

# THE LEGAL CORNER

## WHAT YOU WILL FIND

“The promised dawn of yesterday ... has sadly become the reality of neverland.”

## DO YOU KNOW THAT

- Under the Land Act, where the Lands Commission has doubt as to a matter of law concerning the construction of an instrument lodged for registration or any question of law, it can state a case to the High Court for determination?
- A determination by the High Court or a final appeal on the case stated may be conclusive and binding on the parties?
- The Constitutional Review Committee has recommended that stools be compelled to file annual report of the receipt and utilization of their stool land revenue

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## Proverb Corner

*The stomach has no religion, it worships whoever feeds it – African Proverb*



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**Ghana's Land Act:  
An Act Replete With Innovative Ideas  
Stuck In Implementation Gear**

## **Introduction**

Ghana's landmark Land Act, 2020 (Act 1036) is a treasure trove of innovative ideas aimed at revolutionizing the country's land administration and management.<sup>1</sup> The Act is a bold step towards modernizing the land sector and introduces cutting-edge concepts that promise to enhance efficiency in land administration, transparency in land management, and security in land transactions. It is already five years since its inception.<sup>2</sup>

The Act's groundbreaking provisions have unfortunately been met with sluggish implementation, hindering their potential impact. From bureaucratic hurdles to inadequate resources, the gaps between policy and practice are glaring. The "implementation gap" occupies the vacuum between policy and legal stipulations on one hand, and actual practice, on the other.<sup>3</sup>

Some policy analysts and researchers have described it as an implementation deficit, arguing that the relationship between policy and practice is rarely direct and linear.<sup>4</sup> Our elders say, *if you pull a rope and it does not slacken, it means there is something holding it at the other side*. As stakeholders grapple with the issues, questions linger on as to what is actually holding back the Act's implementation and what it means for Ghana's development.

This article explores some of the creative provisions of the Act caught up with complications in putting plans into action. The writer concludes by tersely highlighting some measures that can be taken to unlock the potentials of the innovative provisions examined in the article.

## **Key Provisions of the Land Act Facing Hurdles**

The key provisions of the Land Act that have remained on paper due to implementation challenges include:

### *1. Customary Land Secretariats (Sections 14-18)*

The Land Act introduced the concept of Customary Land Secretariats where Stools, Skins, Families and Clans across the country are required to establish their own Secretariats to record customary land transactions relative to the customary entity.

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<sup>1</sup> See Ekua Eguakun, *Innovations under the Land Act 2020 (Act 1036)*, Modern Ghana (2020)

<sup>2</sup> The Land Act 2020 (Act 1036) was enacted on 23<sup>rd</sup> December, 2020.

<sup>3</sup> See Zaid Abubakari, Christine Richter & Jaap Zevenbergen, *Exploring the "Implementation Gap" in Land Registration: How it Happens that Ghana's Official Registry contains mainly Leaseholds*. Land Use Policy, Volume 78, November 2018, Pages 539-554.

<sup>4</sup> A. Bergen et al, *Implementation deficit' and 'street-level bureaucracy': Policy, Practice and Change in the Development of Community Nursing Issues*. Health Soc. Care Community (2005).

Since customary land constitutes about eighty percent of the entire land of Ghana,<sup>5</sup> the recording of these transactions will certainly go a long way to reduce land litigation in the country. The Secretariats were designed to support traditional authorities in formalizing customary land administration, enhancing record keeping, and fostering transparency in land transactions.

However, Assaga notes that in spite of the great expectations that supplanting customary land tenure system with western-styled statutory recording systems was envisaged to bring greater certainty in land rights and by extension economic development, the implementation outcomes have been disappointing.<sup>6</sup>

Colandef<sup>7</sup> reports indicate that prior to the inception of the Land Act, over 100 Customary Land Secretariats were in operation on a pilot basis across the country,<sup>8</sup> but it appears that is where the success story ends; not much has since been achieved.

In a study into their operations,<sup>9</sup> it unfolded that the acceptability of Customary Land Secretariats (CLS) among landowning groups in some parts of Ghana “*[r]emain limited largely due to the fear of some powerful local elites capitalizing on focal Customary Land Secretariat operations to usurp their land rights and that of future generations. Customary Land Secretariats are still grappling with several challenges including the inadequate staffing and logistics, delays in service delivery, perceived bias of some staff, proximity issues, and limited direct contact with the secretariat by clients.*”

Generally, the reasons for the slow rollout and suboptimal functioning of the CLSs stem from a variety of systemic and practical issues:

- i. **Inadequate Funding and Financial Sustainability:** The few CLSs that were established under the Land Administration Project (LAP) and are still in existence are not financially sustainable. They rely mainly on meager internally generated funds, making it difficult for them to pay the salaries of their staff and acquire simple logistics to maintain the office. The yet-to-be-established ones are confronted with issues of office acquisition and

<sup>5</sup> See Gideon A. Kusi, Fionena L. Adoree, E. Owusu-Afriyie & G. Fu, *Challenges and Perceptions of Land Acquisition in Accra, Ghana: Finding Ways to Make It Safer and Easier*. Journal of Humanities and Social Sciences Studies 4 (2):127-140, June 2020; Kuusaana E.D. & Eledi, J.A. (2015), *Customary Land Allocation, Urbanization and Land Use Planning in Ghana: Implications for Food Systems in Wa Municipality*. Land Use Policy, 48, 454-466 and Ubink, J.M. & Quan, J.F. (2008) *How to Combine Tradition and Modernity? Regulating Customary Land Management in Ghana*. Land Use Policy, 25 (2), 198-213.

<sup>6</sup> Festus A. Asaaga, *Building on ‘Traditional’ Land Dispute Resolution Mechanisms in Rural Ghana: Adaptive or Anachronistic?*”, Land 2021 Volume 10, Issue 2, 143.

<sup>7</sup> Colandef, *Customary Land Secretariats Gain Legal Recognition As Ghana Expands Customary Land Governance Framework*.

<sup>8</sup> Customary Land Secretariats were experimented during the first phase of the World Bank and Government of Ghana Partnership Land Administration Project (LAP).

<sup>9</sup> See Lankono, Forkuor and Asaaga, *Examining the Impact of Customary Land Secretariats on Decentralized Land Governance in Ghana: Evidence from Stakeholders in Northern Ghana*. Land Use Policy Volume 130, July 2023, 106665.

mobility constraints and looking at the number of families alone across the country, it seems like a near to impossible objective.

- ii. **Staff Shortage and Capacity Issues:** Finding qualified personnel with the requisite know-how to manage the Secretariats for all Stools, Skins, Clans and Families across the country equally seems a grandiose ambition.
- iii. **Absence of Standardized Procedures:** There are no clear, standardized operational procedures for the CLSs. What has accounted for this is the fact that customary law varies from community to community.<sup>10</sup> Every locality has its peculiar customary practices which create inconsistencies in their activities resulting in a clear disconnect in alignment of their rules with national standards.
- iv. **Lack of Co-operation and Low Patronage:** The lack of appreciation of the concept of CLS, coupled with the fear of traditional authorities losing their powers and the desire to hide unapproved transactions have caused some traditional leaders to refuse to cooperate or submit their land transactions to the recording processes.
- v. **Bureaucracy and Poor Co-ordination:** The absence of co-operation between CLS and state institutions such as Lands Commission or the Office of the Stool Lands Secretariat have hindered effective information flow and integrated land management.
- vi. **Chieftaincy Disputes:** Undeniably, some parts of the country are plagued with unending chieftaincy conflicts, which substantially impact on land ownership, and operate to hamper the establishment and smooth operation of CLSs.
- vii. **Boundary Disputes:** Traditional boundary features, such as prominent trees, streams, mountains, and other physical features are perceived as inaccurate, which fact the Supreme Court acknowledged in **Mrs. Vivian Aku-Brown Danquah v. Samuel Lanquaye Odartey**.<sup>11</sup> The attempt to use modern sophisticated tools to set land boundaries to ensure precision often tends to create conflicts, thereby affecting customary grants and transactions that are supposed to be recorded.

Overall, while the Land Act provides legal recognition and framework for Customary Land Secretariats to improve land governance, the numerous practical challenges have significantly hindered their effective widespread operationalization.

## 2. Accountability of Fiduciaries (Section 13)

For the first time in the history of Ghana, the Land Act sought to give effect to the provisions of Article 36 (8) of the 1992 Constitution which recognizes occupants of Stools, Skins and Heads of Families and Clans as fiduciaries and ushers them to

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<sup>10</sup> See Article 11 (1) (3) of the 1992 Constitution.

<sup>11</sup> Civil Appeal No. J4/4/2016, dated 29<sup>th</sup> June, 2016, S.C., Unreported, per Pwamang JSC.

the table of accountability. We may recall that the Head of Family Accountability Act, 1985 (P.N.D.C.L. 114) was the first enacted legislation to exact accountability from Heads of Families, but Stools, Skins and Clans were not affected.

Under section 13 of the Land Act, beyond the mandate given to the subjects of the Stool,<sup>12</sup> Skin, Clan or Family to demand accountability from their leaders who are recognized as fiduciaries, it has been made an offence for any fiduciary to fail to render an open, fair, transparent and impartial account.

While fiduciaries continue to dispose of communal lands without rendering proper accounts as required by law, the society appears to be indifferent to their defiance of the law. Hence, no major report has been made about the prosecution, conviction or sentence of any Chief or Head of Family for contravening the provision of the law, and this is somehow attributed to Ghana's social system which generally frowns on the subjects' demand for accountability from their Chiefs and customary leaders.<sup>13</sup> The law is unrelenting and does not appear weary of giving up any time soon. It seems rather to be bracing itself to hit harder on Stool leaders.

The Constitutional Review Committee is proposing the amendment of the 1992 Constitution to include a clause that will compel traditional authorities, among others, to submit annual reports to the Lands Commission on the receipt and utilization of stool land revenue. The Committee recommends that remedial action, including surcharge, recovery of misapplied funds and referral for prosecution be taken in respect of misuse and misapplication of stool land revenues.<sup>14</sup>

Essentially, a number of factors enumerated below have been identified as contributing to the delay in the implementation of the current provision on the accountability of fiduciaries in the Land Act:

- i. **Loss of Authority:** Some traditional authorities have registered their displeasure about the law.<sup>15</sup> According to an African proverb, *even the fastest zebra knows that the lion does not chase for fitness*. The traditional leaders believe that the provision is clearly evident that the State has concealed intentions to interfere with their traditional function, undermine their authority, and eventually take control over their lands.
- ii. **Lack of Political Will & Enforcement:** Effective implementation requires strong political will and coordinated efforts from stakeholders, including government institutions, to enforce the law. The anxiety of some politicians in power to ensure strict compliance of the law emanates from the fear that

<sup>12</sup> The Constitutional Review Committee at pages 54-55 of their report has recommended for the provisions of Article 267 (1) and 295 of the Constitution to be amended to replace "subjects of the stool" with "members of the stool community" or "members of the stool".

<sup>13</sup> See Abude v. Onano (1946) 12 W.A.C.A. 102; Ameko v. Amevor (1892) Sarbah, FCL 220; Pappoe v. Kweku (1924) FC '23-25' 158 and Nelson v. Nelson (1932) 1 W.A.C.A. 215.

<sup>14</sup> See page 53 of the Report.

<sup>15</sup> See for instance, City News Room report on December 17, 2021 by Fati Aminu Ibrahim captioned, *Land Act 2020: Chiefs Can't Be Forced To Be Accountable – Asantehene*.

traditional leaders may use their influence to cause disaffection for their political parties which can affect their political fortunes in future elections.

iii. **Lack of Clarity of the Provision:** There are also drafting challenges with the provision in establishing the offence, as the language of the law seems unclear.

### 3. *Criminalization of Land Guards (Section 12)*

Land guards' activities have been identified by some land experts as one of the biggest national security threats to the country, leading to an annual displacement of more than 2,000 people.<sup>16</sup> It is mostly prevalent in the Greater Accra Region.<sup>17</sup> As pointed out by one writer, the threat of violent land seizures by land guards dissuades individuals and businesses from buying and developing land, stalls economic progress, deters foreign investors who perceive Ghana as a risky investment destination, erodes trust in the legal system, and questions the government's capacity to protect its citizens.<sup>18</sup>

Darkwa and Attuquayefio<sup>19</sup> explain that land guard activities have become rampant "*[a]rguably due to the challenge of multiple sale of lands; long legal processes for the resolution of land conflicts by the courts; lack of faith in the police and court systems as a result of perceived corruption and bias; and weak law enforcement, which facilitates activities of gangs in the land industry.*"

The Land Act<sup>20</sup> makes it illegal to engage in land guards activities in Ghana.<sup>21</sup> The passage of the Land Act brought smiles to many Ghanaians who had high hopes that the criminalization of the business of land guards was going to make life unbearable for culprits and render the enterprise unpopular.

Unfortunately, the menace still persists and is even far more complicated than it used to be in the past. A recent report bemoans the increase of land guards' activities.<sup>22</sup> Some researchers<sup>23</sup> have explained that currently, some land guards present themselves as members of traditional Asafo groups and as the legitimate defenders of their communities and the communities' properties; while other groups style themselves as members of watchdog committees, due to the low number of

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<sup>16</sup> As reported by Emmanuel Ebo Hawkson of Graphic On Line on September 13, 2025 thus: *Land Guard Phenomenon Threat to National Security – Experts*.

<sup>17</sup> See Adusei Lord Aikins, *An Island of Peace in an Ocean of Turbulence? The case of Land Guards in Ghana*. SOAS University of London (2024).

<sup>18</sup> Wisdom K. Klu, *Features: Ministry of Lands should intervene in Land Guard Crisis*. The Chronicle (June 19, 2024).

<sup>19</sup> L. Darkwa & P. Attuquayefio, *Land Guards, State Subordination and Human Rights in Ghana*. SUR Journal Issue 17, December 2012.

<sup>20</sup> See also the Vigilantism And Related Offences Act, 2019 (Act 999).

<sup>21</sup> Persons found guilty may be sentenced to an imprisonment of terms ranging between 5 to 15 years.

<sup>22</sup> Emmanuel Ebo Hawkson, *Land Guard Phenomenon Threat to National Security*. September 13, 2025 (Graphiconline).

<sup>23</sup> See Darkwa and Attuquayefio *supra*.

police personnel as well as logistical limitations, some community members come together to provide community policing.

As at now, the law against land guards' operations seems to have gone on a holiday due to implementation challenges, and this has shattered the expectations of most Ghanaians.

Factors accounting for the delay in the implementation include:

- i. **Weak Law Enforcement:** Law enforcement agencies are ill-equipped in terms of logistics, personnel and surveillance technologies to combat land guards' activities effectively. Usually, their activities occur in remote or "bush" areas.
- ii. **Corruption & Political Interference:** The land guards often have corrupt powerful figures and politicians behind them who are able to use their influence to secure bail for those arrested and even "kill" cases, which undermine the legal process and public trust.
- iii. **Complex Fragmented Land Ownership:** Ghana's land tenure is a complex blend of customary and statutory land tenure systems. The customary system comprises the Stool, Skin, Clan and Family, and ascertaining their exact lands and the actual individuals vested with authority to alienate them, especially with the families, can sometimes be problematic. The weak structures have often led to multiple sales of the same parcels of land, and conflicting claims; necessitating the demand for informal strong arm 'protection' services.
- iv. **Slow and Costly Legal Processes:** The formal adjudicatory systems by the courts are often perceived as slow, bureaucratic, and expensive. This has caused people to resort to the services of land guards for quicker solutions to secure their lands with no regret that their activities are unlawful.
- v. **High Demand for Land Guard Services:** The perceived notion about ineffective state institutions have arguably contributed to the high demand for land guards' services. These notorious bunches of hooligans who often show up as 'private securities' or 'caretakers' take advantage of legal loopholes to integrate into the legitimate economy.
- vi. **Socio-economic Factors:** The land guards usually target and employ young unemployed men. Unemployment has compelled some young men who otherwise would not have accepted the "employment offer" to join the venture as a source of livelihood. According to an African proverb, *the stomach has no religion, it worships whoever feeds it.*
- vii. **Institutional Challenges:** There is a low rate of land registration.

#### 4. Communal Land Reserved for Common Use (Section 19)

Section 19 of the Land Act hinges on the principle of intergenerational equity, which enjoins the current generation to use land with the consciousness that it would be passed on to future generations in a state not worse than it had inherited it.

Accordingly, communities in alienating lands are to ensure that some areas within the community are reserved for the use of the members of the community. The reserved lands may be used for recreational purposes, community centres, sporting activities, parks, markets etc. Communities have been empowered to set up committees to manage the land.

Since the coming into force of the Land Act, the provision of section 19 has hardly come up for discussion, apart from it being mentioned only at land conferences and seminars. It may seem that not many Ghanaians have knowledge of it to even consider reserving the land.

Besides boundary disputes, indeterminate boundaries have created conflicts and litigations, making it difficult to set aside or register specific parcels of land for common use.

Finally, the high value of land, especially in urban and peri-urban areas like Accra, Tema, Prampram and Dodowa make land reservation difficult.

##### *5. Restriction Regarding the Disposal of Natural Resources (Sections 21 & 22)*

While the Land Act recognizes private and customary groups' interest in land, it explicitly states that the disposal of land by a customary entity does not go with the alienation of the interest in the natural resources in the land. Nevertheless, there are incessant reports in the media that people in "Galamsey" communities now dispose of their lands to "galamseyers" for huge monies, when in fact they do not own the gold and the natural resources in the land to be able to dispose of them.

The framework involving surface rights (owned by people) versus the State's interest in underlying resources is complex and can sometimes lead to conflicts.

Pressure is often mounted on the government by Ghanaians to end illegal mining, which has compelled the government to institute several measures to deal with it, but implementation of the law and the measures taken by the government have become a major challenge.

##### *6. Preparation of conveyances by Stools, Families, etc. (Section 33)*

Only lawyers are allowed by the law to prepare conveyances, since they are trained for that and are held accountable under professional rules and negligence principles for errors committed in their preparation.

Curiously, most conveyances prepared after 2020 are still done by persons other than lawyers. Most Stools, Skins Clans and Families prepare their own conveyances and that has been a source of conflict as the words used in the conveyances they prepare usually contain ambiguous clauses, undisclosed encumbrances, or an omission of the root of title. Similarly, traditional typewriters are also culprits.

To be able to ensure effective compliance with the law, it has been suggested that the Lands Commission be made to ensure that conveyances submitted for registration are endorsed by lawyers or a law firm before they are accepted for registration. Public sensitization of the provision is recommended. Historically, non-lawyers had been actively involved in drafting land transfer documents, and ending this entrenched practice now requires significant public education and strict enforcement.

As Dame Awoonor-Williams notes: “*Although Act 1036 has been in force for almost five years, some Ghanaians remain unaware of its provisions. Therefore, there is a need to educate individuals, corporate entities, customary authorities, and local authorities about the legal requirements for conveyancing in Ghana.*”<sup>24</sup>

## 7. Recording of Customary Grants (Section 37)

Customary law grants are not traditionally known for their writings or recording,<sup>25</sup> yet they have always been recognized as an overriding interest as an exception to the indefeasibility of title of registered lands.<sup>26</sup>

The Land Act has introduced the concept of recording customary grants by CLSs, but it seems that the inability of most Stools, Skins, Clans and Families to establish the Secretariats have rendered the recording of customary law grants a dead letter.

According to a study in Kumasi for instance, there are diverse perceptions about the relevance of land registration among majority of Ghanaians.<sup>27</sup> While the report indicates that some parcel owners do not have knowledge of the existence of a mandatory statutory customary land recording system, others are of the view that they are not necessary and that it is a mere waste of resources. The view was shared by some who presumed land that registration of land is relevant only when the title certificate is required for collateral to secure credit.<sup>28</sup>

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<sup>24</sup> See Dame Awoonor-Williams, *A Stitch in Time Saves the Land: Why Every Conveyance Needs A Lawyer*. B & FT Online, October 27, 2025.

<sup>25</sup> See *Brown v. Quarshigah* [2003-2004] 2 S.C.G.L. R. 930.

<sup>26</sup> See section 46 of the Land Title Registration Law, 1986 (PNDCL 152) and section 121 (2) (f) of the Land Act

<sup>27</sup> See E. Amponsah, F. Agyemang, A.A. Adade & O. Kwadwo, *Drivers of Customary Land Registration(Non) Compliance in Ghana*. Conference 30<sup>th</sup> Annual Pacific Rim Real Estate Society Conference At Gold Coast, Australia, 14<sup>th</sup> – 17<sup>th</sup> January, 2024.

<sup>28</sup> Op cit.

### *8. Requirement of Written Consent of Spouses in Property Alienations (Section 47)*

The Land Act generally presumes that property acquired in marriage is owned by the couple. Following that viewpoint, the law provides for the written consent of the other spouse in the alienation of property. It was thought that the provision of section 47 would aid in eliminating fraud by spouses and promote transparency in dealing with the jointly acquired property.

However, it has been argued that in the light of recent Supreme Court decisions such as **Adjei v. Adjei**,<sup>29</sup> **Ayishetu Abdul Kadiri v. Abdul Dwamenah**,<sup>30</sup> **Mrs. Abena Pokua v. Yaw Kwakye**<sup>31</sup> and **Sarpong v. Sarpong**<sup>32</sup>, it is not every property acquired during marriage that qualifies as ‘jointly-acquired property’. The high hopes of many Ghanaians, especially women, are beginning to dim as the law seems not to have “delivered on its promises” as had highly been anticipated.

### *9. Expansion of Towns or Settlements (Section 50 (21) & (22))*

When there is an expansion or settlement of a town or an area, the law permits the holder of the allodial title to take over a bare land or farmland in the possession of a usufruct. However, the person with the usufructuary interest in the land shall be entitled to 40% share of the land or be paid the equivalent percentage of the economic value of the land.

While the issue always created conflicts between the allodial owner and the usufruct, the incorporation of the provision in the Land Act was seen as fitting. Disappointingly, due to the lack of awareness of the law, it does not seem that much has been achieved in the last five years of the Act’s existence.

Definitional ambiguity of the word “expansion” requires some clarity. Determining when development officially qualifies for the allodial take-over can be contentious. In sum, there have been delays in the implementation of the provision of section 50 (21) and (22) due mainly to the complexities of modernizing land laws, balancing communal needs with individual rights, and the need for addressing long-standing land issues, rather than a single-block percentage figure.

### *10. Customary Consent Required in the execution of a conveyance by a Customary Entity (Section 68 (9))*

While an alienation of the land of a Stool or Skin, or Family or Clan is by the occupant of that Stool or Skin, or the Head of the Family or Clan with the consent

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<sup>29</sup> Civil Appeal No. J4/06/2021, dated 21<sup>st</sup> April, 2021, S.C., Unreported.

<sup>30</sup> Civil Appeal No. J4/36/2024, dated 12th March 2025, S.C., Unreported.

<sup>31</sup> Civil Appeal No. J4/17/2025, dated 9<sup>th</sup> July 2025, S.C., Unreported.

<sup>32</sup> Civil App. No. J4/77/2023, dated 17<sup>th</sup> December, 2025, S.C., per Ackaah- Boafo JSC.

of the principal elders or members of that customary entity, the Land Act requires all the people, whose consent is needed for such alienation, to execute the conveyance in order that it can be deemed valid.

It was anticipated that the law would bring about changes in the form in which conveyances are generally prepared in Ghana, but that does not appear to be so. Most conveyances prepared in contemporary times are no different from those prepared in the past where the consent of the relevant persons was only stated as having been obtained, without them necessarily executing the conveyance as required by the current law. It is hoped that solicitors who draft conveyances would begin to make some effort to abide by the law.

#### 11. *Electronic Conveyancing (Section 71-79)*

The introduction of electronic conveyancing into land administration and management framework in Ghana is a positive concept. While a lot of noise has been made about it, action has been deferred. Section 79 mandates the Minister of Lands to come out with a legislative instrument (L.I.) to regulate it. The L.I. is yet to be passed after five years of the Act's existence.

#### 12. *Creation of Registration Districts (Section 89)*

The concept of the creation of registration districts in Ghana by the Minister of Lands was first introduced into Ghanaian land jurisprudence by the Land Title Registration Law, 1986 (P.N.D.C.L. 152), with the view to replacing Deeds Registration under the Land Registry Act, 1962 (Act 122) after the latter had been found to be ineffective and incapable of assuring proprietors of land, a state-guaranteed title.

At the time the Land Act came into force, only the Greater Accra Region and some parts of Kumasi and Kasoa in the Ashanti and Central regions respectively had been declared as registration districts. Expectations were high when the Land Act was passed. Many were optimistic that it was going to catapult the rest of Ghana into registration districts for landowners across the country to be able to register their titles and interests in land.

Five years of the Act's existence have passed without a single addition to the prevailing registration districts, which is unacceptable. The prolonged delay in the declaration of registration districts for the purpose of title registration throughout the country, as I pointed out in an earlier publication, has progressively widened the gates for land disputes as deeds registration has had the latitude of registering multiple instruments relating to the same parcel of land.

### 13. *Change of Persons Authorized to Make Customary Grants (Section 183)*

Since customary entities such as Stools and Skins are corporate sole,<sup>33</sup> their occupants who alienate lands on their behalf do so as agents.<sup>34</sup> The demise, abdication or removal of persons entitled to alienate the land does not affect prior dispositions. This had, for more than half of a century, been established firmly by case law.

Yet, whenever there was a change in the office of the occupants of the Stool or Skin, the new occupant often failed to recognize the prior grants by either demanding a new compensation or alienating the same land to a different person. This made grantees of such lands feel insecure and shortchanged. Under section 183 of the Land Act, a change of the person authorized to make a grant of land on behalf of a customary entity shall not affect a prior grant. An intervention by the lawmaker through the Land Act to stop the practice was thus in order.

It may seem that, notwithstanding the statutory intervention, the practice continues unabated. The reality is that, not many Ghanaians are aware of the provision of the law. Sadly, those abreast of the provision do not feel obliged to obey it. What has accounted for that is the fact that the lawmaker did not provide any corresponding punishment for those who contravene the provision.

Despite the fact that we seem not to be making any progress in that regard, the solution does not lie in giving up but tightening the screws to make the law work. According to an ancient philosopher, Sun Tzu, *a foolish man complains about a torn pocket while a wise man uses it to scratch his balls*. While sustained sensitization about the provision of the law is required to achieve the intended objectives, future reforms of the law should target the inclusion of sanctions for the non-compliance of the provision.

### 14. *Lands Commission Statement of Case to the High Court (Section 203)*

The lawmaker recognized that the Lands Commission, in the performance of its onerous duties under the law, would, from time to time, face challenges concerning instruments lodged with it for registration. It therefore provided under section 203 of the Land Act that in situations like that, the Lands Commission can state a case for the determination by the High Court.

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<sup>33</sup> Amankwah v. Kyere [1963] 1 G.L.R. 409; Quarm v. Yankah II [1930] 1 W.A.C.A. 80 at p. 83 & Aduana Royal Stool of Bibiana v. Isaac Oteng Krah [2014] 69 G.M.J. 20 at p. 28, C.A.

<sup>34</sup> Republic v. Lands Commission; Ex Parte Vanderpuye Orgle Estates Ltd. [1998-99] S.C.G.L.R. 677 & Ababio v. Tutu [1962] 1 G.L.R. 489.

Unfortunately, the Commission has not taken advantage of the provision to state cases in respect of instruments submitted for registration or any other question of law for determination by the High Court.

We realize that in recent times, the courts have ordered quite a number of registered titles to be cancelled for various reasons, as underscored by the Supreme Court in the case of **Suberu v. Davidson & 13 Ors.**<sup>35</sup> Perhaps, if the Lands Commission had consistently sought the High Court's interpretation via section 203 of the Land Act on dubious instruments on those occasions, the cancellation of title registration by the courts would likely have dropped significantly.

15. *De-Vesting of Stool and Skin Lands (Section 268 -270)*

The Land Act has proscribed the vesting of a Stool, Skin, Family or Clan's land in the State. Lands that were vested prior to the coming into force of the 1992 Constitution are to be de-vested.

**Section 270 of the Land Act** provides:

***“De-vesting of vested lands***

**270 (1) The President shall, on the recommendations of the Lands Commission, authorize the de-vesting of any land which prior to the coming into force of the Constitution was vested in the President by any law.**

**(2) Within six months of the coming into force of this Act, the Lands Commission shall begin the process of evaluating all existing vested lands with the view to recommending to the President, the de-vesting of those lands.**

**(3) The de-vesting of land shall be by Executive Instrument published in the Gazette.**

**(4) Subject to accrued and reserved rights, the publication shall, without further assurance, de-vest the affected land.”**

Per the provision supra, the President is mandated to de-vest lands that were vested in the State prior to the coming into force of the Constitution to the original owners. Six months upon the coming into force of the Land Act, the Lands Commission was tasked to begin the process of evaluating all existing vested lands for the purpose of recommending to the President the de-vesting of those lands. The specific time of six months given to the Commission to commence the process attests to the urgency in which the lawmaker attached to the whole process.

Regrettably, the anticipated Executive Instrument to be published by the President to de-vest the concerned lands is yet to come to fruition after five years. Obviously,

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<sup>35</sup> Civil App. No. J4/28/2021, dated 10<sup>th</sup> May, 2023, S.C., Unreported.

the affected landowners who joyfully welcomed the Land Act upon its passage because of the provision may have started losing hope for the delay in the publication of the Executive Instrument for the de-vesting.

We are however aware that in accordance with section 270 of the Land Act, the Lands Commission in June 2021 established a Committee, chaired by Ms. Mabel H. Yemidi, the Director of the Public and Vested Lands Management Division of the Lands Commission,<sup>36</sup> to evaluate the status of vested lands, collate the views of the pre-existing owners and make recommendations to the President.<sup>37</sup>

Following the completion of the exercise, the Minister inaugurated the De-vesting Lands Review Committee on February 23, 2022, chaired by Hon. Andy Kwame Appiah-Kubi, the then Member of Parliament for the Asante-Akim North Constituency, to review the work by the Lands Commission committee. The Review Committee comprised of distinguished personalities such as Kunbun-Naa Alhaji Iddrisu II, representing the National House of Chiefs, Dr. Wordsworth Odame-Larbi, representing the Ghana Institute of Surveyors, Mr. Dennis Adjei-Dwomoh, representing the Ghana Bar Association, and Mr. Maxwell Adu-Nsafoa, the Technical Director for Lands at the Ministry of Lands and Natural Resources.

In the course of its work, we are told that the Committee engaged chiefs and pre-acquisition owners whose lands had been vested in the State. In May, 2024, the Committee presented its report to the Minister of Lands and recommended that “*all other vested lands be de-vested back to the pre-acquisition owners.*”<sup>38</sup>

Upon receipt of the report, the Minister assured Ghanaians that he would study it and make the necessary recommendations to the President, noting: “*In the not-too-distant future, the long-standing issue of vested lands will be dealt with once and for all.*”

Despite the assurance by the Minister, the promised dawn of yesterday’s “not-too-long distant future”, after twenty months of “endless night”, has suddenly become the Reality of Neverland.

It is fair however to say that the implementation of the provision of the law has delayed due to various reasons, prominent among them are; -

- a. **Complex Review Process:** The Minister of Lands has had to establish a series of committees to thoroughly examine all existing vested lands across the country. These involved extensive stakeholder engagements and visits.

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<sup>36</sup> See GNA Report, *Committee Recommends De-vesting of Lands to Pre-acquisition Owners*, dated 8<sup>th</sup> May, 2024.

<sup>37</sup> The Committee recommends de-vesting of lands to pre-acquisition owners in Ghana. Modern Ghana, 6<sup>th</sup> May 2024.

<sup>38</sup> T. Ngnenbe & A.O. Agbeko, *Govt Advances Processes for De-vesting Public Lands*. Ghana Online, May 7, 2024.

- b. **Auditing and Verification:** The government undertook a comprehensive audit on all state lands to ascertain their current use, location, size, and value, and to identify any illegal or improper transactions. This meticulous process is essential to ensure fairness and prevent further litigation but that has also added to the prolongation of timelines.
- c. **Administrative and Bureaucratic Issues:** General institutional bureaucratic challenges within the land administration system, such as delays in processing documents and a lack of readily-available information on public lands, have contributed to overall implementation gaps.
- d. **Political will and Coordination:** Infiltration of politics into administrative processes has similarly accounted for the implementation gaps in centralized land governance structures.

## Conclusion

The slow implementation of the innovative provisions of the Land Act indubitably has dire consequences for land security, national security and the economy as a whole. Just as the “national bus” remains stationary with its gears stuck, Ghana’s economy will stay neutral unless the implementation hurdles of the Land Act are addressed. If we make a conscious effort to resolve the challenges, the country’s economic engine can shift gears and rev up growth and development.

Effective implementation of the provisions examined in this paper is crucial to unlocking the Act’s transformative potential. Although most of the innovative provisions have gathered dust due to their implementation hurdles, hindering the sector’s prospects for growth and development, it is never too late; we can still be optimistic, especially when the Legislative Instrument to give effect to the provisions of the Act is nearing completion.

Nevertheless, we must recognize that effective implementation hinges on more than just regulatory frameworks. It requires addressing systemic bottlenecks, capacity constraints, sustained public awareness campaigns, investment in infrastructure, political will, adoption of technology, and stakeholder engagement to translate the innovative ideas into tangible outcomes.

By addressing the numerous challenges and leveraging strategies for success, Ghana can bridge the gap between policy and practice, ensuring secure land rights, streamlined processes, and sustainable development. The stakes are high, but with concerted effort, the Land Act can become a game-changer for Ghana’s land governance.