



## Policy Brief: A NATIONAL LAND POLICY IN CRISIS: THE CASE OF GHANA

Eunice Naa O. Lamptey<sup>1</sup>, John Tiah Bugri<sup>2</sup>

### Introduction

Developing countries are increasingly focusing more on land policy as part of their development plans. Ghana created its National Land Policy in 1999 but hasn't updated it in over 25 years, despite significant changes in land governance. Land policy reforms since colonial times were carried out without a structured plan, leading to problems in land management and many legal disputes due to existing land laws' shortcomings. This situation prompted the development of a thorough Land Policy in 1999. In 2020, a new Land Act (Act 1036) was enacted by the country, providing comprehensive legislation for land matters. Act 1036 addresses some of the issues that the 1999 policy could not even anticipate let alone resolve. This situation has created procedural and substantive gaps between policy and law. In light of this, there is an urgent need to revise Ghana's land policy to support and speak to the new land law to a large degree. **It is therefore crucial for policymakers including legislators responsible for drafting and passing land-related laws, as well as advisors and experts in land policy development to take urgent action to revise and update existing land policies to address current challenges in land governance.**

### A Progressive Land Policy: The Ideal Sequence

To be progressive, a land policy should follow key principles outlined by Zimmerman (1999) [1] and Kasanga (2000) [2]: operate democratically and with good governance, enforce laws, have a vision for inclusive development, especially at the community level, clarify institutional roles regarding land, ensure fair access to land information, be adaptable to change, have user-friendly legislation, prioritize local language translations, and foster state-citizen dialogue.

Furthermore, the African Union Land Policy noted that several African countries have developed numerous sector-specific policies and laws to address land issues. However, these policies and laws appear disjointed and complicated, lacking a centralized policy framework to harmonize and simplify these complexities. Thus, to develop and review policies effectively, here is a summary of key best practices and the ideal sequencing as outlined in their regional assessment:

- *Consultations and relevant problem identification leading to a land policy formulation*
- *Preparation of working drafts for further discussion with stakeholders.*
- *Budgetary/financial and institutional appraisal*
- *Refinement, processing and approval of the national land policy*
- *Account for institutional mandate and implementation programmes in implementing national land policies and laws*

- *Prepare land laws, revise or repeal existing law and rationalize land-related legislation*
- *Public dissemination of information, capacity building and training to support implementation*

The African Union, African Development Bank, and Economic Commission of Africa (2010) [3] also noted that while new land policies and laws are important, they cannot solve all land-related issues. Therefore, policies and laws need periodic updates to keep up with changing land governance dynamics.

## **Methodology**

Recommendations in the brief are based on a detailed review of documents and consultations with key informants in governmental institutions, land experts and with landowners. Here are highlights of the gaps the study found.

## **Substantive and Procedural Gaps Revealed**

The study revealed substantive gaps in land governance that need urgent policy attention:

**Institutional capacity:** Despite significant efforts in the land sector, a pressing issue is the action of "landguards" – individuals hired by landowners and users to safeguard the land, but who frequently engage in criminal activities and disregard the law. Here are the common perspectives:

*“People often employ land guards to protect the land they have acquired. In cases where there is a dispute over double sales of the same piece of land and it goes to court, even if the judgment favours the new owner, it does not necessarily resolve the conflict. This is because the existing owner may have land guards who will continue to operate and show force against the legally recognized owner. In some cases, the new owner might also hire land guards, leading to confrontations and clashes between the two groups. Landguard conflicts can also stem from boundary disputes, particularly when landowners are uncertain about their exact property boundaries”* (Developer interviewee, November 2021).

As recent as June 10, 2023, the community of Tuba in the Greater Accra Region witnessed the activities of landguards. An anonymous source narrated:

*“The activities of landguards are quite disturbing. They often demand money from developers, and some developers have paid as much as GH¢50,000 or even GH¢100,000 to the landguards”* (Anonymous source, Citi Newsroom, June 10, 2023).

Local approaches adopted by landowners in resolving landguards incidence, included giving away a plot or two of their lands or by offering them money to keep them away from their properties.

*“The moment they hear a tractor or any machine’s sound on the land, they appear immediately on you and stops any activity demanding huge sums of money and until that is settled, you cannot work on the land you have purchased”* (Developer interviewee, November 2021).

It was noted that many landowners lacked confidence in state agencies when it came to protecting their land rights. Landowners expressed a lack of trust in contacting the police

when facing harassment from landguards. They either observed that landguards were detained briefly without prosecution or fled before the police arrived. Landowners showed minimal confidence regarding Traditional Authorities. There were instances where both a chief and a family member leased the same land to different buyers. Conversely, land agencies received significant trust, as possessing valid land documentation could expedite land rights protection.

Many of these landguards are young individuals with limited access to land and employment opportunities, and this is how they make a living.

With the commencement of Ghana's Land Administration Project in 2003, it was sought to amend the policy document to incorporate gender considerations. However, this focus appears to have shifted given that Kidido and Lengoiboni (2019) [4] advocated for urgent government reforms to prioritize youth inclusion in development, emphasizing the importance of land access and control for youth economic empowerment.

**The vexed question of vested lands:** Vested lands represent a partnership between the state and customary authorities, where the state maintains ownership and the latter benefits from the land. They were established in the 1960s to resolve specific land disputes, but their continued existence has caused concern in communities where those disputes no longer exist.

An official of a Land Agency narrated that:

*“Agitations were rising in these vested areas because these lands are prime lands and situated in prime areas. These allodial owners (stool/skin/clan/family) are demanding for a return of their lands” (official interviewee, January 2022).*

The official highlighted those lands in Sunyani, Ahafo, Winneba, Part One Lands in the Ashanti Region, and other areas had their ownership rights transferred to the state. Due to the lack of regulations for de-vesting such lands, chiefs who lacked ownership rights began to allocate some of the lands as stool lands without proper lease documentation, as the Lands Commission did not authorize it. To address this matter, section 268 of the Land Act, 2020 (Act 1036), prohibits the transfer of ownership of stool, skin, clan, or family lands to the state. However, this contradicts section 2.0 of the Land Policy document of 1999, which acknowledges vested lands. Clearly, Act 1036 of 2020 supersedes the policy document, and a policy review is therefore warranted. Following the enactment of Act 1036, the Lands Commission established a committee to assess lands that require de-vesting, yet nearly three years later, no land parcels have been de-vested in the country.

**Accelerated environmental degradation:** The rapid deterioration of the environment, exemplified by the harmful effects of illegal artisanal gold mining known as "Galamsey," was not addressed in the New Land Act (Act 1036) as the issue of "galamsey" was seen as a matter for a revision under mining legislation. Sections 4.2 and 4.5 of the 1999 land policy aimed to improve land use, capability and conservation but fall short as activities keep harming water bodies, agricultural lands and causes land degradation. We need an integrated land policy that addresses these issues in a coordinated way.

**Climate Change:** Climate change was not discussed in the 1999 land policy document because it was not a major global issue back then. However, today it has emerged as a significant threat to humanity's future. Regrettably, both national and global endeavors often excel in words but lack tangible actions and outcomes. Initiatives related to carbon

removal and land management should be meticulously planned and incorporated into policies that avoid perpetuating social disparities and instead encourage fair land governance and sustainable livelihoods.

### **Brief highlights on procedural gaps:**

*“Things are changing, for instance the issue of urbanization, climate and environmental issues, and globalization, where there is the movement of multi-national companies in and out to upscale businesses. We have gone through a liberalization process and at the time (in 1999) the economy was rigid to these issues. Therefore, there is an inadequate basis for the new consolidated land laws to emanate from the policy which has not seen any revision over 20 years. Certainly, the policy must be in conformity with the current land law”. (Expert interviewee, January 2022).*

One of the six experts involved in drafting the Land bill, now the Land Act of 2020, raised concerns about passing a new land law without reviewing the existing land policy. The panel chair responded by saying:

*“We would rely on the research findings of experts like you from the universities and make the most of the difficulties presented and a thorough review of the land policy can come later” (Expert interviewee-January 2022).*

This indicates the existence of a procedural lapse. However, it would have been more suitable to update the land policy document first, as it would have provided the foundation for the new Land Act (Act 1036). The fact that the country did not revise the National Land Policy of 1999 before passing the new Land Act, 2020 (Act 1036), is a significant missed opportunity.

### **Key policy implication**

These results suggest that having well-defined land policies in Africa could help achieve the objectives of AU Agenda 2063 – the Africa We Want. Notably, it could fulfil the goals of the African Continental Free Trade Area (AfCFTA) as improving resource governance systems would boost productivity by capitalizing on intra-African trade opportunities.

### **Recommendations for policy makers**

- ✓ Land policy development should be encouraged across Africa, primarily following AU guidelines on the ideal sequence but also allowing for national-level adaptations.
- ✓ Institutions should be strengthened to effectively enforce laws that criminalize landguard activities.
- ✓ Greater attention should be given to de-vesting lands owned by the state to facilitate decision-making and promote economic and social development in these communities.
- ✓ Legislative support and specific policy targets regarding youth and women’s access to land and employment opportunities in land governance should be addressed.
- ✓ Ensure that the new land legislation is anchored on a new land policy both of which support and speak to each other to a large degree.
- ✓ Integrate a new land policy in which climate change, environmental degradation, among others, are reflected in one policy document to promote fair land governance.

## References

- [1] Zimmermann, W. (1999). 'Land Tenure in Development Cooperation'. In Land Policy-Tenure Rights in Development Cooperation: Challenges and Opportunities. Pg. 6. BMZ Special No. 002/January. Federal Ministry for Economic Cooperation and Development. Press and Public Relations Unit, Bonn. Federal Republic of Germany.
- [2] Kasanga, K. (2000). Land Policy and National Development in Ghana. Critical Perspectives No. 5. Center for Democracy and Development, CDD-Ghana.
- [3] AUC-ECA-AfDB Consortium, (2010). Land Policy in Africa: A Framework to Strengthen Land Rights, Enhance Productivity and Secure Livelihoods. Addis Ababa, Ethiopia.
- [4] Kidido, J.K. and Lengoiboni, M. (2019). Household land allocations and the youth land access nexus: Evidence from the Techiman Area of Ghana. *Land*, 8(12), p.185.

## Authors Information

1. PhD student at the Department of Land Economy, Kwame Nkrumah University of Science and Technology, Kumasi, Ghana.
2. Professor at the Department of Land Economy, Kwame Nkrumah University of Science and Technology, Kumasi, Ghana.