Customary Land Tenure Dynamics at peri-urban Ghana: Implications for Land Administration System Modeling

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Setting of the study

- New trends in International research and land administration practice
  - Re-emergence of indigenous/customary interests
  - Spearhead by world Bank and UN-Habitat

- Shift in earlier focus- formalization of customary rights to
  - evolution of property rights;
  - broad variation of land rights;
  - empowering of customary land tenure institutions; and
  - inclusion of customary rules
Setting of the study

Example

- Pro-poor land management tools and registration of continuum of land rights (GLTN-UN-Habitat)

- Establishment of customary land secretariats (Sponsored by the World Bank/other donors)

Why the need?

- 80 -90% of land in sub-Saharan Africa lies on customary land

- Most countries have inadequate cadastral data for decision-making

- Most cities in sub-Saharan African exist or have been developed on customary land
Why the need?

- Many rights (customary and common law) often co-exist in the same piece of land in hierarchical order

  - Allodial interest
  - Customary Law
  - Freehold (Usufruct)
  - Share Cropping
  - Customary Tenancies
  - Community’s common property rights
  - Range of derived/secondary rights
  - Alienation Holdings
  - Freehold acquired under common law
    - Leasehold
    - Licenses, Easements
Studies indicate that customary tenure systems evolve to reflect changes in the society and pressure from the growth of urban areas (Österberg, 2002; Torhonen, 2004) good workable and key elements of the tenure system are retained while poor ones dropped (Kalabamu, 2000) lost in communal and social values in land (Larbi, 2006) results in complex hierarchy of rights, broad variation of tenure and interests results - some of which are not properly defined (Toulmin and Quan, 2000; Österberg, 2002)

Conventional land administration systems does not capture over layering or complexity of individual rights - hierarchy (Oosterberg, 2002, Von Benda-Beckmann, 2000) focused on recording information of tenure only in its static state (van der Molen, 2002)

How to record the broad variation of complex rights and dynamics of tenure in land administration?

Paper give account of how customary tenure systems evolve to meet dynamic need of peri-urban communities
Study Areas

- Three peri-urban areas were chosen for the study.
  - Tamale Paramount Area (skin land)
  - Japekrom Paramount Area (stool land)
  - Gbawe Kwetei (Family lands)

- Choice
  - Fast development cities
  - Countrywide problem?
  - Land ownership groups

Jisonayili (peri-urban Tamale)
Methods

- Exploratory case study research (based on embedded case study design approach)
- Qualitative methods (chiefs, family heads, caretaker chiefs, elders, land allocation committees)
  - narratives and oral histories
  - focus group discussions
- Quantitative tools (*structured and semi-structured interviews*)
  - 450 households
  - indigenes and settler

Dynamics of tenure

<table>
<thead>
<tr>
<th>Aspect of Tenure</th>
<th>Past</th>
<th>Present</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Rules of land ownership and transfer</td>
<td>• Protects security or individuals and groups</td>
<td>• Modified to suit individualization of land</td>
</tr>
<tr>
<td>• Land value</td>
<td>• Land is highly valued either for its utilitarian, emotional, mystical, social or religious</td>
<td>• Economic monetary value</td>
</tr>
<tr>
<td>• Communal ownership and rights</td>
<td>• Every land belonged to the community</td>
<td>• Other interests/ownership have carved from communal ownership (state and individual)</td>
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<tr>
<td></td>
<td>• Customary freehold was highest</td>
<td>• Leasehold</td>
</tr>
<tr>
<td></td>
<td>• Communal rights</td>
<td>• Common law freehold</td>
</tr>
<tr>
<td></td>
<td>• User right</td>
<td>• Individual rights</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Ownership</td>
</tr>
</tbody>
</table>
Dynamics in land ownership

Dynamics in use rights
## Dynamics of tenure

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<tr>
<th>Aspect of Tenure</th>
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</tr>
</thead>
<tbody>
<tr>
<td>• Methods of Transfer</td>
<td>• Inheritance through lineage</td>
<td>• Introduction of land sales and other contracts based on common law</td>
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<tr>
<td></td>
<td>• Gift</td>
<td></td>
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<tr>
<td></td>
<td>• Tenancies</td>
<td></td>
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<tr>
<td></td>
<td>• Land pledging</td>
<td></td>
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<tr>
<td>• Tenure security of the usufruct</td>
<td>• Continuous occupation and use of land and honoring obligations</td>
<td>• Forced eviction</td>
</tr>
<tr>
<td></td>
<td>• recognized by every member of community</td>
<td>• Rights recognize through statutory registration</td>
</tr>
<tr>
<td>• Land use pattern and tenure</td>
<td>• Agriculture</td>
<td>• Residential</td>
</tr>
<tr>
<td>practices</td>
<td>• Subsistence farming</td>
<td>• Commercial farming</td>
</tr>
<tr>
<td></td>
<td>• Land use regulations enforced through myth</td>
<td>• Land use regulations enforced through statutory law</td>
</tr>
</tbody>
</table>

## Dynamics in Land use

![1998 Land Use](image1.png)

![2008 Land Use](image2.png)
### Dynamics in land use

![Maps showing land use over time](image)

1998

2008

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### Dynamics of Institutional mechanism for land delivery

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<tr>
<th>Aspect of Tenure</th>
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<th>Present</th>
</tr>
</thead>
<tbody>
<tr>
<td>Methods or recording transactions</td>
<td>No written records, yet legitimated publicly endorsed at public ceremonial gathering</td>
<td>Simple log book, charts and computers</td>
</tr>
<tr>
<td>Land conflict resolutions</td>
<td>Based on arbitration and local knowledge</td>
<td>Based on local knowledge, arbitration and other land professionals</td>
</tr>
<tr>
<td>Land acquisition and delivery</td>
<td>Land for farming allocated by head of household</td>
<td>All land transfers must pass through the chief</td>
</tr>
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<td></td>
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<td>Allocation note used as evidence of allocation</td>
</tr>
<tr>
<td>Selection of community leaders</td>
<td>Purely based on merit (traditions)</td>
<td>Other factors such as ability to read and write considered</td>
</tr>
</tbody>
</table>
Recording Land Transaction

Chieftaincy

Old chief

Modern chief
Conclusions

- Customary tenure dynamics have both positive and negative implications

- Land administration should take the positive aspects of tenure dynamics to counter the negative aspects in order to design an alternative and desirable land administration models for customary areas

Thank you