



TRAINING OF TRAINERS MANUAL ON LAND AND TREE TENURE

IMPROVING TENURE SECURITY FOR SUSTAINABLE COCOA
ACTIVITY IN GHANA

TENURE AND GLOBAL CLIMATE CHANGE (TGCC) PROGRAM



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Cover Photo: Winrock International and ECOM team preparing for field work in Nyame Nnae, Ghana

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ACRONYMS AND ABBREVIATIONS

AGL	AgroEcom Ghana Ltd
Cocobod	Ghana Cocoa Board
ECOM	Ecom Agroindustrial Corp
LAP	Land Administration Project
TGCC	Tenure and Global Climate Change
WI	Winrock International

I.0 MODULE I – INTRODUCTORY MODULE

A study entitled *Land and Natural Resource Governance and Tenure for Enabling Sustainable Cocoa Cultivation in Ghana* was completed in 2016 by the US Agency for International Development-funded Tenure and Global Climate Change (TGCC) program in collaboration with Hershey’s, AgroEcom Ghana Ltd (AGL), and EcomAgro Industrial Corp (ECOM) to advance a better understanding of the intricate challenge of deforestation around smallholder cocoa farming in Ghana. The study led to the approval of the implementation of the Improving Tenure Security to Support Sustainable Cocoa project.

As part of the implementation plan, Winrock International (WI) will provide a “training of trainers” course for motivated AGL field staff on land and tree tenure as knowledge-sharing to help ensure dissemination of messages and retention of knowledge within AGL agents.

I.1 THE BIG PICTURE

Cocoa is a critically important commodity for Ghana at national, regional, and local levels. It provides significant economic benefits that include jobs, improved livelihoods, tax revenue, and foreign exchange earnings. However, a main source of greenhouse gases in Ghana that cause climate change is deforestation and degradation of forests (forest degradation is cutting some trees, but not clearing the forest completely).

There are many reasons why forests are being cut and damaged in Ghana, including illegal small-scale mining (galamsay) and clearing forest for crops. One of those crops is cocoa – which accounts for over a quarter (27%) of deforestation in the high forest zone. The government, along with many companies, has pledged to reduce forest loss in Ghana, focusing on reducing the impact of cocoa on forests and producing cocoa more sustainably.

The government is taking a number of steps:

- Pledging to reduce greenhouse gas emissions by 45% from the high forest zone where cocoa is grown;
- Participating in a number of donor funded programs:
 - Ghana Cocoa Forest REDD+ Programme: flagship program led by the Forestry Commission to reduce emissions in the high forest zone. Under the program, the government will sell emission reductions to a group of donor countries through the World Bank;
 - Forest Investment Programme: donor-funded program managed by the World Bank to help protect forests;
 - Environmental Sustainability Project;
 - Cocoa Rehabilitation and Intensification Project; and,
- Working with Ghana Cocoa Board (Cocobod) and others on new Climate-Smart Cocoa Standards.

Companies are also taking steps in collaboration with government and donors. Over a dozen leading cocoa companies (including ECOM, Hershey's, Olam, Nestle, Cargill, Mars, Touton, and others) have pledged to end deforestation and forest degradation in the cocoa supply chain, with an initial focus on Ghana and Côte d'Ivoire.

At the same time as this push for sustainable cocoa production, cocoa yields in Ghana are lower than in Côte d'Ivoire and other countries, and Cocobod is pushing to increase cocoa output. In 2016, Cocobod announced plans to more than double cocoa output to 1.6 million tons by 2026. In the past cocoa output increased by clearing more forest and planting more cocoa. But the forests are running out and clearing forest contradicts government and company pledges to reduce deforestation. The only way to meet these two potentially opposing objectives is to replant and rehabilitate unproductive or low yielding farms with higher yielding varieties and work with communities not to expand production into remaining forest.

This is easier said than done: in practice a mix of barriers create disincentives that make replanting cocoa farms difficult. Insecure customary land tenure prevents many farmers from cutting and replanting old farms due to fear of eviction once the farm is cleared. Unclear tenure of shade trees results in removal of these trees, which reduces carbon stocks, biodiversity, and the productive life of cocoa trees (though yields are boosted in the short term). These tenure barriers are compounded by a lack of access to financing to clear and replant old farms, and lack of knowledge on best practices for replanting and establishing agroforestry systems.

1.1.1 Land and Tree Rights and Cocoa Farm Rehabilitation

Presently, smallholder farms in Ghana are stuck in an inefficient deadlock of contestation around ambiguous land and tree tenure terms that encourage farmers to keep unproductive cocoa farms in use. Unblocking this deadlock would help create a conducive atmosphere for farmers, landowners, and customary and statutory authorities to mediate and negotiate standard terms for existing land contracts to both improve productivity over the long term as well as reduce deforestation. Tenure reform is urgently needed that improves coordination between customary and statutory structures, reduces conflict between landowners and farmers, clarifies and documents rights in different contractual arrangements to strengthen tenure security, transfers rights over timber trees to landowning groups, channels payments from revenue-sharing schemes to cocoa farmers, and assists smallholders with cocoa rehabilitation to increase land use value.

This manual provides fundamental information and broad discussions of relevant issues that a field officer needs in order to educate or appropriately relate to cocoa farmers in the rehabilitation of cocoa farms.

1.1.2 Objective of the Training

The overall objective of this training manual is designed to equip AGL/ECOM field staff with operational knowledge and understanding of key tenets of the regime of land and tree tenures in Ghana and the extent of their impacts on smallholder cocoa farming operations. It is in fulfillment of Activity 2a of the *Improving Tenure Security to Support Sustainable Cocoa – Implementation Plan*.

1.2 LEARNING OUTCOMES

It is expected that at the end of the training, trainees will:

- Appreciate the big picture of the need innovate to break the links between climate change, deforestation, and cocoa production and Ghana;
- Gain basic understanding of the dual land tenure regime in Ghana;

- Be able to distinguish between statutory land rights and customary land rights;
- Appreciate that land agreements encountered in cocoa production are firmly grounded in customary law and are perfectly legal;
- Understand that currently customary land rights underpinning cocoa production, though legal, are not supported by the land documentation/registration bureaucracy;
- Understand the components of tree tenure;
- Appreciate the extent to which existing tree tenure presents disincentives to landowners and farmers in Ghana; and,
- Have a working knowledge of policy proposals geared for addressing deficiencies in existing tree tenure arrangements.

1.2.1 Approach to Training

The training will comprise both classroom and field based practical work. The venue of the classroom training will be at Asankrangwa. The field-based practical work will be organized in the pilot community of Nyame Nnae. The training will focus on customary land tenure relationships, tree tenure, and their interplay with cocoa farming operations. On Day 1, a presentation on four modules (as detailed in Section 1.2.4 below) will be made. The presentations would be interlaced with role plays that demonstrate tensions and conflicting interests of elders and indigene landowners against stranger farmers and tenants, as well as against youth and women's interests.

Day 2 would be in the community. A real-life community engagement meeting as part of project activities to identify norms to develop land and tree agreement templates would be scheduled to coincide with the training. In this meeting, trainees would observe how issues and tools discussed in Day 1 are utilized by field staff to engage and tease out land and tree rights information from the community. Trainees would be expected to keep notes and make a presentation for discussion on their observations at a final session back in the classroom to close Day 2.

1.2.2 Content of the Modules

The manual is made up of four modules:

- Module 1 is the introductory module which set the scene of the big picture;
- Module 2 deals with land rights and agreements in cocoa farming and sets them in the context of land tenure regime in Ghana and options available for documentation and registration;
- Module 3 covers tree tenure; it discusses the current policy on tree tenure and explores policy changes that are currently being proposed; and,
- Module 4 ties the three modules together in PowerPoint scenarios.

2.0 MODULE 2 – TYPICAL LAND RIGHTS AND AGREEMENTS IN COCOA FARMING IN THE CONTEXT OF LAND RIGHTS IN GHANA

2.1 LEARNING OUTCOMES

This module explores typical land rights encountered in cocoa growing areas and set them in the context of land rights regime in Ghana. At the end of the module, trainees should:

- Have a basic understanding of the dual land tenure regime in Ghana;
- Be able to distinguish between statutory land rights and customary land rights;
- Appreciate that land agreements encountered in cocoa production are firmly grounded in customary law and are perfectly legal; and,
- Understand that currently customary land rights underpinning cocoa production, though legal, are not supported by the land documentation/registration bureaucracy.

2.1.1 Definitions

It is appropriate to commence a discussion of land rights and land agreements by defining land tenure systems from which land rights derive. Broadly defined, a land tenure system comprises both formal and informal laws, rules, norms, and intuitions that govern and regulate land ownership and land relationships among citizens of a country or a community. The land tenure system therefore provides the conditions under which land is occupied, exchanged, inherited, and utilized to support economic and social activities. The power or authority that an individual, group of individuals, the state, or any economic entity (such as a company) may have to enable them do anything on land is derived from the land tenure system. These powers or authorities are described (in legal language) as rights over land. Hence we talk of land rights of cocoa farmers. Ownership of land tends to be, in fact, ownership of a whole “bundle” of rights that allows the owner the power and authority to manage, take proceeds from, or prevent others from the use of that land, for example. We talk of control rights, management rights, and use rights. In practice, we come across circumstances where different sets of people may own the control rights, say, while other people own the use rights. The land tenure system helps to provide the space within which land agreements and land contracts can be reached that allow ownership of rights to be so partitioned among different set of groups or entities, as for example, for indigenes to own some rights over land at the same time as stranger farmers own the right to farm the land. We discuss how these agreements operate in practice in cocoa farming in later in this manual. In the following section we explain the particular nature of the land tenure system in Ghana.

2.2 DUAL LAND TENURE REGIME IN GHANA

In Ghana land rights are governed by two sets of laws and rules: (i) statutory laws inherited from the British and (ii) customary rules and norms regulating land relations. Formally, therefore, Ghana is said to operate a dual land tenure regime: statutory and customary. The 1992 Constitution of Ghana and various Acts of Parliament provide legal backing to the dual regime. Articles 36(8) and 267(1) of the Constitution makes provisions for vesting customary lands in communities and empowering their respective managers as fiduciary trustees of the lands. Beside the Constitution, relevant Acts of Parliament that govern land tenure include:

- (a) Administration of Lands Act, 1962 (Act 123);
- (b) State Lands Act, 1962 (Act 125);
- (c) Land Registry Act, 1962 (Act 122);
- (d) The Conveyancing Decree, 1973 (NRCD 175); and,
- (e) Land Title Registration Act, 1986 (PNDCL 152).

In practice, at the transactional level, there arises a “marriage” between customary and statutory land rights when, for example, stools who hold customary rights to land grant formal statutory leases to land purchasers. Ongoing reform work under the Land Administration Project (LAP), funded by the World Bank, is hoping to consolidate all the pieces of legislation relating to land tenure in Ghana into one act to ensure ease of reference and efficiency of land rights regulation and administration.

2.3 STATUTORY LAND RIGHTS

Statutory land rights are rights over land granted under formal laws of the country. Most of the laws trace their origin from English property law with strict rules regarding the need for contracts to be in writing and signed by parties. Rights to urban land parcels for residential, industrial, and commercial uses are typically held under statutory land rights created by stools or families whose rights over the lands originate from customary laws (an example of the marriage between statutory and customary land rights in Ghana). Some statutory rights over land are created by government who uses compulsory acquisition (eminent domain) laws to convert lands from customary into the statutory category. Rights over all lands described as government lands are therefore statutory rights.

From these two sources – stools and government – formal statutory rights over lands such as freehold, leasehold, and license, from which lesser interests like mortgages, pledges, and liens, may be created.

In Ghana it would be highly unusual to encounter any smallholder farmers whose rights to land for their farms are statutory. For cocoa farmers and, by implication, any interventions to rehabilitate old cocoa farms to increase productivity, an understanding of the dynamics of customary land rights are crucial. The next section provides a glimpse of the main tenets of customary land rights.

2.4 CUSTOMARY LAND RIGHTS

It is safe to state that all cocoa farmers within Nyame Nnae, the pilot area for the TGCC project, hold their lands under customary rules and norms that operate under the Asankrangwa stool. Customary land rights originate from dynamic land rules and norms, rooted in custom, that have evolved to suit the particular circumstances of land use as well as land demand and supply conditions prevailing in traditional communities. Customary land agreements and contracts are typically undocumented. Even when written up, the documentation does not tend to meet the strict requirements of statutory laws. All the same, legal recognition of such oral grants of customary lands is provided by the Conveyancing Decree of

1973, NRCDI75 which exempts them from the need to be in writing (S3[1][h]). The Decree further suggests a framework for local level cost-effective recording of these transactions (S4&5) though (perversely) that aspect of the law has never been effectively activated. Further discussion of the implications of this bureaucratic inertia can be found below. The following customary rights over land are encountered in Nyame Nnae.

2.4.1 Allodial Title

This is the highest form of customary interest in land; it is vested in stools, skins, clans, or families who hold land in trust for members of their community. In Nyame Nnae the allodial title is held by the Asankrangwa Stool. It is from the allodial title that all other customary land rights derive. The allodial title may enter into customary tenancy agreements with non-indigene strangers, but only if the land is not yet “carved” out or allocated to a usufruct title as explained below.

2.4.2 Usufruct (Abusa Land)

The usufruct (also referred to in some donor literature as customary freehold) is created through customary rules that entitle every indigene or sub-group of an allodial community the right to work any common lands hitherto not worked by other indigenes. The local reference to these rights is *abusa asaase* (lands owned by the extended family). Perpetual “private” usufruct rights (that exclude other indigenes) are gained by a person or family over the portion of the common lands so worked. Lands once worked remain private within the usufruct family or clan and may be left fallow for years without loss of usufruct rights. Much of the usufruct rights across rural Ghana have been gained in this manner. We encounter usufruct land holders in Nyame Nnae in the form of indigenous Wassa landowners. Usufruct rights are perpetual; holders may sell, lease, or mortgage their rights. Of particular relevance to cocoa cultivation, usufructs may enter into customary tenancies and other land contracts and agreements with non-indigenes (strangers) without recourse to the allodial titleholder. In Nyame Nnae we encounter indigenous Wassa landowners who have granted *abunu* (explained below) to stranger farmers on their own terms without recourse to the Asankrangwa Stool. However, holders must recognize the superior ownership of the stool and, in some cases, may provide services to the stool when necessary. Only indigenes can hold usufruct title. In rare occasions the allodial title holder may grant usufruct rights to an individual or group, provided that such lands have not been earlier carved out and held under usufruct by any indigenous person or family. As if to demonstrate the dynamic nature of customary land rights, in Nyame Nnae, we encounter a version of perpetual customary rights to land (*asideε*) that have been granted by the Asankrangwa Stool to non-indigenes. These are the non-indigene landowners. This group also enters into *abunu* land agreements with stranger farmers.

2.4.3 Customary Tenancies and/or Land Agreements.

Customary agreements are erroneously generalized in contemporary literature as sharecropping agreements, misinterpreting the Akan words *abunu* (half share) and *abusa* (a third share) which are used to describe them. *Abunu* and *abusa* are generally used in the rural land economy to describe a whole array of customary land agreements that range from true sharecropping arrangements to land agreements that “create property in land” for the tenant or stranger farmer.

2.4.3.1 Abunu

These agreements are widespread in Nyame Nnae and dominate land agreements underpinning smallholder cocoa farming. Under a commonly observed *abunu* contract in cocoa production, a usufruct holder (indigene landowner) or non-indigene landowner enters into an agreement with a stranger farmer to work the forest and bring the entire farm to maturity. Once the farm matures, it is divided in half between the stranger farmer and the landowner. From this stage onwards, stranger farmers gain all the land rights over their portion of the farm and do not pay any rents or render any service to the

landowner. It is therefore erroneous to describe the relationship that results from *abunu* contracts as landlord and tenant relationship as some of the literature confusedly do. Through this arrangement, the stranger farmer gains exclusive and nearly perpetual rights over his/her portion of the cocoa farm, subject to the condition that the land must remain in cocoa production. Landowners maintain in Nyame Nnae that the above condition implies that once land is cleared, the landowner has the right to reclaim the stranger farmer's land back. As would be expected, stranger farmers widely disagree on the validity of this claim.

2.4.3.2 Abusa

Under *abusa* (a third share), a landowner establishes a farm, and the sharecropper is brought in with the responsibility for farm maintenance. The sharecropper keeps one-third of the crop proceeds, the landowner keeps one-third, and the last one-third is used to finance inputs. There are variants of this to be encountered in Nyame Nnae, the sharing terms of which vary in proportion to the contribution of resources and effort to the farm operation by the various parties. Some *abusa* stranger farmers may gain some land rights, while others may be pure caretakers who have no land rights and simply get paid with a portion of the proceeds.

2.4.3.3 Caretakers

Caretakers are hired once a farm is established and their labor is paid for with a portion of the crop. The caretaker has no ownership rights over the land or farm and can be terminated at will.

Land acquisition through the above tenures is not mutually exclusive. An indigene short of land may enter into *abunu* or *abusa* arrangements to farm additional parcels of land beyond the usufruct rights they hold a practice that is more prevalent as land shortages increase. How land rights and land transactions are documented or registered in Ghana is discussed below as a conclusion to this module.

2.5 DOCUMENTATION OF LAND RIGHTS AND LAND TRANSACTIONS

Considering that land cannot be physically moved about – it has to be owned, exchanged, and used *in situ* – effective land tenure systems contain institutions backed by law to provide the service of documenting and keeping records of land ownership and land transactions. We generally refer to this as the framework for land documentation and registration. Records in the register provide definitive proof of ownership of land rights and this may be relied upon to conduct land based transactions. When the land registration framework is effectual, citizens can easily ascertain who owns which rights over land without much dispute. It enables people to enter into agreements to use land, inherit or exchange land rights relatively smoothly. It adds or contributes to security of title. And it helps to open avenues for channeling financial capital to expand or improve land based economic activities like cocoa farming. Indeed the effectiveness and efficiency at which the land documentation and registration system operates go a long way to determining the level of efficiency at which land can be used to support economic activities, like cocoa farming or the provision of social amenities. We consider the land documentation and registration system in Ghana and the extent to which it supports cocoa farming below.

2.5.1 Land Rights Documentation and Registration in Ghana.

The Lands Commission is the institution legally tasked to provide the services of documentation and registration of land ownership and land transactions in Ghana. It is comprised of:

- The Public and Vested Land Management Division;

- The Surveying and Mapping Division (formerly the Survey Department);
- The Lands Valuation Division (formerly the Land Valuation Board); and
- The Land Documentation and Registration Division (formerly the Deeds Registry and The Land Title Registry).

The Land Documentation and Registration Division of the Lands Commission is the division responsible for the documentation and registration of land ownership and land transactions. To understand how its operations affect smallholder farmers, recall what we stated above, that the land tenure system in Ghana is described as a dual tenure system made up of statutory rights on the one hand and customary rights on the other. When it comes to documentation and registration of rights, the dual tenure system exerts its influence. The service offered by the Land Commission for the registration of land agreements or contracts is different depending on whether one holds statutory rights or customary rights.

2.5.1.1 Documentation and Registration of Statutory Land Rights

Registration of statutory land rights is provided for under existing statutory laws (Land Registry Act, 1962 (Act 122) and the Land Title Registration Act, 1986 (PNDCL 152)) and should be straightforward in principle. In practice, the framework provided is somewhat fraught with delays that result from cumbersome procedures and bureaucratic inefficiencies inherent in the operation of the Lands Commission. The World Bank-funded LAP has been ongoing in the country for the past 13+ years or so to streamline land administration and ensure efficient documentation and registration of land ownership and land transactions.

2.5.1.2 Documentation and Registration of Customary Land Rights

When it comes to documentation and registration of customary land rights, the Land Commission does not provide workable frameworks to register land rights exactly as they operate in practice. This is the case in spite of the fact that The Conveyancing Decree of 1973 (NRCD 175) proposes a framework for local level cost-effective recording of customary land ownership and oral transactions originating from them. Currently, The Lands Commission insists that owners of customary rights convert their rights to statutory before they can be registered. Holders of usufructs or *abunu* rights, for example, may only have their interests registered if they are prepared for the documentation to convert their rights to statutory leases of 99 or 50 years, attach a survey plan prepared to a standard dictated by the Survey Division of the Lands Commission and signed by the stool, the allodial holder. Besides being forced to convert their land rights, the cost of complying with standards of registration may be far beyond the budget of most farmers. The truth is, the current arrangements in land administration in Ghana do not offer any viable and practical avenues for cocoa farmers to register their customary land rights. Though under the LAP, customary land secretariats were to be established to fill this gap, the absence of a clear funding mechanism as well as the ad hoc and unsystematic approach adopted by the Ministry to establishing them have undermined their chances of success. One of the objectives of the Improving Tenure Security to Support Sustainable Cocoa project for which this training curricula is developed is to investigate avenues for documentation and lodging for customary land rights of cocoa farmers in order to contribute to security of land tenure and improvement in farm productivity.

3.0 MODULE 3 – TREE RIGHTS AND TENURE

3.1 BACKGROUND

Akin to land tenure systems (discussed in Module 2), tree tenure systems are made up of the norms, rules, laws, and institutional arrangements that combine to help determine how the bundle of ownership and usage rights over trees are assigned in a given country or community. Tree tenure is the bundle of ownership and usage rights over trees and tree products, each of which may be held by different people at different times. The diverse bundle of rights relating to trees includes: a) right to plant trees; b) right to own or inherit trees which controls management and use rights; c) right to use trees and tree products which include the right to gather (dead branches, barks etc.), to use standing trees, to cut all or part of the tree, to harvest tree products, and to use products under or inside the trees (e.g. roots); and, d) right to dispose of trees which includes the right to destroy, to lend the use of the tree, to lease, mortgage, or pledge, and to give away or sell trees.

3.1.1 Relevance of Tree Tenure to the Cocoa Farmer

As we know cocoa is a forest tree and cocoa farms thrive in forest environments. A principal component of cocoa farming best practices has therefore been the planting of shade trees in cocoa farms. Traditionally, cocoa farmers have also maintained naturally occurring trees as shade trees on their farms. Under the bush fallow system of land management adopted in farming communities in Ghana, landowners always reserve portions of their lands to grow back to secondary forests in order to regain lost fertility. Such regenerated forests may contain naturally occurring valuable trees that could be a source of income to the landowner if the right to exploit those trees was properly assigned to them. Thus, though farmers' and landowners' principal interest lie with cocoa production, it is easy to see how laws and institutional arrangements regarding ownership rights of these shade trees – tree tenure system – creates incentives (or disincentives) for maintaining trees on their farms.

This module explores the current tree tenure arrangements in Ghana. It examines the extent to which existing policy and practice create disincentives for farmers and land owners. Ongoing policy reforms to address the inherent disincentives are then discussed. The module concludes with implications for farmers of new policy proposals.

3.1.2 Learning Outcomes

After completing this module the trainee is expected to:

- Understand the components of tree tenure;
- Appreciate the extent to which existing tree tenure presents disincentives to landowners and farmers in Ghana; and,
- Have a working knowledge of policy proposals geared for addressing deficiencies in existing tree tenure arrangements.

3.2 CURRENT POLICY AND PRACTICE ON TREE TENURE IN GHANA

Existing tree tenure and governance in Ghana derives from legislation and numerous policies molded in accordance with the country's customary and statutory laws or dependent on the status or category of the forest. Current policy supports a multiplicity of rights, interests, entitlements, and beliefs in land and forest resources. However, ownership of land does not necessarily translate into ownership of the naturally occurring resources the land holds.

The main operating tree tenure statutes and policies are:

- a) 1948 Forestry Policy;
- b) 1962 Concessions Act;
- c) 1992 Convention on Biological Diversity (International Law); and
- d) 1994 Forest and Wildlife Policy.

From these emerge four major categories of arrangements dependent on whether a tree is naturally occurring or planted and whether it is within a formally designated forest or outside the reserve. Hence the following categorization for sharing benefits from trees:

1. Naturally occurring trees on gazetted or forest reserves (trees on-reserve);
2. Naturally occurring trees off forest reserves (trees off-reserve);
3. Planted trees on forest reserves (planted trees on-reserve); and,
4. Planted trees off forest reserves (planted trees off-reserve).

3.3 TREE TENURE AND BENEFIT SHARING FRAMEWORK IN GHANA

Tree tenure arrangements specific to the four categories are discussed below.

3.3.1 Naturally Occurring Trees On-Reserve

These are naturally grown or growing trees on forest reserves created on any land that the President decides to gazette on the advice of the Forestry Commission. Control, management, and exploitation of these trees are vested in the state and exercised through the Forestry Commission. Royalties are paid to the community that owns the lands. As we discuss in 2.4 below, no changes are being proposed for this arrangement in ongoing policy reforms.

3.3.2 Naturally Occurring Trees Off-Reserve

These are trees occurring off forest reserves. They include trees on farms and in secondary forests. Here the general understanding of existing arrangement is that the traditional authority owns the trees, but the Forestry Commission possesses all rights of disposal of the trees. This implies that all trees are held by the State in trust for the communities concerned. In practice, the state grants licenses for the exploitation of the timber and communities get benefits in the form of royalties that are then shared as follows: 55% to district assemblies, 25% to the alienation holder (stool/skin chief), and 10% to the traditional council after an administrative charge of 10% has been levied by the administrator of stool lands. This means that the farmer or landowner who manages and nurtures the trees and whose farm operations may be disrupted when the tree is exploited receives no direct benefit. This arrangement is largely regarded as a disincentive to sustainable forest management and presents perverse incentives.

The result has been that landowners and farmers remove trees from off-reserve land, particularly given the usually uncompensated damage that logging companies cause to cocoa when they harvest timber.

3.3.3 Planted Trees On-Reserve

These are trees planted by government, organizations, groups, or individuals (farmers) on any land set aside as a forest reserve. When planted by government, the arrangements pertaining to naturally occurring trees on-reserve prevail. For an organization or groups of individuals to plant trees in a forest reserve some prior contractual arrangements as to how the benefits are to be shared are made with government and this would bind the parties.

3.3.4 Planted Trees Off-Reserve

These are trees planted on lands other than forest reserves. The policy environment is clearer when trees are planted as plantations where the owner has ownership and exploitation rights. The position is murky when it comes to trees planted for shade in cocoa farms. The Concessions Act 1962 (Act 124) gives the government the management rights over all naturally growing or planted trees, and landowners and users cannot cut trees for commercial reasons. Therefore a farmer can plant trees to provide optimal shade throughout the productive life of his/her cocoa plants but has never been clear on tenure arrangements regarding those trees. As a result, currently, no private individual or group has incentive to protect or invest in timber and non-timber species that provide for forest canopy, fearing that the state still has the power to grant concessions over those trees which might lead to the destruction of cocoa farms.

3.4 RECENT POLICY DEVELOPMENTS AND RECOMMENDATIONS

The existing tree tenure policies and practice have been found to be unfavourable and present perverse incentives to farmers and landowners. The government of Ghana is designing policies to give ownership and use rights to farmers by investing huge capital in sound, fair, and equitable land and tree tenure regimes to create forest estates. Implementation of these forest sector initiatives is under various national afforestation programs namely: a) Cocoa Forest Initiative; b) Reducing Emissions from Deforestation and Degradation – REDD under Forest Carbon Partnership Facility; c) Voluntary Partnership Agreement; and d) Forest Investment Program. Projects are proposing better benefit-sharing agreements by vesting ownership and exploitation powers in farmers, land owners and communities. Two important policy documents are driving the reform proposals. These are the 2012 Tree Tenure and Benefit Sharing Policy and the 2016 Tree Tenure and Benefit Sharing Framework in Ghana.

The 2012 Tree Tenure and Benefit Sharing Policy has made adequate provisions to deal with weaknesses identified and to: a) ensure better collection and greater equity in the distribution of the revenue from the resource; b) allocate tree tenure rights by law; and c) streamline the collection of stumpage fees and similar taxes and distribute same equitably by law, all in the effort to incentivize farmers and forest-dependent communities to engage in sustainable forest management, plant and preserve economic trees on their farms. In summary proposals are being made for changes are as follows:

3.4.1 Naturally Occurring Trees On-Reserves

The existing arrangements are considered adequate so no changes are being proposed.

3.4.2 Planted Trees On-Reserve

Here again no major policy reforms are being proposed.

3.4.3 Naturally Occurring Trees Off-Reserve

The major reform proposed is with the trees on farms where the key proposal is that since the state does not play any key management role, the state should only be compensated for the regulatory role it plays in the allocation of the resources, for which a fee should be charged. Thus farmers and landowners would have full ownership of the trees on farm and will enter benefit sharing arrangements based on the traditional agricultural sharing systems pertaining in their areas.

For trees in secondary forests, it is proposed that landowners should be considered to have *bona fide* ownership and management rights. However, in circumstances where pre-existing agreements had been entered into between previous farmers and landowners and these farmers and agreements are identifiable, then such agreements must be respected.

3.4.4 Planted Trees Off-Reserve

Proposals are being made such that:

- a) A farmer would have the right to adequately negotiate benefit-sharing arrangements from trees that he/she plants/nurtures with the landowner;
- b) The farmer would have the right to dispose (also for economic benefit) of trees that he/she plants/nurtures; and,
- c) A decentralized land title registration would allow farmers to demarcate and register their lands and trees in the community/district.

3.5 IMPLICATIONS FOR COCOA FARMERS

As the discussions above demonstrate, the existing tree tenure arrangements in Ghana do not clarify farmers' rights over trees. As a result, customary land contracts and agreements discussed in Module 2 do not tend to articulate parties' rights over trees in clear and succinct terms. When exploitation rights of naturally occurring trees are held by the state, there is no point incorporating tree tenure rights in land contracts. Fortunately, policy developments are proposing measures to transfer tree rights to farmers and the landowners. At the moment the developments are simply proposals with the Forestry Commission at a very initial stage of thinking through how they would work in practice. A tree registration system appears to be the way considered viable and efforts along this line have yielded a draft form for registration (included in Appendix 1). However if these proposed policies become law, the absence of clear terms on who owns shade trees would become apparent in customary land contracts. There is therefore the need to pre-empt potential farm level disputes over tree rights by developing standardized and written land agreements that specify terms on ownership rights of shade trees. This is the time to engage landowners and farmers to think through how rights over shade trees are assigned under *abunu*, *abusa*, and other customary tenancy arrangements. It may also be the time to engage stools (allodial title holders), indigene families (landowners) and stranger farmers to explore agreeable arrangements that clarify tree tenure in secondary forests or fallow lands.

4.0 FURTHER READING

Akapme, C. K. (2016). *Development of a Framework on Tree Tenure and Benefit Sharing Scheme (Legal Reform Proposals) Final Consultancy Report*. Accra: Ministry of Lands & Natural Resources.

Ministry of Lands & Natural Resources. (2016). *Tree Tenure & Benefit Sharing Framework in Ghana*. Accra: Ministry of Lands & Natural Resources.

Roth, M., Antwi, Y., and O'Sullivan, R. (2017). *Land and Natural Resource Governance and Tenure for Enabling Sustainable Cocoa Cultivation in Ghana*. Washington, DC: USAID Tenure and Global Climate Change Program.

WCF. <http://www.worldcocoafoundation.org/cocoa-forests-initiative/>

APPENDIX I: DRAFT TREE REGISTRATION FORM



Farmer Code:

REGISTRATION OF PLANTED & NATURALLY OCCURRING TREES

Type of establishment: Woodlot Commercial plantation Others (Specify): _____
 Planted trees on farm Naturally Occurring Trees on Farms

(A) Farmer / Group/Company Details

(A1) Farmer Detail

<i>Name on National ID</i>	
First Name: _____ Surname: _____ Other Names: _____	Picture
Gender: <input type="checkbox"/> M <input type="checkbox"/> F Date of Birth (dd/mm/yyyy): _____ Age: _____	
Address: (Postal / Residential): _____	
Phone Number: _____ Email Address (if any): _____	
Next of Kin: _____ Date of Birth (dd/mm/yyyy): _____	
Age: _____ Gender: <input type="checkbox"/> Male <input type="checkbox"/> Female Phone Number: _____	
Address (postal/Residential): _____	

(A2) Group/Company Detail

Group/ Company Name: _____ Reg. Number(RG) if any: _____
Name(s) (President/Manager & Secretary): _____ / _____
Group/ Company Address: (Postal / Residential): _____
Phone #: _____ / _____ Email Address (if any): _____

(B) Farm Location/ site

Region: _____ Forest District: _____ Stool/Skin _____
District Assembly: _____ Location/ Community: _____

(C) Land / Tree Information

(C1) Plot / Farm information (attachment)

Farm Size (HA)/ Plantation Area: _____ Development of Maps (optional) coordinates of the Plantation plot/ Farm (GPS coordinates):

Date	Point ID	Latitude	Longitude	Way Point	Remarks

(C2) Tree Information on Planted Species (Woodlot, commercial plantations others) (attachment)

No.	Species	No. of Trees (Stocking)	Planting Distance (Spacing)	Year of Establishment	E.g. Planting Completed
1.					

(C3) Tree Location Information on Naturally occurring trees (Applicable only for Trees on farms (attachment))

No.	Species	Trees Stock Number	Size of tree (dbh)	Year planted /Nurturing started	Tree Location		
					Point ID	Lat	Long
1.							

(D) Declaration

Farmer/ Group/ Company rep. Signature (Thumbprint): Date:	Farmer's/Group/Company Witness Signature/Thumbprint Name: Date: Phone #:
---	---

(E) Endorsement

District Forestry Manager's Signature & Stump Name: Date: Phone #:	FOR OFFICIAL USE ONLY	
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- NOTE:**
- This form is not an indenture.
 - Before planting the trees, I had sought the approval of the land owner(s).

(A2) Group/Company List (attachment)

No.	Name	Gender (M/F)	Age	Residential Address	Phone #
1					
2					

(C) Land / Farm Information (attachment)

(C1) Plot / Farm Information

Farm Size (HA)/ Plantation Area: _____ Development of Maps (optional)

coordinates of the Plantation Plot/ Farm (GPS coordinates):

Date	Point ID	Latitude	Longitude	Way Point	Remarks

(C2) Tree Information on Planted Species (Woodlot, Commercial plantations others) (attachment)

No.	Species Planted	No. of Trees (Stocking)	Planting Distance (Spacing)	Year of Establishment	Comments <i>E.g. Planting Completed</i>
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					

(C3) Tree Location Information on Naturally occurring trees (Applicable only for Trees on farms (attachment))

No.	Species	Trees Stock Number	Size of tree (dbh)	Year planted /Nurturing started	Tree Location		
					Point ID	Latitude	Longitude
1.							
2.							

3.							
4.							
5.							
6.							
7.							
8.							
9.							
10.							

APPENDIX 2: ROLE PLAYS

ROLE PLAYERS

Traditional Authority (Allodial Title Holder): Nana Odiasempa. At the time that indigene land owners were settling and establishing ownership rights, parts of the communities' lands, forest resources were abundant and the environment pristine. Nana Odiasempa also allocated land to other families willing to settle and establish roots in exchange for reciprocity and patronage. But now forest land is seriously depleted, indigene farmers no longer offer respect they once did, and lucrative opportunities are presenting themselves from mining, timber, and environmental services. The land is his to give and he wants to reassert his allodial rights to benefit his heirs. But he is also altruistic. Decades ago, the landscape was resource rich; rivers were clean and full flowing; and climate was predictable. Nowadays, the landscape is being rapidly denuded, the rivers are muddy and invasive species and disease are out of control. Sustainable cocoa cultivation and a safe and clean environment is the heritage we must leave behind for our children.

Community Indigene Land Owner: Opanin Yaw Baafi, an indigene, settled and worked on a portion of community's forest in 1957. The land is his; some he has developed, or obtained from migrant farmers clearing the land at his request. However, 30 years ago, forest resources were abundant—lack of labor to clear it and put the land to productive use was the challenged landowners faced. He allocated some of his land to Kwadwo Gruma under an *abunu* arrangement, whereby the migrant farmer would clear the land and plant the cocoa, but once the farm began to produce, it would be divided equally between the Indigene land owner and migrant farmer. Once the cocoa reached the end of its productive life, the land would revert to the landowner. There is no written document stating this arrangement, but oral agreements suffice. However, decades ago when the land was given, resources were abundant and labor was in short supply. Nowadays, Opanin Yaw Baafi urgently needs to reclaim the land to give to his own children and bequeath to heirs.

Migrant Land Holder and Elder: Yaw Abijan came to Nyame Nnae in 1974. Rich with cash from a job in Yamoussoukro, he bought five acres of land from the chief. After years of living within the community, his family are now full community members. They pay respect to the chief and participate in all community affairs. He has planted cocoa but can grow whatever he wants. He can rehabilitate when he wants or can shift to alternative crops – palm or rubber. He recently subdivided and sold half his land to an outsider from Accra. He is concerned about the rich prices being offered by companies coming into the area, but those are issues others must deal with as the land is his without doubt or question.

Migrant Farmer (Abunu). Akwasi Tawiah came to Nyame Nnae in 1987. He acquired land from indigene land owner Opanin Adusei based on *abunu* arrangements. He cleared the land and planted the cocoa. Based on *abunu* agreement, they subdivided the farm equally once the cocoa began producing. Even though no written contract was signed, the farm belongs to him. But, now he is not so sure. The family of Opanin Adusei (who is now dead) is threatening to take the land back and increasingly is butting its nose into land use decisions. Fearful for losing his land if the cocoa was removed, Akwasi is keeping cocoa on the land as long as possible even though yields are low, and is discreetly replanting cocoa in small areas to maintain long-term claims to the land.

Migrant Farmer (Abusa): Maamuna arrived in 2000 accompanying her husband to Nyame Nnae. After his recent death, she decided to stay but it's been difficult. She needed to grow food crops to feed her young children, and lacked the labor to attend to cocoa as well so she neglected the latter. The indigene land owner took the land back to care for the cocoa himself, but gave her one hectare of land

to farm based on the following terms – one-third of the output to be kept by her, one-third to be kept by the landlord, and one-third to pay for inputs. She concedes that this agreement better suits her current needs and resources. Nonetheless she'd like to begin cultivating fruit trees to increase her income.

Forest Extension Agent: Mr. Clement works for the Forestry Department and advises land owners on tree production and harvesting in the area. The government used to own all trees in the country, but the new forest policy (not yet enacted) transfers rights of ownership to landowners. Timber species are very valuable and serve as shade for shaded cocoa cultivation. Fruit trees are also valuable and provide for nutrition and food security. Yet the new forest policy is in a nascent stage which puts the young forester in an awkward situation of having to advise on conflict based on new ones that have not yet come into effect.

ROLE PLAY I: DISPUTE OVER LAND OWNERSHIP ARISING FROM NEED TO REHABILITATE AN OLD COCA FARM

Objective:

To raise awareness and deepen understanding of the relationship between secure land rights and investment in cocoa rehabilitation.

Dispute:

Indigene land owner OPANIN YAW BAAFI has discovered that KWADWO GRUMA has discretely been replanting his cocoa without his knowledge or approval. KWADWO GRUMA argues that the land is his based on oral agreement reached at the time of coming to the area. OPANIN YAW BAAFI argues that replanting of cocoa is against the terms of their oral agreement and custom, and that KWADWO GRUMA should leave because the cocoa is past its prime, evidenced by KWADWO GRUMA replanting it. OPANIN YAW BAAFI has taken the case to traditional authorities who has motives of his own.

Role Play Actors:

- Traditional Authority (Allodial Title Holder)
- Community Indigene Land Owner
- Migrant Farmer (*Abunu*)

Role players should meet beforehand to discuss and refine their roles, prepare a sketch outline of the 15 minute production, and practice the role play in the presence of the facilitator.

Setting (15 minutes):

The indigene land owner has asked for the traditional authority's mediation. They meet at his house or official place of business and follow customs and decorum according to tradition. Respect is paid. Schnapps is offered as tribute. The chief provides opening remarks consistent with his role and position and then offers each side to present their case. The chief sides with the indigene landowner as blood is thicker than water, but on the side commands royalty payment to reclaim rights to the land. The Migrant Farmer must now renegotiate new terms favorable to the indigene landowner or leave.

Facilitated Discussion (15 minutes):

1. Who is the rightful owner of the land?
2. Why are there widely diverging perspectives on ownership?
3. How could this dispute have been prevented or mitigated?
4. What is the best way or ways to address the conflict now?

Take Aways (Concluded by Facilitator)

- ✓ Property rights are not material nor are they cast in stone. They are reinforced or defended through ongoing negotiation to increase tenure security
- ✓ But these negotiations can be costly in terms of time and resources expended and the outcome is not assured and can be arbitrary.

- ✓ There are mechanisms to clarify and secure rights: promoting dialogue, documenting rights in writing, and establishing a central authority to enforce rights objectively
- ✓ Under statutory law, rights may be protected through courts or informal methods of mediation. Under customary law, the options are more limited because the chief as traditional authority may be biased and partial.

ROLE PLAY 2: DISPUTE OVER SECONDARY RIGHTS ARISING FROM CROP SHARING

Objective:

To raise awareness and deepen understanding of the role of land market transactions and secondary rights in cocoa farming.

Dispute:

Migrant farmer MAAMUNA acquired her land from an indigene land owner when she arrived from Guinea in 2000. In exchange for rights to cultivate the land, she receives one-third of the harvest, the landowner gets one-third, and the final one-third pays for crop inputs. For years she experienced no problems and was happy with the arrangement. The land owner kept his promises and crop production was shared fairly. But she is now getting old and is thinking about bequeathing property to her children. She agrees that the land belongs to the landowner, but would like to bequeath use rights to her children. The land owner disagrees. There are other problems. The landowner for reasons unknown has resorted to taking crop production before harvest time, and inputs offered are less abundant than in prior years. Consequently, her crop share has markedly declined. She doesn't know what to do. As a woman, she doesn't share the same status as men within the community. She turns to her friend AKWASI TAWIAH, a migrant land holder, for advice. Both decide to speak to the indigene land owner but asked YAW ABIJAN, village, elder to come along as a witness.

Role Play Actors:

- Community Indigene Land Owner
- Migrant Landholder and Elder
- Migrant Farmer (*Abunu*)
- Migrant Farmer (*Abusa*)

Role players should meet beforehand to discuss and refine their roles, prepare a sketch outline of the 15 minute production, and practice the role play in the presence of the facilitator.

Setting (15 minutes):

The role play starts with the two migrant farmers discussing issues in the community lodge. The *abunu* migrant farmer, while having more ownership security, nonetheless also suffers from his landowner stealing maize and bananas from his farm before onset of cocoa production. After sharing viewpoints, they decide to approach the Indigene Land Owner to discuss the issue in the presence of a well-respected elder within the village – also a migrant land owner. They meet at the indigene land owner's home. Issues are raised and facts disputed without reaching resolution. However, at the last minute, the village elder intervenes with sage advice and a sound recommendation.

Exercise (Facilitated by Facilitator)

- Between Modules 1 & 2, what are the different forms of property rights observed within this village setting? Relate these to the role players:
 - ✓ Traditional land allocations
 - ✓ Indigene land owners

- ✓ Purchased land owners
- ✓ Abunu landowners
- ✓ Abusa land operators
- What is the sound recommendation offered by the village elder?

ROLE PLAY 3: DISPUTE OVER SHADE TRADE OWNERSHIP

Objective:

To raise awareness and deepen understanding of the causality between land and tree rights and their important role in shaded cocoa cultivation and livelihoods.

Dispute:

Indigene landowner OPANIN YAW BAAFI has an *abunu* cropping arrangement with migrant farmer AKWASI TAWIAH, and an *abusa* land holding arrangement with migrant farmer MAAMUNA. Under both arrangements, the land was cleared but shade trees were left and gradually thinned to provide important shade for young cocoa trees. Recently, during the night, a logging company entered the field of the *abunu* farm and cut down valuable timber trees. Besides the loss of trees, both OPANIN YAW BAAFI and AKWASI TAWIAH lost 25 cocoa trees that were damaged in tree felling. Migrant farmer MAAMUNA, an *abusa* farmer, wants to plant fruit trees on her farm, but the indigene farmer refuses on grounds that planting fruit trees is akin to establishing long-term rights in land. Both he and the migrant farmers ask to see the chief accompanied by the forest extension agent.

Role Play Actors:

- Traditional Authority (Allodial Title Holder)
- Community Indigene Land Owner
- Migrant Farmer (*Abunu*)
- Migrant Farmer (*Abusa*)
- Forest Extension Agent

Role players should meet beforehand to refine their roles, prepare a sketch outline of the 15 minute production, and practice the role play in the presence of the facilitator.

Setting (15 minutes):

The indigene land owner has asked again for the traditional authority's mediation. They meet at his official place of business and follow the decorum of tradition. The chief provides opening remarks consistent with his role and position and then offers each side to present their case. But in a twist of fate, the chief declares that the timber company approached him for authorization to fell the timber trees and collected royalties which are his due to his position. Remarkably he sides with the women migrant (*abusa*) farmer who is distant relation and to exercise his authority over an indigene farmers who he sees as indignant. The young forest extension officer is asked to intercede with decisions based on government policy.

Facilitated Discussion (15 minutes):

1. Who is the rightful owner of the trees?
2. Who is responsible for compensating the indigene farmer and migrant (*abunu*) farmer for damaged cocoa trees? How is the compensation to be shared?
3. Is it fair to allow the migrant farmer to plant fruit trees on the indigene farmers land? What would make the decision more palatable?

Take Aways (Concluded by Facilitator)
--

- ✓ In West African culture, planting trees is often seen as establishing rights in land.
- ✓ Customary and statutory systems of land and tree ownership can at times contradict or appear inconsistent making resolution of conflict difficult.
- ✓ Regardless of determinations of who owns what, there are mechanisms to help clarify and defend rights – rights clarification, documentation, and dispute resolution.
- ✓ But without clear legal precedents, decisions over tree rights can and will be arbitrary until clear policy and enforcement emerges.

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