

# Land Grabbing, Biofuel Investment And Traditional Authorities In Ghana

POLICY BRIEF



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**actionaid**

**FoodSPAN** Ensuring Food Security For All





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## 1.0 EXECUTIVE SUMMARY

Equitable access to land and the security of land rights are central to socio-economic development, food security and poverty reduction. This is because land and its resources are fundamental to fulfilling the basic needs of rural women and men. They provide the basis for income and livelihood, food and shelter. In addition to being an important economic asset, land also contributes to the identity, dignity and social inclusion of the individual rights holder. A secured right to land is therefore important for ensuring the enjoyment of fundamental human rights, particularly, the right to adequate standard of living which includes access to water, food and housing. The nature of land rights one has and the extent of security of those rights are to a large extent influenced by the existing land tenure system. This is because the nature of the land tenure system prescribes the institutional arrangements for land governance, the legal framework, implementation and enforcement.

Ghana operates a dual system of land administration. Acquisition and disposal of various land rights are managed by the two main systems. There is the state system operated by written rules and statutes; and there is the customary system operated by unwritten rules of custom and tradition. Both systems are recognized and guaranteed by the 1992 Constitution. About 80% of the total land area in Ghana falls under the customary system and the Traditional Leaders play a significant role in providing leadership and the institutional arrangement for the administration of such lands.

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These place the Traditional Authority in a significantly influential position in matters of land and land rights in Ghana. Traditional Leaders are however enjoined by the Constitution of Ghana to act as custodians of the collective interest of the communities. Thus, in the execution of their responsibility as custodians of the land, Traditional Leaders are to ensure that the interest of the larger group is protected.

Recent trends in the land sector have shown remarkable increases in land transactions in customary land areas. Typically, the commoditization of land and the disposal of large tracts of land for investments pose increasing threats to customary land rights holders. Evidence suggests a marked increase in the rate of dispossession being experienced by customary rights holders and the non-compliance to the principles of free, prior and informed consent. The requirements for the payment of fair, adequate and prompt compensation to those who have been dispossessed of their rights have not been enforced adequately. This trend has serious implications for rural incomes and livelihood, food security, environmental management, sustainable natural resource management and distortions in social identity and social organization. Apart from the concerns about the acquisition of large parcels, the nature of investment on the land also gives cause for concern, especially as evidence points to increasing investment in feedstock for biofuel production. Pragmatic steps are needed to balance the interests at stake to ensure sustainable socio-economic

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development, protection of indigenous land rights and the facilitation of development that addresses the needs and interests of the local people.

This policy brief targets the perspective of traditional authority in the matrix of land grabbing, displacement of smallholder farmers and biofuels and it builds on previous works of ActionAid Ghana and Food Security Policy Advocacy Network (FoodSPAN) on land grabbing. The situation analysis and policy options are informed by a rapid appraisal of land grabbing in Ghana, with field data from selected areas in Ashanti, Brong Ahafo and Northern Regions, under the EU/IFSN/AAG/FoodSPAN Strengthening Civil Society Networking in the International Policy Dialogue for an Increased Food Security Project. Lastly, the brief reflects the position of civil society organizations on the trends in large scale acquisition of land at a validation meeting held in Accra in July 2012, with some Traditional Authorities, biofuel companies and government officials in attendance.

Data gathered from the field indicate that by virtue of their role as custodians of the land, Traditional Leaders have been at the forefront in giving out large tracts of land for the investments. The phenomenon of land grabbing is currently gaining more grounds in the Ashanti, Brong Ahafo and Northern Regions.

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The policy brief analyses the potential dangers that the phenomenon poses to rural incomes and livelihood, local economic development and food security, among others. The position presented in this brief is a call on Traditional Leaders to desist from making themselves absolute owners of the allodial title in land they occupy and show themselves accountable to the people as trustees. They should therefore stop exercising absolute control and decision making over the land without recourse to the larger community they represent and existing related policy and legislative frameworks. Lastly, the policy brief provides policy recommendations and measures that should be taken by Government and state agencies responsible for land administration. It is expected that the policy brief will contribute to the reverse of the current trends in the land sector and enhance the security of land tenure obtained under the customary system while protecting smallholder land users.

## 2.0 CONTEXTUAL BACKGROUND

Agriculture is the backbone of the economy of Ghana, accounting for about 34 percent of GDP and employs 55 percent of the economically active population. A significant proportion of food production for local consumption is done mainly by smallholder farmers, majority of who are women who operate on parcels of land acquired through various customary arrangements. Agricultural activities provide significant benefits to the economy by serving as means of income and livelihood for the rural population and for meeting the household food requirements. Access to land and the security of land rights obtained for agricultural production is therefore very important for rural households.

Over the last five years, there has been increasing attention to large scale investment in the agricultural sector for both food and non-food production. The development of biofuel feedstock is one such investment activity which can be found in some parts of the country including the Northern and Ashanti Regions of Ghana. Cultivating jathropha as feedstock for biofuel production is said to require large land sizes of more than 1,000 hectares. In August 2009, it was estimated that collectively, there had been a total of 1,075,000 hectares of land acquired for jatrophha plantation in Ghana, 730,000 hectares are located in the forest savannah transition zone. Having a National Energy Policy objective 'to ensure the sustainable supply and processing of feedstock into biofuel for local and export market' one can expect an increase in investment in the sector.

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However, the processes for the acquisitions should be regulated within existing policy, human rights and legal frameworks.

Civil Society Organizations (CSOs) are primarily not against the judicious and productive use of landed resources for sustainable development. However, a number of observations have been made in the current policy environment. The implementation of policies within the energy and land sectors, procedures for the land acquisition for large scale investment, the role of Traditional Leaders and the threats posed to smallholder farmers, particularly women, in Ghana call for concern and action.

The definition of land grabbing in this document is that of the International Land Coalition's Tirana Declaration. It defines land grabbing as:

Land acquisitions or concessions that are one or more of the following:

- (i) In violation of human rights, particularly the equal rights of women;
- (ii) Not based on free, prior and informed consent of the affected land-users;
- (iii) Not based on a thorough assessment, or are in disregard of social, economic and environmental impacts, including the way they are gendered;
- (iv) Not based on transparent contracts that specify clear and binding commitments about activities, employment and benefits sharing, and;
- (v) Not based on effective democratic planning, independent oversight and meaningful participation

### 3.1 The Direction of the Current Bioenergy and Land Policies

The overall goal of the current policy on bioenergy is 'to develop and promote the sustainable supply and demand of bioenergy to ensure energy security for Ghana. The policy direction for biofuel is to 'complement national petroleum fuels consumption with biofuel' through:

- Encouraging the Commercial Scale Production of biofuel feedstock
- Creating Demand for the Product
- Sustainable Production and Supply of biofuel
- Becoming a net exporter of biofuel
- Institutional Framework
- Pricing and Incentives
- Quality of biofuel
- Research and Development (R&D)
- Human Resource Development, Science and Technology

It is clear from the policy and the policy directions that a definite stance has been taken for commercial production of biofuel. However, there is no clear analysis of the justification why this is appropriate for the country at this moment of oil find apart from mentioning that 'cultivation does not conflict with any known policy regulation'. As such no attention is needed to deal with the socio-cultural and environmental implications. There is however the need to determine how

### 3.0 REASONS WHY CIVIL SOCIETY IS CONCERNED

related large scale acquisition of land is managed to protect smallholder land users the environment and food security.

There is an emphasis on achieving the economic benefits and energy security and these have been discussed extensively in isolation, as though those were the only benefits to be looked out for. The multi-dimensional implications of the drive to achieve energy security are not adequately discussed to provide the needed justification of comparative and competitive advantage, particularly on food security, rural livelihoods and human rights. These will have to be equally discussed and issues of concern addressed.

The main attention points of the policy direction is based on the assumption that biofuel production is to be undertaken by local farmers as in the case of cocoa production and therefore does not make any Specific provision for ensuring that local farmers benefit has not been made available. The evidence shows that there is very limited involvement of smallholder farmers.

On the other hand, the policy is very much supportive of foreign investors by making definite provisions in the policy for the removal of 'institutional, legal and cultural barriers to access land in order to promote private sector participation...'

The policy mentions the acquisition of land through private

negotiation but at the same time having government to facilitate. Specifically, what does this facilitation entail? There is the potential of government officials influencing the land acquisition process in favour of investors at the expense of local land owners.

The policy is built on the assumption that biofuel production will be done on less productive crop lands. It is however, not clear how this will be ensured. The evidence already shows that this is not the case in some of the acquisitions and plantations already done. If indeed the basis is have biofuel production done on less productive crop lands, it then becomes necessary to clearly define how this will be ensured.

There is also the absence of a clear gender focus in the policy. There is a brief mention of women's role in energy use and therefore need to be considered in the biofuel discussion. There is need for an analysis of the implications of the policy direction on the socio-economic life of women and vice versa.

#### **3.2 ANALYSIS OF TRENDS IN BIOFUEL PRODUCTION AND LAND USE**

As mentioned earlier, there are currently some biofuel production activities on-going in a number of districts in the country. Experiences from the production fields point to some

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disturbing trends.

### 3.2.1 Insidious Dissipation of Indigenous Land Rights

In order to obtain the desired land area required for the development of the feedstock, some indigenous land rights are surrendered by a number of smallholders and these smaller parcels are consolidated into one large area of land for the investment. Acquiring such large areas has brought about distortions in customary land rights arrangements, making them less secure for smallholder farmers. Customary land rights holders now face increasing threat of dispossession, loss of investments in the land and loss of the means of livelihoods.

### 3.2.2 Absence of Meaningful Consultation

Transactions in land are often done with the Traditional Leaders. While that may be the right procedure considering the constitutional provision on the role of traditional institutions in customary land administration in Ghana, it is important to recognize that there are other land users who have acquired various customary rights from the same Traditional Leader. This results in continuous harassment of farmers to vacate the land. Unfortunately, these smallholder land users are not consulted before the decision to give out the land for the investment. At best, they are informed at the end of the transaction, when actual occupation by the

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investor is eminent. Dispossession of the land brings severe hardships to many smallholder farmers as they lose all the investments they have made in the land as well as their means of livelihood. There are no clear procedures for accessing compensation for their loss. In cases when some form of compensation is arranged, values are far lower than what they have leaving the affected farmers in a difficult situation.

### 3.2.3 Weak Institutional Capacity to Negotiate Land Deals

Traditional authority constitutes the main institution for land governance at the customary level. Represented by the Paramount Chief, Divisional Chief or Family Head as the case may be, together with the Elders, the traditional leadership stands in on behalf of the entire community to negotiate the terms for any acquisition. Customarily, these traditional institutions have been negotiating all customary land transactions and leases for relatively smaller parcels and with fewer complexities. While a few Traditional Leaders may have the technical capacity to manage the complexities involved in negotiating large scale land transactions for commercial activities, many do not. This has resulted in land deals that bring little or no significant benefits to the local people, neither in the short term nor in the long term.

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### 3.2.4 Competing Uses of Land for Biofuel Production versus Food Production and Human Right Abuses

Whereas Traditional Authority is responsible for the administration of customary land, planning and regulation of land use is the responsibility of Government, acting through its relevant Ministries, Agencies and Departments. To achieve the right balance in land uses, the two systems of State and Traditional Authority will have to work together. Unfortunately, under the current land regime, traditional authorities seem to be the only institution that plays both roles in customary land areas. They decide which portions of the land are given out for investment, in some cases, without a full understanding of the type of investment and its implications. This trend poses a great threat to access to land for food crop production and related smallholder activities.

### 3.2.5 Lack of Prompt and Adequate Compensation

If for the right reasons and using the right procedures, if any particular smallholder is be dispossessed of land rights, there are legal requirements for the payment of fair, prompt and adequate compensation. Experiences so far show that arranging to get compensation has been challenging for smallholders farmers. There is no support for the farmers in assessing compensation. This limits the ability to negotiate for fair compensation. Smallholders have little option and therefore are compelled to accept any amount paid by

investors, if any.

### **3.2.6 Unfulfilled Expectations of Employment and Infrastructural Development**

One prominent feature discussed as part of the agreements in large scale land acquisition for investment is the requirement for the investor to provide employment and social infrastructure for the community from which the land has been acquired. Communities have experienced that these promises have usually gone unfulfilled. Most often, they are not included in the related contract documents. In some cases, these obligations have been undertaken rather largely as philanthropic or social corporate responsibility gestures and not as obligation even though at the inception of the investment negotiations these provisions were used as part of the conditions for giving out the land. Granted that in some cases, communities have also entertained very high expectations, the unfulfilled promises by investors deepen the loss that local communities experience.

### **3.3 POLICY RECOMMENDATIONS**

**3.3.1** Government should promote a transparent and informed public debate on large scale land acquisition to enable a more comprehensive discussion on the subject to inform Government policy direction.

**3.3.2** Government needs to do a comprehensive

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analysis on the impacts of biofuel production and use the outcome to re-direct the current policy on bioenergy.

**3.3.3** Policy discussions on the creation of feedstock for biofuel should be anchored in the overall land and agricultural policy and should address issues relating to the governance of large scale land acquisition for non-food crop production.

**3.3.4** There is the need for a revised National Land Policy that provides policy direction to the current realities in land administration in Ghana, including the current trends in large scale land acquisition and address the issue of the mixed roles of State and Customary Institutions in addressing the problems of large scale land acquisition.

**3.3.5** The current Draft Guidelines on Large Scale Land Acquisition, having been drafted by the Lands Commission, should be taken through more rigorous stakeholder consultations to receive inputs from all relevant stakeholders. The draft guidelines should be reviewed, finalized and publicized to make all actors in the land sector responsible for its application.

**3.3.6** Government should set up an efficient system for collating and harmonizing data on large scale land

acquisitions in the country to support policy analysis and policy decisions.

**3.3.7** Government should put in mechanisms for information dissemination on the legislation regarding human rights and the Constitution of Ghana as it pertains to customary land administration / allodial title and ensure protection of the rights of smallholder land users during large scale acquisition of land.

**3.3.8** Government should re-evaluate the strategy to facilitate land acquisition for investment as a way of minimizing barriers to land access by investors as this influence negotiation for the land to the disadvantage of local people. Subsequently, pieces of policy and legislative frameworks should be harmonized.

**3.3.9** A one-stop support mechanism for information dissemination, counseling, registration and documentation of large scale acquisition deals should be established.

**3.3.10** There is the need for a gender analysis of the implications of the country's bioenergy policy on rural women and men. Policy options arising from the analysis should target the address of identified gender issues.

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