

On the Implementation of Land Title Registration in Ghana

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SUMMARY

In 1986, the Government of Ghana enacted a Land Title Registration Law (PNDC Law 152) to remedy the weaknesses in the system of registration of instruments that existed then. However the implementation of the formal system has been very slow. In June 1999, the Government issued the National Land Policy (NLP) which was subsequently amended in 2002. The revised policy document articulates the Government's strategy on land management and administration and sets out direction for facilitating equitable access to land and land tenure security based on registered titles to promote community participation in sustainable land management and development practices. It is also to ensure the prompt payment of fair compensation for land acquired by the state, divesting of vested lands to their allodial owners and promoting research into all aspects of land ownership, tenure and the operations of the land market and land development processes. Unfortunately, the factors that have impeded previous implementation attempts still exist. The success of any land title and registration implementation depends on the extent that these factors are identified and remedied. In this paper the administrative, organizational, technical, and economic factors are identified and reviewed and possible measures are suggested for improving the implementation process of land titling and registration land in more efficient and effective way.

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1. INTRODUCTION

Land is the most fundamental of assets in Ghana as in many other societies. It is a very important economic asset that carries serious religious and political connotations (Kuntu-Mensah, 1997). Unfortunately, the administration of land has been saddled with so many problems, that Ghana as a whole, has been unable to benefit fully from the land beyond its physical existence. It turns out to be the source of many human conflicts that ultimately impedes the progress of many developing countries, like Ghana. This is because majority of land holding is informal and ownership rights to these lands are not adequately documented, that creates a lot problems. It is generally agreed that the ills associated with traditional land tenure can be traced to, or stem from the uncertainty of land title ownership and the litigation that follows in its train. Because of inadequate documentation of ownership rights in landed property, the enormous assets cannot be turned into capital, which create the “wealth of nations” (De Soto, 2000).

Recognizing the problem, the Government of Ghana (GOG) in 1986 introduced the Land Title Registration Law with the main objectives of "*first, to give certainty and facilitate the proof of title; secondly, to render dealings in land safe, simple and cheap and prevent frauds on purchasers and mortgages.*" (PNDC Law, 152). This wasn't Ghana's first attempt at registering interests in land. There were the Land Registration Enactment of 1883 of the Queen's advocate, the Land registry Act of 1897, the Land Development Act of 1960, the Farm Lands Protection Act of 1962 and the Land Registry Act of 1962 (Act 122), each successively replacing and improving on the preceding one. These were all forms of deeds registration, with the most improved version, The Land Registry Act of 1962, providing a *prima facie* evidence of title to land (Jaap, 1998). However it failed to require the attachment of accurate plans to *registrable* instrument, did not provide any systematic adjudication process, and even excluded traditional but valid oral transactions (Kuntu-Mensah, 1997). Whether these and other problems associated with deeds “may be solved by incremental changes... rather than a complete turn over to title registration” (Jaap, 1998) is debatable. In 1986, the GOG sought to address the “radical weaknesses in the system of registration of instrument” (PNDC Law 152, Memorandum) through title registration. But the implementation was very slow. In 1999, the government of Ghana issued the National Land Policy (NLP) which was subsequently amended in 2002. The revised policy document articulates the government's strategy on land management and administration. Among other things, it sets out direction for facilitating equitable access to land and security of land tenure based on registered titles. The Land Administration Program (LAP) is the first phase of the policy being implemented to lay the foundation for a long-term land administration reform. One of the components of LAP is to improve land titling, registration, valuation and information systems. Given that the factors that have impeded titling and registration of land in the past have not changed, the objective

of this paper is to review these factors and suggest ways to remedy them to precipitate the implementation of titling and registration in the most effective and efficient way.

2. LAND OWNERSHIP

There are four categories of land ownership provided for in the 1992 Constitution of Ghana, namely Public/State, stool/skin, clan/family, and private lands. State or public lands include lands that belong to the state and all other levels of government - local, urban, municipal and city councils, departments, and state co-operations. In general, the Republic of Ghana does not own land, except such land as are acquired (by lawful proclamations, ordinances, statutory procedures or International Treaty) and held by the state in trust for the people of Ghana. Stool or Skin lands are community lands vested in the traditional chief or other community leaders on behalf of the tribe. These lands include all lands which are at the disposal of any local community. They constitute about 80% of total landholding in the country which is mainly customary. Family or clan lands are owned and controlled by families, where in this case a family includes a group of persons all related exclusively through either a patrilineal or matrilineal line. Private lands are lands that individuals have purchased or otherwise acquired or inherited, and are at their personal disposal and not subject to any family sanctions. Following customary and statutory laws, all land ownership and tenure can be acquired by any citizen or a *stranger* under one of the four categories. Though land ownership acquisitions are being transacted, the majority of the land market is largely informal (especially in rural areas) giving rise to ownership insecurities and other problems.

A number of agencies of the Government are involved in land administration. These include The Land Title Registry, Survey Department, Town and Country Planning, Land Valuation Board, Administrator of Stool Lands and Stool Lands Settlement Commission. The Land Title Registry is responsible for the registration of title to (and other interests in) land in a parcel-based registration system. The Survey Department is responsible for all mapping activities in connection with the registration. The department provides all cadastral, geodetic, topographic, and hydrographic surveying and the production of base and cadastral maps. The Town and Country Planning Department is responsible for planning development within the country at national, regional and district levels. Lands Commission manages all state lands, advising the Government, local authorities, and traditional authorities on land policy. The commission also consents to the disposition of stool lands and carries the responsibility for the Deeds Registry. The Land Valuation board is responsible for the Government's valuation functions such as compiling valuation rolls for local authorities, assessing compensation in state acquisitions, establishing the capital value of state-owned assets, and valuing mineral and forest concessions. The board provides expertise for arbitration to settle land litigation and assesses stamp duty to be paid for documents to be registered in the Land Title and Deeds Registries. Concerning stool lands, the Office of Administrator of stool is responsible for collecting rents, royalties, compensations and other payments on stool lands for the distribution to the district assembly, the stool or skin, and the traditional council. There is also the Stool Lands Boundaries Settlement Commission with the judicial responsibility of adjudicating disputes related to stool lands. During the process of acquiring a piece of land and registering the title

thereof, landowner is bound to interact with all, or most of these departments. This creates a long and tedious process which makes registration of title very cumbersome.

3. IMPLEMENTING THE LAND TITLE REGISTRATION

Ghana's Vision 2020 long-term goal is to become a middle-income country by the year 2020. It has been recognized that an effective and efficient land administration system is vital to achieving this goal owing to the important role *property* plays in the economic and social development of the country. Proper land administration infrastructure has impacted the economies of developed countries by providing support for the operation of land markets, the use and creation of capital, land use planning, *land taxation*, urban infrastructure, and natural resource management (Williamson, 2001). It is hoped that proper land administration infrastructure and effective management will impact Ghana's economy in similar positive ways. Thus, with World Bank financing, Ghana embarked on a general reorganization of land administration to improve mapping, titling, registration, conveyance, and develop cost-effective methods of adjudicating land and issuing clear titles (American Cadastre, 1998). The implementation of Land Title Registration Law 1986 (PNDCL 152) and now LAP forms part of the attempt at improving the general infrastructure for land administration and management. At the moment, the Title Registration is being practiced, in a transitional stage, alongside the older Deed Registration, which it is expected to replace. The implementation started in the Greater Accra region, and it is being gradually extended to the other Regional capitals, in order to decentralize the formalization process.

4. STATUS OF TITLE REGISTRATION

Twenty years after the PNDCL 152 that established the Land Title Registration Law of 1986, it would appear that not much progress has been made in terms of the number of titles registered. The Law itself did not specify any time-lines for the registration; it simply stipulated that the Title Registration would be compulsory throughout Ghana and implementation will proceed *in stages*. It is safe to say that the exercise is far beyond the *pilot scheme* that was to be started in the Greater Accra region to enable staff become accustomed to the new procedures (PNDC Law, 152) and others to receive training. In fact implementation has been started in other Regional capitals with the declaration of registration districts in these regions. Though current numbers are not available, according to American Cadastre, some 20 registration districts had been declared in the municipal areas of greater Accra as of 1998. Some 324 sections have been defined in 12 of the 20 districts, and 184 of the section maps, containing total of 132,000 parcels had been completed. However Land Title Registry had received only 42,000 (30% of the parcels) applications for registration since its inception in 1988. Of these only 11,500 parcels had been duly registered (about 10,000 registered under parcel plans, and 800 registered under cadastral plans). Though property rights are being created at high rates every year, as result of increasing population, urbanization, and housing, this is still taking place informally. It appears also that incidence of land disputes and litigation is increased as property owners attempt to verify their rights to their acquired lands, and thus highlighting the very ownership insecurity that title registration

was to reduce. Clearly, the slow pace of registration and the recurring land disputes suggest that there are problems with the implementation process.

5. IMPLEMENTATION ISSUES

In very broad terms, the limitations to the implementation of Land Title Registration derive from institutional, technological, and financial constraints.

5.1 Institutional Issues

One serious problem in the title registration is a lack of comprehensive approach. Currently, there are too many agencies involved in the registration process. The activities of surveying, conveyance and registration of land parcels are spread among different agencies resulting in duplication of efforts. The registration of a lease on a stool land for example, may involve the Survey department, Town and Country Planning Department, Lands Commission, and the Land Title Registry, each of these successively depending on the other for some certificate. This generally causes delays, with a title registration taking “on the average 382 days, seven different procedures, and about 4.1 per cent cost of the property to finalize” (Ghanaweb.com, 2006). There is also a lack of coordination and adherence to the predefined roles and operational rules of the agencies. For instance, personnel other than licensed surveyors or agents of the Survey Department perform cadastral surveys which results in instances of multiple claims. Also, it appears in general that, there is lack of basic education about guidelines and procedures for the landowners to follow to register their title. Until LAP, the title registration did not really receive the priority it deserved from the government.

5.2 Technological and Resource Issues

Available technologies in most agencies are inadequate to match the current demand for land transactions. Many simple tasks take a long time because of the lack of appropriate tools and technology necessary to execute them. And most of the staff members do not have adequate training in computer technology. More personnel should be trained in information technology and computing procedures; modern survey and digital drafting methods should be incorporated into cadastral mapping.

5.3 Financial Issues

The land title registration is mostly funded through donor grants or loans usually as part of a general developmental program. In recent times, the LAP has received a great deal of financial support from the World Bank. Local Government budgetary allocation for registration of title is limited, as the government in the past has been reluctant to spend money where returns are not immediate, and cost cannot be recovered in some way. Typically, the registration fees do not generate enough revenue; even so, the registration fees (about 4% of total land value) are too high for some landowners and make them unwilling to register their title. There is barely a functional property taxation system in place. It is rather uncertain if the registration system can support itself without government subsidy.

6. DISCUSSIONS AND CONCLUSIONS

The Land Title Registration Law, 1986 was introduced to rectify the weaknesses in the Land registry Act of 1962, mainly to give certainty and facilitate the proof of title, thereby to render dealings in land safe, simple and cheap and prevent frauds on purchasers and mortgages. In the long run it is also to reduce or eliminate land disputes and litigation. This will make for an efficient land administration system (that supports the operation of land markets, the use and creation of capital, land use planning, land taxation, urban infrastructure, and natural resource management), vital to Ghana's Vision 2020 goal of achieving middle-income country status.

Implementation of the Land title registration was started with creation of the Land Registry Office in 1988 and declaration of registration districts in the Greater Accra region. Both the Deeds and Title registrations are running side by side until the former is gradually phased out, though there is no projected time line for this to happen. About twenty years since the implementation started, there has not been commensurate improvement made in this direction. The same problems, mistakes, and bottlenecks associated with the deed registration are still persistent, making the title registration a slow exercise indeed. With launching of the LAP, there is now new zeal towards implementing mechanisms to resolve the numerous problems in land administration in the country.

For the Land titles registration to succeed, landowners have (to be educated) to understand the extent of market value that is associated with property and the financial possibilities that may be open to them. As intimated by Ghana's Attorney General, "many of our customary laws on land are outmoded..." (Ghanaweb.com, 2002), so old traditions against alienating stool and family lands should be reviewed to expand the land market. This can also be greatly enhanced if banking and financial institutions are encouraged to introduce the idea of mortgages for land and real estate property. The government should spearhead the re-education of the population on the parallel life that landed property that lead beyond the physical world. This, more than security of title, will motivate landowners to register their property.

The Land title process should be streamlined to make it more comprehensive; the piece-meal approach to formalization results in a very low efficiency. For example, less than 10% of some 132 parcels that have been shown on section maps were registered (America Cadastre, 1998). For instance the Land Title Registry will not register a lease of a stool land unless accompanied by a concurrence certificate. Land commission will not issue the certificate unless it conforms to Town and Country Planning approved layout, which they will process only when the Survey Department has prepared a base map showing the locations of parcels. Unfortunately, the Survey Department will not prepare the cadastral maps unless funds are provided for the mapping. This creates a cumbersome, long, and costly process. A comprehensive approach will speed up the process and reduce the overall cost (customers will pay less number of fees, not counting the bribes along the way).

Procedures for acquiring landed property should be modernized, streamlined and simplified. Irrespective of the type of land ownership - private, family stool/skin, or government - there should be a systematic way of acquiring them. Once acquired, the registration process should

only involve the Survey Department (or a licensed Surveyor) and the Title Registry. This should effectively eliminate Lands commission and Town and Country from the title registration procedure. Along the same lines, the call for the signature of Director of Survey on cadastral maps should be reviewed. Given the enormous task of cadastral survey, the Survey Department personnel alone cannot meet the demand. The private sector (e.g. Licensed Surveyors) should be allowed to undertake some of the cadastral surveys. Unfortunately, there are not enough licensed surveyors in Ghana to do the job, even though the geodetic Engineering program at University of Science and Technology graduates many surveyors every year. The whole idea of surveyor licenses being awarded by the Director of Surveys (instead of an educational/professional body) should be thoroughly examined. The success of the Title Registration implementation may as well depend on how well the survey community is able to meet the demands for cadastral mapping, all things being equal. The need for surveyors' involvement in the registration process should be extended to other professions such as real estate agents, brokers, and insurance companies in the private sector. It has actually been shown in many parts of the world that the private sector does a better job at ensuring registration in a land market economy than the government.

Another issue great concern in title registration is the adjudication process. While it should be conducted in a fair manner, the whole process should have legal muscle behind it so that some finality can be attached to the decisions that are made. On the other hand, there should be a better way to settle protracted land disputes that sometimes span many generations. For cases in stalemate, opponents should be allowed to "agree to disagree", but agree to accept settlements in kind as adjudication committee and the courts may see fit, to bring closure to the dispute (from a layman's point of view, of course). In other cases of multiple sale of property by chiefs and land owners, there should be stiff deterrent penalties for the culprits. In fact, all old land laws should be modernized and simplified, as has been intimated by many voices, "Land System Is Bogus" (Ghanaweb.com,12/2002), "Judge calls for Simplification of the land Registry"(Ghanaweb.com, 9/1/2003), "Ghana's land laws outmoded" (Ghanaweb.com, 3/19/2002). Land laws should not only be simple and modernized but also enforceable. The rule of any property law is useless if it is not enforced and violators are not prosecuted.

That the implementation of the Land Title Registration has so far not been simple, cheap, or fast does not pronounce failure as a system. The problems, challenges, and mistakes encountered so far have been experienced in almost all developing countries that introduced title registration. Making the system compulsory has not encouraged property transactions to be formalized. It is not difficult to see that people are not prepared to spend money for cadastral surveys, and pay other fees in the process to register their title, when it is not of personal priority to them. The government should work harder at selling the title registration idea as an important and indispensable component of improving the economy. It should show its seriousness by allocating annual budgets for the implementation as done for other sectors. This, the government should do even though it may not make *political sense*, as the returns on the investment may not be immediate or physical. The government should streamline the property laws and enforce them. Above all it should be creative in selling the idea of land leading other parallel life to encourage property registration, and should vigorously publicize

to buyers of landed property to demand proper legal documentation in all land and property transactions.

Success of the registration cannot even be measured in terms of the number of titles registered (less than 10% of parcels with complete cadastral plans as 1998). After all, no land registration system is considered complete, as it is always dynamic. With the LAP in full swing, the financial support and goodwill from World Bank and other donor countries, Ghana's registration system can only be expected to continue to improve, provided the implementation keeps the momentum. Perhaps what is important to consider is the degree of security of ownership (as accorded by land laws) that has been achieved; whether the system is now fair and accessible, whether it is clear, simple, and transparent, whether it is affordable and can sustain itself in the long run. On these counts, the title registration process as is being implemented right now, in terms of organizational practices, level of cooperation, and legal procedures, has a long way to go. But if the government understands that the economic development of the country (creating a property owning democracy and achieving middle class status by 2020) is dependent on the people's ability to liven the so much dead capital in landed property, if the government doggedly pursues the tenets of LAP and if the public is made so aware of the exercise to demand legal documentation in any transaction, then progress could be said to be already on the way.

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BIOGRAPHICAL NOTES

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