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Factors impacting on effective implementation of land title registration – a perspective from Ghana

Benjamin Armah Quaye | [ORCID](#)

Special Projects Unit, Lands Commission, P. O. Box CT 5008, Cantonments, Accra. Email: benquaye@yahoo.com

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ABSTRACT

Many governments across Sub Saharan Africa are in the process of introducing or improving land registration and formal titling systems. One of the stated aims is to achieve modern land information management in order to facilitate the development of the land market. It is often assumed that, because formal systems and institutions have enjoyed some positive outcomes in terms of realising wealth in developed countries, they will succeed equally well in developing economies. However, findings from empirical studies across several developing countries show that the performance of formal land registration systems has been mixed. Relying on empirical data from two major cities in Ghana, this paper examines the operations of land registration system with particular reference to its land information management aspects. The analysis shows that a divergence in the implementation of principles of the legal framework and organisational challenges are major contributory factors to deficiencies in the land information regime of the land registration system. Hence, there is a need for effective implementation of well-crafted and functional legal frameworks for land registration, to ensure that the principles and operations of land registration are locally relevant and sensitive. To address the inadequate organisational capacity there is a need to improve the capacity of the human resource base of the officials of the formal land administration sector. The procedure for land registration must also be streamlined in order to eliminate unnecessary requirements and thereby reduce the transaction time, costs of registration and frustration of clients.

1. Introduction

Most of the land area in Africa is undocumented or covered by any form of cadastral mapping. It is estimated that between 10% and 30% of the land area of Sub Saharan Africa (SSA) have documented title (Byamugisha, 2016; Hammond and Abdulai, 2011; Koeva et al., 2017; Krantz, 2015). It follows from this reality that the availability of land tenure information is limited to areas with formal documents. However, even in these areas, access to relevant information is restricted through inadequate management arrangements (Augustinus, 2003; Latu and Dacey, 2006).

As a result of the above challenges, decision-makers and market participants, including administrators, creditors, real estate professionals and service providers have to rely on questionable or incomplete data to form their opinions (Fourie and Nino-Fluck, 2000; Rode, 2010). This, in turn, leads to increases in transaction costs and market inefficiencies (Ahene, 2009), and the possible under-utilisation of the market for economic development (Galal and Razzaz, 2001; Kironde, 2000; Leduka, 2004). It can be said that an implication of the land information challenge is the possible curtailment of opportunities for the development of viable real estate markets, especially in urban areas where

land per unit area is worth considerably more on the open market than the same unit area of rural land.

Many governments across Sub Saharan Africa (SSA) are in the process of introducing or improving land registration and formal titling systems (Boone, 2019; Byamugisha, 2016; Hilhorst and Meunier, 2015). One of the stated aims of this process is to achieve modern land information management in order to facilitate the development of the land market (Boone, 2019; P. Dale et al., 2010; Wallace and Williamson, 2006). The new formal systems are often part of land reform programmes sponsored by development agencies such as the World Bank and the other bilateral and multilateral development partners (Burns, 2007; Deininger and Feder, 2009; Mitchell, 2009).

It is often assumed that because formal systems and institutions have enjoyed some positive outcomes in terms of realising wealth in developed countries, they will succeed equally well in developing economies (see Dickerman and Barnes, 1989; Pessali, 2011a). However, findings from empirical studies across several developing countries including those in SSA, show that the performance of formal land registration systems has been mixed (Barry and Fourie, 2002; Mitchell, 2009). While some studies point to positive links between land titling and access to credit (Feder and

Nishio, 1998), others show inconclusive results (Besley, 1995; Payne et al., 2009), or negative outcomes such as the curtailment of rights of the marginalized and vulnerable through abuse of the system by the elite (Blocher, 2006; Lastarria-Cornhiel, 1997; Toulmin, 2009). Toulmin, Delville and Traoré (2002), further suggest that modern land registration systems cannot easily handle multiple rights in the same piece of land. Consequently, such systems are not able to provide adequately the information needed for rational decision-making where multiple rights commonly exist (Fourie and Nino-Fluck, 2000). In some cases the information they produce may be inconsistent with the situation on the ground (Hammond, 2006; Platteau, 1995), which is primarily due to their inability to capture and update subsequent transactions (Platteau, 2000).

Various reasons have been suggested for such deficiencies in land registration in SSA. First, introduced land registration systems typically emerged out of historical accidents and are not specifically designed to bridge the gaps in real estate information (Hammond, 2006). For example, it has been suggested that the primary objective for the introduction of land registration in the colonial era was to protect the interest in lands acquired by European settlers, plantation owners, mercantile traders, and timber and mineral concessions (Bruce and Migot-Adholla, 1994; Meek, 1949; Ninsin, 1986). Second, dysfunctional legal regimes in many developing countries make it almost impossible for such systems to operate effectively (Abubakari et al., 2018; Bromley, 2009). Third, unclear and often conflicting institutional mandates of the multiple agencies involved in the land title registration process often undermine the systems and leave users confused and sometimes disappointed and disillusioned (Antwi, 2000). Fourth, design and operational inadequacies of the systems have been blamed for negative outcomes (Kanji, Cotula, Hilhorst, Toulmin and Witten (2005). Fifth, the focus of land registration appears to have been limited to facilitating the conveyancing system to the neglect of other important considerations, such as their information management aspects (Nichols, 1993; Nichols and McLaughlin, 1990).

Relying on evidence from two major cities in Ghana, Accra and Kumasi, the paper examines the operation of land registration system with particular reference to its land information management aspects. It specifically identifies and examines implementation and organisational factors affecting the operations of the land registration system. Accra and Kumasi were chosen for in-depth investigations because they exhibit contrasting social organisational structures regarding their indigenous land tenure arrangements. Kumasi and Accra are the only cities in the country that have operated the deeds registration system and are in the process of converting from the deeds system to a title-based registration system. The two cities are the most prominent urban centres in the country and therefore it was possible to examine empirically the operations and impacts of their respective land registration systems. The paper contributes to the ongoing academic and professional efforts aimed at finding sustainable strategies to improve the operations and outcomes of land registration systems so that they can effectively

facilitate the development of viable local land and real estate markets

2. Methodology

Historical and contemporary data were collected from primary and secondary sources using mixed methods. The primary data sources included relevant agencies and institutions involved in land administration and real estate, customary land authorities, and property owners within the case study cities. Semi-structured interviews were conducted with key informants (see Table 1) to collect mainly qualitative information in order to gain an in-depth understanding of the prospects, constraints and challenges with respect to effective land registration. To complement the qualitative data gathered from the semi-structured interviews, structured questionnaires were administered to selected property owners within the case study cities. Questionnaires were targeted at persons who had actually gone through the process of documenting and registering properties.

The selection of the key informants followed a purposive sampling approach based on three criteria (a) their knowledge on issues (b) the level of the key informants' involvement in their respective organisations and (c) the willingness and availability of the key informants to participate in the study. Table 1 shows the distribution of the key informants and the agencies they represent in the two cities. The table shows that the key informants interviewed represented the public land sector, the customary sector, local government, other professionals and academics.

The property owners were randomly selected throughout the case study cities. The particular locations of the selected respondents were recorded to facilitate mapping their whereabouts within the different parts of the city. Following this strategy, three hundred (300) useful responses, equally split between Accra and Kumasi were collected. Table 2 shows the distribution of the respondents according to their location in the different parts of the two case study cities.

The main purpose for the administration of structured questionnaires, which contained both open-ended and closed questions, was to obtain data about the views of property owners regarding the processes involved in registering land. A Likert-type questions sought information to facilitate the assessment of the nature of the land registration system in terms of the time spent, number of steps and accessibility.

Secondary sources included published and unpublished documents and recorded land transactions within the Divisions of the Lands Commission to obtain historical and current data on the land registration system.

(Besley and Ghatak, 2010; Weimer, 1997). Property rights theorists have suggested that the extent to which one person can legally exclude others from interfering in claims

Description	Accra	Kumasi	Total
Land Sector Agencies (Divisions of the Lands Commission)	4	8	12
Customary Tenure Institutions	2	3	5
Ministries (Lands and Forestry, and Local Government and Rural Development)	2	0	2
Metropolitan Authorities (Accra Metropolitan Assembly and Kumasi Metropolitan Assembly)	1	1	2
Land and Property Market Professional	2	1	3
Academic Lecturers of KNUST)	0	2	2
Total	11 (42%)	15 (58%)	26

Table 1: Distribution of informants across organisations

Source: Fieldwork (2012)

Case Study City	Neighbourhood	No. of Respondents	Characteristics of Neighbourhood
ACCRA	Dansoman	16	Developed
	Kaneshie	13	
	Achimota	30	
	Gbawe	41	Developing
	Haatso	20	
Kwashieman	30		
KUMASI	Asokwa	26	Developed
	Ahinsan Estate	30	
	Kwadaso	33	Developing
	Kotei	29	
	Pankrono	32	
Total		300	

Table 2: Location of respondents to questionnaires – Accra and Kumasi

Source: Fieldwork (2012)

3. Conceptual discussions

3.1 Arguments for and against formalisation of property rights

The concept of property rights is central to understanding the operations of land and real estate markets (Hawley et al., 2018; Malpezzi, 1999). Property rights are the claims or expectations that a person makes regarding the potential benefits that derive from an asset (Bromley, 1989; Paul, 2017; Schutter et al., 2019). They can be described as the relationships regarding the use of an asset or resources

The clarity of property rights is associated with efficient allocation and utilisation of resources, such as land and real estate. When property rights are not well defined or are absent, market failure is likely to occur since it would not be possible to assign costs and benefits appropriately and transaction costs may increase (Maughan, 2004; Musole, 2009; Sikor et al., 2017). Consequently, for the land market to operate effectively, property or land rights must be well defined and appropriately allocated. In other words, for real estate markets to operate effectively, it is argued that the nature of specific property rights must be clarified, usually through the formalisation of land rights (Trebilcock and Veel, 2008). Formalisation of property rights can be defined as the process by which informal [customary] tenure is integrated into a system recognized by public authorities (Durand-Lasserre and Selod, 2009, p. 105). In this regard, it is the process of defining, certifying and registering land rights in a public registry (Ali et al., 2017; Mitchell, 2009). It involves the setting up by the State, legal regulations and institutions such as land registration and cadastral systems to delineate, record, enforce, and recognise claims to land rights by groups or individuals.

However, the appropriateness of formalisation of land rights has been questioned on a number of grounds (Bromley, 2009; Cousins, 2005; Dwyer, 2015). First, the direct link associated between formalisation and increase in tenure security has been questioned as formalisation on its own does not enhance or diminish tenure security (Benjaminsen et al. 2009; Fitzpatrick 2005; Ezigbalike and Selebalo 1999). Second, even though it has been claimed that formalisation does not create or change land rights, but only documents and records existing land rights (Simpson, 1984), in reality the process often results in the transformation of customary rights to rights akin to western property rights (Ngugi, 2003; Peter Dale and McLaughlin, 1999; UN-Habitat, 2012). Third, formalisation may also cement existing social differentials in land relations, such as gender differentials regarding access to land resources (Dwyer, 2015; Hanstad, 1998). Fourth, evidence has questioned the link between formalisation and access to credit (Abdulai and Hammond, 2010; Domeher and Abdulai, 2012; Higgins et al., 2018; Stein et al., 2016). The assumption that banks and other financial institutions will be willing to grant credit because of the certainty granted by formal title is questionable (Durand-Lasserre and Selod, 2009).

Despite the above shortcomings regarding the formalisation of land tenure in Africa, under certain conditions the formalisation of land rights may be desirable (Matthaei, 2018). For instance, Benjaminsen et al. (2006, p. 20) argued that the “alternative: ‘not to formalise’ is not realistic”, and that during a certain stage in the economic development of a country, the need for a formal property right system becomes inevitable (Trebilcock and Veel, 2008). When there is a change in the prospects for economic growth and social institutions are ineffective in meeting emerging challenges, the introduction of a formal property rights regime may be justifiable (Blocher, 2006; Boudreaux and Aligica, 2007). Other conditions under which formalisation of land rights may be necessary include (i) when a jurisdiction becomes less socially cohesive, and there is a potential for increases in land

disputes; (ii) when there are increasing land values and the

Principle	Description
Booking Principle	A change in real rights on an immovable property, especially by transfer, is not legally effective until the change or the expected right is booked or registered in the land register.
Publicity Principle	The legal registers are open for public inspection and published facts can be upheld as being more or less correct by third parties in good faith, so that law can protect them.
Speciality Principle	In the land registration system, the subject and object must be unambiguously identified
Consent Principle	The legal entity booked as holder of the rights described in the register must give consent for any change of the recording in the land register

relative cost of establishing a formal system is low; (iii) where there is early development of a land market (Hanstad, 1998; Trebilcock and Veel, 2008). In effect, rapid urbanisation presents important conditions that make a strong case for the formal recognition of land rights in order to enhance the development and operations of urban real estate markets.

3.2 Principles of land registration

Land registration systems are introduced to facilitate the formalisation of land rights and transactions in land. A well-functioning and accessible land registration system provides opportunity for the protection of land rights as well as being a source of information that contributes to the reduction of transaction costs in the land market (Deiningner and Feder, 2009; Nwuba and Nuhu, 2018). A formal land registration system provides information about the property rights and basic characteristics of real estate, which contributes to lowering the transaction costs associated with searches required to ascertain facts about the particulars of properties and parties to a transaction. Because of the public nature of available information in the registry, the registration system contributes to a reduction in information asymmetry since all parties to a transaction can have access to the same information. Since, registration ensures public notice of assignments of rights, it contributes to the reduction in the cost of enforcement of property rights that are otherwise to be borne by an individual.

Land registration can have private and public good objectives. In its private function, a land registration system provides a safe means of conveyancing or transferring land rights (Simpson, 1984). For instance, Dale (1997, p. 1622) noted that the function of a land registration system is to provide a safe and certain foundation for the acquisition, enjoyment and disposal of rights in land. In other words, a private good function of a land registration system is to facilitate the operation of the land market. A broader public function of

land registration, on the other hand, is concerned with the provision of an inventory of records of land resources in a country or jurisdiction for fiscal and other development purposes (Dekker, 2017; Simpson, 1984). Typically, this is effected through a cadastre or cadastral system, which provides a "...methodically arranged public inventory of data concerning properties within a certain country or district, based on a survey of their boundaries" (Henssen, 1995, p. 5). From this perspective, the information recorded in land registration systems serves both the land market and broader national and land administration purposes.

For land registration systems to be effective, they are underpinned by certain principles, namely the booking, publicity, speciality and consent principles. An overview of the principles is outlined in Table 3.

Table 3: Basic principles of land registration systems

Source: Adapted from Zevenbergen (2002, p. 42)

3.3 Types of land registration systems

Apart from private conveyancing systems, such as notarial systems, there are two main types of land registration systems – registration of deeds and registration of title. Under the deeds registration system, a public registry keeps an abstract of the contents of documents evidencing transactions (deeds) in order to facilitate the investigation of title. Often, the names of the parties involved in the transaction are used for indexing the abstracts. However, there are increasing numbers of deed systems that use unique parcels identifiers to avoid ambiguities in uniqueness of ownership (often known as 'improved deeds registration'). In the deeds system the mere fact of registration does not solve any defect in the instrument nor does it confer any validity of the transaction (Wang et al., 2018; Zevenbergen, 2002; Zevenbergen and Ploeger, 2019). It merely gives priority to a registered document/transaction over one that is unregistered (Peter Dale and McLaughlin, 1999; Reid, 2015; Simpson, 1984). Thus, there is a need to trace the roots of title to ascertain the legality of ownership.

Unlike the deeds system, which focuses on documents evidencing transactions, title registration focuses on the land (Simpson, 1984). Even though there are variations in the nature of title registration systems, the basic features are that a parcel of land is placed in a register as a unit of property and transactions are made with reference to it. Registration confers validity and mitigates any adverse claims. In the title system an inspection of the register should provide conclusive evidence of the title to the land (Hanstad, 1998; Dale and McLaughlin, 1999; Zevenbergen, 2002). To be able to achieve this, the land title registration system is based on three basic principles, mirror, curtain and insurance principles as shown in Table 4.

Table 4: Underlying principles of the Torrens title registration system

Source: Adapted from Dale and McLaughlin (1999, p. 38)

4. Land registration in Ghana

Ghana currently operates both deeds and title systems of land registration. The colonial authorities introduced a deeds system with the Land Registration Ordinance, 1883, which was subsequently amended by the Land Registration Ordinance 1895 (Agbosu, 1990). Registration under the ordinance did not cure any defect in any deed or confer any validity. To protect the interests of foreigners, the Concession Ordinance, 1900 (Cap. 136) was introduced specifically to regulate the alienation of land from indigenes to non-indigenes (Bentsi-Enchill, 1964; Ninsin, 1986). The Ordinance required that, for a grant of land to non-indigenes to be valid, it must be in writing and a certificate of validity obtained from the High Court. The Ordinance further provided for the registration of concessions under the Land Registry Ordinance and introduced the grant of freehold interest to non-indigenes, which were entirely contradictory to those known under customary law (Ninsin, 1986, p. 142). The Registration and Concession Ordinances did not consider the documentation and registration of customary land grants, which were largely oral in nature.

The Land Registry Act, 1962 (Act 122), which replaced Registration Ordinance of 1895, essentially repeated the provisions of the Ordinance with certain amendments. Even though registration under the Act is not compulsory, transactions are deemed to have no legal effect until registered. The effect of registration is to serve as notice to the public and give priority against subsequent registration. An attempt to improve upon the 1895 Ordinance by authorising the Registrar to refuse registration on certain grounds failed to materialise (Agbosu, 1990). Section 20 of the Act was not brought into force when the Act was operationalised. The implication is that the authority of the Registrar to refuse registration based on conflicting claims and other inconsistencies was limited (Somevi, 2001). Even though the Act provided that a plan may be attached to an instrument relating to land, no provision was made for the adjudication of title or the use of accurate cadastral plans (Agbosu, 1990; Sittie, 2006). Consequently, the register of deeds contains conflicting land information and incomplete

information since it also failed to provide for the registration or recording of oral grants.

The Land Title Registration Act, 1986 (PNDCL 152) was introduced to correct the defects of the Land Registration Act, (Act 122). The memorandum attached to the Act summarised the reasons for its introduction:

Systematic land tenure research in Ghana has revealed radical weaknesses in the present system of registration of instruments affecting land under the Land Registry Act, 1962 (Act 122). The chief among them is litigation, the common sources of which are the absence of documentary proof that a man in occupation of land has certain rights in respect of it;

the absence of maps and plans of scientific accuracy to enable the identification of parcels and

Principle	Description
The Mirror Principle	The register reflects accurately and completely the current state of title in a jurisdiction, hence there is no need to look elsewhere for proof of title.
The Curtain Principle	The register is the sole source of title information. In effect a curtain is drawn blocking out all former transactions; there is no need to look beyond the current record to review historical documentation.
The Insurance principle	The state is responsible for the veracity of the register and for providing compensation in the case of errors or omissions, thus providing financial security for the owners.
<i>ascertainment of boundaries; and the lack of prescribed forms to be followed in case of dealings affecting land or interests in land.</i>	

To address the above issues, the Act introduced a Torrens-based title registration system to replace incrementally and eventually supersede the deeds system. The law provides the mechanism for the adjudication of land rights and the requirements for the use of scientifically accurate cadastral survey plans. Key provisions in the Act include the requirement for the registration of a wide range of land rights, including the allodial, usufruct or customary freehold, common law freehold and leaseholds.

The land title registration system, which is the focus of this paper, currently operates in only two out of the sixteen regions of the country, namely in the Greater Accra Region (commenced in 1988) and parts of the Ashanti Region (commenced in 2000).

4.1 Status of registration in Accra and Kumasi

Analysis of land registration data in both Accra and Kumasi between 2006 and 2014 suggest a low rate of land registration. Table 5 shows that between the periods under reference, out of over 106,435 applications received for title registration only 30,437 certificates were issued with title certificates, representing 29% completions rate.

Table 5: Status of land title registration – 2006 to 2014

Source: Compiled from the Lands Commission and Land Administration Project Unit, 2019

Further analysis shows that majority of the sampled respondents completed the registration processes over 1 year to over 3 years. The results, depicted in Figure 1, shows that in Accra, 68% of the respondents indicated it took between 1 year and over 3 years, whilst similarly high percentage (74%) of respondents in Kumasi took the same period.

Year	Applications Lodged	Certificates Issued	% Completion
2006	7,036	2,164	31%
2007	10,001	2,662	27%
2008	10,300	3,367	33%
2009	10,267	3,792	37%
2010	11,019	3,666	33%
2011	19,456	3,323	17%
2012	12,481	3,645	29%
2013	12,945	3,865	30%
2014	12,930	3,953	31%
	106,435	30,437	29%

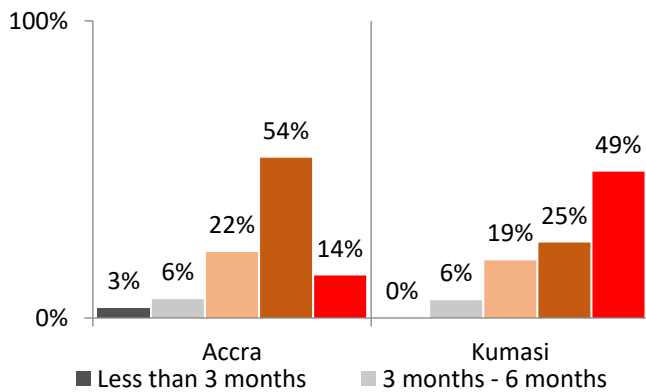


Figure 1: Time taken to complete the land registration process – Accra and Kumasi

It is significant to note that the completion times for land registration in both cities exceeded the current target of thirty days turnaround time for land registration. Further, even though a Client Service Access Unit (CSAU) has been established in Accra since 2015, its impact on the turnaround time is yet to be fully achieved.

4.1.1 Levels of satisfaction with the land registration process

To further understand the nature of the registration process, the sampled property owners were asked to express their level of satisfaction with the land registration process in terms of the number of steps, the time spent, and accessibility. The results show that property owners were generally dissatisfied with the number of steps, the time spent, and accessibility. This result is not unexpected given the findings of low percentage of certificates issued and time taken in the registration process. In the case of Accra, most of the respondents were dissatisfied with the number of steps (74%) and the time spent (78%) in the registration process (Figure 2).

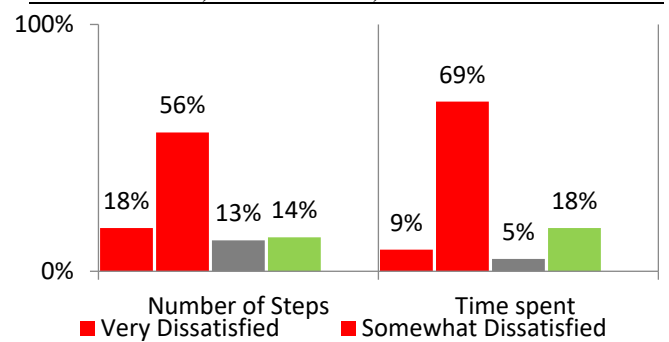


Figure 2: Number of steps and time spent in the land registration process in Accra

With respect to accessibility of the land registration processes in Accra, most of the property owners (52%) were dissatisfied (Figure 3). Although the establishment of the Client Service Access Unit (CSAU) may have improved accessibility, in most cases, applicants in the registration process are not able to adequately track the stages of their applications. Even when the appropriate stage of processing is identified, the availability of adequate information is not prompt. Consequently, applicants are forced to rely on ‘agents’ to follow up on a service.

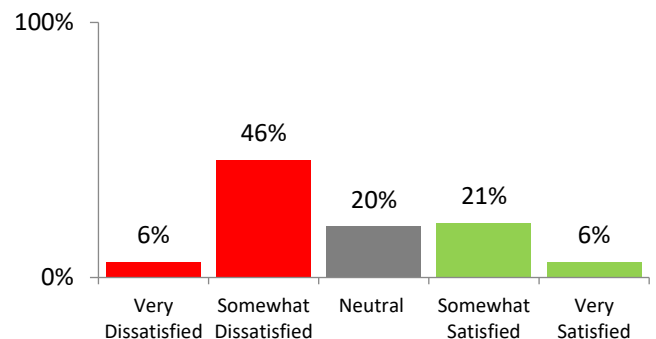


Figure 3: Assessment of the accessibility of land registration services - Accra

In the case of Kumasi, Figure 4 shows that most of the respondents were dissatisfied with the number of steps (73%)

and the time spent (71%) in the registration process. Approximately the same proportions of respondents were dissatisfied with the number of steps and time spent across categories.

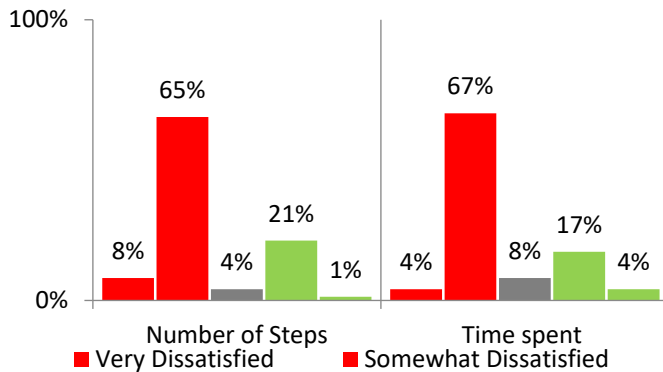


Figure 4: Number of steps and time spent in the land registration process - Kumasi

This result is not surprising given the earlier finding that a high proportion of respondents took more than three years to complete the land registration process.

In terms of accessibility to the land registration service in Kumasi, Figure 5 shows that most (68%) of the respondents were dissatisfied..

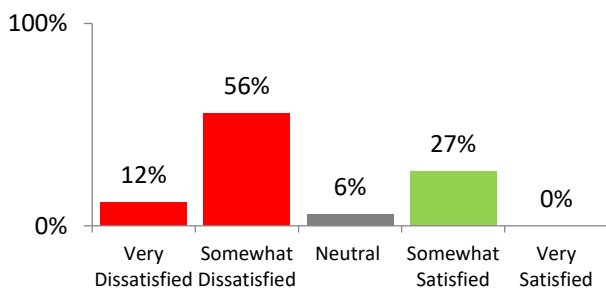


Figure 5: Assessment of the accessibility of land registration services – Kumasi

An important implication of the frustrations faced by property owners in the registration process is that the vast majority of land transactions in the declared districts in Accra and Kumasi are likely to remain unregistered, contributing to low rate of formalisation. An effect of the low level of formalisation is the gaps that emerge in the land information regime, which contributes significantly to the existing land information deficiencies.

To have a better understanding of the status of land registration in Ghana, the following subsections examines the (1) implementation of the legal framework and (2) organisational factors for land registration in Ghana.

4.2 Implementation of the legal framework for land registration

The nature of institutional rules or principles underpinning organisations may affect outcomes of formal land

administration systems (Chang, 2006; Portes, 2006). This is because the outcomes of institutions can differ from their stated objectives if the legal framework is not implemented appropriately by organisations (Chang, 2006; Evans, 2004; Pessali, 2011b). In this regard, the legal framework for land title registration, namely the Land Title Registration Act, 1986 (PNDCL 152) (LTRL) is examined with respect to two aspects. First, how the Act conforms to the principles of land title registration, and second, how the principles and provisions of the Act have been implemented with particular reference to its land information management aspects.

Conformity of the law with the principles of land title registration

The legal framework for land registration in Ghana largely contains provisions that comply with the three principles of title registration discussed in sub-section 1.3.1, namely the mirror, curtain and insurance principles. According to the curtain principle, the register is the sole source of title information. In effect a curtain is drawn blocking out all former transactions; there is no need to go beyond the current record to review historical documentation. To achieve this principle, all parcels must be brought unto the land register. In addressing the *curtain principle*, the procedure for adjudication and first registration of title in the Act was envisaged to be systematic to ensure that once all rights within a declared district had been successfully registered, the land register became the only reference for ascertainment of validity of titles. The systematic approach involves the declaration of an area as a title registration district and the publication of a notice of intention to register all parcels within a specified timeframe, as provided for in Sections 5, 6, 7 and 11 of the law.

According to the *mirror principle*, a land register must reflect accurately and completely the current state of title of a parcel, so that there is no need to look elsewhere for proof of title. The legal framework for land registration in Ghana sufficiently accommodates the peculiarities of customary land tenure, such as the concurrent existence of multiple land rights. For instance, in addition to formal land rights, Section 19 of the law provides for the registration of customary land rights, such as allodial title and usufruct. Further, the systematic strategy envisaged by the law provides a means to adjudicate logically and register the multiple land rights (often associated with customary tenure) within a declared registration district, commencing with the allodial title. With respect to the *insurance principle* of title registration, the State is responsible for the veracity of the register and for providing compensation in the case of errors or omissions. In this regard, Section 123 (1) of the Act provides for a fund to be established to compensate persons who suffer loss because of mistakes in the land registration process.

However, as noted by Chang (2006) and Portes (2006), the mere conformity of the law to the principles does not guarantee that they will actually be implemented. The extent to which the legal framework is implemented affects the effective capturing of, and access to, relevant land information. Consequently, attention is now focused on an examination of the nature of the implementation of the legal

framework relative to how it influences effective land information management.

4.3 Nature of implementation of Land Title Registration Act, 1986 (PNDCL 152)

The assessment of the Act is achieved by focusing on five (5) key aspects, namely the (1) Registration of Customary Land Rights; (2) The Conversion of Deeds to Title; (3) Survey, Demarcation and Preparation of Title plans; (4) The Examination, Adjudication and Publication of Intention to Register; and (5) The Recordings of Land Rights in the Land Register.

4.3.1 Registration of customary rights

Given the pre-eminence of customary tenure in the country, the extent to which the legal framework accommodates it is important. The evaluation of the LTRL (Law 152) in this study reveals that the requirements for the registration of customary land rights have not been fully implemented. One factor that accounts for the inability to register customary land rights adequately is the sporadic approach to the implementation of the law. This approach does not permit the systematic registration of the different levels of customary land rights (allodial, usufructuary etc.). An attempt made under the first Phase of the Land Administration Project (LAP 1) to develop a template to capture the usufruct right, in order to facilitate its registration was resisted by the National House Chiefs (NHC). The NHC argued that the registration of the usufruct would lead to a challenge of the allodial title vested in stools and skins. The implication is that it has not been possible to capture customary land rights fully.

The Constitutional provision that prohibits the grant of freehold interest in stool lands has been misinterpreted. The misinterpretation has resulted in the conversion of usufructuary land rights to leasehold interests before they can be formally registered. The injustice inherent in the conversion of the usufruct interest is captured in the following sentiments expressed by a key informant from Kumasi:

There is available evidence that customarily, nobody questions the term of years granted. So long as you have survivors to inherit you, the land is held ad infinitum. Therefore, when someone is trying to formalise his land and the Lands Commissions reduces the term to 50 years or 99 years is questionable. I am therefore saying that this form of formalisation is inimical to the existing system of land owning rights [KS10].

The potential curtailment of land rights can be a contributing factor that deters some property owners from having formal title. Another factor contributing to the difficulty in registering customary land rights is that the prescribed form for the effective capturing of the details of multiple rights in the same land is not implemented (this is discussed further under the recording of land rights in this section). The overall effect of the inability to register customary land rights is that the land register is often incomplete, since it does not reflect

accurately the situation on the ground. This contributes to uncertainty and conflict in some jurisdictions where the land tenure arrangements are not homogenous, such as in Accra.

4.3.2 Conversion of deeds to titles

The land register must be the conclusive reference for land ownership information. Consequently, Section 13 of the LTRL (Law 152) requires the land registrar to compile a list of all lands registered under the former Deeds system in a declared district, and to take steps to convert them to titles before considering the registration of other interests. This requirement ensures that the land register mirrors the ground situation, and it is a conclusive reference of land ownership information in a jurisdiction. Unfortunately, due to inter-organisational challenges and technical reasons the requirement has not been followed in any of the declared title districts in Accra and Kumasi.

The introduction of title registration in 1986 resulted in inter-organisational dispute, or turf war, between the former Lands Commission, which had oversight responsibility for Deeds registration, and the newly established Land Title Registry (now LRD). Consequently, title registration processes operated in Accra for many years without access to the records in the deeds system. Technically, the nature of indexing of registered deeds at the Deeds Registry in Accra, did not allow easy retrieval of information to facilitate the conversion process. Additionally, the low standards of quality assurance and control used to prepare plans attached to land documents registered under the Deeds system made it difficult to relate registered deeds to particular parcels. Even though, in Kumasi, the nature of indexing of the Deeds records, facilitates easy retrieval of information, the lack of effective cooperation between the LRD and the Public and Vested Lands Management Division (PVLMD) (which currently oversees the operations of the Deeds records) posed challenges to information sharing. These issues underscore some of the inter-organisational challenges encountered in the land registration phase.

One implication of the inability to implement the conversion scheme provided by Section 13 of the LTRL (Law 152) is that transactions under the Deeds system continue to be valid in declared title registration areas. In fact, it was not until 2006 that a directive was given in Accra to stop the registration of transactions under the Deeds system. Consequently, instead of the land register becoming the conclusive reference for land ownership information in a declared district, parallel sources of information exist. The existence of parallel sources of information results in challenges in reconciling conflicting information. Hence, access to reliable and comprehensive land information continues to be characterised by numerous challenges.

4.3.3 Survey, demarcation and preparation of title plans

Well-defined parcel boundaries are required for the effective recording of land information. An important aspect of title registration is therefore the unambiguous identification of the boundary of the land to which land rights are associated. To

this end, Section 6 of Law 152 requires the Director of the LRD to collaborate with the Director of Surveys (now the Director of the Survey and Mapping Division (SMD)) to systematically survey and demarcate parcels within a declared registration district. The purpose of the survey and demarcation is to prepare sectional or registry maps for the preparation of title plans and recording of registered titles. In line with this, Section 24 of Law 152 requires a surveyor to serve specific notices on all adjoining owners or occupiers of land. Owners or occupiers should be present and provide information for the identification of the boundaries of the land. However, because of too few surveyed and demarcated registry maps, the preparation of title plans in Accra and Kumasi are only undertaken sporadically. In the current practice in the preparation of title plans the surveyor relies mostly on information provided by the applicant for title, ignoring adjoining landowners/occupiers (Field Observation Notes).

The sporadic approach to the preparation of plans has important implications with respect to constraints in the land registration process. First, in some instances non-involvement of adjoining landowners in the demarcation and surveying of adjacent and subject parcels triggers conflicts, especially when parcel boundaries are extended onto adjoining lands. Indeed, this is a major contributory factor underlying the phenomenon of ‘multiple requests’ in Accra. Second, the sporadic approach also contributes to high transaction costs due to repeated surveys, which causes delays in the land registration process. For instance, one of the primary concerns of property owners during the land registration phase was the tendency to ignore earlier approved plans, resulting in double payment of the preparation of title plans. It is noted that the introduction of Barcoding of approved plans is supposed to address these challenges.

4.3.4 Examination, adjudication and publication of land rights

Effective examination and adjudication of land rights are fundamental requirements of any land registration system because they ensure the indefeasibility of registered title. Sections 22 to 33 of Law 152 provide elaborate procedures for the systematic examination and adjudication of land rights claims and objections. To facilitate the process, adjudication committees were to have been established for each of the declared title districts. However, only one adjudication committee was ever established for the whole of the Greater Accra Region, which comprises over twenty (20) registration districts. Even this committee, is currently not functional. In the case of Kumasi, no adjudication committee has been established since the commencement of title registration in 2000.

In the absence of the required number of adjudication committees, officials of the LRD, especially in Accra, are often inundated with numerous disputes, which they cannot adequately handle. The effect has been that disputes emerging during the registration process are often referred to the formal courts for resolution. Delays on the part of the courts to deal with such disputes have an effect on the completion time for

title registration, and this further deters property buyers from using the formal registration process.

The mode of examination of claims is also found to be a contributory factor to the ineffectiveness of the land title registration process since the examination is not comprehensive. The current approach involves enquiries at the PVLMD regarding the status of previous transactions. However, it is only when there are conflicting reports that the LRD undertakes field inspection to verify the situation on the ground. As was indicated earlier, Section 46 (1) (f) of the law provides that the customary land rights “...of every person in actual occupation of the land save where enquiry is made of such person and the rights are not disclosed”, constitutes overriding interests that affect a registered title. Hence, the need to ascertain actual occupation must be an important part of the adjudication process, especially if the indefeasibility of registered title is to be upheld. The importance of actual occupation was confirmed in a Court of Appeal judgment, *Edward Doku Nettey v Lartey* (Suit No: H1/ 158 /10 dated 26th May 2011). In this instance, it was ruled that a title certificate issued without taking into consideration the actual occupation of the defendant was obtained fraudulently. Part of the ruling stated:

The plaintiff has not denied that he once lived in an adjoining house owned by one of defendant's father's grantees. This means he has been aware of the defendant's family's occupation of the plots of land in the area including the one in dispute prior to the time he executed the 1989 lease agreement with the Sempe Stool. The execution of the said lease can safely be said to be tainted with fraud.

Although this ruling seemed to put the burden of proof on the plaintiff, it can be argued that, had the examination and adjudication of the claim by the plaintiff followed the procedures in the law, the actual occupation of the defendant would have been discovered. Obviously, the survey and demarcation stage of the formalisation process, as outlined earlier, could provide a good opportunity to ascertain actual occupation or possession.

An integral part of the examination and adjudication process is the publication of examined claims. In line with its systematic objective, Sections 6 and 54 of the Land Title Registration Regulations, 1986 (LI 134) requires that a record of all examined claims within a registration district should be prepared and published. In addition, Section 28 of Law 152 provides that the details of the records to be published include the description of the land, the name of the person(s) to be registered and particulars of their entitlements. Importantly, the law requires that the notice of publication must include the details of the place(s) where the public can inspect the adjudication records and associated demarcation or land registry map. The requirement for physical inspection of the records is important because it provides a good opportunity for interested parties to raise effective objections within the specified period stated in the prescribed notification.

Despite the importance of the requirements for publication, the prevailing approaches followed do not conform to the requirements. For example, the details of application for title

are couched in technical language making it impossible to identify the subject matter of a publication. In addition, opportunity for physical inspection of applications is not provided in the notice of intent to register. In particular, the opportunity for broader scrutiny of applications was limited in Kumasi, because publication is limited to a local newspaper (now Kumasi publications are included in a National newspaper). Further, the sporadic compilation of claims for publication contributes to delays in the registration process.

Non-compliance with the examination and adjudication procedures provided by Law 152 means that the integrity of the records is questionable. Hence, the reliability and conclusiveness of the land information captured is often in doubt since the particulars do not allow informed decisions to be made. Consequently, the indefeasibility of title as promised by the law is often not attained.

4.3.5 Recording of land rights in the land register

The details of how land transactions are recorded in the land register has important implications for the effective access to, and retrieval of, land information. Section 33 of Law 152 requires that the registrar take steps to enter relevant details of a claim into the land register after the adjudication record becomes final. Based on current practice, if no objection is received after 14 days from the date of publication, registration is considered to be final.

To facilitate the recording of land rights, the form of the land register, which contains three sections, namely property, proprietorship, and rights and encumbrances, provides a means to capture comprehensive information about registered titles. Section 16 (1) of the law states that the land register shall comprise a folio in respect of each parcel in every registration district, and each folio shall comprise:

(a) An entry of the description of the parcel with reference to the registry map and a plan approved by the Director of Surveys under sections 15 and 34.

(b) An entry in respect of every proprietor of the parcel, stating the name of the proprietor and the nature of the proprietorship [joint ownership or ownership in common, absolute or provisional.

(c) An entry in respect of every interest held [allodial, usufruct, freehold, leasehold, etc.] in the parcel by a person, stating the name of the proprietor of the interest and the nature of the interest.

The land register accommodates the recording of details of multiple land rights usually associated with customary land tenure. Particularly, sub-clause (c) above, provides that the particulars of multiple interest held in a parcel must be recorded in its associated folio or page in the land register in order to allow for easy retrieval of complete information.

However, the current form of the register only allows for the recording of one type of land right per folio. Field observations revealed that a new folio in the land register is opened to record the details of a leasehold interest derived

from a freehold right in the same parcel of land, instead of entering the particulars in the same folio as the freehold interest. The absence of an effective link between the records entered in the different folios makes it difficult to obtain complete information about all interests related to a registered parcel.

To compound the above difficulties associated with the recording of land rights and access to land information, there is no direct link between the parcel on the registry map and the land register that contains legal ownership information about a subject parcel. Whilst the register is identified by a combination of volume and folio, parcels are identified by a combination of the Region, District, Section, Block and Parcel Number. For example, a parcel in Section 18 of District 03 in the Greater Accra Registration Region will have GA/03/18/2/21 as its registration parcel identifier, whilst its register will be 'uniquely' identified by 9/345 (vol/fol). GA/03/18/2/21 and 9/345 are not directly related. Hence, to identify the land register associated with a parcel, an officer has to use a manual index sheet to identify the volume of the whole registration section. To locate the folio that contains title information about that parcel, the officer must either flip through the whole volume or rely on other records. Instead of using a unique identifier to record titles on the registry map, the certificate number, which changes anytime there is a transaction is used. Consequently, accessibility and retrieval of comprehensive information with respect to particular parcels is limited to manual searches. The task of automation is even more difficult without the construction of a complex indexing and cross-referencing lookup table.

The implication is that, the mode of recording land rights under the title registration system has made land information management difficult in terms of capture and retrieval. Consequently, this affects the ability to capture effectively relevant information about urban land transactions in general and customary land rights in particular. In effect, even though the legal framework accommodates customary practices and provides elaborate mechanisms for adequately capture land information, the actual implementation is fraught with challenges.

4.4 Organisational and operational challenges of land registration

The characteristics of the organisational arrangement can have significant impacts on how effectively or otherwise a particular legal or institutional rule would be implemented and hence, on the subsequent institutional outcomes. A number of challenges confront the institutional arrangements for land administration, which in turn affect the effectiveness of the land delivery process. Despite the merger of the previously autonomous agencies under the LC, they did not act as a corporate whole, contributing to the frustrations discussed earlier. For instance, it was observed that prior to the introduction of barcoding, there was often duplication of processes across the divisions, and multiple fees were sometimes paid for similar services due to a lack of proper coordination. In some instances, site plans that had already been approved by the SMD during the land acquisition phase were ignored when the LRD made a request for title plans

during the registration phase. This suggests that the applicant for title essentially had to make another payment to go through the same process again. The PVLMD, LVD, SMD, and the LRD undertake field visits at different stages in the land registration process with respect to the same application. This causes further delays and additional frustration for applicants. These organisational and operational challenges are similar to those reported in other studies. For instance, high levels of bureaucracy, rent-seeking behaviour of officials, and the imposition of administrative requirements during the registration process are identified as factors that frustrate and prevent the majority of urban populations from gaining access to the services of the formal system (Antwi and Adams, 2003; Lavigne Delville et al., 2010; UN-Habitat, 1990; Zevenbergen, 1999).

Discussions with some of the key informants (KS5, KS15 and AC2) suggested that the initial lack of understanding about the title registration system was a significant contributory factor to the operational difficulties that are evident in the system being dysfunction. A report prepared as part of an Organisational, Management and Operations (OMO) study under the institutional reforms of LAP 1 suggested that most (56%) of the staff of the LC did not meet the academic and professional qualifications for the positions they occupy (Innovative Services, 2009). The inadequacy in qualification was particularly acute in the case of the Land Registration Division of the LC were lawyers and land administrators until recently were very few. The officers who handle the critical day-to-day aspects of the registration process are likely to lack adequate appreciation of the law, which can be a major contributor to the ineffective operation of the system.

Evidence from Accra and Kumasi point to inadequate logistical capacity and inter-organisational difficulties as contributory factors to the ineffective implementation of the law. The survey and demarcation of land boundaries, the adjudication, and examination of land rights, and on-going maintenance or sustainability of the system requires budgetary resources. The lack of adequate resources contributes to the sporadic implementation of formal processes rather than the envisaged systematic approach. Further, lack of effective inter-agency collaboration and other challenges in the implementation of the law is also a cause of delays.

5. Conclusions

The analysis of the data from the study shows that organisational challenges and a divergence in the implementation of the principles of the legal framework are major contributory factors to deficiencies in the land information regime. The deviations in the implementation of key provisions in the land title registration law have important land information implications. First, the resulting ineffectiveness of the registration system is a major source of frustration to property owners as was expressed by the general dissatisfaction with the process in both cities. Second, because of the frustrations, most land transactions in the declared districts in Accra and Kumasi remain unregistered.

One important effect of the low level of formalisation is the gaps that emerge in the land information regime, which

contributes significantly to the existing land information deficiencies. Hence, there is a need for government to effectively implement a well-crafted and functional legal framework for land registration to ensure that the principles and operations of land registration are locally relevant and sensitive. In this regard, it is the expectation that that the new Land Bill passed by Parliament of Ghana will address the key deficiencies identified by this paper.

To address the organisational challenges, the paper notes that a reengineering of the business processes of services of the Lands Commission, including land registration is ongoing to streamline and integrate the processes of the Divisions of the Lands Commission into a single business process. A key outcome of the business process reengineering has been the establishment of Client Service Access Units (CSAUs) in five (5) regions: Greater Accra, Western, Eastern, Northern and Upper East Regions. Efforts by the management of the Commission to take the reengineering to the next level and expand the CSAUs to the other regions is commendable and must be sustained. In this regard, it is pertinent that there should be continuous monitoring and evaluation of the processes to identify new areas that must be the focus of further reengineering.

There is a need to improve the capacity of the human resource base of the officials of the formal land administration sector to address the identified challenges at the organisational and operational levels. In this regard, the ongoing digitization and automation by the Lands Commission, which is in the right direction, should be complemented with a focused reorientation of the staff to a new paradigm in land administration. The automation of the processes of the Commission should factor in measures to overcome some of the difficulties identified by this paper in effectively implementing the legal framework for land registration in the country.

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