Focus on Africa Brief

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Ghana

Lesson 4:

Land Administration at a Crossroads

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INTRODUCTION

During the 1980s and 1990s, Ghana began the process of reforming its institutional framework for land governance. However, legal reforms and more systematic land registration has only recently begun. In 2008 the Lands Commission Act was passed, and several donor agencies have partnered with the national government to reinvigorate the process of formalization in peri-urban Ghana. While these reforms have had incremental successes, it is yet to be seen if they are sustainable or scalable. In this lesson we discuss these projects, their impact, and the risks of unintended consequences for women, pastoralists and the poor if their rights are not explicitly taken into account.

Since colonial times, Ghana's land sector has suffered from splintered institutional functions and capacity and an underdeveloped land registration system. Until recently there has been a lack of cooperation – and even conflict – among government land agencies (although this has begun to improve since the reorganization of the Land Commission). Some of this conflict was born out of the varied land institutions' fear of their changing roles as title registration replaced deed registration; agencies stopped sharing their records and stopped cooperating in the process.

In 1986, the Land Title Registration Act was enacted, which determined title registration as the official system for registering property. The purpose of the law was to increase certainty and to ensure that dealings in land were "safe, simple and cheap." Under the law, the state backed new titles and eliminated the need for deed records. However, the implementation of the 1986 act was very prolonged. Title registration was meant to parallel the process of deed registration until it fully substituted for it, but deed registration has not been phased out and the two processes have been poorly integrated.

Today, large numbers of titles remain unregistered. Between 1986 and 2006 only 42,000 applications for land registration were submitted to the Land Title Registry, and less than 30% of those were actually registered. Lack of administrative capacity and weak public outreach have hindered the process, leading to many citizens losing faith in the land administration system.

There have been land conflicts as claimants take advantage of a weakly coordinated system and register titles without other claimants' knowledge. The adjudication system for such conflicts is weak, courts are overwhelmed, and decisions are poorly enforced. As of 2006, the Ghanaian courts of law were clogged with 35,000 land disputes

In 2008, a new Lands Commission Act was ratified. It redefined the responsibilities of the Land Commission and brought four different agencies under one institution. The Survey Department, Land Valuation Board, Land Title Registry and Lands Commission Secretariat now function as four distinct divisions within the new Lands Commission. The Lands Commission will also be responsible for stakeholder engagement and public outreach for the formulation of a new Land Act. Within the Lands Commission, The Land Registration

Division has at least four functions according to the Lands Commission Act: it is responsible for registering land titles, deeds and other interests in land; notifying the public of registration once an application has been received; and maintaining Ghana's land registers.

Before the Lands Commission was reorganized in 2008, registration was piecemeal and cumbersome. In some cases all four land agencies would be involved in a single registration. A lack of electronic systems made cadastral and register recordkeeping nearly impossible. While the consolidated land administration system seems to have streamlined registration, there have not been any rigorous studies to determine its effectiveness.

Today, several projects seeking to strengthen the land sector in Ghana and formalize tenure are being implemented: the Government of Ghana's Land Administration Project (LAP), which is supported by the World Bank and a number of bilateral donors; the Millennium Development Authority's Land Tenure Facilitation Activity; and private sector programs such as the ParcelCert™ program led by Medeem LLC and the Micro-Mortgage and Land Titling Project led by Opportunity International and International Land Systems (ILS).

The World Bank has heavily supported the Ministry of Lands and Natural Resources Land Administration Project. The project, expected to last 20 years, began in 2003 and is valued at $55 million. Through policy, legal and institutional reforms, the project aims to increase the extent of land titling, facilitate the creation of community-based registration facilities managed by traditional authorities, minimize boundary disputes, and harmonize statutory and customary land laws. Over the past few years, the project has begun systematically registering land in pilot regions. Land owners are required to pay a flat fee of GHc50.00 to receive their land title certificates. With the inception of the Land Administration Project, the government began to give land title registration more attention.

The project has also supported the creation of the Lands Commission Act that consolidated land sector agencies and the establishment of 38 Customary Land Secretariats to house land records and document land transactions. LAP is currently in the process of demarcating and creating a map of allodial territories, working with customary authorities in
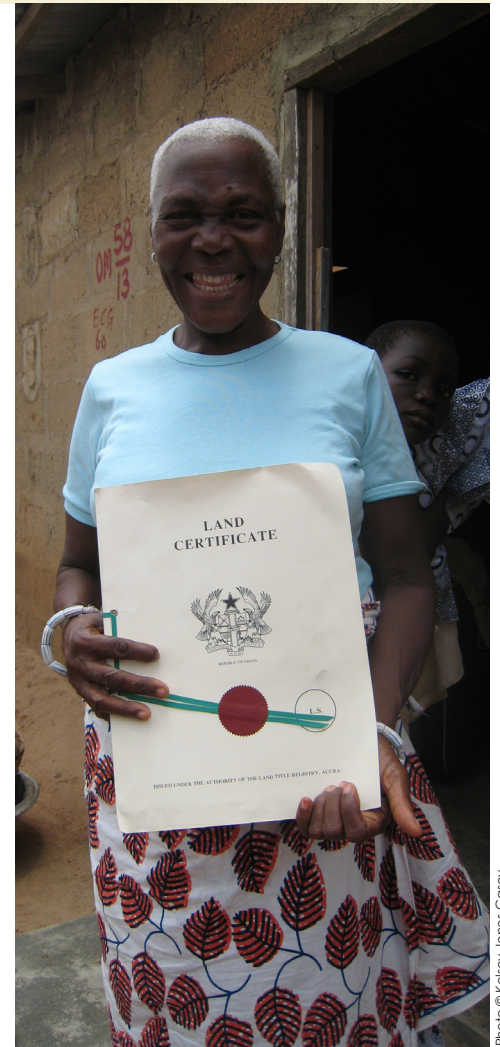
"Before the Lands Commission was established, registration was piecemeal and cumbersome. In some cases all four land agencies would be involved in a single registration."

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selected pilot communities to confirm the boundaries. The maps will be made public upon completion.

Under the auspices of the Millennium Challenge Corporation, the Millennium Development Authority (MiDA), Ghana was established in 2006. One of their goals is to improve tenure security for existing land users and to facilitate access to land for commercial crops in their regions of intervention.

To that end, MiDA is implementing a pilot project in the Awutu-Senya District of peri-urban Accra to systematically title and register land. Other objectives are to modernize survey and database equipment, establish rural land registries, and encourage alternative dispute resolution for land conflicts. To date, MiDA has issued and registered 270 land titles.

The process for systematic land titling and registration under the MiDA project is notably comprehensive. The project begins by sensitizing potential communities to gauge their willingness to participate in formalization. The MiDA team also identifies the different types of tenure in the region and creates a team of local stakeholders to map the community's land boundaries using Global Positioning System (GPS). MiDA then undertakes a parcel inventory that includes the names and landholding interests of current occupiers, which is followed by a survey of parcel boundaries

and linking of the two sets of information. The entire process costs approximately $200 - $250 per registered parcel, including the fixed costs of equipment. Costs are expected to decline somewhat if implemented at a larger scale.

Later in the process, chiefs call villagers to a meeting, so that participants can verify their information in the project databases. If any inaccuracies are found in the records, mistakes are corrected. If the information is correct, the landholder then signs the Land Registry Application and Parcel Plan witnessed by the chief and two others, and the application is submitted to the Chief Registrar for his/her signature.

Alternative dispute resolution (ADR) methods are used to manage any disputes that may arise during the process. A notice of intent to register is then published in the public media and displayed publicly within the community for 14 days to provide an opportunity for objections. If there are no objections, the Registry Office of the Land Commission proceeds with registering the parcel and issuing title certificates to the land owner.

This process takes 31 days for 100 parcels. It is a 10-step process that includes filling out land registry forms, lodging the application, issuing acknowledgement notes, entering certificate numbers, drafting certificates, typing and checking

land registers, preparing files for signature by the acting director of the Land Administration Division of the Lands Commission, plotting parcels, and binding the certificates. MiDA hopes that this model for land registration will eventually be adopted throughout Ghana.

The MiDA project represents a significant departure from the usual process for landholders to register and title their land. Usually those seeking to title and register their land must take responsibility for the numerous processing fees and visits to distant Land Registries, expenses that are typically prohibitive for rural villagers. In these areas with high levels of poverty, MiDA has succeeded in asking the Government of Ghana to waive the stamp duty (a tax on documents brought in for recording land rights), as well as the fee for searching land records to ensure there are no conflicting claims. MiDA delivers the Title Certificates to beneficiaries, whereas the normal procedures require them to collect them from the Registry. MiDA also fully subsidizes the costs of community sensitization, surveying, verification of information, publication of notices in the media and community, dispute resolution, and generally guiding communities through the formalization process.

It is doubtful that the Government could or would invest the necessary resources to assume the costs of systematic registration on a large scale. Hence, prospects for replication of the MiDA model nationwide are dim unless political will is exercised and financial and human resources are fully mobilized to meet those costs.

From 2007 to 2009 ILS – with a consortium of companies led by Corporate Initiatives Development Group (CIDG) – undertook a pilot project to document the land rights of poor Ghanaians through a process they call paralegal titling (paralegal titles can later be converted to formal titles). In partnership with Corporate Initiatives Development Group, Opportunity International, Trimble Navigation, and ESRI/Sambus Ltd., ILS used low-cost GIS software to store information on land rights, including satellite images and photo documentation.

Land title services were delivered by Opportunity International, a microfinance organization that also facilitated the connection with pilot communities by using private school operators (and Opportunity International beneficiaries)

as "trusted brokers." Thirty schools were targeted in the pilot. Land title services were delivered by Opportunity International, a microfinance organization operating in the pilot district. The project decided to choose private schools as their clients for the pilot because growing numbers of private schools in Ghana are looking to construct more buildings, and also because schools' property boundaries are usually clearly defined. Opportunity International operated as a broker in its relationship with the selected group of private school operators who were the project's clients. Thirty schools were included in the project

Medeem – a new company created by Corporate Initiatives Development Group in concert with local enterprise in Ghana – was created to build on the pilot's results and to bring about a full-scale locally driven program to assist the socially and economically disadvantaged in Ghana, including urban dwellers, farmers and women. In addition to land documentation services, Medeem provides these groups with asset management education and training to inform them about the benefits of protecting their land assets and the need to avoid predators that may seek to take advantage of their interests in the land.

The Government of Ghana and its donor partners have made significant strides in streamlining and building the capacity of the land sector. This includes investments in human capital, modern mapping and record-keeping technologies, and decentralization of land registries. Without these measures, the country would not be prepared to scale up formalization beyond the various titling and registration projects that are now being piloted.

Yet, it is uncertain how the GOG intends to scale-up from these pilot projects and institute nationwide formalization. Models like the one developed by MiDA are both complex and costly, leaving doubts about their replicability at scale. Their sustainability is also questionable if the economic and transaction costs of transferring title are beyond the means of most landholders.

Other sustainability concerns emerge from the fact that there are multiple approaches being pursued to formalization with little apparent coordination or efforts to institutionalize them within the Land Commission By providing a state-backed guarantee of landl,land titling and registration projects often aim to stimulate land markets and improve landholders' access to credit. The process of clarifying rights and boundaries can also be instrumental in reducing boundary and inheritance disputes.

However, land formalization can also have unintended consequences. Many systematic titling efforts in other countries have registered male heads of household as land owners to the detriment of women and those with secondary rights to land, like pastoralists. This has the effect of giving men unilateral power to sell family land, and may also disenfranchise women in the event of divorce or widowhood.

Concerns have also been raised that formalization could lead to "perverse redistribution" with the poor selling off land to the rich and worsening asset inequality. Moreover, there is little evidence that formalization improves access to credit, is cost-effective, or is sustainable. It is critical that pilot formalization projects in Ghana build in systems to monitor project outcomes and eventually assess the long-term impacts on families who received titles.

Whereas formalization efforts in Ghana have sought to recognize customary tenure and engage with traditional authorities in order to enhance social legitimacy, challenges persist in terms of making the process simple, efficient and cost effective both for landholders and land administration authorities. Unless the "costs" associated with land registration (including time and complexity) are sufficiently low vis a vis the benefits perceived by landholders, land registration records can rapidly become obsolete, jeopardizing the massive investments made to reform registration systems.

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