
When enough is enough

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Since independence the citizens of Ghana have dealt with a dysfunctional land administration system with 2 overlapping systems: the inefficient state land bureaucracy and customary tenure. Long and expensive procedures taking up to 5 years and involving 6 different agencies discouraged many from going through state institutions to register their land. Many preferred to avoid the headache, keeping their land issues within clans or tribes—unrecorded, but simpler, cheaper, and aligned with traditional practices. The government was aware of the problem but could do little about it. The turning point was the Lands, Forestry, and Mines Ministry's Land Administration Program, which cut the time to register property to 34 days.

Achieving this was not easy. The government struggled more than 5 decades to address its weak land administration system. The bumpy road involved interagency competition, deteriorating land tenure security, and many mistakes along the way—all within a complex environment where most people are used to abiding by customary law.

Tangled land administration

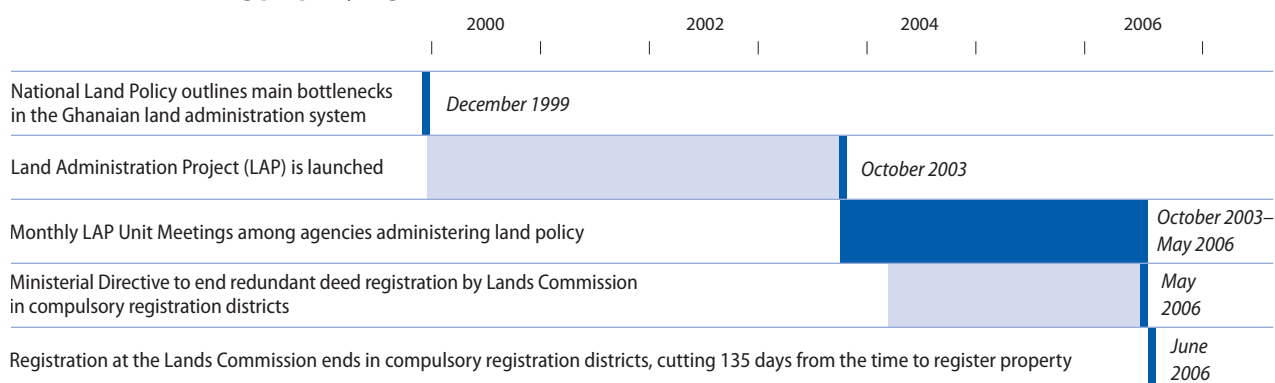
In Ghana land issues are administered in a plural environment, with customary laws and norms operating alongside state law. About 80% of land is held by the customary owners: tribes and their leaders, clans and families, and *tendamba*—the “owners” of the land and groves, typically the first settlers in communities. The remainder belongs to the state. During colonial times data on land ownership were not comprehensively recorded. According to custom, most transactions happened without documentation, and boundaries were not defined by surveyed maps but by such physical landmarks as hills, streams, and trees.¹ Because landmarks are not a reliable way of delimiting land, litigation over ownership and boundaries was a constant.

Shortly after independence the government introduced the 1962 Land Registry Act (Act 122), which disallowed the registration of the oral transactions and made it compulsory to register all instruments affecting land. This was to be administered through the deeds registration system which has been in practice in the country since the 19th century. The system based on documents proving a person or an entity's right to transfer the property. But while a deed was an evidence that an isolated transaction took place, it did not prove that the party registering the land actually owned it.

FIGURE 1

Timeline of reforming property registration in Ghana

Source: Doing Business database.



To complicate the situation, registrars did not have the power to investigate and reject documents of questionable validity. So, anyone with a deed could claim the land and sell it to someone else. Without a thorough search, there was no way to find the actual owner. To ensure that the seller had a legal right to sell the property, the buyer had to trace the deed back to a title. That search had to be repeated for each deal on the land. Time consuming and expensive, the process could not always turn up all the restrictions and obligations that may have been filed against a parcel of land or owner.²

The deeds registration system therefore failed to ensure title security. Its flaws: inaccurate maps, multiple sales of the same parcel, use of unapproved development schemes, haphazard developments, conflicting land uses, and time consuming land litigation, among others.³ And then there was customary land tenure, under which tribe members transferred properties through oral transactions. Because these transactions were undocumented, the same piece of land was sometimes allocated to multiple owners. The result was that the public lacked confidence in the state's ability to secure tenures. Some citizens even had to hire illegal private security—"land guards."⁴

Early reform attempts—too little outreach

The weak land registration system finally prompted the government to replace the deeds system with something more secure and transparent. The government enacted the Land Title Registration Law (PNDC Law 152) in 1986, introducing title registration as the official system for recording property in 2 districts: greater Accra and the city of Kumasi. These were "compulsory registration districts" where deed registration was to cease. The purpose of the new system was to promote title security by registering the title rather than just the transaction.

Under title registration the registrar and the state guaranteed the title and its authenticity and there would no longer be any need to trace ownership back to the root title. The new law also promoted accurate parcel or cadastral maps to reduce fraud and multiple registrations of the same parcel.

The implementation of the law began in 1988 with the creation of the Land Title Registry, which replaced the Lands Commission in the compulsory registration districts. But implementation proved slow. By some accounts, less than 5% of land in these districts had been registered 15 years later.⁵ And many Ghanaians complained that the procedures were slow and costly. A 1996 study reported an average turnaround time of 5 years to secure concurrence to a private land transaction.⁶ According to that study, only 10% of land buyers in the north ever approached the Lands Commission for official, formal documentation proving their landholding.⁷ Customary practices remained widespread, and most people continued to ignore the law.

The reasons for the failure were many. It takes trained and skilled administrators, lawyers, and supporting staff to address title uncertainty. And it takes equipment for accurate and fast surveying, production of maps and plans, and information storage. “Unfortunately,” says Kasim Kassanga, former minister of lands, forestry, and mines, “the reform was inadequately funded and resourced and has suffered from personnel and logistical problems.”⁸

According to Odame Larbi, head of the Land Administration Program at the Ministry of Lands, Forestry, and Mines, the problem was duplicated efforts and too little coordination among land administration agencies.⁹ Without cooperating with the Title Registry, the Lands Commission continued accepting and processing documents on private and family lands before the documents went to the Title Registry. “The 1986 law clearly called family and individual owners in compulsory registration districts to apply to the Land Title Registry to register their land. In spite of these clear instructions, the deeds registration system continued operating in these areas,” notes Larbi.

This duplication confused the public, leaving lengthy and redundant procedures. It also aggravated fundamental problems in Ghana’s land administration system. Two different people, someone with a title from the Title Registry and someone else with a deed from the Lands Commission, could be allocated the same land. After more than 15 years, the law had failed to eliminate multiple sales, excessive litigation, and the use of land guards.¹⁰

“This confusion was partly the result of lack of public outreach,” says Larbi. Many experts and authorities agree that the Land Title Registration Law was not publicized widely enough and that the public remained largely unaware of the change in legislation. Public education was conducted mainly through the distribution of flyers and brochures, and a few public lectures.¹¹ With only 60% of the population literate and an affluence of local languages, such efforts were inadequate.

“A more intensive and extensive public education program in major languages should have been applied in targeted districts,” says Rebecca Sittie, the chief registrar of the Land Title Registry.¹² Applicants continued going to both agencies because they thought it was necessary to get approval from both. The Lands Commission, for its part, continued providing the service because demand meant revenue—and extra cash is hard to turn down.

The Land Administration Project

The confusion and duplication of efforts continued. The government began to realize that it was failing in its goal to secure land tenure in the country. Problems were particularly acute in the urban and peri-urban areas, where the growing population and rapid urbanization increased the social and economic demand for land. “Our chiefs are supposed to be the custodians of our land. But instead of safeguarding my land, my chief sold it to a commercial company,” says Kofi, a farmer in peri-urban Kumasi, adding “I didn’t have a proof that the land was mine, so it was taken from me. Now instead of making profit of rising land values, my family and I have to live with our relatives.” Similar cases were common. The resulting homelessness, poverty, and violence showed that land tenure security was a problem not just of economic development but of basic rights.¹³

This was the backdrop to the introduction of the Ministry of Lands, Forestry, and Mines’ National Land Policy. Published in June 1999, the policy was the country’s first formal land policy—and the cornerstone of national development policy. The policy outlined the bottlenecks to efficient and effective land administration, stressing such problems as indeterminate boundaries, weak and fragmented land administration, and inadequate tenure security.¹⁴ The new government implemented the policy with enthusiasm and designed the Land Administration Program as a tool to implement it. The program, supported by international donors, is to last 15–20 years and consists of 5-year phases. The first phase, known as the Land Administration Project, began in 2003.

The Land Administration Project lays the foundation for reforming land administration. “The goal,” says Larbi, director of the project, “is to create a sustainable and well functioning land administration system that is fair, efficient, cost effective, decentralized, and good for land tenure security.” The implementation of the project in 2003 created awareness of land management problems throughout the country. “Special emphasis went to education,” says Abossey Allotey, deputy director at the Survey Department, adding that public outreach through media had been extensive. “I attended a television program where I talked about problems of the country’s land management system and possible solutions. The interest was definitely there. That’s something one wouldn’t have imagined 5–10 years before.” Public figures became involved, including the president. “Every single occasion was used to stress that it was in people’s own interest to document their properties,” adds Allotey.¹⁵

Saying enough is enough

That awareness prompted the Ministry of Lands, Forestry, and Mines to start looking at ways to resolve the disagreements and lack of coordination among the 6 agencies involved in land administration. “Before, there wasn’t much cooperation among the agencies,” says Sittie, “But since 2004 heads of departments of each agency would meet once a month to discuss their issues. These meetings, also known as “LAP Unit Meetings, were an excellent way for us to find common ground to solve our issues.”

On 16 May 2006 Dominic Fobih, the minister of lands, forestry, and mines, issued a directive calling on the Lands Commission to stop registering deeds belonging to family and individual owners in the compulsory registration districts. “This procedure is not backed by any law, is duplication, causes delays, and confuses the public, who tend to believe that plotting is synonymous with registration,” the directive warned.

The directive introduced little new. It just called on “all institutions involved in the implementation of the Land Administration Project to pursue the objectives of the project.” But it voiced an important message: enough is enough. It was time for all relevant stakeholders to start abiding by the long-ignored law.

The results were impressive: the 135 unnecessary days it took the Lands Commission to plot a document suddenly disappeared from a landowner’s to-do list. Queues at the Lands Commission disappeared, and within 34 days anyone could complete a property transaction in a compulsory district.

According to Larbi, interagency competition and lack of coordination were the main obstacles preventing the full implementation of the 1986 law. “Some of the agencies that have traditionally been a part of land management process in the country saw the law as a threat to take over their traditional role. They claimed they couldn’t stop providing title registration services because they did not want to turn down the people who came to them.” In fact, the staff were manipulating people’s lack of knowledge of the law.

“Before the directive, everybody was doing what they wanted,” agrees Sittie, “There was little cooperation between the agencies. There was even competition. Everybody was stepping on each other’s foot.” When the minister demanded that everyone abide by the law and address the problems, people finally realized that the game was up and there was no choice but to start abiding by the law.. Sittie believes that this move was long overdue.

The directive, which went into effect on 1 June 2006, dramatically increased the workload of the Land Title Registry. To keep up with the demand, the registry recruited new staff and is planning to computerize its databases in 2008. Information technology will help the agency deal with the heavy workload brought on by the change and further reduce the time required to search for a title. Ghanaian officials will then be able to keep accurate records of registered properties.

The Ministry of Lands, Forestry, and Mines is working to sustain its progress within the framework of Land Administration Program and plans to expand the registry’s operations to the rest of the country which remains under the operations of Act 122 and the deeds registration system. The Ministry has already established 6 land registries under the Land Administration project, 1 in each regional capital in addition to the 2 already in Accra and Kumasi. Encouraged by LAP’s initial success, the Ministry is determined to continue its quest to make land management in Ghana less cumbersome and more secure.

Lessons

First, the failure to widely publicize the 1986 law demonstrates the importance of well-designed public outreach. The government had to deal with confused applicants and cumbersome transactions for 2 decades before it could enforce a directive—this time, better publicized—compelling stakeholders to comply with its previous decisions. With only 60% of the population literate and many local languages, the government knew that it needed an extensive public outreach program in targeted areas, using mass media.

Second, identifying bottlenecks and conducting negotiations is important. But when this doesn’t lead to results, the determination to say “enough is enough”

is a must. When the Ministry of Lands, Forestry, and Mines realized that duplicated efforts and lack of coordination among agencies created deadlock, it took action by issuing a directive compelling all the agencies to abide by the law.

Third, it is crucial to build the capacity to implement reforms. After publishing the directive in May 2006, the Ministry of Lands, Forestry, and Mines had to make sure that the Land Title Registry had the capacity to process all the applications formerly handled by Lands Commission. Recruiting new staff and computerizing databases helped the registry deal with the higher workload, smoothing the transition for Ghana's landowners.

Notes

1. Kotey Kasanga, "Current Land Policy Issues in Ghana," Land Reform, Land Settlement and Cooperatives, Food and Agriculture Organization of the United Nations, 2003.
2. "International Registry and Cadastral Systems." A White Paper by International Land Systems (ILS), Inc. 2005.
3. Andrew Adjei-Yeboah, Ghana's Deputy Minister responsible for forestry at the Ministry of Lands; a key note address at a training session on transparency in land administration organized by the Global Land Tool Network in Ghana on January 22-24 2008.
4. Rebecca Sittie, "Land Title Registration. The Ghanaian Experience." XXIII International FIG Congress, October 2006, Munich, Germany.
5. Joseph Blocher, Building on Custom: Land Tenure Policy and Economic Development in Ghana.
6. Kasim Kasanga and Nii Ashie Kotey, "Land Management in Ghana: Building on Tradition and Modernity," 2001.
7. Ibid.
8. Ibid.
9. Interview with Dr. Odame Larbi in December 2007.
10. Ministerial Directive to stop Deeds Registration at Lands Commission, Minister of Lands, Forestry and Mines of the Republic of Ghana, Prof. Dominic Fobih, May 16, 2006.
11. Interview with Rebecca Sittie in April 2008.
12. Interview with Rebecca Sittie in April 2008.
13. Joseph Blocher, Note, "Building on Custom: Land Tenure Policy and Economic Development in Ghana." Yale Human Rights and Development Journal, 2006.
14. Ministry of Lands and Forestry, Republic of Ghana, National Land Policy, 1999.
15. Interview with Mr. Abossey Allotey in April 2008.