaries are very nebulous. Land negotiations are verbal and in good faith; consequently, there is no tradition of documenting land agreements and no land titles.

Today, land use and access rights in Ghana are governed within a pluralistic legal environment where both customary practices and enacted legislation are used to administer land, sometimes in contradiction with one another. Hence, access to land and natural resources is at the root of most conflicts in northern Ghana, and insecure, and often disputed, tenure rights is one of the primary constraints on investment. The competing land uses and unclear tenure systems affect food security, poverty reduction, investments and natural resource management in northern Ghana. While the formal policies and laws governing land tenure guarantees equal access to, control over, and ownership of land and natural resources, in practice women and minority groups have unequal access to and control over land and other assets. This unequal access creates tenure insecurity, inhibiting their full participation in improving food security at the household and community level, and investing in and safeguarding the natural resource base.

2.3 Role of Land in Securing Livelihoods

Land is fundamental to the economic well-being of people in northern Ghana. With most of the population earning their living and feeding their families as small-scale subsistence farmers,

⁹ Lund 2006: 77

¹⁰ Today all these so-called “non-chiefly” tribes have chiefs

¹¹ Kotey 1995; Djokoto and Opoku 2010

¹² Kotey 1995; Djokoto and Opoku 2010; Assefa 2001; Yirrah 2013a

land is critical. In rural communities across northern Ghana, land is not only a fundamental building block for most people's livelihoods, but also a source of identity. A person's sense of belonging to the community, with associated rights and the ability to participate in decisions that affect their well-being, is tied to identifying with a piece of land. Land also has significant political import since it helps to define power relations between and among individuals, families and communities.

Women, and migrant/settler farmers are the most affected by the land tenure practices in northern Ghana. They have little or no secure access or rights to land and natural resources. They are often ignorant of existing laws and policies that protect them and guarantee them rights to land and other natural resources. Tenure insecurity affects their livelihood options and prospects in wealth creation. The land tenure system affects their decisions as to the type of crops they cultivate, for either subsistence or commercial purposes, in the short or long term; and it affects the investments a person is willing to make on the land.

2.3.1. Gendered Dimension of Livelihoods

Defined gender roles and responsibilities in local food production has affected a woman's access and rights to land and natural resources. These gender roles are discriminatory and limit the capacity of women in the production, storage and marketing of farm produce and in access to and use of other natural resource products. Men control the decision-making and resources base on which agriculture, logging, and fishing activities depend. Men focus on cash crop production, whereas women grow a wide diversity of crops and vegetables for home consumption. This is evidenced within the CREMAs in the Black Volta River Basin: Dorimon, Wechiau and Zukpiri; where men control groundnut production and women control the production of beans.¹³ Generally men clear the land, women plant and tend crops, and men harvest and market the produce. Additionally, women regularly work with their husbands in producing cash crops in northern Ghana. While the above describes the general rules, these gender patterns are fluid and vary depending on the community, age, ethnicity and marital status.

There are observable engendered patterns for water use and management. Men use water for irrigation whereas women have far less access to irrigation systems for vegetable gardens and subsistence crops. In livestock management, men care for cattle and larger animals, and women care for smaller animals such as poultry and ruminants. Women also have the responsibility of collecting fodder for animals. A woman's responsibility to provide her household with the basic necessities, including food, fuel, and water means she relies greatly and directly on natural resources. Seldom do the men have the responsibility to procure natural resources for household use.

The challenges of climate change in recent times further compounds the demands on women's time for labor intensive household tasks; and the depletion of natural resources is bound to impact gender responsibilities and relations in households and communities. Since women play such a central role in the use of these resources, they must be included in the decision-making, planning and management of the natural resource base.

¹³ In Zukpiri groundnuts are produced for the commercial market and beans are produced for household/subsistence consumption and are classified as a woman's crop.

2.4 The Land Tenure Practices in Northern Ghana

Land tenure is fundamentally a social relation involving a complex set of rules that affect the way land is used and held. It is a system in which communities define through laws or by custom, the way land is accessed, used, held and exchanged. Property rights are recognized interests (i.e., customary, statutory or informal social practices, which enjoy social legitimacy at a given time and place) in land vested in an individual or group. Property rights can also be applied to buildings on the land.¹⁴ The nature and content of these rights, the extent to which people have confidence that they will be recognized, respected and enforced have a direct bearing on how land is used.¹⁵ Rights agreements range from informal verbal agreements to written and signed legal contracts. Any discussion of land tenure and property rights must consider the socio-cultural, religious, historical and political influences, as well as those of technical and legal systems. According to IFAD:

Land tenure refers to the rules, authorities, institutions, rights and norms that govern access to and control over land and related resources. It defines the rules and rights that govern the appropriation, cultivation and use of natural resources on a given space or piece of land. It governs who can use what resources, for how long and under what conditions.¹⁶

Most of the rural areas in northern Ghana follow customary land tenure practices and many are ignorant of existing laws and regulations governing land access and land rights.

Tenure security is the level of certainty that rights of access to and use of land and natural resources are objective, known, just, fair, equally applicable, contestable and protected. It is the degree of confidence that the land user will not be arbitrarily deprived of his/her rights to the land and economic benefits that flow from it.¹⁷

The nature, character and organization of a society is determined by the ways it allocates title and rights to land. Communal societies tend to emphasize communal ownership and individualistic societies give priority to private tenure systems. Each system has advantages and limitations. Whatever the system, access to secure and affordable land is a pre-condition for social and economic development and for human dignity. Secure access to and use rights to land and natural resources is the precondition for sustainable social and economic development. The denial of guaranteed access has been a major cause of ethnic conflicts in northern Ghana and one of key contributing factors contributing to environmental degradation. Most of the migrant and settler farmers who live in fear of eviction practice extractive farming, 'mining' the land rather than investing in the land.

In Ghana, land is governed by a pluralistic tenure system, combining statutory and customary laws, which presents a complex and diverse matrix of practices which have evolved over time.

There are three main categories of land in northern Ghana: Customary, State (public and vested) and Private. According to Ghana's land administration lexicon, vested lands are simultaneously categorized as public lands.¹⁸

¹⁴ UN-Habitat Report 2008: 5

¹⁵ UN-Habitat 2003

¹⁶ IFAD 2008

¹⁷ UN-Habitat 2008: 5

¹⁸ WaterAid 2009; Landesa 2013

2.4.1 Customary Lands

In Ghana, customary ownership constitutes between 78% to 80% of the total land area¹⁹ owned by Stools, Skins, Families and Clans²⁰ and are usually held in trust for the benefit of members of the respective group by a chief, clan/family head or traditional priest. The 1992 Constitution of Ghana recognizes customary ownership of land and subsequent legislation establishes processes for individual acquisition. Individuals can own customary lands through inheritance, grant, sale, lease, gift or marriage.

When the area now known as northern Ghana was declared a Protectorate in 1900, all native lands were vested in the Governor and the legislation passed made it unlawful to use land without the Governor's consent. However, the local communities, which had not been consulted and were not privy to the new laws, continued to adhere to their own customary land practices. Eventually, lands were divested and released to clans and families over which they exercised allodial rights.²¹

2.4.2 Public Lands

Public lands are those lands that compulsorily acquired for a specific public purpose or in the public's interest by lawful exercise of constitutional or statutory power. In Ghana, public lands constitute 20% of the lands and are categorized into State lands and Vested lands.²² The President of Ghana holds these lands in trust for the people.

Most frequently, these were customary lands that became annexed by the government due to land disputes/conflicts, national security concerns or for public interests.²³ These acquisitions override all previously held recognizable rights to the land. However, recognizable interests in such lands are entitled by law to compensation, either monetary or replacement, with land of equivalent value.

The Lands Commission is legally mandated to manage public lands and administer formal land registrations on behalf of government. Specific legislation governing the compulsory acquisition of land by the State includes:

- 1992 Constitution (Article 20)
- The Administration of Lands Act 1962 (Act 123)
- The State Lands Act 1962 (Act 125)
- The Land Statutory Way Leaves Act 1963 (Act 186)²⁴

Vested lands are lands for which ownership and management is shared between the State and traditional customary owners; very little land is held as Vested land in Ghana. The landowners retain customary land ownership but the management of the land is appropriated by the State

¹⁹ Deininger 2003

²⁰ The stool is a chair on which the chief sits and is the symbol of chieftaincy in Southern Ghana. In northern Ghana the chiefs sit on animal hides/skins; thus the jurisdiction of the chief is described as a skin. The clan refers to a group of families claiming a common ancestry.

²¹ Kassaga 2000; Djokoto and Opoku 2010

²² Kasanga and Kotey 2001

²³ Deininger 2003

²⁴ WaterAid 2009, Landesa 2013

in trust for the owners. The responsibility of the State is legal and financial; it derives power from the Administration of Stool Lands Act²⁵ and the Lands Commission Act of 2008.²⁶

2.4.3 Private Lands

Private land is land held under private freehold, mainly stemming from land grants acquired by the colonial government and land purchased from individuals and customary owners prior to the promulgation of the 1992 Constitution. Private ownership of customary land can be acquired through inheritance, grant, sale, lease, gift, marriage or outright purchase from customary landowners or private individuals.²⁷

2.5 Types of Land Holdings and Related Rights

2.5.1 Allodial Title

Allodial title is the ultimate and most permanent title from which all other interests in land are derived and beyond which there is no higher claim on land vested in communities. Allodial title is a real property ownership system whereby the real property is owned free and clear of any superior landlord. The owner has absolute title over his or her property. Property owned under allodial title is referred to as allodial land. Allodial title may be derived from being the first to cultivate, discover, settle, inherit, conquer, gift, or purchase the land. Customary lands are held under allodial title, vested in Stools, Skins, clans or families. This means the lands are held in trust for the community and not for the arbitrary administration or use of an individual ruler, priest or clan head. In the Upper West and Upper East Regions, the allodial title holder is the *Tendana*, whereas in most parts of the Northern Region, it is held by chiefs.²⁸

2.5.2 Customary Freehold (Usufruct)

Customary Freehold represents an interest in allodial land held by subgroups and individuals and acknowledged to be owned by a community. It refers to use rights over customary land held by individuals or groups within the allodial title-holding community. These rights are acquired directly, through grants or occupation. Such rights are permanent as long as the superior title of the Skin/Stool is acknowledged. In case of death, rights may be inherited by successors of the original interest-holder. Holders can forfeit their title by refusing to perform customary services, attempting to deny the ownership of the allodial titleholder, or when the land is abandoned.

In the CREMA communities along the Black Volta and in the Western Wildlife Corridor, several factors determine how titles are forfeited. These include farmlands abandoned for more than three years; arbitrary extension of boundaries; performance of unsanctioned traditional rites; refusal of the freeholder to support the allodial in social activities such as funerals, sexual activity on the land, or murder. Additionally, a wife's constant refusal to support the children and household with her farm produce, results in her loss of all rights to farm the land.

In situations where the allodial titleholder may want to transfer the land, the titleholder must consult and obtain consent from the customary freeholder. Significantly, customary freehold

²⁵ GOG Act 481 1994

²⁶ GOG Act 767

²⁷ Deininger 2003; WaterAid 2009; Landesa 2013

²⁸ Ollenu 1962; Asante 1975; Nukunya 2003; GOG 1999; USAID 2011; Landesa 2013

cannot be registered as a land right in Ghana, although the National Land Policy (1999) recognizes the legitimacy of customary freehold rights.²⁹

2.5.3 Common Law Freehold

This is interest in land acquired through a freehold grant made by the allodial owner, either by sale or as a gift. Private lands are commonly held in this manner and common law is used to regulate individual rights. Freehold land exists mainly in areas where chiefs have made grants of customary land to private individuals prior to the 1992 constitutional ban.³⁰

2.5.4 Leasehold

Leaseholds are time-bound interests in land granted to persons to occupy a designated plot of land for a specified term. This arrangement is derived from common law and not customary law. Both allodial and freehold titleholders can grant leaseholds to citizens up to 99 years by convention. However, leasehold agreements with non-Ghanaians are constitutionally limited to a term of no more than 50 years. The lessee may create a sublease or assign the unexpired term of the lease, subject to the consent of the lessor.³¹

2.5.5 Customary Tenancy (Sharecropping)

Customary tenancy refers to sharecropping arrangements by which tenants till the land and at harvest give a specified portion of the produce to the landlord. It is a type of contractual agreement between landholders and farmers in which the farmer can farm on some portion of the landholder's land, usually in exchange for payment or a share of the farm output, although in some cases the farm itself is shared. Sharecropping is a common feature in the cocoa growing areas of southern Ghana. Customary tenancy is evolving in northern Ghana due to the activities of natives who travel to the south as migrant farmers and relocate back to the north, bringing this tenure arrangement with them. In some CREMAs, there exists a loose form of land tenancy agreement, especially with migrant farmers. After every harvest, it is expected of the settler to provide the "kazu"³² to the allodial right owner as a form appreciation.

2.5.6 Community-Based Land Administration System

Under this system, all stakeholders in the community manage the land collectively. This arises from the conviction that: "a decentralized system that is community-based, community operated, community-controlled, and is the result of empowerment to this level of society, will probably produce the most adoptable, cheapest, most owned and therefore most lasting administration and management regime."³³ It is an emerging practice that demonstrates a potentially effective natural resource management model in northern Ghana and on which Ghana Wildlife Division's Community Resource Management Area (CREMA) approach is founded.

²⁹ Sarpong 2006; GOG 1999; da Rocha and Lodh 1999; Bugri 2012

³⁰ da Rocha and Lodoh 1999; Kasanga and Kotey 2001; USAID 2011; Bobobee 2013

³¹ Sarpong 2006; GOG 1992, Ubink and Quan 2008; da Rocha and Lodoh 1999; USAID 2011

³² "Kazu" refers to a bunch of millet used as a kind of rent payment within the Black Volta Basin

³³ Alden Wily 2003

Figure 1: Case Study: Zukpiri Community Forest Conservation Project

Two decades ago, seven foundational communities — Soriyiri, Ameguo, Puni, Namau, Jeliman Zulpri, and Mangtari — decided to preserve a portion of their land on their own after calls from government agencies for communities to plant trees. Communities also saw the need to enhance the ecology of the landscape to induce rainfall. The portion of land that was demarcated for the conservation project had previously been given to migrant farmers for cultivation.

When the decision was conceived, the *Tendana* from the Ameguo Community were consulted to release the land for the project. The role of the *Tendana* was pronounced, and it clearly defined who takes care of the land. The land was a reserved area for ritual purposes where the indigenes never tilled, but settlers were offered the place for farming. Migrant farmers who were farming on the delineated land were compensated with maize and given land elsewhere to continue with their farming activities. The protected area stretches from Amegua to Zulpri, and terminates at the Black Volta. It is estimated by the community to be about five kilometers long.

After eight years of community resource management, the communities received support from the Wildlife Division and other Non-Governmental Organizations (NGOs) to establish the Community Resource Management Area (CREMA) resulting in the formation of the Zukpiri CREMA and community resource management committees. Currently, 17 communities are involved with the Zukpiri CREMA and others have expressed interest in joining. The CREMA has a Management Board and has designed by-laws to regulate anthropogenic activities within the landscape. Due to the effective engagement, awareness raising and education, community members have come to accept this community-led initiative due to the ecosystem services they derive. Community members have observed that the protected area receives precipitation first and more regularly within the landscape.

For over 15 years in which the landscape has been designated as a community protected area, no fire has accidentally or deliberately been stoked, and children are forbidden to handle fire. This is an indication of the communities' resolve to protect their landscape.

The Tampaha sacred grove, which has healing powers to cure leprosy by using soil from the grove, is situated within the protected area. Other sacred groves in the community-managed protected area include the Siridung, Sanche, Tanagna Naa, and Santua.

Women have been playing critical roles in the project. During tree planting, they “dig, water and nurture the plants” and during the yearly fire belt creation, they generate some income by contributing their labor to the effort. The level of commitment to create the fire belt exemplifies amply the communal spirit that has held this conservation project together. The project has protected flora and fauna and there have been reported cases of hippopotamus visiting the CREMA communities.

Chapter Three: Land and Natural Resource Governance

3.1 Customary Land Administration and Management

Historically, customary land administration and management in northern Ghana was affected by migration and the colonial administrative policy of indirect rule. In choosing to rule through the chiefs, the colonial administration ignored the socio-political structures and indigenous land and natural resource governance systems. The policy of ruling through the chiefs ignored the plurality of the land tenure systems in which land management was vested in different authorities. In some communities, families own the land and in other communities the *Tendana* is the local authority responsible for granting access and rights to land and natural resources. In all cases, the chief must consult the responsible authorities before granting access and use rights. The rules, processes and institutions through which decisions are made about access to land and its use, the way these decisions are implemented and the ways that competing interests in land are managed, are different in the various ethnic groups. The 1999 National Land Policy has contributed to the recognition of customary land rights.³⁴ Consequently, in Ghana today the Customary Land Administration rests solely in the hands of the chiefs.

This gives the chief enormous power because eighty per cent of land management is under the customary regime. In the customary tenure systems, people have overlapping rights to land and natural resources that include permanent and temporary use rights, and individual and common property rights. For example, a person with exclusive rights to cultivate a piece of land may have shared rights over the trees on the land.³⁵ This is evidenced in farming and NRP collection practices within CREMAs in the Black Volta Basin.

3.1.1 Traditional Hierarchy of Land Decision-making

Since 1979, allodial title to land in northern Ghana has been vested in the institution of the chieftaincy, hence the designation Skin lands.³⁶ In the Northern Region where the institution of the *Tendana* is wiped out, the chiefs directly control the alienation of land, along with access and use rights to land and other natural resources. In the Upper West and the Upper East Regions, clan and family heads own the customary lands.³⁷ The *Tendana* (earth priests), usually the oldest male of those who claim to be the first settlers manages issues of access to and use of land and natural resources. Among the Sisala, Builsa, Tallensi, Dagaba, Kusasi and Frafra, the allodial title and control of land is vested in the *Tendana*.³⁸

Within the Zukpiri CREMA area, decision-making power on the allocation of land rights is vested in the *Tendana* in consultation with the chief, while in Wechiau, Dorimon, Builsa-Yening and Moaduri-Wuntaluri-Kumwusasi there exist more than one *Tendana* exercising such authority in consultation with a strong centralized chieftaincy institution.

In the Wechiau traditional area, for example, a *Tendana* exists for the Limayiri, Balumei, Fongo and Nayiri clans. In large allocations of lands made by the *Tendana*, the chief is supposed to be consulted. Relationships with subjects, migrants and settlers influence the

³⁴ Bugri 2012

³⁵ Hughes, Knox and Jones-Casey 2011

³⁶ Kotey 1995; Agbosu, Awumbila, Dowuona-Hamong and Tsikata 2007; Kasanga 2002; ISSER 2007

³⁷ Kotey 1995; Kasanga 2002; Agbosu Awumbila, Dowuona-Hamong and Tsikata 2007; ISSER 2007

³⁸ Agbosu Awumbila, Dowuona-Hamong and Tsikata 2007; ISSER 2007

distribution and allocation of land resources, inextricably linking the chieftaincy and land tenure in northern Ghana.³⁹ An opinion leader in Wechiau aptly asserted:

If a hen lays an egg, the egg is for the hen but the
owner of the hen owns both the hen and the egg.

Iddrisu Mahama

3.1.2 Women Leadership and Decision-making in the Customary Social Hierarchy

Women seldom play a prominent role in the hierarchy of land administration except in an informal advisory role. A respected elderly woman in the family may offer advice or insights in the case of dispute over a piece of land or land boundary. The recent introduction of the queen mother (*Pognaa*)⁴⁰ concept has opened a window of opportunity for women to participate in the decision-making processes in customary matters including land administration. It is a new concept and its impact in giving women a voice on critical issues in northern Ghana is yet to be evaluated.

The Dagaaba, for example, recognize the role of women leaders in the traditional setting; women from various sections identify older, mature women with high moral standards as women leaders. Such a leader is called *Pognaa*, literally meaning ‘woman chief,’ signifying the leadership role they play. The *Pognaa* is considered the leader of women and usually leads and represents women in community activities.⁴¹ The *Pognaa* institution may have been created to represent women in their community’s development discourse. The new institution is a window of opportunity to give voice and create a political space within a traditional patriarchic structure for women.⁴² The *Magazia* is an old system of leadership among market women and an example of organized leadership among women. Among the Dagomba, Mamprussis and Nanumbas, there are women chiefs who wield approximately the same powers as male chiefs. The *Pognaa* and *Magazia* are advocating for removing the barriers that impede women’s access to land and natural resources in the Northern Region, a cause that is gaining ground as women are engaging the existing power structures to gain equal rights to land. Today women who have the financial means can buy land and title it in their own name.

For mediation and conflict resolution efforts among women, the *Pognaa* and *Magazias* play significant roles in maintaining peace among women in communities. Disputes that are not fully resolved are brought to the chief and elders for adjudication. Land and related issues are not addressed by the court of the *Pognaas* or *Magazias*. In addition, the *Pognaa* in Dorimon Traditional Area is involved with discussions with elders in the palace regarding the development needs of the people. Her role in the administration of the traditional area is poignantly pronounced and a model for communities across the three northern regions.

In sum, the *Pognaa* and *Magazia* form an increasingly critical part of the social and political structure of communities in northern Ghana. Every *Pognaa* and *Magazia* has a linguist and representatives in the traditional area for disseminating information and mobilizing women for community engagement. Women’s groups, such as the *dakabile* (savings groups), operate under these women leaders. The emergence and prominence of these women leaders is a

³⁹ Odonkor and Mason 1994

⁴⁰ A framework supported by government legislation to incorporate women into decision-making processes at the traditional level.

⁴¹ Alenuma 2002, cited by Atuoye and Odame 2013

⁴² Nanbigne 2003, cited by Atuoye and Odame 2013

development that should be promoted and supported to increase equal rights for women. Even though leadership in northern Ghana is patriarchal, the gradual co-opting of women into decision-making and political administration is critical for eliminating gender stereotyping and ensuring effective representation in decision-making.

3.1.3 Women's Social Identity and Land Rights under Customary Land Practices

As has been stated previously, women's access to and control over natural resources are determined by a patriarchic traditional structure, which restricts their land access and use rights. Even though access to and ownership of land within the customary sector is primarily based on membership to a particular landholding community, women only have secondary-use rights to land.⁴³ The control over natural resources within the customary setting is generally discriminatory against women. Additionally, current land scarcities encourage males and family heads to assert patrilineal claims and lineage principles more strongly than before.⁴⁴ These norms effectively limit the rights of women in favor of men. Women are associated with families and communities by birth or by marriage, but do not really belong to either. In their families of birth they are considered people who will marry and leave the house and in their husband's family, women are perceived as "coming from outside". Women find themselves in a precarious situation when it comes to access to and rights over land because they are associated with both families but are not absolute members of either family.

A woman's marriage is critical to her access to productive resources from her marital home. Divorcees and widows risk losing their access to land. Women can benefit through inheritance but often women do not get their full rights in inheritance, but rather her children are given the land and the mother only holds use rights to the lands given to her children. The social rules that deny women a right to land are based on traditional beliefs that are no longer tenable. In marriage, women are considered "property" of the husband's family, and the patriarch's position was that "property cannot own property." Furthermore, women are forbidden from performing sacrifices and rituals to the land and ancestral gods. As such, they are perceived to be spiritually and physically incapable of owning lands.⁴⁵ They can, however, access family resources, especially land, for secondary production.⁴⁶ These beliefs can and must be challenged and changed. There is also enough evidence to demonstrate that these traditional beliefs do not prevent women from accessing land for farming. Although women's rights to inherit land are weak and insecure, once they have acquired land, their use of it is rarely restricted.⁴⁷

⁴³ Pottier 2005; Kameri-Mbote 2005

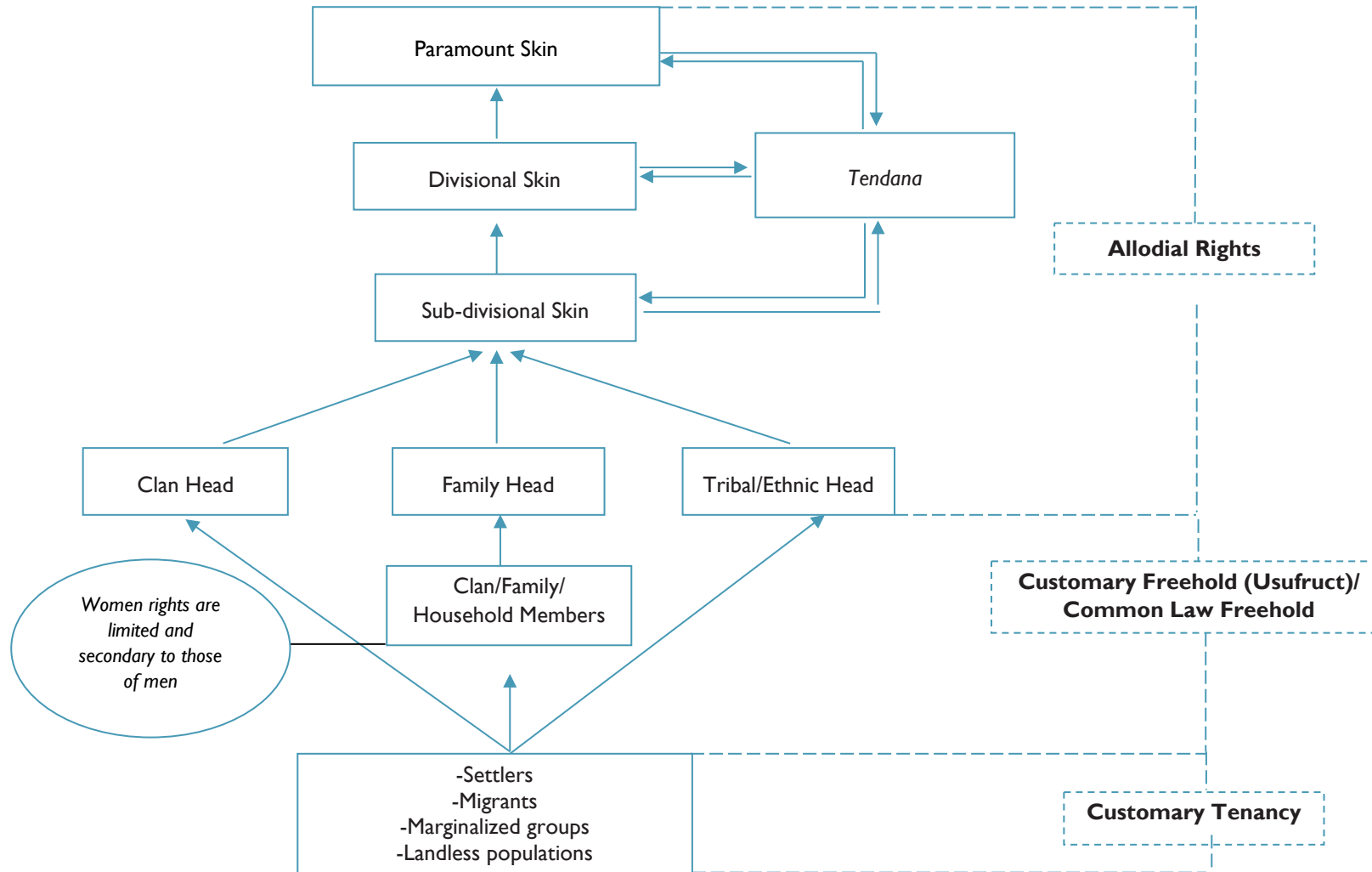
⁴⁴ Nukunya 1972

⁴⁵ Manuh 1984; Kuusaana 2007; Kuusaana *et al* 2013

⁴⁶ Millar 2004

⁴⁷ Kasanga *et al* 1996

Figure 2: Hierarchical Structure of Customary Land Administration in Northern Ghana



Source: Schematic is based on CECOTAPS' analysis of field observations, assessments and interactions with key stakeholders (2016)

Land and natural resources are very limited in the Upper West and Upper East Regions because of population density. In the Northern Region, the situation is different because there are still vast spans of unoccupied land. Women have unlimited access to natural resources such as tree products. There may be some limitations regarding when to start harvesting shea fruits, but there are no limits on how much one can harvest. Poor knowledge of the commercial value of some of the forest products is affecting women's income from these products. Women's land ownership has recently increased in northern Ghana due to a great number of outright purchases of land by women and through gifting to women from parents, grandparents and/or spouses. During interviews in Dorimon and Wechiau traditional areas, a number of men stated more women are cultivating large acres of lands, sometimes even more than their husbands,⁴⁸ though these claims are yet to be substantiated or corroborated in the field.

3.1.4 Women's Influence and Decision-making in Customary Land Administration

The irregularities in access to and control of livelihood assets (such as land, water, energy, credit, knowledge and labor) negatively affect women's ability to produce food. Women have limited decision-making power and depend on men for use rights, which they can lose through marriage, widowhood or divorce. Their ability to claim, use and defend their rights is also weak because of ignorance of their rights and legal processes. Even when they know their rights, social pressures often prevent them from demanding or seeking redress for injustices done to them. The judicial system is expensive, inaccessible and time consuming. Furthermore, factors hindering women's land use are shaped by a complex system of common/civil laws, as well as local social and religious laws and practices. The perception of a woman's position in the household, family and community ultimately affects the extent to which they can exercise their rights.

Even with these barriers, women are the main force behind food production and wealth creation. Women are most affected by poor water sources and/or availability. They are the hewers of wood and drawers of water, they have specialized knowledge, traditions, and self-interest that make them efficient managers of the resources they use, yet they are often not involved in local water and land management institutions, such as water users' associations and the CREMA executive committees.

3.2 Statutory Land Administration

The institutions with decision-making authority include:

- National Development Planning Commission (NDPC)
- Ministry of Lands and Natural Resources (MLNR)
- Ministry of Finance
- Forestry Commission
- Lands Commission (Survey and Mapping, Land Title Registration, Land Valuation and Public and Vested Lands Management divisions)
- Office of the Administrator of Stool Lands (OASL)
- Environmental Protection Authority (EPA)
- Town and Country Planning Department (TCPD)
- Metropolitan/Municipal and District Assemblies (MMDAs)

⁴⁸ Duncan and Brants 2004

- Customary Institutions (Customary Land Secretariat)

3.3 Statutory and Legal Instruments

Ghana's land administration legal regime is a hybrid of customary, constitutional, legislative, judicial judgments and precedents. However, all these pieces of legislation draw legitimacy from the 1992 Constitution. The hybrid nature of the land tenure regime in Ghana complicates efforts to address tenure security for women, migrant settlers, the poor and other vulnerable groups.⁴⁹

3.3.1 The 1992 Constitution

This Constitution vests all public lands in the President, who holds these lands in trust for Ghana's citizens. Article 257 of the Constitution returned all public lands, that had been annexed by the government in northern Ghana, to the appropriate Skins, but still recognized the concept of trusteeship in the wider interests of communities.

The state shall recognize that ownership and possession of land carry a social obligation to serve the larger community and, in particular, the state shall recognize that the managers of public, Stool, Skin and family lands are fiduciaries charged with the obligation to discharge their functions for the benefit respectively of the people of Ghana of the Stool, Skin or family concerned, and are accountable as fiduciaries in this regard.⁵⁰

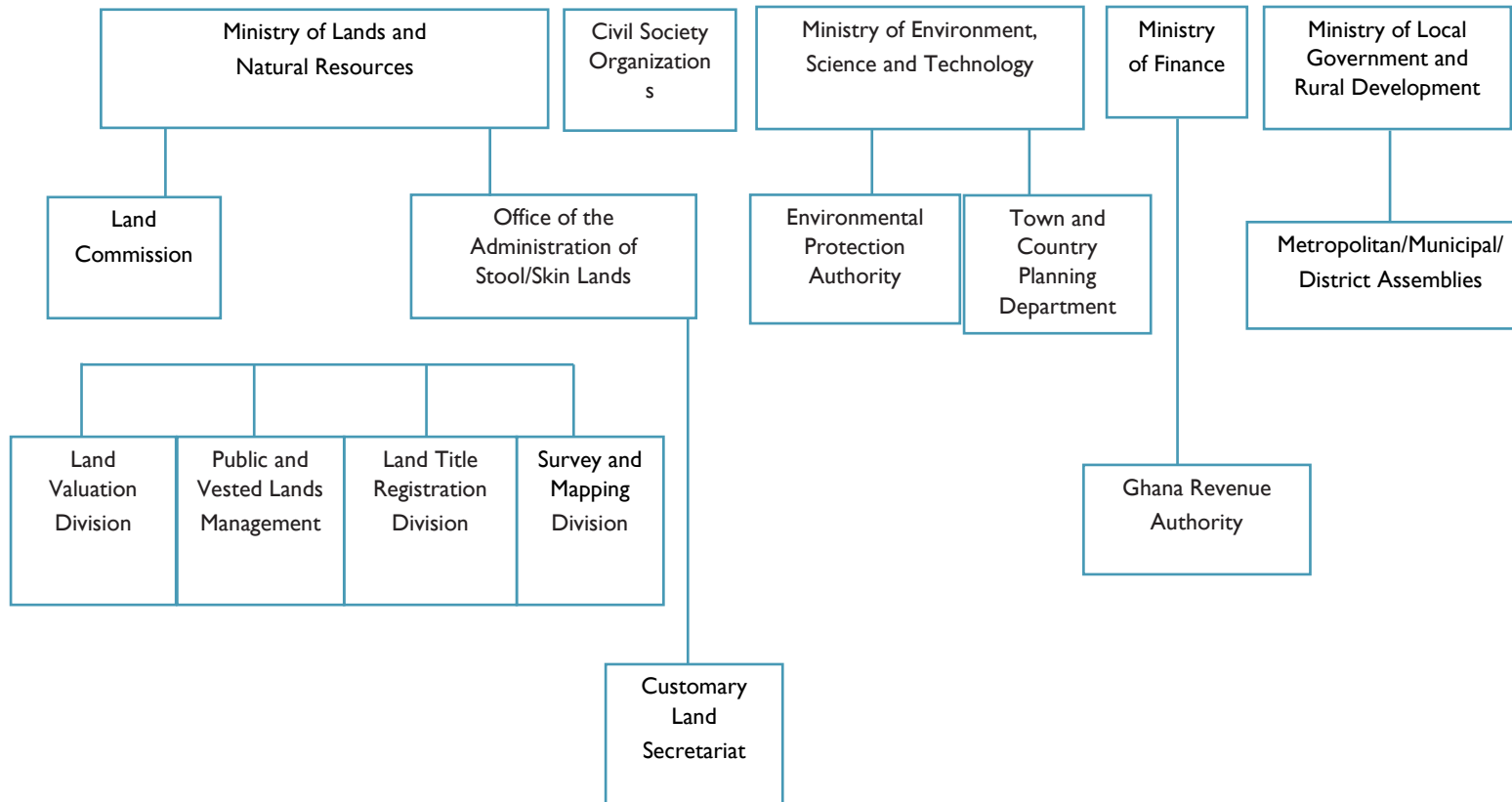
Chapter five of the 1992 Constitution is devoted entirely to fundamental human rights and freedoms consistent with the International Bill of Rights, political, civil, economic, social and cultural rights as follows:

- Article 17 states that all persons are equal before the Law.
- Article 17(2) states that "a person shall not be discriminated against on grounds of gender, race, colour, ethnic, origin, religion, creed, social or economic status."
- Article 17(4) makes provision for special legislation or policies to address discriminatory socio-cultural, economic or educational imbalances in the Ghanaian society.
- Article 18 guarantees every citizen with the right to property.
- Article 22 provides that spouses shall have equal access to property jointly acquired during marriage, and that assets which are jointly acquired during marriage shall be distributed equitably between the spouses upon dissolution of the marriage
- Article 22 also prohibits the deprivation of a reasonable provision of a spouse's estate upon death or dissolution of marriage.

⁴⁹ Agbosu *et al* 2007; Sarpong 2006; Rüniger 2006

⁵⁰ GOG Constitution 1992, Article 36(8); Kasanga and Kotey 2001; Landesa 2013

Figure 3: Land Administration Structure in Ghana



Also, enshrined in the Constitution are other provisions that protect women's land rights in Ghana. Article 35 (1) enjoins the State to promote the integration of all the peoples of Ghana and prohibits discrimination and prejudice on grounds of origin, circumstances of birth, ethnicity, gender, religion and other beliefs. The Constitution also requires that the State guarantee the ownership of property and the right of inheritance of all (Article 36 (7)) since women's unequal land rights affect their access to resources and their economic, social and political status.

However, the Constitution also allows customary institutions to apply traditional rules, which indirectly foster discrimination against women's land ownership.⁵¹ Legislation that has governed land administration in Ghana include:

- Deeds Registration Ordinance of 1883
- Land Registry Ordinance of 1895
- Town and Country Planning Ordinance of 1945 (CAP 84)
- Land Registry Act, 1962 (Act 122)
- Administration of Lands Act 1962 (ACT123)
- State Lands Act, 1962 (Act 125)
- Land Title Registration Law, 1986 (PNDCL 152)
- Land Title Regulation, 1986 Legislative Instrument (L.I.) 1241
- Fourth (4th) Republican Constitution of the Republic of Ghana, 1992
- Local Government Act, 1993 (Act 462)
- National Development Planning Commission Act, 1994 (Act 479)
- National Development Planning (Systems) Act, 1994 (Act 480)
- Administration of Stool Lands Act, 1994 (Act 481) which repealed the Administration of Stool Lands Act, 1962 (Act 123)
- Lands Commission Act, 2008 (Act 767) which repealed the Lands Commission Act, 2000 (Act 483)
- Land Use and Spatial Planning Act, 2016

3.3.2 Land Use and Spatial Planning Act (2016)

The Land Use and Spatial Planning Act (July 2016) is formed as part of the Land Administration Project-Phase 2 (LAP II) and developed from the Ghana National Spatial Development Framework.⁵² The Land Use Act harmonized existing acts including Acts 462, 480 and of the Colonial Ordinance⁵³. The Act also seeks to provide sustainable development of land through a decentralized planning system for which the Town and Country Planning Department has the mandate.⁵⁴ Other significant legislation includes Section 79 of the Local Government Act,⁵⁵ which confers authority on Municipal, Metropolitan and District Assemblies (MMDA) to construct by-laws and enforce them through endorsement by the local government minister and through publication in Ghana's official gazette, which is the government's way of officially recognizing all by-laws.

⁵¹ Landesa 2013

⁵² GOG 2015

⁵³ Metcalfe 1964

⁵⁴ GOG Constitution 1992; GOG Land Title Registration Act 1986; GOG 1985; Larbi 2004; Sittie 2006

⁵⁵ GOG 1993: Act 462

3.4 Gender Responsive Legislation on Social Protection

3.4.1 The Intestate Succession Law

The Intestate Succession Act of 1985, promulgated by the Provisional National Defense Council (PNDC), has specific provisions protecting the rights of surviving spouses to marital property. The law makes it a crime if one denies a spouse's right to property and is punishable by a fine and up to a year of imprisonment.

Section 4 states that: "where the estate of a deceased person includes only one house, the surviving spouse and children shall be entitled to it and they shall hold it as tenants in-common". However, these rights do not apply to Stool, Skin or the family's other property.

The Intestate Succession Law is being reviewed currently and the related bill is before Parliament. It seeks a more responsive approach to the needs of nuclear families when parents and spouses die intestate. When passed, the bill will replace the 1985 Intestate Succession Act.⁵⁶ The objective of the new Act will be to make the intestate succession regime more responsive to the needs of the immediate family of persons who die intestate and provide a uniform intestate succession policy that will be applied throughout the country, irrespective of the inheritance system of the intestate and the type of marriage contracted.

3.4.2 The Marriage Ordinance of 1884 and Mohammedans Ordinance of 1907

These legal instruments govern family inheritance and serve the rights of women and children to access land. The Marriage Ordinance of 1884 recognizes monogamous marriages only and specifies that wife and children be entitled to two-thirds of the deceased man's estate, while the remaining one-third goes to the deceased man's brothers and sisters. The 1884 Marriage Ordinance was designed to mitigate the practice of the man's family taking the deceased man's estate and leaving his wife and children to fend for themselves. In some instances, the woman would leave the children, move out and marry again or stay in the village and struggle on her own to take care of her children or marry the brother of her husband. The Marriage of Mohammedans Ordinance of 1907 addresses polygamous marriages and codifies a separate legal system, including inheritance rules, for Muslims. Under the Mohammedans Ordinance each wife has an equal share of the deceased husband's property.

3.4.3 The Property Rights of Spouses Bill

The Property Rights of Spouses Bill fulfills Article 22 (3) of the Constitution, which requires that spouses have equal access to property jointly acquired during marriage. It also requires that marital property should be equitably distributed between the spouses upon termination of the marriage. Currently, the courts decide the percentage of property distribution between the couples after the dissolution of a marriage. In the new bill, however, each spouse would receive fifty percent of jointly acquired property including land.⁵⁷

3.4.4 The Head of Family (Accountability) (PNDC L114)

This act requires the head of a family, or any other person with control over family property, to file an inventory of all such property. The law also makes the person legally accountable for

⁵⁶ The principal laws relating to inheritance in Ghana are the following: 1992 Constitution of the Republic of Ghana; Administration of Estates Act of 1961 (Act 63); The 1971 Wills Act (Act 360) and the 1985 Intestate Succession Act (PNDC Law 111)

⁵⁷ Parliament of Ghana 2016; The Bill was passed by cabinet in September 2013 and was sent back to Parliament for review, where it remains today.

the property. The law secures family property by empowering the head of a family to manage property in ways that benefit the nuclear family unit. Also, family members are empowered under this legislation to file a claim in a court of competent jurisdiction (High Court) to seek remedy if family property is being mismanaged.⁵⁸ An amended Bill reflecting this current policy is in Parliament currently (May 2017).

Other legislation to improve women's access to landed property includes the Customary Marriage and Divorce (Registration) Law (PNDC L112), and the Administration of Estate (Amendment) Law (PNDC L113), but empirical evidence from rural northern Ghana indicates that women's rights to land are still limited and insecure compared to men.⁵⁹

3.5 State Commitment to International Laws, Conventions and Protocols on Women's Rights

Ghana is signatory to a myriad of international laws, conventions and protocols. These include the Universal Declaration of Human Rights (1948), which recognizes the equal rights of men and women, the right to own property (Article 17) and the right to social security (Article 22).

Ghana is also a signatory to the 1979 Convention on the Elimination of all forms of Discrimination Against Women, which enjoins states to modify the social and cultural patterns of conduct of men and women, with a view of achieving the elimination of prejudices and all other practices that are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles of men and women (Article 5(a)). Other international laws to which Ghana is a signatory include the Declaration on the Rights of Indigenous People (2007), Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (1999), International Convention on the Rights of the Child (1991), International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (1990), and African Charter on Human and Peoples' Rights (1989).

⁵⁸ Awusabo-Asare 1990; Kludze 1987; GOG 1985; Bugri 2012

⁵⁹ Kutsoati and Morck 2012; Colandef 2011; Landesa 2013

Chapter Four: Land and Natural Resource Tenure in Northern Ghana: Implications for Women

Tenure security is the level of certainty that rights of access to and use of land and natural resources are objective, known, just, fair, equally applicable, contestable and protected. It is the degree of confidence that the land user will not be arbitrarily deprived of the rights land and economic benefits that flow from it.⁶⁰ Land tenure security refers to a person's or group's ability to control and manage a parcel of land, use it, dispose of its produce and engage in transactions, including transfers. There are three main characteristics of land tenure security: Duration (how long will the right(s) last); Protection (is the right protected if it is challenged or threatened); and Robustness (are the rights holders able to use, transfer and/or dispose of these rights free from interference of others).⁶¹

The nature, character and organization of a society is determined by the ways it allocates title and rights to land. Communal/collective societies tend to emphasize communal ownership and individualistic societies give priority to private tenure systems. Each system has advantages and limitations. Whatever the system, access to secure and affordable land is a pre-condition for social and economic development and for human dignity. Secured access and rights to land and natural resources is the precondition for sustainable social and economic development, especially in rural, land-based economies such as across northern Ghana. The denial of secure access to land and other natural resources has been a major cause of ethnic conflicts in northern Ghana and one of the key contributing factors to environmental degradation. Most migrant and settler farmers, who live in fear of eviction, practice extractive farming and hardly invest in permanent structures on the land. The settlement patterns make it very difficult for local government to invest in social services, such as health facilities, water and sanitation, etc., further reducing the prospects for economic development in the community.

4.1 Women's Rights to Land in Northern Ghana

Women's access and right to land and property is central to women's economic empowerment, as land is a base for food production and income generation, as collateral for credit and as a means of holding savings for the future. Consequently, there is a direct relationship between women's right to land, economic empowerment, food security and poverty reduction. A gendered approach to land rights can enable shifts in gender power relations, and assure that all people, regardless of sex, benefit from and are empowered by development policies and practices to improve people's rights to land. In the Upper West Region, men have control over up to 96% of the land and thus women must depend on them for access.⁶² In the Upper East Region, women form 80% of the labor force in food production, yet very few women own or have tenure security over the land on which they work. Women often have limited decision-making power and control over how to use the land or its outputs. While men have a stable access and rights to land, women's access and rights are linked to their marital status (see Figure 3). Access and rights to land and natural resource are in the following descending order of security: married women with male children and living in the matrimonial home; widows with male children; widows without children and women married without children; and

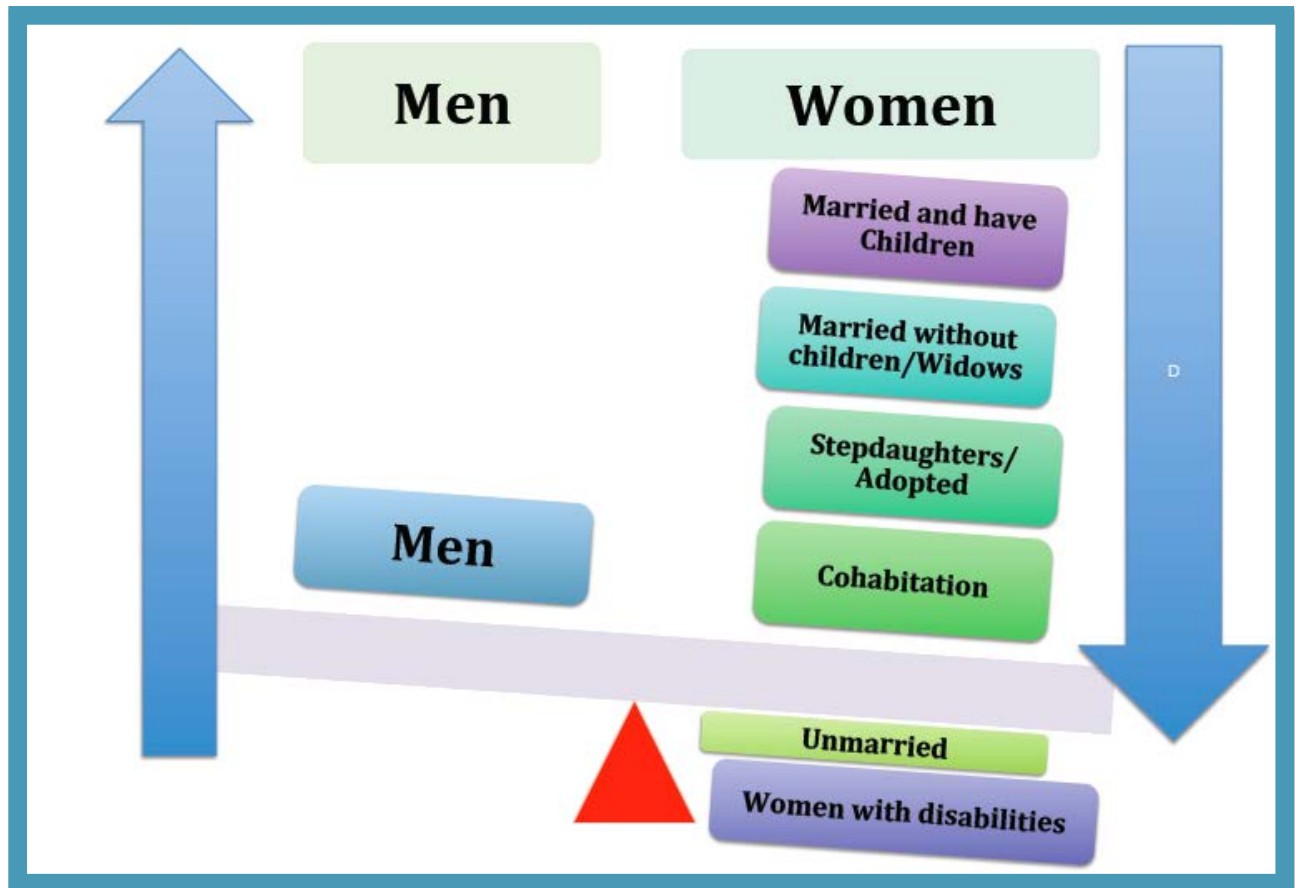
⁶⁰ UN-Habitat 2011: 5

⁶¹ IFAD 2008

⁶² ISSER 2005

stepdaughters/adopted daughters and those cohabitating with men in the family. Generally, unmarried women and women with disabilities do not have any access to land. This gender inequality has contributed significantly to the high poverty levels among women in northern Ghana.

Figure 4: Schematic of Gendered Hierarchy to Land Access in Northern Ghana



In short, a woman has usufruct rights based on her marital status, or her relationship to a male member of the family.⁶³ Despite these challenges, women in northern Ghana play a critical role in providing nutritious and diverse diets for their families as well as meeting other productive demands.⁶⁴

The 1962 Administration of Lands Act (Act 123) with Consequential Executive Instruments (87 and 109, July 11, 1963) vested all northern lands to the President. Purposefully, the State could have prudently vested its interest in redistributing land to women and vulnerable groups through specific legislation, but this opportunity was missed.

Moreover, Parliament is mandated by the Constitution to enact legislation regulating the property rights of spouses to ensure equal access to property acquired jointly in marriage, and

⁶³ Mbote 2005

⁶⁴ Chagomoka *et al* 2015

equitable distribution of such property at the dissolution of marriage (Articles 22 (2 and 3)). This opportunity has also not been brought to fruition.

Marriage, divorce and intestate succession significantly influence the nature of women's property rights. Marriage is one of the most progressive sources of acquiring farmlands for women, but the cultural stereotypes prevailing against this indicts land acquired through marriage as substandard to that acquired through family membership.

As discussed, women enjoy access to land through their husbands, especially during the early years of marriage, and many possess very secure rights to sufficient land through their husbands. However, women often have less control over the choice of crop, technologies and farm management practices. Many women in the three northern regions maintain that working on their husband's farm reduces the amount of time they can work in their own fields. Women also lament the lack the time to increase their farm acreage in situations where land is available and fertile.⁶⁵

Among communities along the Black Volta in the Upper West Region, it remains a source of pride for women to work on their husbands' farms under the notion of common or co-ownership. Typically, women continue to yield decision-making responsibilities to their husbands. For example, when limited tractor services are available, women tend to acknowledge that their husbands' farms should be prepared before their own. In many communities, farm produce from the husband's farm is food for the household, but when there is poor yield, the wife voluntarily supports with stored foodstuff. Additionally, when there is the need to vary the household diet, it is the duty of the wife to provide the additional ingredients to the bowl.

In some Sisala and Wala communities, women are prohibited from participating in the actual tilling of land.⁶⁶ Wives support their husbands as simple farm hands, and through marketing and sale of the produce. Existing cultural antecedents, marital obligations and women's inability to negotiate for greater rights limit their economic independence. Some women reported being able to negotiate with their husbands for the right to sell their own farm produce and retain the proceeds.⁶⁷ Specific to the Birifos in the Wa West District, after harvest wives are required to present their farm produce to their husbands as a sign of respect and gratitude for being allowed access to land to cultivate. Even in situations where the wife sells her farm produce, her husband receives a share of the earnings.

Evidence from the CREMAs in the Black Volta Basin and Western Corridor suggests that land access and use rules vary from community to community. But, for the most part, across the communities, men have more secure access to and control over land resources. Women's tenure security appears to be increasing slowly in some communities, and more quickly in urban areas and larger district towns (e.g., Wechiau and Dorimon).

4.2 Women's Evolving Land Rights

Rural women's direct access to land through purchase or inheritance is often limited in the customary land tenure system. Since women are the major producers of household food supply,

⁶⁵ Duncan 2004; Kasanga 2001; Apusiga 2013

⁶⁶ Millar 2004

⁶⁷ Millar 2004; Kuusaana 2007; Apusiga 2013

there are usually customary provisions for indirect access to land in terms of use rights as community members, wives, mothers, sisters or daughters. These use rights, however, do not grant sufficient security for women when traditional family structures dissolve. The economic and social well-being of women and their children are at increased risk when women face widowhood and divorce, or when the male head of household does not or cannot exercise his traditional responsibilities to his family. In Ghana, both written and customary laws govern access to resources. In considering women's rights, especially when conflicts exist between traditional norms and national laws, the local norms generally prevail and are enforced by community members. Written national laws granting women equal access to productive resources are essential but for these rights to be legitimate and adhered to, it is necessary to secure the support of the local community.

Women acquire land in northern Ghana principally through their lineage, inheritance, marriage or by contractual arrangements. Farmland can be acquired through sharecropping, inheritance, tenancy, pleading, license, purchase and use of her husband's lands.⁶⁸ Nonetheless, women have restricted rights to land and related natural resources. Among the multiple causes of such restrictions are the country's inheritance systems, tenure arrangements and land-use patterns.⁶⁹ Access to land by women, especially for agricultural use, is generally possible, but highly insecure with agreements that can be revoked at any point in time. A woman's acquisition of land is almost always through a male agent to facilitate land allocation; without this channel, many women would be unable to acquire land.⁷⁰

Even though husbands remain the corporate and communal source of land for women farmers, evidence-based research demonstrates that women gain considerable tenure security through marriage.⁷¹ For example, within CREMA communities along the Black Volta, husbands provide farmlands for their wives and do not need to consult the *Tendana*. The drawback is that the woman's access to the land for farming depends on her marital status.

Additionally, other scenarios complicate these dynamics.⁷² If the husband cannot provide sufficient land, if the wife of a polygamous marriage disapproves of the land she is given, or if the land is situated far from that of her husband, the woman will be permitted to seek access to land from another family in the community. In the case of the death of a husband, the widow is entitled to the husband's farmland for food cultivation to meet her children's needs. A widow, who has only female children who are all married, has a right to request farmland from her deceased husband's family for her own use. The female offspring of a man with no sons only have the right to use their father's land; but they must consult and be granted permission from the male members of their father's extended family. A woman's right to land may be strongest among the Builsas in Northern Region, where women from the *Tendana*'s clan have the right to own land and can claim land even when they are unmarried. However, these women must consult the secular chief and *Tendana* when making decisions about the use and management of the land.⁷³

⁶⁸ WIA 1997

⁶⁹ Sarpong 2006

⁷⁰ Bugri 2008

⁷¹ Apusigah 2013

⁷² Millar 2005, cited by S. Bonye (undated)

⁷³ Millar 2005, cited by S. Bonye (undated)

Contrary to the perception that women do not inherit land, recent evidence in the Wa Municipality (Upper West Region) establishes that 14% of women acquired their lands through inheritance. These women acquired their land by successfully asserting their rights, in opposition with the men in their families, by demanding their equitable share of the family's inheritance.⁷⁴ Though women from the *Tendana* families within the communities in Black Volta and Western Corridor cannot own land, they have unfettered access.⁷⁵ However, women's access to land is continually improving as a result of evolving economic, social and cultural practices.

Naa Dakora of Soriyiri⁷⁶ succinctly puts it:

'If the support gets to the women it is better since men can manage poverty but women cannot withstand and they might leave their husbands. More so, they take care of our children and I will prefer support gets to women'.⁷⁷

However, research suggests that women are often allocated less productive and less accessible land. Women, who have fewer financial resources at their disposal and whose tenure is less secure, tend not to invest in these marginal lands because they are apprehensive that men will dispossess them of the land if they improve the fertility.⁷⁸

4.3 Changing Trends in Land Tenure

Population pressures and increased interest in commercial investments, including international interests in biofuel production, have driven up the demand for land in northern Ghana. This has served to influence how chiefs allocate land to community members and migrant farmers. Hitherto, traditional authorities were placated with 'drinks money' - a small, one-time monetary tribute paid to the land granting authority. Currently, some chiefs demand recurrent "drinks money," gifts, and even sizable cash payments for personal gain rather than the community's benefit.⁷⁹ Steeper payments to access land resources presents greater challenges to women and other vulnerable members of the community.⁸⁰

Covertly, evidence supports simmering tensions in land management in communities in the Upper East and Upper West Regions, which may play out in conflict scenarios. This is because, chiefs are clandestinely usurping the authority of the *Tendana*. Chiefs are claiming allodial title to lands to which hitherto they had no rights because of the authority given to them by the State and by virtue of the position they occupy in the communal hierarchical system. They continually appropriate to themselves unbridled and unchecked power to usurp explicit tradition. Fundamentally, this contrasts with their role as preservers of the sanctity of the culture bequeathed to them.⁸¹

⁷⁴ Kuusana *et al* 2013

⁷⁵ Bonye and Kpieta 2012

⁷⁶ Chief of Soriyiri

⁷⁷ Quote from CECOTAPS Assessment field notes 2016

⁷⁸ Agnes Loriba 2013 and cited by Landesa 2014

⁷⁹ Orla Ryan 2006, cited in Hughes, Know and Jones-Casey 2011

⁸⁰ Hughes, Know and Jones-Casey 2011

⁸¹ Aapengnuo 2013

Indicatively, as indigenous tenure practices evolve over time, any attempt to characterize tenure as a fixed bundle of rules and regulations is likely to ignore one of its most important characteristics of local tenure systems:⁸² their ability to evolve and adapt to changing realities.⁸³

Nevertheless, under the LAP agenda, more customary lands are now being formally registered to secure tenure and there is remarkable improvement. Notably, effective communication strategies and technologies, including new awareness raising efforts, have been employed to reduce processing times and costs of land registration. New systems in place are better equipped to monitor and provide updates to clients on application process, procedures and status. The Clients Service Access Units is a one-stop shop for all land registration services.

A significant advancement in land management in Ghana has been the codification of customary laws and regulations. Under the African Customary and Codification Law Project (a collaborative effort between the German Development Cooperation (GTZ), the Law Reform Commission of Ghana and the Regional Houses of Chiefs), the expectation is for the project to gradually contribute to reducing land disputes in twenty (20) selected traditional areas in Ghana. These include endemic and recurring conflict zones such as Mamprugu, the Gonja, Bolga, Paga, Kaleo and Nadowli Traditional areas.

Outstanding watershed legislation is the Land Bill, currently before Cabinet for approval. The tenets of this Bill seek to address the conflicting laws and policies governing land administration in Ghana, and grant further recognition to women's rights to land and greater community participation in land administration.

Meanwhile, there are two emerging major trends in northern Ghana's land tenure practices worth monitoring. First, there is the multiplicity of sales and reallocation of lands already owned; this is occurring primarily in urbanized areas of northern Ghana. These practices can trigger broader land conflicts and can also become a factor to eroding gains made in ensuring greater equity in land redistribution. Second, although not a widespread practice in northern Ghana, women are beginning to inherit more land. In more urbanized centers like Wa, for example, there is strong evidence that women from the lineage of the *Tendana* have inherited land.

4.4 Women and Water Resources

Rural women and men also have different roles, responsibilities, and knowledge in managing water resources. Consequently, the degradation of water sources impacts rural household members differently.

Men typically use water for agricultural production, principally for irrigating cash crops. Women play an important role in water management as collectors, users, and managers of water and they use water for both agricultural and household purposes. As previously discussed, the task of providing domestic water almost always falls to women and girls. Women also use water on subsistence crops and vegetable gardens, and spend considerable time collecting water for the household use (for example, food preparation, drinking and sanitation). Many traditional rural water sources have become contaminated because of human and animal waste, agricultural runoff and mining.

⁸² Lund 2006

⁸³ Birgegaard 1993; Bonye and Kpieta 2012

Equitable access to water for productive use can empower women and address the root causes of poverty and gender inequality. However, lack of access (ownership) to land may be the underlying cause of women's limited access to water and a key reason for the greater poverty of female-headed households. The real problem faced by many female farmers is that they have very little or no access to irrigation water for agricultural purposes and are entirely dependent on rainfall.

It is evident that prevailing cultural expectations for both men and women can have critical importance in determining attitudes toward water resource use and management. Women's capacity to have input into water resource use and management is further hampered by their lack of skills in science and technology. To make informed choices and decisions, basic knowledge and understanding of the technologies involved is needed. Women are particularly disadvantaged first because of their lack of confidence about technological matters and second because of negative male attitudes toward a woman's ability to use new/improved technologies.

Water shortages not only undermine agricultural production but also threaten the health of households. Local norms and customary practices can limit women's rights to water resources.⁸⁴ Access to water depends on land rights, control over resources, and social networks, all of which more severely restrict women than men.⁸⁵ Women's limited decision-making influence over household finances may make them reluctant to suggest greater expenditure on improved access to water, particularly if this expenditure would primarily benefit the women by easing the burden of their household work. Excluding women's roles and perspectives in water and land management interventions will have adverse effects on the entire household's well-being. Involving women in participatory land and water management promotes more sustainable land and water use and improved socioeconomic conditions.

4.5 Women and Forest Resources

Forests are important to subsistence farmers in many ways – forests protect watersheds by protecting against soil erosion; forest create micro-climates and can attract rain; forests provide biofuel, food, medicinal remedies and fodder. Women play a central role in many of these forest uses and have been at the forefront of forest management and protection. Unfortunately, they are often not involved in more formal community decision-making on the use of the forests.

Without secure land rights, women and men farmers have little or no access to credit to make investments in improved natural resource management and conservation practices. Poor rural women lacking secure land tenure often depend on common property resources for fuel wood, fodder, and food. The overuse and poor management of common property resources pose severe threats to the livelihoods and household food security of poor rural women and men. Female headed households remain at a disadvantage in terms of access to land, water, and other natural resources in northern Ghana.

⁸⁴ Gender and Water Alliance 2003

⁸⁵ IFAD 2003

4.6 Tree Tenure, Forests and Communities in Northern Ghana

4.6.1 Tree Tenure in the Context of Customary and Statutory Authority

Tree tenure refers to the compendium of rights over trees and tree products, each of which may be held by different people at different times.⁸⁶ These rights include the right to own, inherit, dispose, use and exclude others from using trees and tree products. In northern Ghana it is possible to control the resource and not manage it. Subjects of Stools may own land, with control vested in the Stools on behalf of, and in trust for, their subjects. For example, naturally occurring trees are vested in the President in trust for the Stools concerned, managed by the Forestry Commission, with the State recognizing pre-existing customary rights.

This implies that all trees are held by the State in trust for the communities concerned. Although a community's legal ownership is not affected in practice, the State has control over trees and forest resources, even though communities and landowners are involved in forest management tasks.⁸⁷ There are greater tree tenure restrictions in the northern regions compared to the southern regions of Ghana because of the savannah ecological zone harboring a limited number of economic trees. The Ministry of Land and Natural Resources regards existing tree tenure regimes as a disincentive to sustainable forest management. Also, the State views inadequacies in the legislation and/or misinterpretations of the complex texts relating to tree tenure and benefits as the root cause of this unsustainability.⁸⁸

In Ghana, land constitutes the soil, as well as the sub-soil and anything under the soil, like minerals or other extractives. But land excludes objects on or attached to the soil, such as trees, houses, or other permanent/semi-permanent objects. Interest accrued from the land itself is distinct from interest accrued from objects found on it, or attached to it.⁸⁹ Therefore, planted or naturally occurring trees (particularly upon transfer) are not regarded as part of the land in almost all Ghanaian tenure systems.⁹⁰

Statutory laws governing land and tree tenure reinforce these notions.⁹¹ Land can be owned by an entity, but ownership and access to trees can be held by another entity. Nonetheless, all forestlands in Ghana (except those under private plantation) are managed by the State, in trust for the Stool landowners.⁹²

The duration of the land agreement between a land user and a landowner determines which crops to plant, including tree crops.⁹³ Since trees need longer cycles of maturity, longer land tenure agreements or arrangements are more likely to stimulate tree planting. Farmers respond differently to tree planting initiatives even in the same village depending on the tenure they hold to their farmlands. When land is leased, the agreement between the landowner and the lessee determines whether the lessee can plant trees on the land or not. Allegedly, some instances tenants conspire to claim land ownership by planting trees on land for which they

⁸⁶ Fortmann 1985

⁸⁷ Ministry of Lands and Natural Resources 2016

⁸⁸ Ministry of Lands and Natural Resources 2016

⁸⁹ Klutse 1973, cited by Ministry of Lands and Natural Resources 2016

⁹⁰ Agyeman 1994, cited by Ministry of Lands and Natural Resources 2016

⁹¹ Ministry of Lands and Natural Resources 2016

⁹² Boakye and Baffoe 2008

⁹³ According to Ansaah *et al* 2016, cited by Ministry of Lands and Natural Resources 2016

were given use rights only; thus, land owners are careful to stipulate if a land user has the right to plant trees as part of the agreement.

Currently, customary land arrangements are often a disincentive to tree planting. This is because, when naturally occurring trees have been nurtured to maturity by tenant farmers, their permission is not sought in the granting of timber rights, and neither are they paid compensation in the case of destruction of property. Also, the constitutional and administrative provisions are prone to elite (i.e., State) capture including exploitation by divisional and paramount level chiefs.⁹⁴ In the northern regions, a tree can be inherited in the same way as land;⁹⁵ thus, women have restricted rights to plant, use and own trees in northern Ghana.

The landowner holds the rights over the fruits of the trees unless otherwise ceded. For example, in the Upper East Region, trees growing naturally on farms, with the exception of dawadawa trees, are in most instances owned by the farmer. The farmer may pick fruits, collect firewood and benefit in other ways from the trees on the farm. The use of economic trees in non-farm areas in the Wa West and Nadowli Districts are generally not restricted and considered free for anyone to harvest. Additionally, as shea and dawadawa trees are in abundance and are naturally growing, women exercise use rights by picking shea nuts and dawadawa fruits from communal and other holdings without restriction. However, this is not the case in the Upper East Region, where there are fewer of these economically important trees, and men tend to control access to them.⁹⁶

4.6.2 Communal and Private Forest Estates

Ghana's forest landscape management can be categorized into four main management regimes, three State supported regimes: 1) Protection (for example, Globally Significant Biodiversity Areas, 2) Production Forest Reserves – plantation or natural forests); 3) Off-Reserve Areas (trees on-farm, community resource management areas). Prior to the State supported schemes, tradition prevailed thus the fourth regime is Traditional Protected Areas.

Trees on farms, community resource management areas (CREMA) and community forests are designated as off-reserve areas, whilst protection and production forests are designated as forest reserves.⁹⁷ Traditional Protected Areas in this context include sacred groves, water points, burial sites and sacred hills where shrines may be located. These sacred places are where trees and plants are allowed to grow undisturbed and where reptiles, birds, fish and other animals can have free living without fear of poaching or interference by people. The management of Traditional Protected Areas is restricted to specialized people (*Tindanas*, fetish priest, rain makers and other traditional spirit mediums). The management of these areas are central to a community's spiritual sustenance, and access to these sites is restricted to limited activities and members of a community. As a result, these sites are often protected from overuse and other abuses.

Traditional authorities employed indigenous strategies to prevent human activities from encroaching on sacred groves but the influence of Western culture, Christianity, education and demographic pressures have eroded many of the basic tenets underpinning the survival of

⁹⁴ Ministry of Lands and Natural Resources 2016

⁹⁵ Dumenu *et al* 2014

⁹⁶ Apusiga 2013

⁹⁷ Foli and Dumenu 2015, cited by Ministry of Lands and Natural Resources 2016

traditional reserves. Rising population, coupled with increased demand for agricultural land and natural resource products (i.e., lumber for construction) have led to serious encroachment of some sacred groves. Although some groves remain well-preserved with few or no signs of degradation, others have been seriously affected by farming activities, unauthorized logging, bushfires, housing development, hunting and gathering expeditions, road construction and mining. Some groves have degraded beyond recovery because of these encroachments. Local communities and NGOs have initiated rehabilitation programs in some groves, but a major setback to the management and monitoring of sacred groves is the lack of data with which to elicit support from interested groups. If they are well managed, some of the sacred groves that have survived in permanently protected forest reserves could provide benefits such as genetic material for research, and environmental improvement through microclimatic effects. At present, however, many sacred groves are not being properly managed. Participatory forest management is the most effective forest management currently practiced in Ghana. Within two to three years of their establishment, Community Forest Committees (CFCs) in some forest reserves and forest districts have had positive impacts.⁹⁸ Improvements have included: changed attitudes towards forest conservation and tree planting; the incorporation of trees into the farms of CFC members and other farmers; prompt payment of compensation for felling damage; official recognition of a community's role in forest management; a community's improved ability to initiate and implement forestry activities; and reduced bushfires. The successful rehabilitation of degraded forest reserves has resulted in a flow of benefits to forest fringe communities, which may help reduce poverty in such communities.

In some cases, the *Tendana*, as caretaker of the communal forest, is granted limited rights to sell tree products, but not the land. Religious influences from Islam and Christianity, and western education, have diminished fundamental and superstitious beliefs that had protected these groves. Population pressures, the search for fertile agricultural lands, and the demand for both timber and non-timber forest products threatens the survival of these protected areas.⁹⁹

Newly designated communal forests are also sources of fuel, food, fodder and medicines. Communal forests are either natural or established by communities with support from the Forestry Services Division (FSD) and the Wildlife Division of the Ghana's Forestry Commission, along with support from Non-Governmental Organizations (NGOs). However, environmentally conscious communities have also taken initiatives to establish communal forests without initial support from the FC or NGOs.

In the Zukpiri Community Resource Management Area (CREMA), the *Tendana*, in consultation with the chiefs, undertakes the delineation of areas for communal forests. Under this framework, trees cannot be owned or inherited by individuals, but through usufruct rights community members can exercise some use rights. Community members can gather non-timber forest products (NTFPs) according to CREMA regulations, which vary according to the specific CREMA. In the Wechiau Community Hippopotamus Sanctuary access to NTFPs is highly restricted, but in Zukpiri, CREMA regulations allow for the collection of medicinal plants under strict monitoring and regulations.

Through the National Forest Plantation Development Programme (NFPDP) of 2001 and the Forest Plantations Project of 2002, non-timber forest reserves were established and created in

⁹⁸ An evaluation report of pilot Community Forestry Committees carried out by the Forestry Commission.

⁹⁹ Boakye and Baffoe 2008

the Northern, Upper West and Upper East Regions. This was to offer opportunities for people to grow and exercise ownership over trees they planted.

4.7 Customary Deterrents Supporting Natural Resource Protection

Traditional practices, beliefs and norms have helped to protect the natural resource base even these practices have been modified over the years.¹⁰⁰ The economic value of savannah trees has resulted in traditional authorities instituting preventive and punitive measures to protect these economic trees (see Figure 5). Even though these punitive measures have long been in existence they were not enforced because the trees were in abundance. However, these economically important trees are facing greater threats these days, due to changing farm practices, the demand for fuel wood, and general demographic pressures. Faced with increased threat of cutting, communities are taking greater steps to protect trees, including shea, dawadawa and rosewood. Nowadays, in many areas when an individual cuts down one of these trees, a report is made to the chief in the presence of the *Tendana*. Investigations ensue and if the claims are substantiated, then restitution is appropriately applied.¹⁰¹

In communities in the Wa West and Nadowli-Kaleo Districts, payment of such fines is demanded and key informants from these areas maintain that offenders pay up. There is a superstitious belief that offenders, or relations of offenders, will die if a culprit fails to pay the fine. Though these sanctions are not enforced by the State, the Zukpiri and Wechiau CREMAs have codified these regulations into their by-laws.

Figure 5: Felling of Dawadawa/Shea Trees: Sanctions Regime¹⁰²

CREMA Site	Fine	Tree	Custodian/Recipient of Fine
Zukpiri	GHC 100 (\$26)	Shea/Dawadawa	Unit Committee
	GHC 50 (\$13)	Shea/Dawadawa	Chief
	Sheep	Shea/Dawadawa	<i>Tendana</i>
	A bottle of Schnapps	Shea/Dawadawa	<i>Tendana</i>
Wechiau	Sheep (2)	Shea/Dawadawa	<i>Tendana</i> /Chief
	Goat (2)	Shea/Dawadawa	<i>Tendana</i> /Chief
	Guinea Fowl	Shea/Dawadawa	<i>Tendana</i>
Dorimon	Unspecified amount	Shea/Dawadawa	Chief
	Sheep	Shea/Dawadawa	<i>Tendana</i>
	Goat	Shea/Dawadawa	Chief
	Fowls	Shea/Dawadawa	Chief

Source: AgNRM CECOTAPS Field Survey 2016

The challenges traditional authorities and CREMA Executive Committees encounter in their efforts to manage their natural resource base include political interference, difficulty in applying sanctions to close relatives, disrespect for indigenous beliefs and lack of logistical support and funds. Agencies, including District Assemblies, the Forestry Commission and the Environmental Protection Agency play various roles in the natural resource management. However, there is no legal or administrative link between these formal State institutions and

¹⁰⁰ Shanunu 2012

¹⁰¹ Based on CECOTAPS field work conducted under the AgNRM project

¹⁰² AgNRM CECOTAPS Field Survey

traditional institutions. Thus, traditional authorities do not have adequate information in terms of policy formulation and implementation. Over the years, traditional authorities have become less involved in natural resource management; however, the Wildlife Division's CREMA model returns management responsibility to local communities.¹⁰³

4.8 Opportunities for Women: Natural Resource Product Value Chains

There are several important economic tree species endemic to the savanna ecological zone of northern Ghana, including shea (*Vitellaria paradoxa*); dawadawa (*Parkia biglobosa*); kapok (*Ceiba pentandra*); tamarind (*Tamarindus indica*); baobab (*Adansonia digitata*); neem (*Azadirachta indica*); teak (*Tectona grandis*); mango (*Mangifera indica*) and black plum (*Vitex doniana*).

The shea tree has become the most economically important of these species; shea is in high international demand for its semi-processed nuts and processed butter for the food and cosmetic industries. Similar possibilities can be envisaged for dawadawa and baobab fruits and other natural resource products. Women in northern Ghana are directly benefiting from these evolving domestic and international markets since these tree crops have long been considered women's crop in these communities.¹⁰⁴ The exception to this rule is the dawadawa tree, over which the chief or *Tendana* claim ownership.¹⁰⁵

However, these economic trees including shea, baobab and dawadawa have been disappearing from northern Ghana at an alarming rate due to the pressure to clear agricultural land of all trees and the demand for charcoal. In need of livelihood alternatives against the backdrop of reducing agricultural yields, degraded forests, and high demand for cooking fuel, more men have resorted to harvesting these important trees to produce charcoal; shea is sought after owing to its high quality as a source of fuel.¹⁰⁶ Since the shea tree takes 30 years to mature and can produce at full capacity for up to 200 years, charcoal producers and others who are clearing the parklands are depleting a NRP on which countless women depend.

Pragmatic steps are being initiated by government agencies to maximize dividends from natural resource products, especially timber production, in northern Ghana. A forest plantation strategy is being developed to ensure that approximately 300,000 hectares of land are available for the establishment of forest plantations in the Savannah Zone Forest Reserves; and another 600,000 hectares in the off-reserve areas. The estimated of annual market value of the NRPs is around 35 million Ghanaian cedis or approximately USD 7.77 million.

However, the economic value of NTFPs, for both commercial and household purposes, may outweigh that of timber. Forest products account for one-third of the total household's livelihoods in rural areas, of which two-thirds comes from non-cash income. The value of NTFPs continues to increase due to the diverse products, multiples uses and development of both national and international markets. Emerging uses of NTFPs promise more dividends as numerous companies scout local communities from whom to purchase various products including seeds, leaves and roots. Baobab, shea and moringa products have already premium and high value markets, especially if they are collected and/or cultivated in organically-

¹⁰³ Shanunu 2012

¹⁰⁴ According to Blench and Dendo 2007

¹⁰⁵ Peiler 1994

¹⁰⁶ <http://www.ipsnews.net/2014/07/she-harvesting-good-for-income-bad-for-the-environment-in-ghana>

certified landscapes. An increasing number of Ghanaian-based, export-oriented companies have already started operating within the CREMA zones – key among these companies is the Savannah Fruits Company – known for its commitment to fair prices, premiums for organic products and support to ecosystem integrity. These NTFPs of interest are also prioritized under Ghana Non-Traditional Exports¹⁰⁷ (NTE) agenda for NTFP investment.

¹⁰⁷ <https://www.ghanabusinessnews.com/2015/07/09/ghana-export-promotion-authority-targets-2-6b-non-traditional-exports-in-2015>

Chapter Five: Land Use Disputes and Conflicts

5.1. The Nature of Land and Natural Resource Disputes and Conflicts

Many of the land and natural resource disputes and conflicts in northern Ghana have their origins in the vesting of lands in the chieftaincy institution. Traditionally, land regimes were under the authority of the earth priest (*Tendana*), who had both spiritual and juridical powers. Land was not conceptualized in terms of private property but as a gift from God for the current generation, the “living dead” and future generations. People had use rights and when the land was exhausted, they moved to another piece of land. Land was used for subsistence, was abundant and had no commercial value. In this context, the ritual aspects were prominent and land conflicts were about desecration of the land. Conflict resolution was about pacification and purification of the land for the general well-being of the whole community. As the value of land increases due demographic pressures, commercial farming, construction of permanent infrastructure for domestic and commercial use, and an increase in private ownership of land, the need to control land access and use becomes increasingly important.

Vesting land in the hands of the chiefs created several challenges. First, chiefs misconstrued allodial title to mean private ownership. Chieftaincy became linked to land, and land became the source of economic and political power. The distinction settler/indigenous became linked to land and use to exclude others from access and rights to land. Presenting chieftaincy as the system of “traditional leadership” ignored the fact that there are other normative systems clamoring for recognition and acceptance as “traditional public authorities” capable of generating customary laws and enforcing compliance. Chieftaincy that was one among many forms of traditional leadership, became the system of traditional leadership. At this level, disputes over land were more about who has authority to determine land and property rights. The conflicts were about who has the right to regulate social activities and to define property rights in the community. In the 1979 and 1992 constitutions, chieftaincy became the primary locus of regulation of land and property rights in northern Ghana. Some non-chiefly tribes contested the new authority of chiefs as the primary locus of regulation and those protests were considered by the chiefly groups as acts of insubordination.¹⁰⁸ In short, the chieftaincy institution is not the only source of customary law and legal order in northern Ghana, so it is necessary to unpack the concept of customary law.

The second level of land disputes and conflicts relate to the evolving social identities, including ethnic identities, linked to land access and use rights. Social identity is the individual’s self-concept derived from perceived membership in a relevant social group. Ethnicity, chieftaincy and land are social categories around which people define themselves and perceive these constructed social categories as intrinsic and inherent; as such, people make statements such as: “God created us to be chiefs and gave us this land.” People develop a sense of membership and belonging to a group by defining themselves in opposition to others; thus, in northern Ghana people identify as chiefly/non-chiefly, landowners/landless, indigenous/settlers which often translate into those who (can) have and those who do not have rights to land.

The third type of conflicts over land and natural resources stem from the lack of written records and basic data concerning transactions, the dearth of permanent boundary indicators and the undocumented requirement to pay rent or other fees to the land owners/holders, often referred

¹⁰⁸ Aapengnuo 2013: 11

to as “drink money.” The lack of transparency in land transactions gives rise to land disputes, litigations and other related problems across northern Ghana. Furthermore, current land administration and acquisition practices, emanating mainly from legislative interventions; the introduction of commercial agriculture; demographic pressures in some localities, urbanization, etc. have affected customary land tenure practices. Some chiefs in the Upper East and Upper West regions, contrary to customary land law, are claiming that they are the allodial title holders to land, rather than the *Tendanas*. Most of the reported cases are from the Upper East region.

Land conflicts are a fact of life in northern Ghana. These conflicts involve at least two parties and the root causes of these conflicts stem from the different interests and rights people have in the land. The two parties may disagree over the right to use, manage and invest in, generate income from, exclude others, transfer, or the right to receive compensation for a piece of land.¹⁰⁹ Unfair distribution of benefits, lack of transparency, accountability and elite capture have been noted as conditions that cause conflicts. Common land conflicts also stem from undefined boundaries and unresolved inheritance issues. Other common problems stem from the illegal practice of selling a plot of land to more than one person, and unlawful evictions. Over the decades Fulani herdsman have been on a collision course with communities over grazing lands and destruction of farmlands by their cattle. Neighboring communities have also been experiencing a rise in inter-community land disputes. Today these include conflicts in Piisi, involving the “indigenes” and “settlers/strangers”; the Kabanye and Daanaayiri land dispute in Wa; the disputes between the Mangu-Kambali and Mangu-Kokoyiri over Mangu lands in Wa; Tanina and Singh in Wa; and between the Lambussie and Billow.¹¹⁰

5.1.1. Community Dispute Resolution Mechanism

Traditionally, communities handled their disputes at the family and clan level where the head of the family, in consultation with the council of elders, resolved the disputes. Where they failed, the dispute was sent to the chief, who was the final arbiter. These same mechanisms are at play today but are not always as effective as in the past.

Building the capacity of women and CREMA members in Alternative Dispute Resolution (ADR), especially in mediation, will empower communities to manage their land and natural resource disputes. Mediation is an informal alternative dispute resolution process that can be used to resolve problems between individuals or groups. In this process, an impartial person, referred to as a neutral or mediator, helps facilitate communication between the disputing parties. During the mediation session, the mediator helps the parties discuss the problem, identify the real issues, and explore options to create a voluntary, mutually acceptable solution. Mediation allows the parties to create their own unique solutions, instead of taking the problem to an outside decision-maker and having a solution imposed on them.

Mediation is recommended when:

- There is interest in resolving the dispute quickly
- There is a need for a private setting to discuss the issues

¹⁰⁹ Wehrmann, 2008

¹¹⁰ Paaga 2013

- The parties want someone not involved in the dispute to facilitate their communication
- The parties want to either preserve their relationship or end the relationship in the least adversarial way
- The parties are interested in retaining control of the outcome

A mediator is expected to guide the negotiations and communications between the parties. In cases where the issues are clearly defined, the mediator may simply facilitate discussions. Mediators can help the parties work through strained or emotional communications, distrust, and long standing conflict. Mediation does not focus on who is right and who is wrong. It focuses on solving the problem. The mediator has no authority to make decisions for the parties. The mediator helps the parties communicate, make informed decisions by understanding and listening to each other, and work together to create options and acceptable solutions. The *Pognaa* and *Magazia* can play an important role in mediation and are well placed to represent the needs of community women.

Chapter Six: Towards Correcting an Imbalance in Land and Resource Governance – Developments, Best Practices and Lessons

6.1. State Fostered Interventions and Reforms

Notwithstanding significant progress of State involvement in land administration, which instituted structures, deeds, registry systems and maps. Few would deny that the greatest beneficiaries of State involvement in land administration to date have been the political elites and State institutions.¹¹¹ Unfortunately, many of the changes introduced by the State have done little to protect or promote the interests of women and the other vulnerable groups in society.

6.1.1. The Land Administration Project (LAP) - I and II

During the 1980s and 1990s, Ghana began the process of reforming its institutional framework for land governance. New legal reforms and more systematic land registration were attempted in the 2000s.

In 2004, the Ghana Land Administration Project (LAP) was initiated and funded by the World Bank. The overarching goal of the project was to reduce poverty and enhance economic growth through improved land tenure security, simplified land acquisition processes, prudent land management systems, development of a land market, and establishment of efficient and sustainable land administration, both formal and customary. It also sought to improve land administration and land security.

The LAP project was implemented in two phases, Phase I: 2004 to 2011; and Phase II: 2011-2015. The Ministry of Land and Natural Resources monitored the implementation.

The commencement of LAP I was confronted by teeming challenges at the initial stages resulting in the extension of the project's implementation period. Subsequently, LAP I's focus changed to creating a strong legal and administrative framework; and piloting initiatives that

¹¹¹ As opined by Kasanga and Kotey 2001

addressed systematic registration, customary land demarcation and determination of best practices.¹¹²

A significant achievement under LAP I was the creation of the Lands Commission; which was created by merging all existing government agencies responsible for land management. These were the Land Registration; the Public and Vested Lands Management; the Survey and Mapping; and the Land Valuation Board, all of which became “divisions” within the new Commission.

The project successfully reorganized Ghana’s land administration system in order to improve coordination and synergy amongst government agencies. It retooled and enhanced the human, technological and logistical capacity for effective and efficient service delivery.

The project also improved the weak land registration system and piloted ten boundary demarcation efforts in southern Ghana. But these demarcated lands, ironically, were never formally registered.¹¹³

Importantly, the LAP I also established the Customary Land Secretariats (CLS), which aimed at strengthening customary land administration in Ghana.¹¹⁴ A computerized land information system has been developed and was used in some land registration pilots, although full deployment was projected for LAP II.¹¹⁵

According to the World Bank¹¹⁶, LAP I reduced the turnaround time of title registrations from over 36 months to six months, significantly increased titles and deeds registered by women, and witnessed nearly ninety per cent reduction in the backlog of land cases at the High and Circuit courts amongst several successful pilot initiatives.

At the end of LAP I in June 2011, approximately 14,000 titles and 33,000 deeds had been registered.¹¹⁷ However, several intended outcomes, such as the Draft Land Bill, Land Use Planning Bill and a Gender Strategy for Land Rights, were deferred to LAP II.

The LAP II project (2011-2015) aimed at consolidating gains made under LAP I by deepening the reforms and enabling land sector agencies to be more responsive to clients by improving services.

A Land Use and Spatial Planning Bill, informed by the Ghana National Spatial Development Framework 2015 to 2035, was authored under LAP II. There are provisions in both the framework and Bill to increase food production by women. The Bill is also aimed to harmonize Act 462, 480 and the Colonial Ordinance,¹¹⁸ and is placed under common law. These consolidations of the legal regime are aim to harmonize customary practice and statutory legislation to improve land governance and food security in Ghana.¹¹⁹

¹¹² Larbi 2008; World Bank 2011

¹¹³ World Bank 2011a; Larbi 2011

¹¹⁴ Jones-Casey and Knox 2011; Mustapha 2006; World Bank 2011; Larbi 2011

¹¹⁵ World Bank 2011b; Larbi 2011

¹¹⁶ World Bank 2011a

¹¹⁷ World Bank 2011b

¹¹⁸ Metcalfe 1964

¹¹⁹ Landesa 2013

6.1.2. Customary Land Secretariats

Customary lands support the livelihoods of the majority of the population, therefore sustainable management of such lands is critical to the overall socio-economic development of the country.¹²⁰ In this regard, the Customary Land Secretariat (CLS) was created as part of the land reform program to provide support services for customary landowners. The CLSs are decentralized land administration units established and preserved by land owning communities recognized by the 1992 Constitution as managers of their own lands in accordance with customary practices and usage.¹²¹ The CLS concept was an intended outcome of LAP I and is mandated to strengthen customary land administration. The main objectives of the CLS are to promote good land governance, ensure the security of tenure for farmers, and guarantee food security. The CLSs responsibilities include:

- Providing land information on ownership, rights, use to the public
- Keeping and maintaining accurate and up to date land records
- Keeping records of all fees and charges associated with land grants
- Liaising with Plot Allocation and Town Development Committees to ensure that development conforms to planning schemes/layouts as agreed to by the community at the local level
- Serving as the link between the landowning community and the public-sector land agencies
- District/Municipal/Metropolitan Assemblies, Environmental Protection Agency
- Serving as the link between investors and the Community Land Management Committee
- Promoting ADR and keeping records on land related disputes settled at the local level through ADR.

Prior to the advent of the CLS, land registration and administration efforts focused mainly on urban areas, while land laws and policies barely impacted customary land administration in rural northern Ghana. However, CLS' functions are designed to assist the Public and Vested Lands Management Division (PVLMD) of the Lands Commission in land administration. The PVLMD is currently responsible for recording, documentation and registration of public and vested lands as well as customary lands. In addition, it is a pre-requisite from PVLMD that all prospective land purchasers have allocation notes from the CLS before the Division can process land documents.

In total, fifty-seven (57) Customary Land Secretariats were established, to impact customary land administration positively through basic records keeping, awareness creation, recording of customary land rights, land use plans and dispute resolution.¹²² However, not all CLS were established by LAP. The Wa Central Customary Lands Secretariat (WCCLS), for instance, was established based on the traditional landowners' initiative.

To ensure that the CLS operate efficiently, remain accountable and embody the vision of the landowners, the Land Management Committees/Boards were constituted. The apex decision-making body in the CLS is the Land Management Committee (LMC)/Board of Directors.

¹²⁰ According to WaterAid 2009

¹²¹ Kakraba-Ampeh 2007

¹²² Larbi 2011; World Bank 2011b

Membership spans from the representatives of the landowning community, the Stool or Skin, family and clan members, professionals such as lawyers, planners, estate managers and land surveyors and other identifiable interest groups, including land developers and users. Among the functions of a Land Management Committee/Board are:

- Exercise general oversight responsibility over the operations of the CLS
- Offer policy direction to the CLS
- Hire all categories of staff of the CLS and to fire any such personnel where necessary
- Determine salaries and allowances for CLS staff
- Provide the CLS with details of all persons with capacity to execute instruments affecting land within the CLS area
- Offer guidelines for determination of 'drink money' and ground rent
- Review performance of the CLS and determine new direction for effectiveness and growth.
- Resolve land related disputes through ADR
- Perform any other functions to be determined from time to time by the customary land owning group.¹²³

A functional CLS must have a Coordinator (head), Deputy Secretary, Accountant, Surveyor, Sensitization Officer, Secretary, Chairman and Vice Chairman for dispute resolution forming the administrative structure.

The Wa Central Customary Lands Secretariat schedules monthly meetings and is responsible for supervising the administrative team. However, the CLS in Damongo only organizes emergency meetings. According to the Coordinator for the Damongo CLS, when a parcel of land is sold, 48% is retained by the CLS and the rest presented to the Damongo-Wura (chief). A functional CLS retains a Dispute Resolution Committee (DRC) for adjudication on land related disputes through the Alternative Dispute Resolution Mechanism. Within the Damongo CLS, ad hoc DRCs are assembled to resolve conflicts when they arise.

The CLS has achieved some successes. These include: the sensitization of people on land use and development; written records of land transactions; inspection of lands prior to sale as a means of preventing multiple land sales; and land dispute resolution. For example, the Wa Central CLS has resolved 7 out of 16 land disputes. One of the challenges LAP faced was the perception from customary landholders that CLS were just an extension of the government's machinations to interfere with customary land rights. Additionally, many holders of customary lands deemed the land administration architecture as elitist, non-engaging and undermining authority. However, through continual engagement and education, some customary landholders subjected their lands to CLS's economic variability assessment processes. The CLS are limited in terms of finance, human resources, logistics and office space. In order for the CLS to be effective, their sources of funding must be diversified and also staff capacity must be improved. Importantly, the activities of the CLSs should be given legal backing especially in the draft Land Bill to empower them to discharge their duties. This legal backing will ensure that the CLS is sustained with funding from the Consolidated Fund.

¹²³ Mark Kakraba-Ampeh 2007

Some of the challenges have been: lack of capacity to engage personnel with requisite technical knowledge for effective management of the offices in revenue deficient customary land areas; and inadequate equipment and training facilities to empower the secretariat to work effectively and efficiently. It was observed in the Upper West Region that the Buwa Customary Land Secretariat had been closed due to financial and human resource challenges. There were also reported cases of the Wa Customary Secretariat extending its operations into jurisdictions where it had no mandate. A case in point is the secretariat's involvement in a land dispute in the Kaleo Traditional Area. The Damongo CLS, a successful, flagship CLS in northern Ghana, indicated several challenges directly relating to associated cost of developing cadaster plans by surveyors.

6.2 Civil Society Activism and Advocacy on Land Administration

After the commencement of LAP, efforts were made to engage Civil Society Organizations (CSOs) and Non-Governmental Organization (NGOs) in the anticipated reforms. The Ministry of Lands and Natural Resources, through the erstwhile Ghana Association of Private Voluntary Organization (GAPVOD), invited NGOs with a focus on land management and practices to participate in networking meetings, which culminated in the creation of the Network of Land related NGOs in 2006; later referred to as the Civil Society Coalition on Land (CICOL).

Technical, resource and organizational support from CARE International was instrumental in setting up this network. The Coalition has been a legal entity since 2007, with a regular membership of 55 across all the 10 regions in Ghana, and a Secretariat in Accra. Among the members of this coalition are the following:

- Zuri Organic Vegetables Farmers Association
- Zasilari Ecological Farms Project
- Society for Women & Aids in Africa-Ghana
- Presbyterian Agricultural Station
- Rural Environmental Care Association (RECA)
- Northern Accelerated Interventions for Development (NAID)
- Centre for the Development of People (CEDEP)
- Rural Development & Youth Association (RUDEYA)

CICOL is critical in sharing and supporting discourse that furthers land access and control by the women, migrants and persons with disabilities. CICOL's institutional knowledge and bargaining power is vital support in promoting equitable land access and the long-term use agenda for women.

6.3 Leveraging Land and Nature Resource Governance through the CREMA Framework

The State, since the Colonial through the post-Colonial era, continues to make efforts to conserve wildlife and natural resources, by establishing national parks and forest and game reserves. This 'traditional' approach centers on biodiversity conservation by physically separating people from the reserved or protected areas, resulting in conflicts and poor management that have hindered Ghana's conservation efforts.

The Government of Ghana has addressed these challenges by introducing the Community Resource Management Area (CREMA) approach, recognized by the National Wildlife Policy

of 2000. Today the CREMA and its variants are the established practice for biodiversity conservation and natural resource management in Ghana.

The underlying philosophy of CREMA is that when natural resources are given value and communities are given the authority to manage them, then the local inhabitants will have the incentive to sustainably manage and conserve natural resources. Biodiversity conservation does not preclude natural resource use if the resource base is properly managed for long term ecosystem health and sustainability.

The CREMA approach relies on individual farmers, resource users and landowners, all of whom are CREMA members. Through the Community Resource Management Committees (CRMCs), member communities determine the policies and priorities of the CREMA; the community level committees are responsible for holding the CREMA Executive Committee (CEC) accountable. The CEC is responsible for formulating and amending the constitution and other operational instruments to ensure the effective operation across the entire CREMA landscape

The CREMA framework mobilizes local people into an organizational structure that is based on the existing local decision-making system. The CREMA recognizes and respects local governance systems, cultures and resource tenure relationships such as land tenure and decision-making on land-use; functions and duties of chiefs in respect of traditional roles, including the allocation of land to “strangers” or peripheral stakeholders; settlement of land disputes by traditional authority (chiefs and elders); pouring of libation and the pacification of the land when sacrilege has been committed; taking appropriate sanctions against trespassers and for anti-social behavior.¹²⁴ Landlords and chiefs are the custodians of the land. Therefore, they are powerful stakeholders and without their support the CREMA will not operate smoothly. Traditional authority figures serve as advisors and patrons to the CREMA. They assist in mobilizing the community for CREMA activities and mediating conflicts that arise in the CREMA’s operation.

The CREMA model affords the local community members the opportunity to participate in the conservation and wise management of their natural resources and improve their standard of living through the planned sustainable use of natural resources and subsequent equitable sharing of benefits because of collective and coordinated efforts. This approach avoids the “outsider” control of community resources and puts resource management in the hands of local communities. If the local communities come together, they can protect their landscape and resources while ensuring that the full benefits are reaped by the local communities. The administrative costs of managing a landscape are relatively low since most workers are largely volunteers and get satisfaction from managing their own resources for livelihoods and future generations.

The greatest success achieved by the CREMAs is improved governance, conservation awareness and increased collective community action and unity. An additional role the CREMA could play is that of land-use planning. The nature of the CREMA makes this uniquely possible and promising. This case serves as an exemplar for adoption across the landscape, if resource tenure is to be made sustainable.

¹²⁴ Martin Yelibora, "Local Communities' Perceived Importance of Boabeng Fiema Monkey Sanctuary in the Brong Ahafo Reion 2013"

Figure 6: Proposed matrix for securing and managing land tenure under the CREMA model

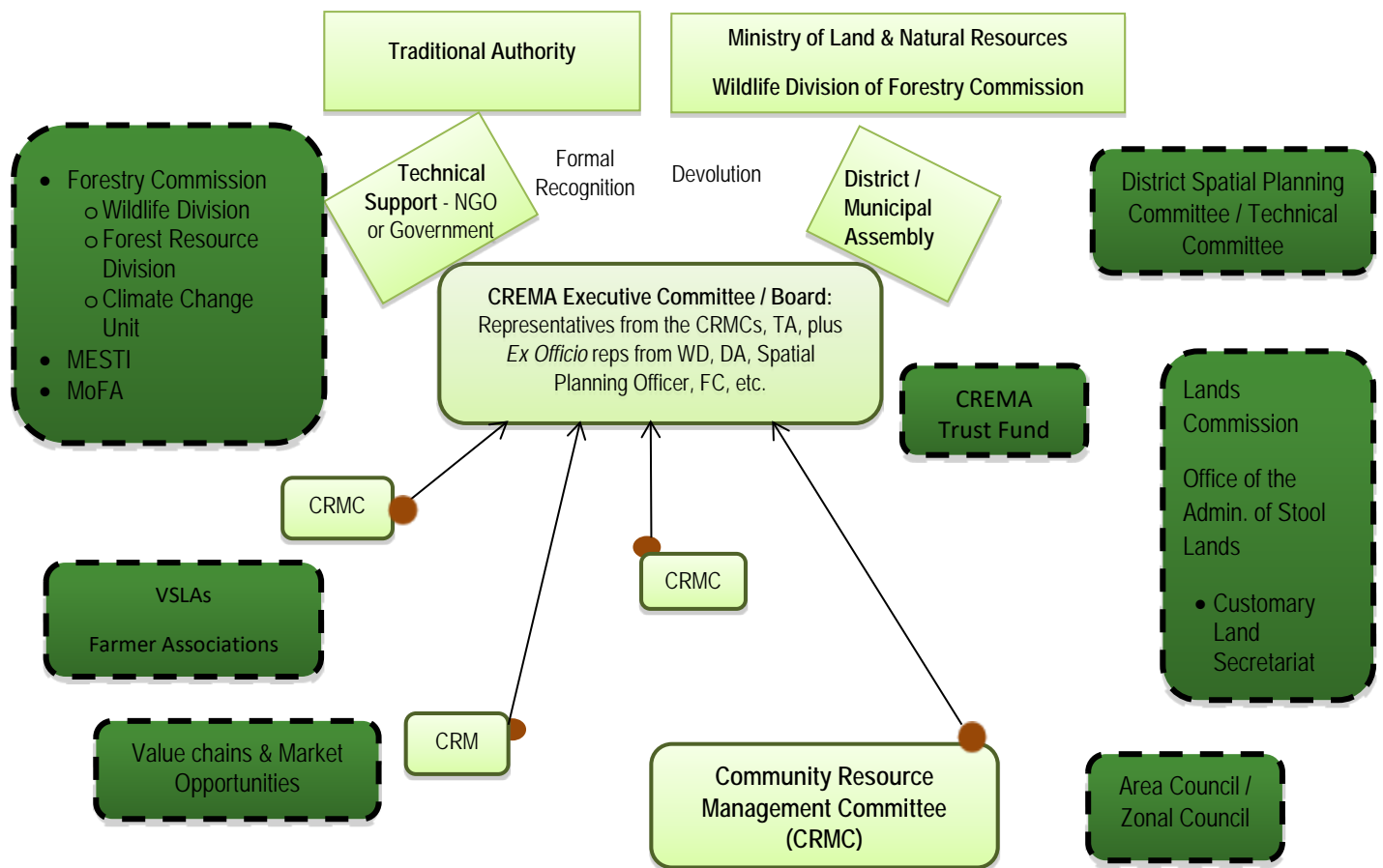


Figure 6 (above) conceptualizes a modified CREMA framework that incorporates land and resource use and spatial planning elements. Incorporating land and resource tenure and management issues into the CREMA would ensure stakeholder engagement across the spectrum of community and development dynamics. It would make the CREMA more responsive to emerging trends and allow the CEC to more readily embrace new opportunities while protecting the rights and responsibilities of its membership.

Chapter Seven: Conclusions

Access to land and natural resources has direct consequences on agricultural production and a family and community's ability to ensure long-term food security. It is a means by which resources and benefits of those resources are distributed within society. Equitable access to land is a human rights issue and as the UN Economic and Social Council Commission on the Status of Women states, "land rights discrimination is a violation of human rights". The dramatic demographic, economic and social changes in northern Ghana are marginalizing vulnerable farmers, especially women and the youth. As nontraditional family arrangements emerge, and as rural lands become engulfed in urban expansion, those at greatest risk are the poor, the elderly, women and children. Chieftaincy conflicts and land disputes, environmental degradation, and population growth accelerate the stress on land resources.

Women have been particularly singled out in this assessment because they are the majority (as high as 90% in some areas) engaged in agricultural activities, yet women's secure access to land resources, credit, and shelter are often tenuous and are at higher risk when implementing programs focused on land titling, formalization of property rights, and even housing or road improvement. In many households, providing food for the family is primarily the responsibility of women. The willingness and ability to make long term investments in arable land is directly dependent on the protection society affords to rights holders. Thus, any concept of sustainable development relies heavily on both access to land and other natural resources and the security of those rights. There is also a strong correlation between decision-making powers and the quantity and quality of land one holds. In northern Ghana, social inclusion or exclusion often depends solely on the individual's land holding status. The right to participate in District Assembly planning, community decisions, and some elections can depend on the status of an individual, and all too often women and newcomers/settlers are not included.

Providing women with secure and effective access to land can benefit families and entire communities by improving economic opportunities; increasing investments in land and food production; improving family security during economic and social transitions; and enhancing land stewardship. These benefits can only be fully realized if the strategies adopted for improving women's access to land work in practice and if decision-makers are fully onboard.

The CREMA model offers a window of opportunity to contribute to a responsive land and resource management; considering that it features all critical ingredients of local community acceptance and credibility. Work already on the ground gives a fair idea of how women empowerment on land rights can transform household food and nutrition security. Land use security will be most positively impacted if it is tied to land use planning, where judicious and collective decisions are taken by communities on the productive and ecologically viable use of land.

7.1 Recommendations for the AgNRM Project

The AgNRM project can promote women's rights to land by building the capacity of women to participate in the process of developing a local land policy that increases their right to land. Using the CREMAs to encourage the development of a gender responsive land policy through:

- Supporting women's groups in the CREMAs to advocate for gender equality within customary systems.
- Holding traditional rulers accountable for commitments made on gender equality and supporting women's economic empowerment.
- Assisting in building knowledge and capacity on gender equality in the right to access, use and hold land and the upcoming legislative process among actors such as legislators, civil society and land users.
- Promoting, through dialogue, women's participation in governance structures responsible for interpreting customary law.

The AgNRM team can support the implementation of land laws by creating awareness about existing laws and promoting acceptance of them, advocating for the representation of women on land boards or other governing bodies responsible for distributing or overseeing land rights, and supporting efforts to sensitize local and traditional leaders, officials and others with decision-making power over land distribution/management.

The AgNRM team can support the enforcement of more equitable land use practices by building the capacity of CREMAs to use Alternative Dispute Resolution mechanisms, especially mediation, to resolve land and natural resource disputes. The project can support capacity building of law enforcement institutions such as courts, local councils, and police through gender sensitization training, and by raising awareness of existing laws and tools to support women's rights to land.

The AgNRM team can support CREMAs with land delimitation, titling and registration of tenure in an open manner which does not discriminate against women and that encourages an increase in women's rights to land. The project can support the CREMA Executive Committee to put in place a written and well organized land registration system which is shared with/accessible to illiterate women and men, where legal tenure documents only also valid using a combination of photographs and fingerprints and not just signatures.

Finally, the AgNRM could support the restoration of abandoned, degraded and fragile lands (ADF), in consultation with allodial right owners, and to make them more suitable for agricultural and/or agroforestry production. Before the land works with interested women to restore the land, the project would support these women to negotiate longer-term use agreements or, if possible, outright purchase. Using improved, climate smart technologies, the women would be in the position to convert these marginal lands into productive resources.

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Appendices

Appendix 1: Stool/Skin Lands Registration Procedures

1. Applicant negotiates with the chief concerned for the land.
2. Three copies of the document executed between the chief and the applicant to be submitted to Lands Commission.
3. A solicitor of the Supreme Court (i.e. a practicing lawyer) must sign the back of each copy with his stamp duly affixed.
4. Each copy of the document must have a site plan attached. Two extra site plans, making five (5) in all must accompany the documents.
5. The back of the site plans are to be endorsed by both the chief lessor/vendor and the applicant lessee/buyer.
6. Each site plan is to be certified by the stamps of a licensed surveyor and the regional surveyor and duly dated.
7. At least two principal Elders of the Stool (with status) must sign as witnesses.
8. The witnesses of the applicant lessee/buyer must write full names, provide addresses and signature, as well as date the document.
9. Documents submitted to Lands Commission.
10. Processing and registration fees paid.
11. Chairman of Lands Commission grants concurrence.
12. Documents released for stamping at Land Valuation Board.
13. Applicant obtains Tax Clearance Certificate at Internal Revenue Service.
14. Document registered at Deeds Registry at Lands Commission.
15. Applicant pays first year's ground rent.
16. Original copy of the document is released to applicant.

Appendix 2: Family Lands Registration Procedures

1. Applicant negotiates with the family Head and principal members of the family concerned for the land.
2. Three copies of the document executed between the family Head, principal members of the family and the applicant to be submitted to Lands Commission.
3. A solicitor of the Supreme Court (i.e. a practicing lawyer) must sign the back of each copy with his stamp duly affixed.
4. Each copy of the document must have a site plan attached. Two extra site plans, making five (5) in all, must accompany the documents.
5. The back of the site plans are to be endorsed by both the actual owner lessor/seller and the applicant lessee/buyer.
6. Each site plan is to be certified by the stamps of a licensed surveyor and the regional surveyor and duly dated.
7. At least two principal Elders of the Stool (with status) must sign as witnesses.
8. The witnesses of the applicant (lessee) /buyer must write full names, addresses and signature, as well as date the document.
9. Documents submitted to Lands Commission.
10. Processing and registration fees paid.
11. Documents processed at Lands Commission.
12. Documents released for stamping at Land Valuation Board.
13. Applicant obtains Tax Clearance Certificate at Internal Revenue Service.
14. Document registered at Deeds Registry at Lands Commission.
15. Original copy released to applicant.

Appendix 3: State and Stool Vested Lands Registration Procedures

1. Apply to Lands Commission for plot of land.
2. You would be invited to complete application form (form 5) and questionnaire with two (2) passport size pictures.
3. Lands Commission gives approval, if a plot is available.
4. Applicant pays requisite fees and charges.
5. Documents prepared by the Secretariat of Lands Commission.
6. Applicant invited to execute documents.
7. Documents executed by Chairman of Lands Commission.
8. Applicant pays ground rent and registration fee.
9. Documents released for stamping at Land Valuation Board.
10. Applicant obtains Tax Clearance Certificate at Internal Revenue Service.
11. Document finally registered at Deeds Registry at Lands Commission.
12. Original copy of document released to applicant.

Appendix 4: Land Tenure Security Indicators for Ghana

Organization	Categorization	Interpretation	Rank
Millennium Challenge Corporation Scorecard	Land Rights and Access	(Range: 0 - 1) 1 = best	0.55
International Property Rights Index	Physical Property Rights Score	(Range: 0 – 10) 0 = worst	6
World Bank	Property Registration	(Range: 1 – 181) 1 = best	36

Source: USAID 201

Appendix 5: Comparison of Modern and Customary Land Laws in Ghana

Area of Comparison	Customary/ Traditional Land Law	Codified Land Law
Legal Status	<input type="checkbox"/> Unwritten	<input type="checkbox"/> Written
Responsibilities	<input type="checkbox"/> Local and Traditional Authorities (Chiefs, Tedamba, Clan heads)	<input type="checkbox"/> Government agencies with decentralized administrative authorities
Appropriation	<input type="checkbox"/> Individual use <input type="checkbox"/> Collective use <input type="checkbox"/> Joint or shared use	<input type="checkbox"/> Land titles <input type="checkbox"/> Lease contracts
Availability	<input type="checkbox"/> Family <input type="checkbox"/> Clan <input type="checkbox"/> Tribe	<input type="checkbox"/> National citizenship <input type="checkbox"/> Non-citizen
Land Tenure Rights	<input type="checkbox"/> Exclusive rights of adobe <input type="checkbox"/> Seasonal or permanent use rights <input type="checkbox"/> Collective use of pasture <input type="checkbox"/> Collective use of natural resources	<input type="checkbox"/> Private property rights <input type="checkbox"/> Tenancy <input type="checkbox"/> Leasehold <input type="checkbox"/> Exclusive right
Transferability	<input type="checkbox"/> Can be allocated for use but cannot be sold <input type="checkbox"/> Traditional inheritance law	<input type="checkbox"/> Power of alienation <input type="checkbox"/> Possibility of tenancy <input type="checkbox"/> Inheritance according to national inheritance law
Theory	<input type="checkbox"/> Evolutionary	<input type="checkbox"/> Liberalization

Source: Adopted from GTZ 2012

Appendix 6: Types of Conflicts Arising in CREMA

Type of conflict	Description
Intra conflicts	<ul style="list-style-type: none"> <input type="checkbox"/> Disputes over land and resource ownership, e.g. between private and communal land owners <input type="checkbox"/> Disputes over land boundaries between individuals or groups <input type="checkbox"/> Disputes due to CBNRM projects/schemes being captured by elites and/or those who happen to own resources of a higher quality <input type="checkbox"/> Breaking of common property resource (CPR) constitutional or operational rules, such as protection agreements for grazing areas, fish net sizes, forests, misappropriation of funds, etc. <input type="checkbox"/> Disputes over the unfair distribution of work and profits
Inter conflicts	<ul style="list-style-type: none"> <input type="checkbox"/> Conflict between 'land owners' and 'resource users' <input type="checkbox"/> Conflict between indigenous CPR groups, and more recent settlers <input type="checkbox"/> Resentment built up due to lack of representation in village committees
Supra conflicts	<ul style="list-style-type: none"> <input type="checkbox"/> Cultural conflicts between community groups and 'outsiders' <input type="checkbox"/> Project management disputes between community groups and outside project-sponsors <input type="checkbox"/> Disputes caused by political influence (national, provincial or local)

Source: Warner 2000