



January 2019

Whose Land Is It Anyway? Navigating Ghana's Complex Land System

Aimee Kline

Texas A&M University School of Law

Élan Moore

Texas A&M University School of Law

Elizabeth Ramey

Texas A&M University School of Law

Kevin Hernandez

Texas A&M University School of Law

Lauren Ehrhardt

Texas A&M University School of Law

See next page for additional authors

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Recommended Citation

Aimee Kline, Élan Moore, Elizabeth Ramey, Kevin Hernandez, Lauren Ehrhardt, Megan Reed, Morgan Parker, Samantha Henson, Taylor Winn & Taylor Wood, *Whose Land Is It Anyway? Navigating Ghana's Complex Land System*, 6 *Tex. A&M L. Rev. Arguendo* 1 (2019).

Available at: <https://scholarship.law.tamu.edu/lawreview/vol6/iss1/15>

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Authors

Aimee Kline, Élan Moore, Elizabeth Ramey, Kevin Hernandez, Lauren Ehrhardt, Megan Reed, Morgan Parker, Samantha Henson, Taylor Winn, and Taylor Wood

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NAVIGATING GHANA’S COMPLEX LAND SYSTEM**

*by Aimee Kline, Élan Moore, Elizabeth Ramey, Kevin Hernandez, Lauren Ehrhardt,
Megan Reed, Morgan Parker, Samantha Henson, Taylor Winn, & Taylor Wood**

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*J.D. Recipients and Candidates, Texas A&M University School of Law, 2018 and 2019; participants in Texas A&M University School of Law’s Global Law Program in Ghana. The Authors would like to thank Professor Aric Short and Professor Thomas Mitchell for being the faculty advisors in Ghana and throughout the process of writing this Article. Without your help and guidance this would have been an impossible task. Thank you to Professor Rita Yembilah and Dr. Cassandra Johnson Gaither for their assistance and support, and to the many Ghanaian attorneys, judges, agency officials, and chiefs who took time out of their busy schedules to meet with the Authors during their time in Ghana. Thank you to Elizabeth Shannon, Rebecca Ward, and the entire Texas A&M Law Review staff for editing this Article. Lastly, thank you to Dean Charlotte Ku, Professor Cynthia Alkon, Chase Sanger, and the entire Law School faculty and staff for their continued support and tireless efforts to make these programs successful.

I. INTRODUCTION

This Article dives into Ghana's complex land-registration system, which is influenced by both statutory and customary law. Section II discusses Ghana's statutory land laws. Section III provides a brief overview of Ghana's customary land laws. Section IV discusses several obstacles within Ghana's land-administration system.

II. STATUTORY LAW

A. Background

Since Ghana gained its independence in 1957, it has experienced significant political turmoil.¹ There have been multiple military coups, a variety of constitutional movements, and leaders pushing ideologies—all of which have shaped Ghana's culture and laws.² These movements eventually led to the 1992 ratification of Ghana's current Constitution, which establishes Ghana's policies and laws regarding land ownership.³

Ghana's 1992 Constitution also established its current court system, which is an adversarial common law system.⁴ Ghana has two categories of courts: (1) the superior courts, which include the Supreme Court, the Court of Appeal, the High Court, and the Regional Tribunal; and (2) the lower courts, which include the circuit courts and the district courts (or Magistrate Courts).⁵ Descriptions of Ghana's courts are as follows:

- The Supreme Court is Ghana's highest appellate court and consists of at least nine justices, including one Chief Justice.⁶ The Supreme Court sits in panels of five judges.⁷ It has

¹ Joseph Blocher, *Building on Custom: Land Tenure Policy and Economic Development in Ghana*, 9 YALE HUM. RTS. DEV. L.J. 166, 185 (2006).

² Maxwell Owusu, *Politics Without Parties: Reflections on the Union Government Proposals in Ghana*, 22 AFRICAN STUD. REV. 89, 89 (1979) ("Ghana, the first sub-Saharan African country to achieve independence after World War II, has experienced several diverse forms of government, including a Westminster-style parliamentary democracy, a socialist single-party republic, and two military regimes following coups d'état in 1966 and 1972.").

³ CONSTITUTION Apr. 28, 1992 (Ghana).

⁴ Victor Essien, *Researching Ghanaian Law*, HAUSER GLOBAL L. PROGRAM (Sept. 2016), <http://www.nyulawglobal.org/globalex/Ghana1.html>; RICHARD CROOK ET AL., INST. DEV. STUD. U. SUSSEX, THE LAW, LEGAL INSTITUTIONS, AND THE PROTECTION OF LAND RIGHTS IN GHANA AND CÔTE D'IVOIRE: DEVELOPING A MORE EFFECTIVE AND EQUITABLE SYSTEM 42 (2007); Samuel Marful-Sau, Justice of Appeal, Presentation at Two Days Seminar by the JTI/Ghana News Link for Journalists 2, <https://docslide.net/documents/the-courts-structure-in-ghana-by-samuel-marful-sau-justice-of-appeal.html>.

⁵ Marful-Sau, *supra* note 4, at 3; CROOK ET AL., *supra* note 4; Osei Bonsu Dickson, *The Structure and Jurisdiction of the Courts*, ACADEMIA 1, 2, https://www.academia.edu/12694626/THE_STRUCTURE_AND_JURISDICTION_OF_THE_COURTS.

⁶ Marful-Sau, *supra* note 4, at 5; Essien, *supra* note 4.

⁷ Marful-Sau, *supra* note 4, at 5.

original and appellate jurisdiction over constitutional issues⁸ and exclusive jurisdiction over issues of high treason and Parliament exceeding its power.⁹

- The Court of Appeal has no original jurisdiction—it exclusively decides appeals from the High Court, Regional Tribunal, and civil appeals from the Circuit Court.¹⁰ The Court of Appeal has one Chief Justice and no less than ten other justices, who sit in panels of three.¹¹
- The High Courts are regional courts and have original jurisdiction over all civil and criminal matters. They also have appellate jurisdiction for civil appeals from the District Courts and criminal appeals from the Circuit Courts, along with “exclusive jurisdiction for the enforcement of the Fundamental Human Rights enshrined in the 1992 Constitution.”¹² Each High Court has one judge.¹³ The High Courts also have specialized divisions.¹⁴
- The Regional Tribunals have only “special criminal jurisdiction to try offences against the state and public interest as Parliament may by law prescribe.”¹⁵
- The Circuit Courts have jurisdiction over many types of claims, including: (1) contract or tort cases; (2) civil actions where the recovery of liquidated claims does not exceed 10,000 Ghanaian cedis; (3) landlord/tenant cases; (4) other types of other land cases; (5) probate and letters of Administration where the property’s value does not exceed 10,000 cedis; (6) child custody matters; and (7) criminal matters not involving treason or offenses punishable by death.¹⁶
- The District Courts are the lowest courts in Ghana’s modern judicial hierarchy and every district in Ghana has at least one.¹⁷ District Courts have civil jurisdiction in personal tort or contract actions where the damages do not exceed 5,000 cedis and criminal jurisdiction over offenses where the fine does not exceed 500 cedis and the imprisonment term does not exceed two years.¹⁸ Three specialized District Courts have been established: Juvenile Court, Family Court, and Motor Court.¹⁹
- The Judicial Committees of the Traditional Authorities hear chieftaincy disputes, which can be appealed to the Regional House of Chiefs and then to the National House of Chiefs.²⁰

⁸ A. Kodzo Paaku Kludze, *Ghana in Search of Good Governance*, 21 REV. GHANA L. 166, 174 (2001–05); see also Marful-Sau, *supra* note 4, at 4.

⁹ Marful-Sau, *supra* note 4, at 4–5.

¹⁰ *Id.* at 6.

¹¹ *Id.*

¹² *Id.* at 7–8.

¹³ *Id.* at 7.

¹⁴ *Id.* at 9.

¹⁵ *Id.* at 10; Essien, *supra* note 4.

¹⁶ Marful-Sau, *supra* note 4, at 11–12; Essien, *supra* note 4. The Domestic Violence Court, which deals with gender-based violence, was established in 2009 and is run by a Circuit Judge. Its purpose is to “facilitate the speedy resolution of domestic violence cases.” Essien, *supra* note 4.

¹⁷ *Id.*; Marful-Sau, *supra* note 4, at 14.

¹⁸ Marful-Sau, *supra* note 4, at 14.

¹⁹ *Id.* at 15–17; Essien, *supra* note 4.

²⁰ Marful-Sau, *supra* note 4, at 18.

Ghanaian chiefs no longer have legally recognized courts,²¹ but some customary groups have a form of mediation and alternative dispute resolution (“ADR”) programs.²² But if those programs fail, the only option is to sue in court.²³ Land disputes adjudicated in court are decided under statutory rules²⁴ regardless of whether the dispute arose from customary property rules or statutory law.²⁵ This is likely because customary rules are usually not written down, but have been orally passed down between generations.²⁶ Some people prefer to have their dispute settled by the courts rather than their chief—but if they want the dispute decided under customary law, they must utilize resolution methods outside of the courthouse.²⁷

A study conducted from October 2001 to March 2005 found that over half of the land-dispute cases filed in Ghana involved intra-family disputes.²⁸ This includes “inheritance disputes between different sides of a family, amongst children of the deceased or between the widow and the children, unauthorised disposition of family land by an individual family member, and property disputes between divorcees.”²⁹ The study also found that double sales or sales by someone without title to the land accounted for only about 13% of the land-dispute cases filed in Ghana.³⁰

B. Presidential Retention of Public Land and Minerals

Ghana’s Constitution has specific clauses describing how public lands and minerals should be handled. All public lands and minerals are “vested in the President on behalf of, and in trust for, the people of Ghana.”³¹ Public lands include any land vested in the government when the 1992 Constitution was ratified and any land acquired by the government through compulsory acquisition thereafter.³² Minerals are found in their “natural state in, under[,] or upon any land in Ghana, rivers, streams, water courses throughout Ghana, the exclusive economic zone and any area covered by the territorial sea or continental shelf.”³³

The reservation of public lands and minerals for government use in the interest of Ghana’s people has caused some tension. Landowners and leaseholders have little incentive to take proper care of their natural resources because they know the government will reap all benefits from the natural resources. The government compensates the landowner or leaseholder in exchange for the

²¹ Tracy Higgins & Jeanmarie Fenrich, *Legal Pluralism, Gender, and Access to Land in Ghana*, 23 FORDHAM ENVTL. L. REV. 7, 16 (2012).

²² Interview with undisclosed attorney, in Accra, Ghana (May 17, 2017) [hereinafter *Attorney Interview I*]; Higgins & Fenrich, *supra* note 21.

²³ *Attorney Interview I*, *supra* note 22.

²⁴ *Attorney Interview I*, *supra* note 22.

²⁵ Interview with undisclosed official, COLANDEF & undisclosed official, Forestry Commission, in Accra, Ghana (May 16, 2017) [hereinafter *COLANDEF & Forestry Commission Interview*].

²⁶ *Id.*

²⁷ Interview with undisclosed attorney, in Accra, Ghana (May 19, 2017) [hereinafter *Attorney Interview II*].

²⁸ CROOK ET AL., *supra* note 4.

²⁹ *Id.*

³⁰ *Id.* at 7.

³¹ CONSTITUTION Apr. 28, 1992 § 257(1), (6) (Ghana).

³² *Id.* § 257(2); Janine M. Ubink & Julian F. Quan, *How to Combine Tradition and Modernity? Regulation Customary Land Management in Ghana*, IN THE LAND OF THE CHIEFS 40, 54 (2008).

³³ § 257(6).

resources and land it acquires.³⁴ But this compensation is difficult for the landowner or leaseholder to obtain from the government and is rarely adequate considering what the government took from the landowner.³⁵ This tension is discussed further in Section III of this Article.

C. Establishment of the Lands Commission

Sections 258–265 of the Constitution established the Lands Commission and enumerates its functions: (1) managing of public lands; (2) advising the President and authorities regarding land development and policy; (3) administering the land title registration process; and (4) following the instructions of the Minister responsible for land and natural resources.³⁶ The Constitution also established the Lands Commission’s organizational structure and leadership positions.³⁷ The Lands Commission’s leaders must follow appointment regulations and qualifications to avoid disqualification or removal from office.³⁸ The Lands Commission is not just a centralized agency because it also has regional offices established by the Constitution that perform the same functions enumerated in section 258 within the individual regions.³⁹

D. Establishment of the Ministry of Lands and Natural Resources

Section 11 of the Civil Service Law of 1993 established the Ministry of Lands and Natural Resources (“MLNR”),⁴⁰ whose main function is to ensure “the sustainable management and utilization of the nation’s lands, forests and wildlife resources as well as the efficient management of the mineral resources for socio-economic growth and development.”⁴¹ The agencies within the MLNR are the Forestry Commission, Lands Commission, Minerals Commission, Geological Survey Department, Precious Minerals Marketing Company, and the Office of the Administrator of Stool Lands.⁴² A cabinet minister appointed by the President leads the MLNR.⁴³ The MLNR is responsible for implementing long-term reforms in the Land Sector, including preparing land for agriculture, forestry, and mining.⁴⁴

³⁴ Minerals and Mining Act 2006, (§ 74(2)/2006) (Ghana) [hereinafter MMA]; *see also* CONSTITUTION Apr. 28, 1992 § 20(2)(a) (Ghana).

³⁵ Interview with undisclosed Lands Commission Officials, Accra, Ghana. (May 16, 2017) [hereinafter *Lands Commission Interview*].

³⁶ CONSTITUTION Apr. 28, 1992 §§ 258, 265 (Ghana).

³⁷ *Id.* § 259.

³⁸ *Id.* §§ 263–64.

³⁹ *Id.* §§ 260–62.

⁴⁰ Civil Service Act (PNDCL 327), Section 11 (1993).

⁴¹ *The Ministry*, MINISTRY LANDS & NAT. RES., <http://www.mlnr.gov.gh/index.php/ministry-of-lands-and-natural-resources/the-ministry> (last visited Oct. 23, 2017).

⁴² *Lands Commission*, MINISTRY LANDS & NAT. RES., <http://www.ghanalap.gov.gh/index.php/implementing-agencies/lands-commission> (last visited Oct. 23, 2017).

⁴³ *The Ministry*, *supra* note 41.

⁴⁴ *Id.*

E. Non-Citizen Land Ownership

The framers of the Ghanaian Constitution thought it was important that only Ghanaians own land in Ghana. The Constitution prohibits non-Ghanaians from having a freehold interest in Ghanaian land.⁴⁵ This law applies retroactively to August 22, 1969.⁴⁶ The maximum land interest that a non-Ghanaian can have is a fifty-year leasehold.⁴⁷ Any conveyance of land to a non-Ghanaian that violates this prohibition is immediately void. Therefore, a non-Ghanaian who wishes to possess land for longer than fifty years must renew the lease every fifty years. This can cause problems if the landowner decides to stop leasing the property or if there is a conflict as to who actually owns the land. This adds to the already complicated process of determining land rights and ownership.

F. Stool and Skin Land

Ghana recognizes two forms of land ownership: statutory and customary. The Constitution establishes statutory land ownership through formal land registration.⁴⁸ In contrast, customary ownership derives from the stools and skins who own the land and can convey it to others.⁴⁹ *Stool* and *skin* refer to the Ghanaian chief or the area the chief oversees.⁵⁰ Generally, *stool* is used in Southern Ghana, where a carved wooden stool is the “traditional symbol of chieftainship and is believed to contain the souls of the ancestors.”⁵¹ *Skin* is generally used in Northern Ghana, where the chief’s animal skins represent his authority.⁵²

The government recognizes the stools’ and skins’ customary ownership, which takes precedent over governmental control so long as the statutory laws are not violated.⁵³ Section 267 of the Constitution acknowledges stool and skin land, develops the leadership structure, and describes the functions of the Regional Lands Commission, which works with the stools and the skins.⁵⁴ Part of this customary system requires stools and skins to pay 10% of revenues from their lands to the government and its agencies.⁵⁵

⁴⁵ CONSTITUTION Apr. 28, 1992 § 266 (Ghana).

⁴⁶ *Id.* § 266(3), (5).

⁴⁷ *Id.* § 266(4) (“No interest in, or right over, any land in Ghana shall be created which vests in a person who is not a citizen of Ghana a leasehold for a term of more than fifty years at any one time.”).

⁴⁸ *Id.* § 258.

⁴⁹ *Id.* § 267 (“All stool lands in Ghana shall vest in the appropriate stool on behalf of, and in trust for the subjects of the stool in accordance with customary law and usage.”).

⁵⁰ Ed Lauber, *Stools and Skins*, HEART LANGUAGE (Feb. 17, 2012), <https://heartlanguage.org/2012/02/17/stools-and-skins/>.

⁵¹ JANINE M. UBINK, *IN THE LAND OF THE CHIEFS* 42 (2008).

⁵² *Id.* at 82 n.25; Lauber, *supra* note 50.

⁵³ CONSTITUTION Apr. 28, 1992 § 267 (Ghana).

⁵⁴ *Id.* § 267(1)–(5).

⁵⁵ *Id.* § 267(6).

G. Natural Resource Protection

Ghanaian landowners cannot convey their land to anyone for the purpose of natural resource extraction without parliamentary ratification.⁵⁶ Parliament can also create a resolution to approve certain transactions if two-thirds of Parliament vote in favor of that resolution.⁵⁷ Parliament must then create commissions to regulate minerals, forestry, fisheries, and any other necessary commissions to protect natural resources.⁵⁸ These commissions allow the government to protect its natural resources and regulate their cultivation, processing, and distribution.

H. Current Legislation: The Land Bill of 2016

“[A]fter decades of piecemeal legislative and state management measures” in Ghana, the government started its first comprehensive National Land Policy in 1999.⁵⁹ The First Land Administration Project (“LAP-1”) emanated from that Policy in 2003.⁶⁰ The LAP-1’s objective was “to develop a sustainable and well-functioning land administration system that is fair, efficient, cost effective, [and] decentralized and that enhances land tenure security.”⁶¹ The LAP-1, a twenty-five-year project divided into five-year phases,⁶² “was designed to address . . . the high level of land disputes in the country and cumbersome land administration procedures involving various statutory agencies as well as customary institutions.”⁶³ In 2010, the Ghanaian government launched the Second Land Administration Project (“LAP-2”), which built on the LAP-1.⁶⁴ The LAP-2’s objective is to “consolidate and strengthen urban and rural land administration and management systems for efficient and transparent land service delivery.”⁶⁵

The Land Bill of 2016 (“the Land Bill”), which stems from the LAP-2, aims to make the land-administration process simpler by consolidating Ghana’s land laws.⁶⁶ The Land Bill’s main focus is collaboration among key authorities who have a stake in land issues—especially

⁵⁶ *Id.* § 268 (“Any transaction, contract or undertaking involving the grant of a right or concession by or on behalf of any person including the Government of Ghana, to any other person or body of persons howsoever described, for the exploitation of any mineral, water or other natural resource of Ghana made or entered into after the coming into force of this Constitution shall be subject to ratification by Parliament.”).

⁵⁷ *Id.*

⁵⁸ *Id.* § 269.

⁵⁹ Ubink & Quan, *supra* note 32, at 54.

⁶⁰ *Id.*

⁶¹ *Id.* at 41; Interview with undisclosed official, Forestry Commission, in Accra, Ghana (May 16, 2017) [hereinafter *Forestry Commission Interview II*].

⁶² COLANDEF & Forestry Commission Interview, *supra* note 28.

⁶³ Ubink & Quan, *supra* note 32.

⁶⁴ Ghana: Second Land Administration Project, LANDS COMMISSION (Dec. 2016), <http://www.ghanalap.gov.gh/files/ARAP-Completion-Report-LAP-Accra.pdf>.

⁶⁵ *Id.*; COLANDEF & Forestry Commission Interview, *supra* note 25.

⁶⁶ Ghana: Second Land Administration Project, *supra* note 64; Fourth Draft, The Lands Bill of 2016 S. 242(1), Ghana (2016) [hereinafter *Lands Bill*] (“The objective of the [Land] Bill is to revise and consolidate the laws on land, with the view to harmoniz[e] those laws to ensure sustainable land administration and management, effective land tenure and efficient surveying and mapping regimes and to provide for related matters.”).

customary chiefs.⁶⁷ The Lands Commission is the lead agency responsible for implementing the Land Bill.⁶⁸

1. Structure

The Land Bill begins by defining the various interests in land: allodial title, customary law freehold, common law freehold, usufructary interest, leasehold interest, and customary tenancies.⁶⁹ The Land Bill then proposes procedures for surveying and conveyance, title registration, land registration, conflict management, customary land, and compulsory acquisition.⁷⁰ The Land Bill concludes by repealing seven previous land acts.⁷¹ However, any prior land acts not listed are valid “until reviewed, cancelled or terminated.”⁷² Further, “[a]ny instrument or document made or issued under the repealed enactments shall continue to be valid under [the Land Bill] . . . until otherwise revoked.”⁷³

2. Notable Sections

The Land Bill has many notable sections, one being the section for gender equality in land acquisition. In the past, most women did not have enough money to lease land, so they had to rely on customary tenancies, which are similar to sharecropping.⁷⁴ The Land Bill, however, allows women to register a customary tenancy without converting it to a lease.⁷⁵ Further, land acquired by one spouse during the marriage becomes property of the spouses collectively, providing women with an additional avenue to acquire land rights.⁷⁶ Additionally, if only “one spouse is stated in the [land] certificate as the proprietor of land or an interest in land . . . , that spouse shall be deemed to be holding the land or interest in land on behalf of that spouse and in trust for the other spouse.”⁷⁷

However, these provisions equalizing the rights of men and women have received substantial pushback.⁷⁸ If the Land Bill passes, it would effectively recognize a woman’s work in her home as a contribution toward the purchase of the home.⁷⁹ This would allow women to utilize

⁶⁷ COLANDEF & Forestry Commission Interview, *supra* note 25.

⁶⁸ CONSTITUTION Apr. 28, 1992 § 1 (Ghana).

⁶⁹ *Id.* §§ 2–8.

⁷⁰ *Id.* §§ 21–267.

⁷¹ *Id.* § 266 (1)(a)–(g).

⁷² *Id.* § 266(2).

⁷³ *Id.* § 266(3).

⁷⁴ *Id.* § 4 (“The customary freehold (a) is an absolute interest in land and it is not subject to any proprietary obligations except the jurisdictional and cultural rights of the stool, skin, clan or family which holds the allodial title; (b) is acquired when a person or group of persons purchase land outright from the stool, skin, clan or family which holds the allodial title; and (c) is of perpetual duration and is inheritable and alienable without the consent of or payment to the stool, skin, clan or family.”); Interview with undisclosed official, COLANDEF, in Accra, Ghana (May 16, 2017) [hereinafter *COLANDEF Interview*].

⁷⁵ *Id.* § 78.

⁷⁶ *Id.* § 36; COLANDEF Interview, *supra* note 74.

⁷⁷ § 121(7).

⁷⁸ COLANDEF Interview, *supra* note 74; Interview with undisclosed official, Forestry Commission, in Accra, Ghana (May 16, 2017) [hereinafter *Forestry Commission Interview I*].

⁷⁹ COLANDEF Interview, *supra* note 74.

their traditional roles in the home to acquire land rights. It will also indicate a movement away from the antiquated paradigm created by the patrilineal customary system, which is discussed further in Section III.

Another notable section of the Land Bill addresses customary law and attempts to harmonize the land-registration process between customary and statutory practices. This section requires a stool, skin, clan, or family that owns land to select a Customary Land Secretariat to manage the land; describes how the Secretariat should conduct business; and describes how the landowner will pay the Secretariat.⁸⁰ Also, the Land Bill specifies that stool, skin, clan, and family lands must be formally registered with the Lands Commission.⁸¹ The Land Bill also expands on customary land rights by declaring that “[a]fter the commencement of this [Bill] . . . it shall be unlawful to vest clan or family land in the Republic.”⁸²

Further, the Land Bill designs a system for electronic land conveyances, which Ghana currently lacks. The Land Bill states that the Lands Commission shall: (1) establish a land-information system equipped with the requisite technological infrastructure; (2) train and equip staff to manage the system; and (3) educate professionals who provide services to the public on the land information system.⁸³ Only a qualified legal practitioner, who has been granted access to the information system by the Lands Commission, can make an electronic conveyance.⁸⁴ The Land Bill also addresses compulsory acquisition of private land for public use, which has caused conflict and distrust between citizens and the government. The current issues with compulsory acquisition are discussed in further detail below in Section IV, but the Land Bill also includes provisions to help address these issues. For example, before a compulsory acquisition is finalized, the person acquiring the land must prove in writing that the acquisition funds have been paid into an escrow account managed by the Lands Commission.⁸⁵ The Land Bill also subjects Lands Commission officers to consequences for not following best practices during the compulsory-acquisition process.

Further, the Land Bill establishes penalties for other government officials. Any public officer that falsifies land records, fraudulently issues or alters documents, fraudulently removes documents from the land register, or mutilates any land register or Lands Commission document is subject to a fine or term of imprisonment.⁸⁶ These penalties represent the government’s acknowledgment of Ghanaian citizens’ corruption concerns and ensures that the land-registration process is credible and trustworthy.

III. CUSTOMARY LAW

⁸⁰ *Id.* § 16.

⁸¹ *Id.* § 173(1). The registration must be updated when the stool, skin, or head of the clan or family changes. *Id.* § 173(3).

⁸² *Id.* § 255.

⁸³ *Id.* § 71–77.

⁸⁴ *Id.* § 73. The electronic system must include the time and date of the conveyance and certified electronic signatures of each authenticating person. *Id.* § 76.

⁸⁵ *Id.* § 225. Further, landowner who is dissatisfied with the Lands Commission’s compensation assessment may apply to the Lands Commission for review for a review. Then, if that landowner is still dissatisfied with the assessment, he or she may proceed with the ADR system. *Id.* § 240. Lastly, a landowner who is still dissatisfied after ADR can resort to the High Court. *Id.*

⁸⁶ *Id.* § 263.

In Ghana, customary law affects various aspects of Ghanaians' lives. Customary law existed long before the 1992 Constitution and any statutes adopted by Parliament.⁸⁷ Customary law is a set of norms adopted by Ghanaian tribes and is held in societal memory.⁸⁸ The judiciary has made efforts to standardize customary law through case law, yet codification of customary law into statutory law remains incomplete.⁸⁹

Most notably, customary law impacts Ghana's land-tenure system and land-use laws because all Ghanaian land is owned by someone.⁹⁰ Therefore, anyone attempting to sell, develop, or inherit land in Ghana must first identify the rightful owner. Due to the longstanding practice of not registering lands, identification can be difficult. Accordingly, the judicial process is often complicated and cumbersome. Thus, some take matters into their own hands by choosing tribal justice, while others do nothing at all.⁹¹

Ghana's tribal system makes its customary laws unique. Customarily, lands in Ghana are either Stool Lands or Skin Lands.⁹² Whether the land is Stool or Skin Lands often depends on the method of inheritance: matrilineal or patrilineal.⁹³ In the patrilineal system, inheritance is tied directly to the father's lineage; and in the matrilineal system, inheritance is tied directly to the mother's lineage.⁹⁴ Because customary law is regional in nature, location can determine whether the tribe or village falls under a patrilineal or matrilineal system. Most Stools are patrilineal, while most Skins are matrilineal.⁹⁵ The following Sections discuss the patrilineal and matrilineal systems to provide a concise description of how both impact land tenure.

A. Patrilineal Customary Law

In Ghana, men are afforded far more property rights than women. Although present in both customary and statutory law, this disparity is more apparent within customary law. Generally, natives establish custom by presenting evidence of local custom or authoritative textbooks.⁹⁶

⁸⁷ Gordon R. Woodman, *Family Law in Ghana under the Constitution 1992*, 2003 INT'L SURV. FAM. L. 195, 208 (2003).

⁸⁸ *Id.* at 197 ("Customary law has been continuously interpreted and adal application for more than 150 years, and a large body of case-law has been built.").

⁸⁹ *Attorney Interview II*, *supra* note 27.

⁹⁰ *See id.* ("Land ownership in Ghana widely operates on the premise that 'there are no 'ownerless' lands in Ghana.' Land rights are governed by customary and statutory law, statutory law trumps customary when there are conflicts in the law. Chiefs and Families are instrumental in the customary land interest.").

⁹¹ *Ann. Hum. Rts. Rep.* Submitted to Cong. by U.S. Dep't St., Vol. 35, xiii-1112, 270 (2011). Chieftaincy disputes, which frequently resulted from a lack of clear succession, competing claims over lands and other natural resources, and internal rivalries and feuds, continued to result in deaths, injuries, and destruction of property. For example, in January one person was killed and two others seriously injured over a land dispute between Abiriw and Dawu residents, in Kuapem, North District. Daniel Fitzpatrick, *Fragmented Property Systems*, 38 U. PA. J. INT'L L. 137, 154 (2016). "A study of urban land in Ghana found that 40% register land transfers with the national land agency." *Id.*

⁹² Kofi Akamani, *Beyond Panaceas in Land Tenure Systems in Ghana*, in *Selected Themes in African Development Studies* 79, 82 (Lucky Asueline et al. eds., 2014).

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ Kofi Akamani, *supra* note 92.

⁹⁶ Woodman, *supra* note 87, at 131-32. There are other methods, however they are less prevalent. *Id.*

Because 80% of Ghanaian land is held under customary land tenure,⁹⁷ the perpetuation of disproportional rights will likely persist unless appropriately addressed. This Section focuses on the disparity in property rights under customary law within the patrilineal system.

It is important to first emphasize that “patrilineal” and “patriarchal” are not synonymous. In a patrilineal system, inheritance descends through the father’s lineage,⁹⁸ whereas a patriarchal system signifies that the head of the family is a male.⁹⁹ However, given the historic disenfranchisement of women in Ghanaian culture, the family structure is often patriarchal by default. Although women in a patrilineal family may legally inherit land, families typically give priority to men.¹⁰⁰ This paradigm is detrimental to a female’s attainment of property rights because a Ghanaian person’s position in the family lineage determines the person’s political, economic, and social position in the community.¹⁰¹

The disparity in property rights is most apparent in women’s access to marital property rights. Although changes in marital property rights have been discussed briefly above regarding the Land Bill, it is important to understand their relation to patrilineal customary law. Currently, women mainly acquire land through marriage.¹⁰² But property acquired *during* marriage is not considered joint property of the two spouses.¹⁰³ The land purchased belongs solely to the spouse who paid for the land.¹⁰⁴ Although on its face this arrangement is not discriminatory, in practice it strips women of any practical means of attaining property rights because the man generally purchases the land.¹⁰⁵ The disparity of rights is exacerbated by the fact that women generally cannot independently buy land because they account for a disproportionate number of Ghana’s poorest citizens.¹⁰⁶ Further, women do not have equal wealth development opportunities as their male counterparts because of Ghanaian women’s traditional duties.¹⁰⁷ Thus, current marital property rights hinder women’s rights and access to land; but, there is hope for reformation.

As discussed in the previous Section, the Land Bill seeks to address the marital-property-rights issue created by customary law. Under the Land Bill, any land acquired during the marriage becomes property of the spouses collectively.¹⁰⁸ However, as discussed above, there is substantial pushback against the provisions that would equalize men’s and women’s rights.¹⁰⁹ If the Land Bill is enacted, it will signify a shift away from the antiquated paradigm created by the patrilineal customary system.

⁹⁷Higgins & Fenrich, *supra* note 21, at 8; *Challenges and Opportunities in Inheritance Rights in Ghana*, CHRONIC POVERTY RES. CENTRE 2 (Feb. 2011) [hereinafter *Challenges and Opportunities*].

⁹⁸Jeanmarie Fenrich, *Promise Unfulfilled: Law, Culture, and Women’s Inheritance Rights in Ghana*, 25 FORDHAM INT’L L.J. 259, 272 (2002).

⁹⁹*Patriarch*, BLACK’S LAW DICTIONARY (10th ed. 2014).

¹⁰⁰Fenrich, *supra* note 98, at 276. The most notable patrilineal groups in Ghana are the Ewe, the Ga-Adangbes, Guans of Southern Ghana, most Volta region families, and many northern Ghanaian families. *Id.* at 271.

¹⁰¹*Id.* at 272.

¹⁰²Higgins & Fenrich, *supra* note 21, at 12.

¹⁰³*Id.* at 13.

¹⁰⁴*Id.*

¹⁰⁵Fenrich, *supra* note 98, at 276.

¹⁰⁶Higgins & Fenrich, *supra* note 21, at 18.

¹⁰⁷Fenrich, *supra* note 98, at 276.

¹⁰⁸COLANDEF Interview, *supra* note 74.

¹⁰⁹*Id.*

B. Matrilineal Customary Law

As noted above, Ghanaian laws generally afford men more rights. At first glance, the matrilineal system seems to be an exception to this practice. However, male heirs are still the favored inheritors in a matrilineal system.¹¹⁰ In 1985, the Intestate Succession Law (“ISL”) furthered this discrimination by transforming inheritance rules in customary matrilineal systems.¹¹¹

In a traditional matrilineal system, the entire lineage may be traced to a single female ancestor.¹¹² In Ghana, the Akan are a prime example of a matrilineal society. Akan fathers cannot pass land to their sons. Instead, fathers can only pass land to their sisters’ sons or to certain other males of their maternal kin.¹¹³ But Akan mothers can freely pass their property rights to their daughters because children are considered part of the mother’s kin group in a matrilineal system.¹¹⁴

The ISL granted particular protections to the nuclear family, rather than the extended family. In Ghana, the concept of a nuclear family¹¹⁵ does not exist as it does in the United States.¹¹⁶ Spouses are not related in the Western sense.¹¹⁷ Under the ISL, once a man’s household possessions are transferred to his spouse and children, “the residue of a man’s intestate property has to be distributed as follows: nine-sixteenth to children, three-sixteenth to surviving spouse, one-eighth to surviving parents and the remaining one-eighth, in the case of the matrilineal Akan, to the matrilin.”¹¹⁸

Before the ISL was passed, such intestate property passed to the kin group under customary rules.¹¹⁹ Regardless of whether a group follows matrilineal or patrilineal lineage, the ISL allows fathers to pass land on to their children, even though it is against the custom of the matrilineal system, as statutes precede customs.¹²⁰ The result is that the bulk of male-owned land transferred in inheritance is passed on to male heirs, continuing to favor an already male-favoring system.¹²¹ Because statutes control over custom, the customary system of matrilineal inheritance is being pushed out. Disparity in male and female treatment is not merely a customary practice—it has

¹¹⁰ *Challenges and Opportunities*, *supra* note 97 (“In matrilineal systems, women may benefit as lineage members of a deceased man (e.g. wives of a man’s sister’s sons), but not as a man’s wives or children. Within customary governance systems, stability of marriages and good relations with male relatives are critical factors in maintaining women’s land and inheritance rights.”).

¹¹¹ ELIANA LA FERRARA & ANNAMARIA MILAZZO, CUSTOMARY NORMS, INHERITANCE, AND HUMAN CAPITAL 1 (Mar. 21, 2012).

¹¹² Higgins & Fenrich, *supra* note 21, at 270. The major Ghanaian ethnic groups with a matrilineal structure are the Akan (except those found in the Volta region and the Jasikan District), the Lobi, the Tampolese, and the Vagala or Baga, found in the Upper East and Upper West Regions. *Id.* The Akan, found in southwestern Ghana, are the largest of these groups. *Id.*

¹¹³ La Ferrara & Milazzo, *supra* note 111, at 1.

¹¹⁴ *Id.* at 4.

¹¹⁵ A nuclear family is “a basic social unit consisting of parents and their dependent children living in one household.” *Nuclear Family*, WEBSTER’S NEW WORLD COLLEGE DICTIONARY (3d ed. 1997).

¹¹⁶ See Higgins & Fenrich, *supra* note 21, at 270.

¹¹⁷ See *id.* at 269.

¹¹⁸ La Ferrara & Milazzo, *supra* note 111, at 6.

¹¹⁹ *Id.*

¹²⁰ See *id.* at 7.

¹²¹ *Id.*

been codified.

While the matrilineal system continues, there are statutory methods to bypass the matrilineal system. Regardless, several prevalent matrilineal groups still exist in Ghana. The Land Bill could impact land inheritance and solidify women's place in the land system.

IV. PRACTICALITIES AND ISSUES

A. *Ownership, Acquisition, and Registration of Land in Ghana*

1. Ownership

In Ghana, land ownership is a multifaceted concept, partly due to the dual-tenure and land-management systems. For example, customary lands are governed by customary law, but statutory lands are governed by statute.¹²² The customary system is more common, but the government's increasing use of the statutory system has weakened both the reliance and use of customary law.¹²³ If customary law conflicts with statutory law, the statutory law trumps, thereby affecting who ultimately owns the land.¹²⁴

It is often difficult to determine the true owner of a specific piece of land. And because Ghana's primary resource is land, ownership disputes often arise.¹²⁵ Further complicating those disputes is the fact that no Ghanaian lands are ownerless.¹²⁶ Thus, possession of the land becomes important because the adverse possession statute of limitations is only twelve years.¹²⁷ Ownership issues are further muddled by the myriad of land interests that a landowner can have, coupled with the increasing use of leases.

Access to public information on land ownership is a big problem.¹²⁸ Many Ghanaians do not know who to speak with to acquire land because they do not know who owns the land.¹²⁹ And foreigners interested in leasing land need a local Ghanaian's assistance.¹³⁰

2. Acquisition

Both Ghana's customary and statutory system have various faults. Under Ghana's customary system, land acquisition is an already complicated process that becomes even more complicated when an acquisition triggers statutory laws. Within the customary system, one problem arises when multiple people attempt to acquire the same land. This problem is particularly

¹²² *Attorney Interview II, supra* note 27.

¹²³ KASIM KASANGA & NII ASHIE KOTEY, *LAND MANAGEMENT IN GHANA: BUILDING ON TRADITION AND MODERNITY* 20 (2001).

¹²⁴ *Attorney Interview II, supra* note 27.

¹²⁵ *Attorney Interview II, supra* note 27.

¹²⁶ *Id.*; COLANDEF *Interview, supra* note 74.

¹²⁷ *Id.*

¹²⁹ COLANDEF & Forestry Commission *Interview, supra* note 25; *Attorney Interview II, supra* note 27 (stating that the problem with land in Ghana is that there are too many conflicting interest).

¹²⁹ COLANDEF & Forestry Commission *Interview, supra* note 25; *Attorney Interview II, supra* note 27 (stating that the problem with land in Ghana is that there are too many conflicting interest).

¹³⁰ COLANDEF *Interview, supra* note 74.

common among large families or land-owning clans.¹³¹ For example, one family member may grant an interest in a piece of land to an individual. Unaware of the previous transaction, a second family member may grant an interest in the same piece of land to a different person. Assuming both parties have the required allodial or customary freehold interest, they both have the right to transfer the land. The family's failure to communicate or maintain adequate records causes future problems for people acquiring an interest in that land. In fact, a Ghanaian attorney stated: "If you acquire land from two different people claiming an interest, you are only being prudent."¹³²

A similar problem arises when parties falsely claim to have the required land interest to grant property rights to others. For instance, a chief may falsely claim to have the interest necessary to transfer title even though he possesses a lesser interest.¹³³ Thus, the buyer would not actually have title to the land and would likely lose in a legal dispute to determine the land's rightful owner.

Acquiring land statutorily, which requires some formalities and adherence to statutes, also comes with its own issues.¹³⁴ Typically, the new owner must register the land with the Lands Commission and obtain a land-title certification.¹³⁵ However, if there is an ownership dispute, land registration can be delayed by months—or even years—while the dispute is litigated. One Ghanaian attorney stated that these disputes normally took substantially longer than six months.¹³⁶ These disputes are common due to the problems with familial land transfers.¹³⁷

3. Registration

Although land registration prevents land-ownership disputes, only a small percentage of registerable land is actually registered.¹³⁸ In 1998, only 32% of public-land instruments were registered and 68% of Stool-Land instruments were registered.¹³⁹ Although this percentage of registered Stool-Land instruments seems relatively high, the Stools are not given registered copies when their property is leased. This makes it almost impossible for a Stool to secure the reversionary interest when the lease ends.¹⁴⁰ Consequently, the Stool could lose this land when the lease ends because he has no documentation to prove his right to bring legal action.¹⁴¹

Another issue with registration is the lengthy and cumbersome process.¹⁴² Although a person with a land interest should register it as soon as possible, registration can often take

¹³¹ *Id.*

¹³² *Id.*

¹³³ KASANGA & ASHIE KOTEY, *supra* note 123, at 14.

¹³⁴ *Attorney Interview II, supra* note 27.

¹³⁵ *Attorney Interview I, supra* note 22.

¹³⁶ *Attorney Interview II, supra* note 27.

¹³⁷ *Attorney Interview I, supra* note 22.

¹³⁸ *Id.*

¹³⁹ KASANGA & ASHIE KOTEY, *supra* note 123 at 14.

¹⁴⁰ *Id.* at 21.

¹⁴¹ *Id.*

¹⁴² *Attorney Interview II, supra* note 27.

anywhere from six months to several years due to competing claims.¹⁴³ Rather than spending time arguing over competing claims in court, many people decide not to register their land.¹⁴⁴ This is especially true for farmland due to the misconception that land only needs to be registered if it is used for residential purposes.¹⁴⁵

Landowners may also face other impediments in the registration process. First, customary freeholds cannot be registered.¹⁴⁶ Second, if the land being registered is family or Stool Land, the buyer must speak with the family members. In doing so, the buyer may find that another family member has already sold the same land rights to someone else.¹⁴⁷ Alternatively, if the land is government-owned, the buyer must go through the Lands Commission.¹⁴⁸ In either case, the person registering the land must pay stumpage fees if trees are on the property and obtain a yellow card as evidence of the registration application.¹⁴⁹ Some landowners mistakenly assume that the yellow card is evidence of registration—not just *receipt* of the application.¹⁵⁰

B. Compulsory Acquisition and Illegal Resource Harvesting

1. Compulsory Acquisition and Compensation

Ghana's 1992 Constitution and the Minerals and Mining Act of 2006 both dictate that “[e]very mineral in its natural state . . . is the property of the Republic of Ghana and shall be vested in the President on behalf of, and in trust for the people of Ghana.”¹⁵¹ For the President to exercise his rights, the government must compulsorily acquire the land from its owner.¹⁵² Compulsory acquisition is the process by which the government can claim land for the purpose of collecting minerals and natural resources. The government acquires lands to collect minerals like gold, bauxite, manganese, and diamonds.¹⁵³

The Minerals and Mining Act of 2006 establishes the process and procedures for compulsory acquisition of minerals. When land is first designated for acquisition, the Land Valuation Division of the Lands Commission surveys the land for its current crops and structures and determines a value by which the land owner can start their price negotiations.¹⁵⁴ The mineral-

¹⁴³ Interview with undisclosed Chief, in Akosombo, Ghana (May 24, 2017) [hereinafter *Chief Interview*]; *Attorney Interview II*, *supra* note 27.

¹⁴⁴ *Attorney Interview II*, *supra* note 27.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Attorney Interview I*, *supra* note 22.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ CONSTITUTION Apr. 28, 1992, 257(6) (Ghana); *see also MMA*, *supra* note 37 at § 1.

¹⁵² *MMA*, *supra* note 34 at § 2.

¹⁵³ Peter Awuah, Ghana's Mineral Rights and the Cadastral System, Minerals Commission, slide 3 (Ghana is the second largest producer of gold in Africa, and often in the top ten countries worldwide in gold productions.). Ghana is the second largest producer of gold in Africa, and often in the top ten countries worldwide in gold productions. *Id.*

¹⁵⁴ Lands Commission Act, art. 22(a); *see also MMA*, *supra* note 34, at § 72(5); *see generally* J.Z. Ayitey et al., *Who is the Rightful Recipient of Mining Compensation for Land Use Deprivation in Ghana?* 43 RESOURCES POL'Y 19, 24 (2015).

https://www.researchgate.net/publication/268813852_Who_is_the_rightful_recipient_of_mining_compensation_for_land_use_deprivation_in_Ghana [last visited Oct. 2, 2017].

rights holder and the surface-rights holder must negotiate and agree on compensation. But if an agreement cannot be made, however, the Minister of the Lands Commission, consulting with other Lands Commission officials, must determine the compensation paid by the mineral-rights holder to the surface-rights holder.¹⁵⁵

Surface-rights holders are guaranteed “prompt payment of fair and adequate compensation.”¹⁵⁶ However, the meaning of “fair and adequate” is not clear and is commonly determined by section 74 of the Minerals and Mining Act. Under the Act, the lawful owner or occupier of the property is entitled to compensation for the loss of use of the land’s surface, loss or damage to immovable property, loss of earnings from cultivated land, and loss of expected income from the crops.¹⁵⁷ The cost of relocation, annual ground rent, and the landowner’s time and effort must also be considered when determining proper compensation.¹⁵⁸ Lastly, in lieu of monetary compensation, the landowner or lawful occupier can relocate at the mineral-rights holder’s expense.¹⁵⁹

Though the statutes may seem fair and adequate, on a practical level there are many issues with the compulsory-acquisition system. In reality, the landowner or lawful occupier rarely receives compensation. And when they do, it is likely insufficient compared to their entitlement under sections 73 and 74. The compensation amounts are generally low and meant only to appease the landowner, not compensate them for the total loss.¹⁶⁰ The main difficulty with actually receiving compensation is the cumbersome process of determining who the lawful owner or occupier is.¹⁶¹ Multiple people often claim ownership of the land, and the land is likely unregistered with the Lands Commission.¹⁶² In these instances, the mineral-rights holder still retains the land and can begin mining activities; but the compensation remains unpaid until a court determines the lawful landowner or occupier.¹⁶³ In turn, this delays receipt of compensation and also creates a high likelihood of never receiving compensation.

2. Illegal Logging

¹⁵⁵ MMA, *supra* note 34 at 73(3); *see also* J.Z. Ayitey et al., *Compensation For Land Use Deprivation In Mining Communities, The Law And Practice: Case Study Of Newmont Gold Ghana Limit Ed*, SURVEYOR J. GHANA INSTITUTION SURVEYORS 32, 34 (2001) [hereinafter *Compensation for Land Use Deprivation*].

¹⁵⁶ MMA, *supra* note 34, at §74(2); *see also* CONSTITUTION Apr. 28, 1992 20(2)(a) (Ghana).

¹⁵⁷ MMA, *supra* note 34, at § 74(1). The compensation for the crops on the land is statutorily different than many of our interviews led us to believe. Many people said that the landowner or occupier is only entitled to money for the crops on the land at the time the land is taken. However, section 703.74(1(d)) states that “loss of expected income, depending on the nature of crops on the land and their life expectancy . . .” This shows that the owner of the surface rights is entitled to compensation for the loss of crop revenue during the life expectancy of the crops.

¹⁵⁸ MMA, *supra* note 34, at § 74(3).

¹⁵⁹ *Id.*, at § 73.

¹⁶⁰ *Lands Commission Interview, supra* note 35.

¹⁶¹ *Id.*

¹⁶² *Attorney Interview II, supra* note 27.

¹⁶³ The money is not put in trust, or set aside for the lawful owner or occupier. The mining simply commences without any person being paid for the land until the lawful individual can be determined. *Id.*

Similar to minerals, naturally occurring timber resources are vested in the President and held in trust for the people of Ghana.¹⁶⁴ The inadequacy and poor likelihood of compensation for lost surface rights often leads to unlawful and unethical practices such as illegal logging.¹⁶⁵ A landowner or lawful occupier aware of the land's resources may fear lack of compensation. Thus, the landowner or lawful occupier may then allow illegal logging on their property to protect the land from compulsory acquisition and to ensure compensation for the land's resources and the loss of land use.¹⁶⁶ An additional reason for illegal logging is the power struggle between the Forestry Commission and local chiefs over adequate compensation.¹⁶⁷ Often, the farmers stuck in the middle of these disputes will illegally log the timber to ensure adequate payment.¹⁶⁸

Approximately one-fifth of Ghana's land mass is forest land; however, it is quickly being lost due to deforestation.¹⁶⁹ A main cause of deforestation is the conversion of forests into land used for other purposes, such as agriculture and mining.¹⁷⁰ The Forestry Commission monitors illegal logging on forest reserves and enforces penalties through the criminal justice system, which can result in both fines and jail time.¹⁷¹ However, the understaffed Commission cannot effectively police the vast forests.¹⁷² Accordingly, it is difficult to catch illegal loggers in the act and even more difficult to catch them after they harvest the timber.¹⁷³

Many people argue that if landowners are given tree-ownership rights, they would have a greater incentive to care for the trees and to abstain from deforestation activities.¹⁷⁴ In line with this argument, the Forestry Commission has introduced a tree-registration system to combat illegal logging problems and to help protect and rebuild the forests.¹⁷⁵ This system allows landowners and lawful occupiers to register planted trees on their property. The program's basic purpose is to reverse deforestation by incentivizing landowners to plant trees.¹⁷⁶ By registering planted trees in

¹⁶⁴ The Concessions Act, 1962, art. 267(1) (Ghana).

¹⁶⁵ *Forestry Commission Interview II*, *supra* note 61; *see also Attorney Interview II*, *supra* note 27.

¹⁶⁶ *Attorney Interview II*, *supra* note 27.

¹⁶⁷ *Forestry Commission Interview II*, *supra* note 61.

¹⁶⁸ *Id.*; *see also* Clement Kojo Akapme, *Development of a Framework on Tree Tenure and Benefit Sharing Scheme*, MINISTRY LANDS & NAT. RESOURCES § 1.1 (June 2016).

¹⁶⁹ Ghana, ILLEGAL LOGGING PORTAL, <https://www.illegal-logging.info/regions/ghana> (last visited Oct. 2, 2017).

¹⁷⁰ *Addressing the Risks of a Weak Legal Framework Governing Forest Conservation in Ghana*, CLIENTEARTH 1 (Sept. 2017) [hereinafter *Forest Conservation Framework*].

¹⁷¹ *Forestry Commission Interview II*, *supra* note 61; *see also Forest Conservation Framework*, *supra* note 170, at 4 (citing Forest Protection (Amendment) Act, 2002, § 1 ("Anyone who is convicted of felling trees in a forest reserve without appropriate written authority may receive a fine up to 500 penalty units and imprisonment up to two years.")).

¹⁷² *Forestry Commission Interview II*, *supra* note 61; *see also Forest Conservation Framework*, *supra* note 170, at 4.

¹⁷³ *Id.*

¹⁷⁴ *Id.*; *see also* Akapme, *supra* note 168, at § 1.1.

¹⁷⁵ Interview with undisclosed Resource Management Support Center Officials, in Kumasi, Ghana (May 23, 2017) [hereinafter *Resource Management Support Center Interview*]; *see also* Akapme, *supra* note 168 (distinguishing how trees be vested differently on reserve or off, and if they are naturally occurring or planted).

¹⁷⁶ *Forestry Commission Interview II*, *supra* note 61.

their name, the landowners receive the right to harvest timber and retain the profits when the trees have matured.¹⁷⁷ Although this system is rather new, it seems well-planned.¹⁷⁸

Additionally, more socially geared projects have been instituted to help encourage good resource management and land stewardship. One project is the implementation of social-responsibility agreements, which encourage local landowners to leave trees in place for those who have timber permits, allowing them to legally harvest. These agreements require logging firms to give a portion of their profits to local forest-fringe communities.¹⁷⁹ This allows the communities to benefit economically from legal and sustainable timber sales. These agreements ensure that those with timber-utilization contracts give back to other Ghanaians who have no ability to benefit from the natural resources around them.¹⁸⁰ The agreements also ensure that the harvesters log in a socially responsible manner.¹⁸¹ Money from the agreements can fund schools, clinics, roads, and community development.¹⁸² If the firms do not follow the agreements, the courts can compel them to comply with the contract.¹⁸³

Lastly, the Forestry Commission has implemented the REDD and REDD+ programs (“the REDD programs”).¹⁸⁴ The REDD programs’ purpose is to reduce emissions from deforestation while encouraging conservation and sustainable forest-management strategies.¹⁸⁵ To accomplish this, the REDD programs focus on the country as a whole and the education of individual communities.¹⁸⁶ The REDD programs work through private systems, which allows them to be more productive and efficient than governmental entities.¹⁸⁷

These systems and programs are designed to work together to combat deforestation and improve the environment. Many of the programs are relatively new or are still in the planning phase. The forestry industry accounts for 2% of Ghana’s GDP and employs 15% of Ghana’s workforce. Agriculture accounts for 36% of Ghana’s GDP and employs 45% of Ghana’s workforce.¹⁸⁸ Combined, these two industries account for over half of Ghana’s workforce. Inadequate compensation and illegal logging in both the agriculture and forest industries could affect half of Ghana’s employment and cripple Ghana’s national economy. Currently, Ghana’s government is not considering any new formal legislation, amendments, or rules on these issues. But with such grave consequences on the line, the Ghanaian government must consider

¹⁷⁷ Akapme, *supra* note 187.

¹⁷⁸ However, it is yet to be seen if this is a long-term solution, or if problems will arise due to the long time period for trees to mature and be ready for harvesting. It is possible that there will be a situation where a lessee registers trees in his name, with the approval of the landowner, but by the time the trees are ready to be harvested, the relationship between landowner and leaseholder had soured and a conflict will arise as to the trees.

¹⁷⁹ Ayine, D., 2008. *Social Responsibility Agreements in Ghana’s Forestry Sector*. Developing Legal Tools for Citizen Empowerment Series at 2, IIED, London.

¹⁸⁰ *Id.* at 3.

¹⁸¹ *Id.* at 2–3.

¹⁸² *Id.* at 2.

¹⁸³ *Id.* at 28.

¹⁸⁴ *Resource Management Support Center Interview, supra* note 175; *see also* Ghana REDD+ Strategy 2016 (Dec. 2016-2035), <https://www.fcghana.org/userfiles/files/REDD%2B/Ghana%20REDD%2B%20Strategy.pdf>.

¹⁸⁵ Ghana REDD+ Strategy, *supra* note 184, at 15.

¹⁸⁶ *Id.* at 25.

¹⁸⁷ *Forestry Commission Interview II, supra* note 61; *see also* Ghana REDD+ Strategy, *supra* note 184, at 25.

¹⁸⁸ *Forest Conservation Framework, supra* note 170, at 2.

compulsory acquisition's effects on individual landowners and reflect on the possible widespread environmental, economic, and social consequences of its current natural-resource acquisition procedures.

C. Problems with Land Court

With the extremely high number of land disputes filed in Ghana, the judicial system must be quick and efficient. In 2003, however, there were approximately 60,000 land disputes in Ghanaian courts, with 15,000 of those cases pending before the Accra courts alone.¹⁸⁹ Many administrative problems stand in the way of quickly disposing of this large amount of land disputes. Litigants' cases are often severely delayed and can sometimes take years to resolve.¹⁹⁰ Regrettably, no party to the process takes responsibility for the delays and instead, they blame each other.¹⁹¹

1. Overscheduling

One main administrative bar to quick disposal of a case is the overscheduling of hearings. According to a Ghanaian attorney, lawyers often go to court for their scheduled hearing, but either their case is never called or the judge does not appear.¹⁹² And this problem has not improved within the last twelve years: In 2005, about 40% of people said they attended court more than twenty-one times and about 60% said they attended about 100 times.¹⁹³ One Ghanaian attorney stopped practicing litigation because she felt that she wasted too much time waiting in court.¹⁹⁴ Unfortunately, it does not look like this practice will change anytime soon because there are no proposals or discussions of changing this practice.

2. Court Reporters

The lack of access to reliable court records is also a big problem in Ghana's court system. According to a Ghanaian Appellate Judge, the appellate court judges must write everything by hand.¹⁹⁵ In contrast, most United States judges have law clerks that do a significant amount of that work for them. Another Ghanaian judge stated that the judges are supposed to have recorders in their court rooms during proceedings, but once her first recorder failed, she never got another.¹⁹⁶ One courtroom actually had a court reporter that was typing on a standard computer and the judge had to continually pause the proceedings to ensure that the court reporter could accurately record the proceeding.

¹⁸⁹ Eric Yeboah & Franklin Obeng-Odoom, "We are not the Only Ones to Blame": District Assemblies' Perspectives on the State of Planning in Ghana, 7 COMMONWEALTH J. LOC. GOVERNANCE 66, 78, 84 (2010).

¹⁹⁰ CROOK ET AL., *supra* note 4, at 10; KASANGA & ASHIE KOTÉY, *supra* note 123, at 12.

¹⁹¹ CROOK ET AL., *supra* note 4, at 10–11.

¹⁹² *Attorney Interview II*, *supra* note 27.

¹⁹³ CROOK ET AL., *supra* note 4, at 10.

¹⁹⁴ *Attorney Interview I*, *supra* note 22.

¹⁹⁵ Interview with undisclosed judges, in Accra, Ghana (May 18, 2017) [hereinafter *Judges Interview*].

¹⁹⁶ *Id.*

3. Progress and Solutions in Court

Fortunately, ADR has become a more popular option in Ghana,¹⁹⁷ decreasing the courts' high number of land-dispute cases. For example, the Court Connected Alternative Dispute Resolution mediated 1,373 cases in 2016 with a 44% settlement rate.¹⁹⁸ Between 2003 and 2010, 770 land disputes were settled through ADR.¹⁹⁹ Hopefully within the coming decades, Ghana will significantly increase its use of ADR, which could remove a huge burden from land-dispute courts and reduce the high amount of cases filed.

The good news is that there is growing confidence in Ghanaian courts.²⁰⁰ According to a Ghanaian attorney, this changing attitude is likely due to modernization, the increasing prevalence of technology, and the mixing of traditional family lines within bigger cities.²⁰¹ In the past, many Ghanaians acquired land without a formal document; but Ghanaian's are beginning to realize that formal documents are necessary.²⁰² Hopefully this will decrease the amount of land disputes and make disputes that do arise easier to resolve.

Although Ghanaian courts appear to be headed in the right direction, they still have a long way to go. First, those in charge of Ghana's judiciary system should consider scheduling each case for a specific time period. Accordingly, attorneys and clients would spend less time waiting in court. Second, they should consider hiring law clerks for judges to help manage their immense caseloads. Third, they should ensure that each courtroom has a competent court reporter and a working recorder. They should also consider training courses for court reporters to ensure that proceedings run smoothly.

D. Corruption in Ghana

Corruption is a recognized and widespread problem in Ghana. Every year, Transparency International releases a report with a corruption perceptions index.²⁰³ The scores range from 0–100.²⁰⁴ A score of zero indicates that the country is “highly corrupt,” and a score of 100 indicates that the country is “very clean.”²⁰⁵ In 2016, Ghana ranked 70th out of 176 countries, with a score of forty-three.²⁰⁶ Since 2012, Ghana's score has remained in the forties.²⁰⁷ Ghana was the second

¹⁹⁷ *Lands Commission Interview*, *supra* note 35; *Chief Interview*, *supra* note 143 (stating that he prefers the ADR process over litigation in court).

¹⁹⁸ *Alternative Dispute Resolution Reduces Backlog of Land Dispute Cases*, GHANAWEB (Mar. 13, 2017), <https://www.ghanaweb.com/GhanaHomePage/NewsArchive/Alternative-Dispute-Resolution-reduces-backlog-of-land-dispute-cases-518354>.

¹⁹⁹ Yasin Abdalla Eltayeb Elhadary, *Conventions, Changes, and Contradictions in Land Governance in Africa*, 59 AFRICA TODAY 59, 66 (2012).

²⁰⁰ *Attorney Interview II*, *supra* note 27.

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ *Corruption Perceptions Index 2016*, TRANSPARENCY INT'L (Jan. 25, 2017), https://www.transparency.org/news/feature/corruption_perceptions_index_2016.

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *Id.*

worst decliner for the 2016 corruption perceptions index. Corruption levels in Ghana are better than other African countries; nevertheless, corruption is present.²⁰⁸

For example, the Lands Commission faces a corruption problem.²⁰⁹ In Ghana, the Lands Commission “is hampered by a shortage of trained and motivated staff . . . and endemic corruption.”²¹⁰ Corruption within Ghana’s land administration system stems from two main sources: (1) acceptance by the governance and (2) lack of transparency.²¹¹ Ghanaian citizens, including practicing lawyers, have accepted corruption as part of the land administration system.²¹²

During an interview about the land-registration system, a Ghanaian attorney spoke about corruption. The attorney stated that she often must pay Lands Commission employees a “facilitation fee” to receive the necessary land-registration documents.²¹³ The attorney also stated that her clients, who are citizens of Ghana, understand that facilitation fees are necessary to register their land.²¹⁴ Foreign clients, however, do not understand why these fees are necessary.²¹⁵

Transparency is key for an effective land administration system.²¹⁶ In this context, “[t]ransparency means that the people shall be told, and shall be entitled to know, the reasons and the bases for decisions made by those in authority.”²¹⁷ The lack of transparency is a root cause of corruption within Ghana’s land administration system.

Ghana’s land-registration system is complex. Many Ghanaians are illiterate and do not understand the system. The complexity, in turn, makes the system even less transparent. The lack of transparency breeds corruption because Lands Commission employees can take advantage of those who do not understand the system.

Because of the corruption in Ghana’s lands administration system, people are discouraged from registering their land because the corruption increases costs.²¹⁸ Indeed, “high cost, inefficient land officers and prolonged procedures related to corrupt land-registration practices, have discouraged people from registering their land and properties.”²¹⁹ The cost the bribes that people may have to pay to register their land essentially “inflate[s] documentation costs,” increasing the cost of registering land beyond what it should lawfully be.²²⁰ As the cost of registration increases, fewer people can afford to complete the cumbersome land-registration process. In turn, a large amount of land in Ghana will continue to be unregistered.

V. CONCLUSION

²⁰⁸ *Sub Saharan Africa: Corruption is a Big Issue in 2016 African Elections*, TRANSPARENCY INT’L (Jan. 25, 2017), https://www.transparency.org/news/feature/africa_corruption_is_a_big_issue_in_2016_african_elections.

²⁰⁹ Ubink & Quan, *supra* note 32, at 47.

²¹⁰ *Id.*

²¹¹ *Attorney Interview II*, *supra* note 27.

²¹² *Id.*

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *Transparency is Essential to Proper Land Administration- GGA West Africa*, CITIFM ONLINE (Oct. 11, 2017, 7:05 PM), <https://citifmonline.com/2017/10/11/transparency-is-essential-to-proper-land-administration-gga-west-africa/>, [hereinafter *Transparency is Essential*].

²¹⁷ Kludze, *supra* note 8, at 221.

²¹⁸ *Transparency is Essential*, *supra* note 216.

²¹⁹ *Id.*

²²⁰ KASANGA & ASHIE KOTÉY, *supra* note 123; *Attorney Interview II*, *supra* note 27.

Ghana's legal system is unique due to the influence of both statutory and customary law. The policies and practices regarding land and natural resources reflect these influences. There are many officials, agencies, and organizations who are working toward finding solutions to the obstacles outlined in this Article. As Ghana continues to modernize its legal system, educate its population, and implement new programs, Ghana's land administration system will continue to improve and the number of land disputes will decrease.