Roadmap for Inclusion of Female Traditional Leaders in National Land Policy Processes

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1.0 BACKGROUND

COLANDEF, in partnership with Wellspring Philanthropic Fund and in collaboration with country-level stakeholders, has since December 2018, implemented the REPAFEL project.

The project has two main outcomes, which are;

a. Increased understanding of state actors and traditional authorities on the limitations that current Constitutional and Legal provisions impose on Queen Mothers’ participation in policy processes and in land governance

b. Increased capacity of Queen mothers in national policy processes, land governance, institutional representation and voice

As part of the project activities, there was an assessment of the legal and constitutional provisions to ascertain if there was any legal disability for the inclusion of Queen Mothers in national policy processes.

The findings from the legal review are summarized in this document, with some explanation on each finding.

Finding 1.

a. The overall national orientation to addressing gender discrimination is informed by international conventions and national laws.

b. The efforts have mainly been focused on strategy development and ratification of international protocols and not so much on implementation of interventions.

c. They all looked at the gender issues as a whole and not specifically the peculiar situation of Queen Mothers.

Examples of the International Conventions and national laws/policies/programs, that have shaped the national orientation in addressing Gender issues in Ghana include the following;


– The 1976 UN Conference on Women which stressed on gender equality and was subsequently pronounced in Ghana’s domestic law and its international legal obligations.

– Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1979 which was signed on 17 July 1980 and ratified on 2 January 1986. Article 7 of the Convention called upon states and parties ‘to take all appropriate measures to eliminate discrimination against women in the political and public life of the country.


1Queen Mothers are the female counterpart of Traditional Leadership in Ghana. In each traditional set up, there are the male traditional leaders called Chiefs and there are the female traditional leaders called Queen Mothers and in some traditional areas, as ‘Obaapanyin’. In this document, the expression Queen Mothers and/or Female Traditional Leaders are used interchangeably to refer to all the different types of the female traditional leaders.
– The 1995 Beijing Platform for Action which sought to address the grave disparity in power between women and men in public affairs.

– The Affirmative Action Policy of 1998 provides for a 40% quota of women’s representation on all government and Public Boards, Commissions, Councils, Committees and official bodies, including Cabinet and the Council of State.

– Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW-OP) 1999 which was signed on 24 February 2000.

– The 2000 Beijing Plus 5 which is the outcome document of the Beijing Declaration and Platform for Action and that Ghana has a professed commitment in implementing the decisions.

– National Gender and Children’s Policy (2004) by Ministry of Women and Children’s Affairs was developed with the main objective of mainstreaming gender concerns into the national development process in order to improve the social, legal/civic, political, economic and cultural conditions of the people of Ghana, particularly women and children.

– National Gender Policy (2015) developed by the Ministry of Gender, Children and Social Protection with the theme of “Mainstreaming Gender Equality and Women’s Empowerment into Ghana’s Development Efforts.”

– National Gender Policy and Strategy (2015) by the Ministry of Lands and Natural Resources under the auspices of the Land Administration Project.

– Women’s Manifesto for Ghana (2004 and 2016)


**Finding 2.**

Efforts in addressing gender discrimination has been not only by the state. There have also been interventions by non-state actors. Specific interventions from some non-state actors that have called for inclusion of female traditional leaders in recent times include:

a. The sensitization and capacity building programs by the UN, UNFPA, GTZ, CIDA and DANIDA. They have all engaged in sensitization activities to increase the participation of women at decision-making levels within the family, community and the nation;

b. Local NGOs, such as Leadership and Advocacy for Women in Africa (LAWA) in 2004 delivered a position paper to the Attorney-General regarding the Chieftaincy Bill, aiming to help women gain voice in traditional institutions and in government;

c. Some Civil Society Organizations have has embarked on a program aimed at integrating women’s leadership into the traditional governance institutions. The intention is to empower women in the northern part of Ghana to partner the men in leadership roles in their societies, as it is the case of the matrilineal system in the south, and to contribute meaningfully towards the development of their regions and the country as a whole.
Finding 3.
The first attempt that was directed specifically at the problem of exclusion of Female Traditional Leaders was in 1990. Even at this time, it was still not specifically on their involvement in land governance. It targeted female leadership in general.

a. Intervention was by the 31st December Women’s Movement, led by the former First lady
b. The agenda was to empower them to support the 31st December Women’s Movement
c. Later, efforts were made to give them a place at the National House of Chiefs (NHoC)
d. This brought about wide public discussions on the issues with Queen Mothers/Female Traditional Leaders’ exclusion. Issues concerning Queen mothers came to the limelight
e. The proposals on Queen Mothers inclusion in policy discussions were ignored after the coming into force of the 1992 Constitution and policies from that time did not take into account the proposals by the 31st December movement

Finding 4.
The influence of colonial administration and missionaries in entrenching the discrimination of Female Traditional Leaders in leadership

a. The building of alliance with male members of the traditional leadership by the colonial administration and the Christian missionaries favoured male domination in decision making. It deepened the domination in some cultures and introduce that dynamic in other cultures where the women were somewhat influential
b. State policies after independence continued with the tradition of aligning with the male traditional leaders and eroded the authority of female traditional leaders

Finding 5.
The ownership, administration and management of land are governed by the laws of the country, which according to Article 11 of the 1992 Constitution comprise the constitution, statute law and the common law which is defined to include customary law.

Thus, the applicable laws that need to be considered in discussing the issues with Female Traditional Leaders’ exclusion in land governance should include the Constitution, the various legislations and customary laws. All of them together provide guidance on what the situation should be.

Finding 5a. Findings under Customary law

c. Customary land is not owned by the chief or the family head in his personal capacity, but he holds it on behalf of all the members of the group, both male and female members. Given that the 1992 Constitution defines a chief to include a queen mother, it stands that in law and in practice if the chiefs or traditional heads are custodians of the land, then female traditional leaders are also included as custodians of land. This provides basis for the call for inclusion of female traditional leaders in decision-making on land and in its management in the various communities.
d. Under Customary Law, there are three leadership roles available to females at the community level. They are Queen mothers, Elders in the community or chiefs.

Finding 5b. Findings from the 1992 Constitution

Two things: the guarantee of equality of all persons and the definition of chief to include Queen mothers

a. Article 17 (1) states that all persons shall be equal before the law and clause (2) provides that no person “shall be discriminated against on grounds of gender, race, colour, ethnic origin, religion, creed or social or economic status.” By this provision of the Constitution, there is an imperative obligation on public and community leaders to include women on merit in decision-making on land.

b. Second, Article 277 of the Constitution defines a “chief as a person, who, hailing from the appropriate family and lineage, has been validly nominated, elected or selected and enstooled, enskined or installed as a chief or Queen Mother in accordance with the relevant customary law and usage”. The Constitution, therefore, recognizes a queen mother as a chief and fundamentally appears to address the question of availability of equal opportunities for both male and female chiefs to decision making at every level and in all matters with particular reference to land policy formulation and implementation in Ghana.

Finding 5c. Findings from the Chieftaincy Act

The Queen Mothers were to be involved in the institutional set up for traditional leaders except that the way the members are to be selected as defined in the constitution is what has taken them out.

a. The National House of Chiefs and Regional Houses of Chiefs were created after independence. Both Houses are autonomous institutions whose membership are generally based on a hierarchical system of chieftaincy. There is a Ministry of Chieftaincy Affairs with a Minister who maintains contact with the leadership of both Houses in all relevant government decisions and chieftaincy matters.

b. Chapter 22 of the 1992 Constitution focuses on Chieftaincy with a provision in Article 270 (1) guaranteeing the setting up for the institutional arrangement for Chieftaincy, providing for the establishment of traditional councils, to be established by customary law and usage.

c. The Chapter also establishes the National and Regional Houses of Chiefs

d. Even though the provisions do not specifically bar female traditional leaders from membership to the Houses of Chiefs, the mode of selecting the members results in only male chiefs getting into the House. The Constitution restricts membership to Paramount Chiefs and does not include Paramount Queen mothers, notwithstanding the fact that Article 277 defines chiefs to include queen mothers.

e. The definition of chiefs is repeated in Section 57 (1) of the Chieftaincy Act, 2008 (Act 759), which is the relevant enabling Act to Chapter 22 of the Constitution. Thus, there should be no situation where the Queen mothers should be excluded from the membership to the chieftaincy institutions. By this, there are excluded from land policy processes at all level and in adjudicating disputes.

f. The QMs are clearly cut out from the institutional set up for chieftaincy. This does not stop the occupants of the stools and family heads to consult and involve any other persons, especially the QMs, but even that is also not done.
Section 3b of the Act gives the House of Chiefs, the authority to undertake the study and compilation of the customary laws in the country. This means that should any House of Chiefs make the bold determination that in this modern era in Ghana, customary law now recognizes that female leaders and queen mothers should be part of the council of elders responsible for the management of customary lands, this determination will immediately have the colour of a valid law implementable in all traditional communities and enforceable by the courts.

Unlike their male counterparts, queen mothers do not receive any resource support from the state such a meeting place like the Regional and National Houses of Chiefs, even though the definition of a chief includes a queen mother.

**Finding 5d. Findings from the Administration of Lands Act, 1962,(Act 123)**

- The Act establishes the requirement for the Lands Commission to give consent and concurrence to all land transactions before they can be considered valid.
- It also establishes the mandate for the collection of stool land revenue by the Office of the Stool Lands and paid into a stool lands account on behalf of the stool landowners. Both statutory interventions have been captured in the 1992 Constitution under article 267.

The above provisions could be an avenue for enforcing the inclusion of QMs but that is not being done.

**Finding 5e. The OASL Act, 1994 (Act 481)**

- Under the Act 481, part of stool land revenue is understood to be given to chiefs for their use for the maintenance of the stools and in keeping with their status as chiefs.
- Article 267 (6) (a) reserves “twenty-five percent of the stool land revenue to the stool … for the maintenance of the stool in keeping with its status.” Clearly, this is omission in the law with regards to Queen Mothers. Queen mothers play complementary roles to that of their male counterparts. They similarly occupy stools which require maintenance and they also incur expenditure to preserve their status as queen mothers of their communities. The distribution of stool land revenue in the Constitution, however, excludes queen mothers. This is a clear omission in the law that needs redress.


- The law makes provision for constituting the NLC and RLCs. It provides the opportunity for inclusion, but the law is skewed by virtue of the composition of the people who make up the institutions from which the nominees are to be selected.
- Section 8 (1) of Act 767 provides that the National Lands Commission shall in accordance with Article 259 of the Constitution consist of: (a) the Chairman, who shall not be a Minister of a Deputy Minister; (b) one representative of, and nominated by (i) the National House of Chiefs; (ii) the Ghana Bar Association; (iii) the Ghana Institution of Surveyors; (iv) each Regional Lands Commission; (v) the Department Responsible for town and country planning; (vi) the National Association of Farmers and Fishermen; (vii) the Environmental Protection Agency; and (c) the Executive Secretary of the Commission. The Chairperson and other members of the National Lands Commission are appointed by the President in accordance with article 70 of the Constitution.
c. With regards to the Regional Lands Commissions, section 9 of Act 767 states that a Regional Lands Commission shall consist of the following persons appointed by the Minister responsible for Lands: (a) the chairman who shall not be a Minister or a Deputy Minister; (b) one representative of, and nominated by: (i) the Regional House of Chiefs, (ii) each District Assembly within the Region, and (iii) the department responsible for town and country planning, (c) one nominee of the Ghana Bar Association practicing in the Region; (d) one nominee of the Ghana Institution of Surveyors practicing in the Region; (e) one nominee of the National Association of Farmers and Fishermen in the Region, and (f) the Regional Lands Officer.

d. In addition to the setting up of the National and Regional Lands Commissions, opportunities also exist in the execution of its mandate which includes the following:

– advising the Government, local authorities and traditional authorities on the policy framework for the development of particular areas of the country to ensure that the development of individual pieces of land is coordinated with the relevant development plan for the area concerned;

– advising on, and assisting in the execution of, a comprehensive program for the registration of title to land throughout the country;

– registering deeds and instrument that that affect land throughout the country;

– ensuring that through sound, sustainable land use planning, socio-economic activities are consistent with sound land use through sustainable land use planning in the long-term national development goals;

– collaborating with other bodies to minimize or eliminate, where possible, the sources of protracted land boundary disputes, conflicts and litigations in order to bring their associated economic costs and socio-political upheavals under control; and

– promoting community participation and public awareness at all levels in sustainable land management and development practices to ensure the highest and best use of land.

The evidence of the exclusion Queen Mothers have faced is demonstrated by the scenario below; Although the Ministry of Lands and Natural Resources attempted in the strategy to integrate gender perspectives in the Land Administration Project planning and to ensure adequate women’s representation and involvement in decision making on land, the issue of queen mothers was not adequately taken on board and addressed. For example, among eleven categories of institutions identified to play specific roles in the implementation of the strategy, the category of Civil Society which comprised of National and Regional Houses of Chiefs, NGOs, Women’s Coalitions and Groups to play advocacy in reforming customary land transactions and reforming land legislation for land administration, the role of queen mothers is subsumed under the Houses of Chiefs. This indirectly is a constrain on the queen mothers’ adequate involvement in the implementation of the strategy.

Also, the strategy is focused on promoting women’s access to and control over land and collecting gender disaggregated data with comparative information on women’s access to land, acquisition processes and recognition of secondary usage to inform policy reforms. In all it appears the issue of queen mothers’ effective engagement in land policy remains unresolved.
Conclusion;
Both in customary law and statutes, Queen mothers were to be recognized as active
participants to land policy, decision making and in sharing the benefits. This is not
happening because of;

1. Discrimination and stereotyping;
2. Cultural practices;
3. Absence of specific provisions for Queen mothers in the relevant
   laws for affirmative action;
4. Inadequate financial capacity of Queen mothers
5. Level of education and status in society

ROADMAP FOR ADDRESSING THE EXCLUSION OF QUEEN MOTHERS IN LAND POLICY
PROCESSES AND LAND GOVERNANCE

The review brought out three broad approaches to resolve the challenge;

1. **No legal disability.** The problem persists because of history, culture and stereotyping,
   underestimating the capabilities of QMs. Therefore, advocate for male traditional
   leaders to make concessions to include female traditional leaders as provided in
   both customary laws and statutes
   
   b. Women to be incorporated in the Decision-Making Process
   
   c. Percentage of Representation on Council of Elders being
      Female Traditional Leaders
   
   d. Introduce a quota system for women (30 percent of public appointments); and
   
   e. Passage of the Affirmative Action Bill to increase women’s involvement in decision
      making at all levels.

2. **Challenge the status quo by getting the three arms of Government to act
   through enforcement of the law and/or challenging the current status
   through court processes**
   
   a. **Legislative Intervention**
      Legislation is recommended to be passed by Parliament to firmly establish
      the principle of female representation on the councils.
   
   b. **Management of Customary Land Revenue**
      There ought to be fair distribution or utilization of customary land revenue for the
      benefit of the members of the land-owning group. The benefit from the revenue should
      extend equally to female as well as to male members.
   
   c. **Effective implementation of the National Gender Policy (NGP)**
      The broad provisions in the NGP are good as they are supportive of the equal
      representation of women in decision-making in respect of land management as
      well as the removal of discrimination against women in all sectors of national life.
      What is urgently required is that the next Strategic Implementation Plan of the NGP
      should be prepared to specifically address the gender inequality associated with the
representation of Queen mothers and other female traditional leaders on the councils of elders at the traditional level.

d. Public Policy Directions

A change in attitude of public institutions and public officers is essential. Public land sector institutions should be lobbied to be more gender sensitive and play their part in ensuring the fair treatment of female traditional leaders.

As an example, the Lands Commission’s standard operating procedures provide that a customary land grant by a chief or head of family should be evidenced by the signatures of at least two elders to signify the consent of the council of elders to the grant. This regulation could easily be amended to increase the required number of elders to sign the grant to three, one of whom should be a female traditional leader. This regulation will be an easy enforcement provision that all land-owning groups which desire to make grants out of their land will have to comply with immediately. Other public sector agencies like the Land Use & Spatial Planning Agency, OASL and MMDAs could also adopt similar measures.

e. Public Education and Engagement with Stakeholders

For the support and understanding from the general public and as well as voluntary co-operation from stakeholders, an intensive public education campaign is required from the several women’s advocacy groups which want to see changes made.

f. Support from the Government and Government Agencies

Some of the key institutions to be lobbied are:

- Ministry of Gender, Children and Social Protection
- Ministry of Lands and Natural Resources
- Ministry of Food & Agriculture
- Ministry of Chieftaincy Affairs
- MMDAs
- National and Regional Houses of Chiefs
- Traditional Councils
- Parliament
- NCWD
- Lands Commission

g. Representation of Female traditional leaders on Boards and Commissions

Qualified female traditional leaders should be considered for selection and appointment on equal terms with their male colleagues, to serve on public boards and commissions.

h. Judicial Interpretation

The status quo could be challenged by a legal suit to seek a judicial pronouncement from the courts as to the constitutionality of the obvious discrimination against Queen Mothers/Female Traditional Leaders in land administration. The decision of the court
will be a binding precedent on the lower courts and all persons and institutions including traditional authorities and the government.

3. **Creation of the National and Regional Councils of Female Traditional Leaders as the platform for engagement and inclusion**

   a. **Support and Recognition for the Platform of Female Traditional leaders**

   The existing Associations of Queen mothers at the regional and national levels should be recognised by the government as the official mouthpiece of Female Traditional Leaders. The government should then provide them with material and financial support to enable them function effectively. They should be consulted on policy discussions on land and other relevant traditional matters.

   b. **Action by Female Traditional Leaders**

   Inaction and acquiescence by female leaders are partly responsible for the continued lack of progress in the fight against discrimination against women in their land rights. There should be continued with advocacy at the district, regional and national levels.

   c. **Training of Female Traditional Leaders**

   Public and private agencies as well as civil society organisations and international agencies can assist in providing training programmes for selected female traditional leaders to enable them to make effective contributions to the decision-making process.

   d. **Support from Women Advocacy Groups**

   Civil society organizations, NGOs, international and multi-lateral agencies involved in gender advocacy especially those interested in promoting women's land rights should be encouraged to intensify their efforts in these matters.

   e. **Lobbying of Political Parties**

   As Tsikata, (2009) noted, it is a deficiency of the women’s advocacy in Ghana that the issues about Female Traditional issues have not been made a major electoral issue to ensure that political parties put them high on their manifestos. Queen mothers have not been sufficiently mobilized to make political parties pay attention to their issues. This should be an important target.

**Conclusion**

Each of the three approaches will involve a detailed process to arrive at the desired outcome. Also, complementary actions will be required to support the achievement of the desired outcome. For example, attitudinal changes, financial support, advocacy and building strategic alliance, consultations and dialoguing are needed to complement any of the three approaches that is selected for implementation. It is also possible that all three approaches will be pursued, each of them with its own process.

Based on the current context and the project timeline, the project team proposes to focus on the third approach but will complement it with consultations and dialoguing with policy actors.