SUSTAINABLE
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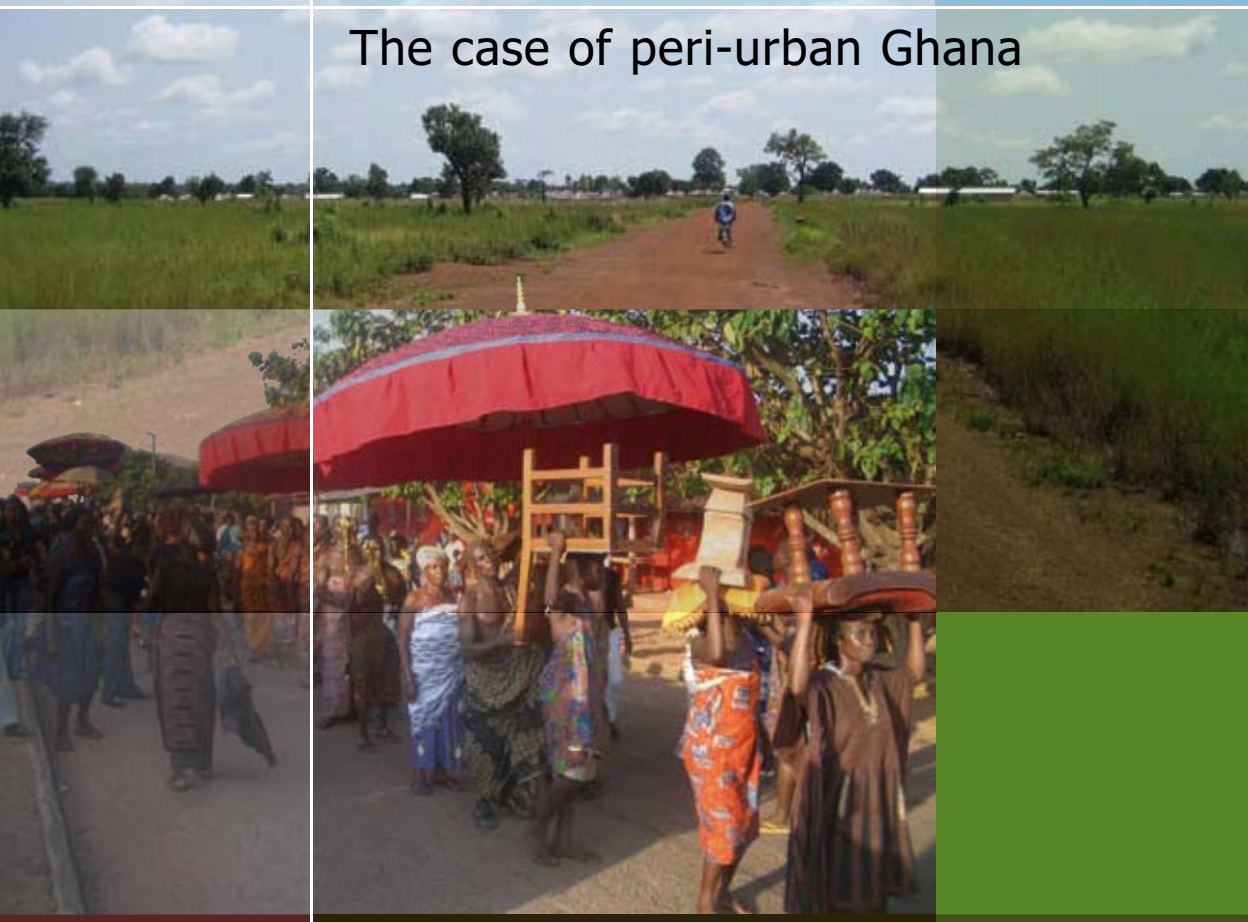
39

Adapting land administration to the institutional framework of customary tenure

The case of peri-urban Ghana



Anthony Arko-Adjei

TU Delft

Delft Centre for Sustainable Urban Areas

Delft University of Technology

Adapting land administration to the institutional framework of customary tenure

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Dedicated to:

Michael Yaw Adjei (1926 - 2005) *Father*
Grace Araba Insaidoo (1936 - 2001) *Mother*
Mansa Adjei Damoah (1959 - 2007) *Sister*
Ernest Oppong-Adjei (1974 - 2003) *Brother*

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Acronyms

ADR	Alternative Dispute Resolution
CLS	Customary Land Secretariat
COE	Council of Elders
CPP	Convention People's Party (Ghana)
CTI	Customary Tenure Institution
DA	District Assembly
DCE	District Chief Executive
DFID	UK Department for International Development
EU	European Union
FAO	Food and Agriculture Organisation
FIG	International Federation of Surveyors
GIS	Geographic Information Systems
GNSS	Global Navigation Satellite System
GPS	Global Positioning Systems
GLTN	Global Land Tool Network
IDS	Institute of Development Studies, UK
IIED	International Institute for Environment and Development, UK
ILAS	Integrated Land Administration Systems
IMF	International Monetary Fund
IK	Indigenous Knowledge
ISSER	Institute of Social Statistics and Economic Research
LA	Land Administration
LAC	Land Allocation Committee
LADM	Land Administration Domain Model
LAP	Land Administration Project
LAPU	Land Administration Project Unit
LAS	Land Administration System
LC	Lands Commission
LI	Legislative Instrument
LNRC	Land and Natural Resource Committee (Ghana)
LSA	Land Sector Agencies
LTRL	Land Title Registration Law (Ghana)
LVB	Land Valuation Board
MLFM	Ministry of Lands, Forestry and Mines
MMDA	Metropolitan/Municipal/District Assembly
NCD	National Commission for Democracy (Ghana)
NLP	National Land Policy (Ghana)
NRCD	National Redemption Council Decree (Ghana)
OASL	Office of the Administrator of Stool Lands
PGIS	Participatory Geographical Information Systems
PRA	Participatory Rural Appraisal
PNDC	Provisional National Defence Council

STDM	Social Tenure Domain Models
TC	Traditional Council (Ghana)
TCPD	Town and Country Planning Department
UC	Unit Committee
UN	United Nations
UNDP	United Nations Development Programme
UN-ECE	United Nations Economic Commission for Europe
UN-HABITAT	United Nations Human Settlement Programme
UN-FAO	United Nations Food and Agricultural Organisation
UTM	Universal Traverse Mercator
VRA	Volta River Authority (Ghana)
WGS	World Geodetic System

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1 Introduction

1.1 Background

In many parts of Sub-Saharan Africa, the majority of landholdings are based on customary forms of tenure that are either unwritten or, at best, only informally recorded. Landholders' rights depend on agreements that are embedded in local communities and that derive from their social relations with families, clans, lineages and communities (Berry, 1993). Access to land is generally based on negotiability of rules and relationships (Juul and Lund, 2002). These informal arrangements account for access to land in most rural, peri-urban and urban areas. In these areas, chiefs, family heads and elders continue to be the *de facto* land managers, allocating plots and running 'customary courts' for the settlement of land and other disputes, even where statutory systems do exist (Crook, 2009: p. 131). They administer virtually all land in these areas, even in those areas in which demand for land transactions and more formal property rights is rapidly increasing (Deininger, 2003).

Since the process of modernising rural agriculture began, several attempts have been made to replace or modernise customary tenure in Africa, on the grounds that it is a recipe for underdevelopment and thus a major cause of the region's high levels of rural poverty (Dorner, 1972). In many Sub-Saharan African countries, a number of efforts have been made to administer customary land, in the form of institutions and statutes. However, the effectiveness of regulatory institutions and laws as a means of managing customary tenure has yet to be realised. In many of these countries, both statutory and customary mechanisms for accessing land and administering tenure have been afflicted by many problems. Lying at the heart of these problems are: (1) land ownership conflicts and disputes over land boundaries that impede these countries'development; (2) haphazard and unregulated land development, as a result of a change in land use from agricultural to residential use; (3) illegal and informal land transactions; and (4) illegal land occupations and the proliferation of informal settlements. For example, in Ghana, it is estimated that, as of the year 2002, cases involving disputes over land constitute 50% of total cases filed in the courts nationally (Crook, 2005) (recent accurate figures are unavailable). All of the above-mentioned problems result in tenure insecurity.

Although some of these problems occur in rural and urban areas, they are more pronounced in peri-urban areas. In these latter areas, customary tenure has undergone several changes in response to high levels of land development and changes in land use. In these areas, overlapping and multiple rights, consisting of several interlocking systems of individual and communal rights (Pottier, 2005), often evolve as customary tenure systems try to adapt to changing demands. Some of these rights are bound by customary law, and others by statutory law (Larbi, 2006). There is high uncertainty surrounding titles and tenure in such areas. In particular, poor people and disadvantaged groups in these areas live in fear of losing their land. Both the

customary and the statutory systems for securing rights and administering land have proved to be ineffective in peri-urban areas. While the statutory land laws imposed under colonialism had little to do with customary law and practice, at the same time, a number of problems relating to inequality, landlessness and eviction prevail in most customary systems, especially where the mechanisms that hold indigenous institutions to account have been weakened (Alden Wily and Hammond, 2001; IIED, 2006; Amanor, 2008; Ubink, 2008b; Toulmin, 2009).

In acknowledgement of its importance, the issue of customary tenure and its associated problems has been receiving increasing attention in policy and scholarly circles over recent decades. This growing interest has been reflected in a number of land reform initiatives that have been launched across Sub-Saharan Africa, and a stream of academic debates on the subject. International organisations such as the World Bank, UN-HABITAT and the FAO have been the most prominent actors in these policy and research initiatives.[1]

In most of these academic debates and policy reform initiatives, the need for alternative land administration systems (LASs) for Sub-Saharan Africa to deal with problems associated with customary tenure, has been stressed. The debates have addressed which principles, approaches to and mechanisms of land tenure reform and administration would be best suited to African conditions, and which would deliver tenure security in customary areas. They emphasise the importance of recognising customary tenure and building on customary tenure systems in order to achieve equitable land management, in the context of poverty reduction (Toulmin and Quan, 2000; Deininger, 2003; UN-HABITAT, 2004; World Bank, 2005; UN-HABITAT, 2006). The historical evolution and complexity of customary tenure have been addressed, as has the need to strengthen customary tenure institutions (CTIs) to carry out land administration (LA) activities at the local level. These are no longer seen as obstacles to growth and tenure security in customary areas, but rather as elements to be taken seriously in 'institutional tinkering and engineering' (Lund, 2009: p. 1). It has been widely recognised that incorporating indigenous interests and securing rights for groups and individuals are necessary preconditions for the eradication of poverty and achieving the Millennium Development Goals.

Although recent land policies in many Sub-Saharan African countries recognise customary tenure, many existing LASs are still based on 'a relatively narrow land administration paradigm' (Bogaerts *et al*., 2002: p. 38): rigid land registration, cadastral surveying and mapping rules and standards. A new

1 Since 2000, a number of workshops and publications by the World Bank and UN-HABITAT have supported the need for alternative LASs in Africa. These include the UN-HABITAT Global Campaign for Secure Land Tenure, launched in December 2002; the World Bank Regional Workshop on land issues in Africa (Kampala, Uganda); and the World Bank Land Policy Research document (2001).

paradigm is thus required. This study explores new ways to recognise customary rights by adapting LA to the institutional framework of customary tenure.

1.2 Land administration systems

'Land administration' can be defined in several ways, depending on how the term 'administration' is understood and used (Van der Molen, 2002). Although other definitions are used (Dale and McLaughlin, 1999; Lindsay, 2002), the notion of LA as 'the process of determining, recording and disseminating information about the ownership, value and use of land, when implementing land management policies' (UN-ECE, 1996: p. 6) has been a key guiding principle in many policy documents and research studies. This definition has been challenged, however, for promoting a 'western' perspective and for failing to cover certain issues that are pertinent to the context of African LA (Fourie *et al.*, 2002). In the African context, where the majority of land is held under customary and informal tenure, LA falls outside the conventional cadastre/land registration sphere. The definition of LA therefore needs to encompass a range of key issues, such as governance, institutions, non-formal and informal land administration systems, ownership and occupancy rights, pro-poor issues and the decentralisation of LA (Fourie *et al.*, 2002; Österberg, 2002). Governance and institutional issues are critical to LA in Africa, where institutional restructuring and decentralisation are often undertaken due to the weakness of the state and the importance of improving good governance (Fourie, 2002). Nevertheless, the UN Economic Commission for Europe's (UN-ECE's) definition of LA still holds, especially when concepts of ownership, value and use are interpreted broadly (Van der Molen, 2006b).

Conventional LASs, whether they are established for fiscal, legal or multiple purposes, have four main components, namely: land registration, cadastral surveying and mapping, land valuation and land-use planning (Dale and McLaughlin, 1999). These components feature in many LASs worldwide. A country's LAS can be organised in many ways, and can take the form of a centralised, decentralised or integrated land administration system (ILAS). Centralised systems use a centralised bureaucracy to carry out LA tasks, thereby relying on a single, closed (top-down) approach. Most countries' LASs are centralised systems that are controlled by central government agencies. In decentralised LASs, different LA functions are diversified and shared among different agencies. In most cases, LA functions are delegated to central governments, provinces or districts; or they may be split between different departments at the central and local government levels. Decentralised LA ensures accessibility for end-users, and also ensures that the state's responsibility for guaranteeing all citizens equal access to institutions, services and

land information is upheld (Bogaerts and Zevenbergen, 2001). In some countries, ILASs are used. In an ILAS, the four basic LA functions are integrated in an approach that runs counter to the traditional separation of responsibilities of institutions (Dale and McLaughlin, 1999). ILASs are essential for achieving sustainability objectives and a more efficient property development process (Bennett *et al*., 2005). The integration of LA functions features prominently in a new theoretical framework for LASs (Williamson *et al*., 2010). This new theoretical framework contains ten LA principles that show how LASs should be designed and integrated, so as to ensure that people dealing with land-related questions can identify the best tools and options for administering land. Good governance, efficiency and effectiveness feature prominently in this new theoretical framework as a means to ensure sustainable land administration, and this thesis builds on these three fundamental principles.

Throughout this study, LA is used as a tool to record information about tenure, value and the use of land. LASs include systems, processes, organisations and operational functions for the management of land. The term *organisation* is used to refer to the statutory, customary and informal institutions that are involved in allocating land, protecting interests, solving disputes, planning, and managing the resourceful use of land. *Land* is understood as the surface of the earth, the matter beneath the surface, the air above the surface and everything attached to the surface, to the extent that the rights to these are established and protected via the tenure regime (Van der Molen, 2006a). The concept of *ownership* should be understood as a relationship between the people and the land within any jurisdiction. It is concerned with the mode in which rights to land are held, and which are therefore grounded in statutory law, common law or customary law and traditions. *Value* should be understood as all values that can be assigned to land, including economic assets, social and historic or cultural values. *Use* refers to the use to which land can be put and land cover according to the defined classification system.

1.3 Building land administration systems on customary tenure systems

Historically, two schools of thought have shaped the formalisation and legal recognition of customary land rights and the design of LASs in Sub-Saharan Africa. The first, the economic school, is embedded in neo-classical economic theories of property rights, and emphasises the role played by economic and land market objectives. Formalisation is therefore seen as a fundamental requirement for the economic development of areas characterised by informal and/or customary land tenure (McLaughlin and Palmer, 1996). In the economic property school, the flexibility and fluidity of customary tenure arrangements are considered tantamount to tenure insecurity and market in-

efficiency (Dorner, 1972; World Bank, 1974). Agricultural productivity, the promotion of land markets and creation of security of tenure feature prominently in this formalisation strategy. These concepts have functioned as a form of legitimisation for privatising land, which has been promoted as the only efficient and secure institutional arrangement available. This school of thought influenced many land reform programmes in Sub-Saharan Africa during the twentieth century. Assisted by the World Bank, many governments, including that of Ghana, extended classical titling programmes as a means of securing tenure, particularly in the wake of De Soto's publication of *The Mystery of Capital* (De Soto, 2000; De Soto and Cheneval, 2006). These objectives included changes to existing customary landholding patterns and the establishment of new institutional arrangements to provide security of tenure. LASs shaped by these objectives are usually centralised, with top-down administration processes. Even when they are decentralised, they are still built on state-led institutions (see Chapter 2).

In many parts of Sub-Saharan Africa where culture and tradition are strong, these formalisation techniques have failed to deliver their overriding objectives to the majority of beneficiaries (Dalrymple, 2005). In many areas where land titling registration has been pursued, it has proved to be 'slow, expensive, difficult to keep up-to-date, and difficult for poor people to access' (Cotula, 2007: p. 6); it has had little or no impact on investment behaviour and income, and has not always been necessary or sufficient for achieving a high level of tenure security for land development (Zevenbergen, 1998; Deininger, 2003); and has only benefited a small number of high-income groups (Fourie, 2002).

Since the 2000s, a new paradigm has emerged for the formalisation of customary tenure and LASs. This new formalisation strategy has been driven by the need to promote customary rights and laws in LA reform initiatives, and represents the views of the second school referred to above. International researchers (Alden Wily and Hammond, 2001; Durand-Lasserve, 2006; Alden Wily, 2008; Benjaminsen *et al.*, 2009; Toulmin, 2009) have shown that although formalisation may be necessary, it should be implemented in an incremental manner and should address the social aspects of tenure. Community participation in land governance, and the development of local institutional capacity by decentralising LASs from national, state-led agencies into community-based institutions, play major roles in these policies and formalisation strategies (Amanor, 2008). Several experiments with land reform policies and locally-based systems across Sub-Saharan Africa have been based on these objectives (Durand-Lasserve, 2006; IIED, 2006; Benjaminsen *et al.*, 2009). In Ghana, the multi-donor Land Administration Project (LAP), which strengthens the customary administration of land and establishes Customary Land Secretariats (CLS) under the aegis of chiefs, reflects how dominant this strategy has become.

This view has been echoed by many international policy and research ini-

tiatives that emphasise the importance of building on customary tenure systems in order to achieve equitable land management (Deininger and Binswanger, 1999; Toulmin and Quan, 2000; Deininger, 2003; UN-HABITAT, 2003; Delville, 2006; Toulmin, 2009). As such, this study also contributes to this new area of research and policy development.

1.4 Land administration in peri-urban customary areas in Ghana

In examining how customary tenure systems have evolved in response to urbanisation and legislative influence, this study will focus on peri-urban areas. Peri-urban areas tend to be tenure hotspots, where property relations are subject to intense contestation and where access to wealth and authority is undergoing rapid change (Ubink, 2008a). Generally, the term 'peri-urban area' is used to describe transitional zones between urban and rural areas that are undergoing urbanisation, and which are therefore progressively assuming many of the characteristics of urban areas (FAO, 1999; Nkwae, 2006). When judging whether a village can be classified as peri-urban, it is important to consider whether there is a continual presence of bush/fallow agricultural land, in combination with competition for land for non-agricultural uses (Holland *et al*., 1996). Peri-urban areas are often characterised by diverse populations, growth and expansion, heterogeneity of land uses, morphological conditions and densities of built-up areas, demographic changes, and complex functional relations and social structures (FAO, 1999).

In peri-urban Ghana, there are two basic categories of landownership: state and private. Where landownership is vested in the state, land is managed by state-led agencies. In contrast, private land in most parts of the country is under communal landownership, held in trust for communities or groups in the form of stools, skins or families (see Chapter 3).[2] Land held under private/communal ownership accounts for about 80% of the land in Ghana, whereas the state owns about 20% (Antwi and Adams, 2003).

Land administration in peri-urban Ghana operates within a plural environment, with statutes and customary laws, public and indigenous institutions, traditional values and corporate norms operating side by side. The administration of customary land is governed by customary and statutory institu-

2 In Ghana, land is traditionally vested in chiefs or families (see Section 3.3.1). In the South, the symbol of a chief's authority and land ownership is a carved stool, whereas in the North, the symbol is that of a skin of a cow or a sheep. Where land is vested in chiefs, it is called 'stool land' among the tribes of southern Ghana, whereas it is known as 'skin land' among the tribes of northern Ghana. A number of traditional groups are also scattered throughout Ghana, however, which do not recognise stools or skins as symbols of private communal land ownership. In such cases, the traditional arrangement is normally that of the vesting of land ownership in the clan, family or individual (National Land Policy, 1999).

tional arrangements that run parallel to one another. In these areas, access to customary land can only be obtained through customary institutional arrangements. These, in turn, are governed by rules – customary laws – that determine who can use the land and under what conditions. These rules are implemented by the authorities, or institutions that owe their legitimacy to traditional practices. These institutions may exist as autonomous bodies or as organised bodies in hierarchical structures, headed by 'paramount chiefs' and manned by different levels of sub-chiefs and committees, depending on the tenure arrangements of the area (Cotula, 2007). In the context of this study, the term *customary tenure institution* is used to describe a system of indigenous authority that is in charge of managing customary land. Such institutions are made up of chiefs, councils of elders, indigenous courts and steering committees, who are responsible for regulating access to land, managing conflicts, ensuring the security of community members, regulating settlements and maintaining land records (see Section 5.3).

In statutory systems, a number of laws regulate the administration of land through land registration, surveying and mapping and land-use planning, and improve the overall management of customary land. In colonial times, several attempts were made to improve land management in these areas. Some of these attempts were intended to resolve the contradictions in land tenure in favour of state interests (Aryeetey, Ayee *et al.*, 2007), and to improve tenure security and economic development in customary land. Post-colonial governments continued the tradition of land reform by enacting a flurry of legislation to control customary land.

Customary land delivery in peri-urban Ghana has come under considerable strain due to increasing demand for land for housing, as a result of the movement of tenants from inner-city areas to more established settlements on the periphery, so as to escape overcrowded conditions and high urban rents (Gough and Yankson, 2000). The superimposition of state land management institutions onto customary areas has also affected indigenous institutions, making them operate less effectively in peri-urban areas than in rural areas. Consequently, customary systems have not been able to evolve to the extent that they can cope with the speed, volume, diversity and complexity of contemporary land management issues, as shown, for example, by some areas in Ghana (Kasanga and Kotey, 2001). The increasing monetisation and individualisation of customary land rights, and the changing land values these create, have resulted in several attempts to redefine land ownership and tenure (Aryeetey, Ayee *et al.*, 2007). This, in turn, has resulted in the contestation of rights to land by community members and traditional authorities (Aryeetey, Ayee *et al.*, 2007; Ubink, 2008b). The situation can be explained by the fact that during rural-urban transformation, customary land becomes an economic good rather than a collective resource (Mends and De Meijere, 2006). Some chiefs take advantage of increasing land values by selling land without first gain-

ing the approval of community members, and by interpreting customary laws to their advantage (Ubink, 2007). Accountability and transparency are particularly affected as a result, because chiefs try to make land transactions as private as possible (Berry, 2002; Aryeetey, Ayee *et al*., 2007; Ubink and Quan, 2008; Toulmin, 2009). Land is increasingly being lost due to the rapid conversion of farmland into residential land. Some farmers who lose their land are compensated with the crops they have lost, or a plot of land for a single house unit (Alden Wily and Hammond, 2001). New migrants find it difficult to access land and must sometimes do so under severe conditions. Even tenants who have acquired land from community members have found the terms of their tenancies increasingly unstable and expensive (Alden Wily and Hammond, 2001). These developments have caused considerable unrest and distress in Ghana's peri-urban communities.

Despite the national *ad hoc* land management and administration policies that have been adopted, effective and efficient land management has not yet been achieved in Ghana. The existence of numerous litigation cases – 30,000 disputed titles were brought to court in the year 2000 (Kasanga and Kotey, 2001) – attests to this. Current approaches towards modernising and improving LA in peri-urban areas focus on improving operational processes, but have failed to address the factors underlying tenure insecurity and other tenurial problems. The approaches taken follow economic property models and the trend towards replacing customary tenure, rather than adaptation to existing customary practices. State management institutions form the main instrument for pursuing formalisation. The dialogue between these competing and overlapping concerns means that alternative LASs are needed to support the dynamic humankind-to-land relationship that one finds in customary tenure systems. The aim of this study is to address this research and knowledge gap.

1.5 Problem definition

The research that has resulted from current debates on securing tenure in customary areas shows that there has been a paradigm shift from formalisation strategies based on replacement or market-based models, to the integration of informal and customary rights into LA. Even though the importance of securing all rights in customary tenure and decentralising LAS activities to local communities is widely acknowledged, and the urgency of the issue is recognised in Sub-Saharan Africa, this has not led to consensus on how it should be realised. This study focuses on three prominent issues that act as significant scientific and practical constraints on this 'new' approach towards the recognition of customary rights and the local administration of land. In doing so, the study attempts to demonstrate the need to adapt LA to local institutional frameworks of customary tenure.

The first issue concerns the question of how LASs can manage the dynamics of tenure in ways that allow the diverse needs of various stakeholders in peri-urban customary areas to be met. This question has not yet been adequately addressed; only a few studies (Arko-Adjei, 2001; Daley and Hobley, 2005; Nkwae, 2006) have attempted to analyse and conceptualise LASs in relation to the dynamics of customary tenure systems in peri-urban areas. Customary land structures are characterised by several interlocking individual and communal rights associated with the ownership, control and use of land (Toulmin and Quan, 2000; Pottier, 2005; Larbi, 2006). As discussed in Section 1.1, such conglomerates of rights can be very complex, particularly in peri-urban areas in developing countries, where customary tenure can undergo several transformations in response to high levels of land development and changes in land use. The complexity of tenure is related to the changing needs of various stakeholders in customary land areas. The needs of stakeholders can vary over time, depending on the values attached to customary land. While land may be needed as a communal resource, both in terms of its socio-cultural significance and for group subsistence, group members need individual rights to plots for farming or building, which can be used as economic incentives. At the same time, land may be needed for public and social amenities, and other such uses that are of overall benefit to society. Recording these multiple rights and designing LASs that are flexible enough to provide a broad set of solutions to the specific needs of different stakeholders at different times, especially in rapidly growing peri-urban areas, has proved complex, and has become a thorny issue among LA experts. The diversity of needs demands a diverse range of responses. In other words, as the various categories of stakeholders in peri-urban customary areas differ, so do their needs regarding tenure options. As customary tenure systems evolve, can we identify an effective way of securing individual and group rights? The answer to this question will require a critical analysis of the customary tenure dynamics in peri-urban areas.

In customary tenure systems, there are internal mechanisms that ensure good governance by the standards of traditional society. These mechanisms ensure community participation in decision-making, equitable distribution of community resources and accountability. A second issue, however, relates to whether CTIs can meet good land governance requirements in LASs. As discussed above, several reports from peri-urban areas indicate that when customary land transactions become increasingly monetised, land delivery activities are often affected by significant governance problems. These are often related to: (1) abuses of power by chiefs and custodians; (2) lack of transparency in land transactions; (3) lack of stewardship; (4) inequity in access to land and the delivery of justice; (5) tenure insecurity as a result of forced evictions and land-grabbing; and (6) land contestations between traditional authorities and indigenous members of landowning groups (Alden Wily and

Hammond, 2001; Ikejiofor, 2006; Ubink, 2007; Amanor, 2009; Toulmin, 2009). Since an effective LAS is linked to good governance, these studies raise questions about the ability of CTIs to provide effective and efficient systems that can improve tenure security for peri-urban dwellers, while also meeting land governance objectives in LA. It is crucial to critically assess land governance in CTIs. Extending governance assessment in CTIs would allow for the holistic diagnosis of measures to improve LASs, the lack of which could hinder the objective of decentralising LA to the local level. Yet, governance assessment in LASs has always been limited to formal institutions and legislation.

Conventional methods of recording land information and administering rights put an emphasis on technical tools, specifications and standards, all of which require specialised knowledge and skills that are lacking in local communities. In view of these stringent LAS requirements, the third issue regarding the implementation of LASs at the local level is that of how local communities can meet these specifications and develop the capacity to administer land effectively. This relates to specific capacity-related issues, including the building of knowledge, skills and resources. The use of participatory geographic information systems (PGISs) in appraising indigenous knowledge (IK) for LA will be examined.

This study will address these three fundamental questions, all of which have less been treated in the literature on formalisation and the design of LASs in customary areas. This has led to misguided and questionable policy assumptions concerning the administration of customary land. The results of the research described in this thesis are therefore not only intended to contribute to the development of theory and the academic study of customary tenure systems in LASs and related peri-urban issues, but are also intended to provide input into the development of policy relating to the design and implementation of LASs for peri-urban customary areas.

1.6 Research questions

The central research question to be answered in the study is:

How can land administration systems in peri-urban areas be adapted to the tenure and institutional framework of customary tenure systems?

This research question, which covers the wide range of issues outlined in the section on problem definition above, has been broken down into five objectives and sub-questions.

Objective 1: To analyse land administration objectives and requirements for peri-urban customary areas (Step 2 in Figure 1.1).

1. *What lessons can be learnt from the analysis of the formalisation theories, and to what extent can these be applied to the design of LASs in peri-urban areas?*
2. *What is the nature of the existing legal framework for administering land in Ghana, and to what extent does the framework support the administration of customary land at the local level?*

Objective 2: To develop a framework for LAS requirements for peri-urban customary areas (Step 3 of Figure 1.1).

3. *What are the requirements for the design of LASs in peri-urban customary areas?*
4. *What are the requirements for assessing good land governance in customary tenure institutions?*

Objective 3: To analyse how customary tenure systems in Ghana are changing in response to internal or external pressures resulting from demographic change, urbanisation, high levels of land development, and legislative influence (Step 5 (a) of Figure 1.1).

5. *Which aspects of Ghana's customary tenure systems are dynamic?*
6. *How do the customary tenure institutional arrangements adapt to the dynamics of tenure?*

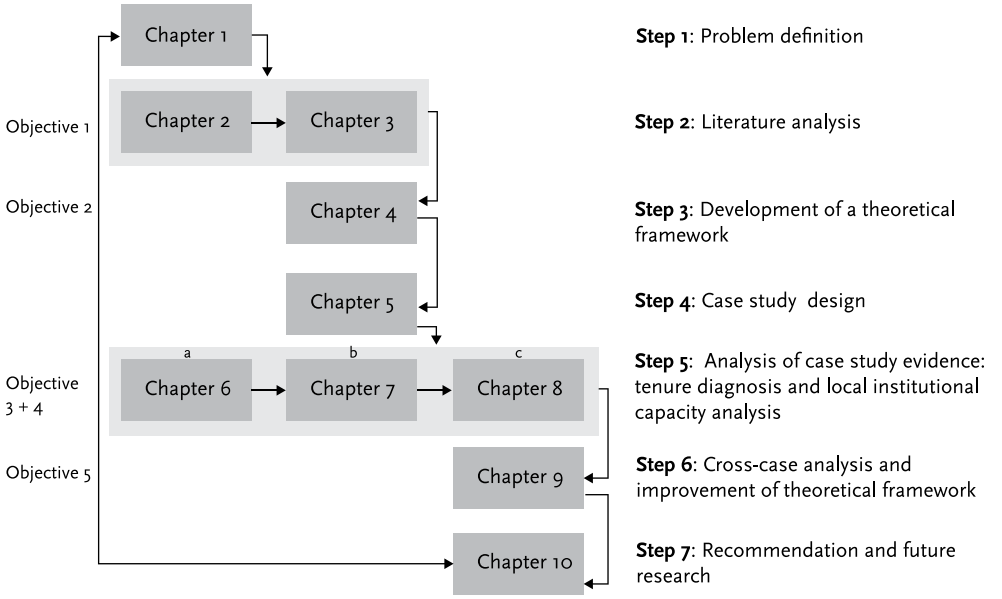
Objective 4: To assess the institutional capacity of customary areas in Ghana for LA (Steps 5 (b) and (c) of Figure 1.1).

7. *To what extent do the customary tenure institutions in peri-urban Ghana meet good governance objectives in LA?*
8. *To what extent can a PGIS approach enhance indigenous knowledge and local capacity for LA?*
9. *To what extent do customary tenure institutions in Ghana meet the LAS requirements for peri-urban areas?*

Objective 5: To institutionalise LASs for peri-urban customary areas in Ghana (Step 6 in Figure 1.1)

10. *What strategies are needed to design and effectively implement LASs in customary areas?*
11. *What are the challenges for adapting LASs to the institutional framework of customary tenure?*

Figuur 1.1 Research design in relation to the thesis structure



Chapter 1 - Introduction
Chapter 2 - Lessons from LA theory, formalization strategies, land policy reform and good governance
Chapter 3 - Analysing the framework for administering customary land in Ghana
Chapter 4 - Defining the framework for designing land administration system adapted to the institutional framework for customary tenure
Chapter 5 - Case study design and research methodology
Chapter 6 - Analysis of dynamics of customary tenure system in peri-urban Ghana
Chapter 7 - Assessing good governance in customary tenure institutions of peri-urban Ghana
Chapter 8 - Assessing of indigenous knowledge and local capacity for land administration
Chapter 9 - Strategies for designing and implementing LAS requirements for peri-urban customary areas
Chapter 10 - Conclusions

1.7 Research design, methodology and study areas

1.7.1 Research methodology

The study of the securing of tenure and the administration of customary land covers a wide range of issues that are related to specific social, political, cultural, technical and historical-geographic contexts, and which cut across several disciplines. An interdisciplinary, process-oriented and institution-focused approach was thus needed for this study, which uses concepts from anthropology, political science and public administration. The multi-dimensional and multi-disciplinary nature of the issue means that it cannot be analysed and discussed adequately from a single methodological perspective. Therefore, in this study, a variety of research methods from different disciplines were used to address the questions outlined above.

This study uses a research methodology based on the systematic use of case studies to develop a strategy for designing and implementing LASs that can be adapted to the institutional framework of customary tenure. The research methodology is divided into two stages: first, an analysis of the literature, and second, a research design based on multiple case studies. The phases of the research design in relation to the chapters of the thesis are conceptualised in seven steps, as shown in Figure 1.1. These steps are followed throughout the thesis.

The first part of the study, at the most general level, consists of a multi-level literature analysis. The purpose of the literature analysis is to define the research problem and formulate the research questions (Step, 1), and to formulate the 'new' requirements and the framework for designing LASs that can be adapted to the institutional framework of customary tenure (Step 2). In the literature analysis, international academic and policy debates on customary tenure, formalisation strategies, LA theory and good governance concepts are analysed in the light of the available evidence, prior to setting out the framework used in the study. At this stage, the literature analysis goes beyond Ghana, as the issue of securing tenure and administering customary land extends to other Sub-Saharan African countries and other parts of the world.

The results of the literature analysis are directly applied in Chapters 2 and 3. Chapter 2 explores and analyses the links between strategies for formalising customary tenure, good governance principles, customary tenure dynamics and peri-urban conditions. Lessons are drawn from a number of cases in which unconventional or innovative tools have been used to secure land tenure in Sub-Saharan Africa and other parts of the world. Drawing on these examples and experiences from other countries allows us to better understand the case of Ghana, and also helps to justify the need for an alternative framework for administering land in customary areas. In Chapter 3, the framework for administering land in Ghana is analysed with a view to better understanding the extent to which Ghana has adapted to formalisation strategies, and also how Ghana's LA framework supports the administration of customary land at the local level. Next, a set of research questions and methods used for the case study were constructed (Step 3).

The second part of the study constitutes a field study. The aim is to appraise the LA framework defined in Step 2 by way of a case study of peri-urban customary areas in Ghana. A research methodology based on case studies was deemed appropriate, on the grounds that such methodologies are well suited to the investigation of interactions between phenomena in real-life contexts. The use of case studies is also appropriate for descriptive studies in which the goal is to describe the features, context and processes of a particular phenomenon (Yin, 2003). The case study research uses an explanatory case study technique (Yin, 2003). Explanatory case studies are suited

to causal investigations, where the aim is to examine and explain 'how and why' certain phenomena occur, and for testing hypotheses, (Tellis, 1997) all of which feature in this study. The research takes the form of a multiple-case study that involves three peri-urban areas (see Section 1.7.2). In each case-study area, the tenure and tenure institutions form distinct units of analysis.

The field study analysis is divided into two parts: a land tenure diagnosis and a local institutional capacity analysis (Step 5). The tenure diagnosis (Step 5a) consists of two levels of investigation and analysis. The first aim is to analyse the dynamics of tenure and to explain why these dynamics occur. The second part of the tenure diagnosis involves an analysis of how customary tenure institutions are adapting to the dynamics of tenure and the changing needs of peri-urban dwellers. Having clear insights into the internal operations of customary systems can heighten our understanding of the ways in which local actors select what should be accepted or rejected. This can help us to formulate appropriate mechanisms for securing land rights and administering land in customary areas.

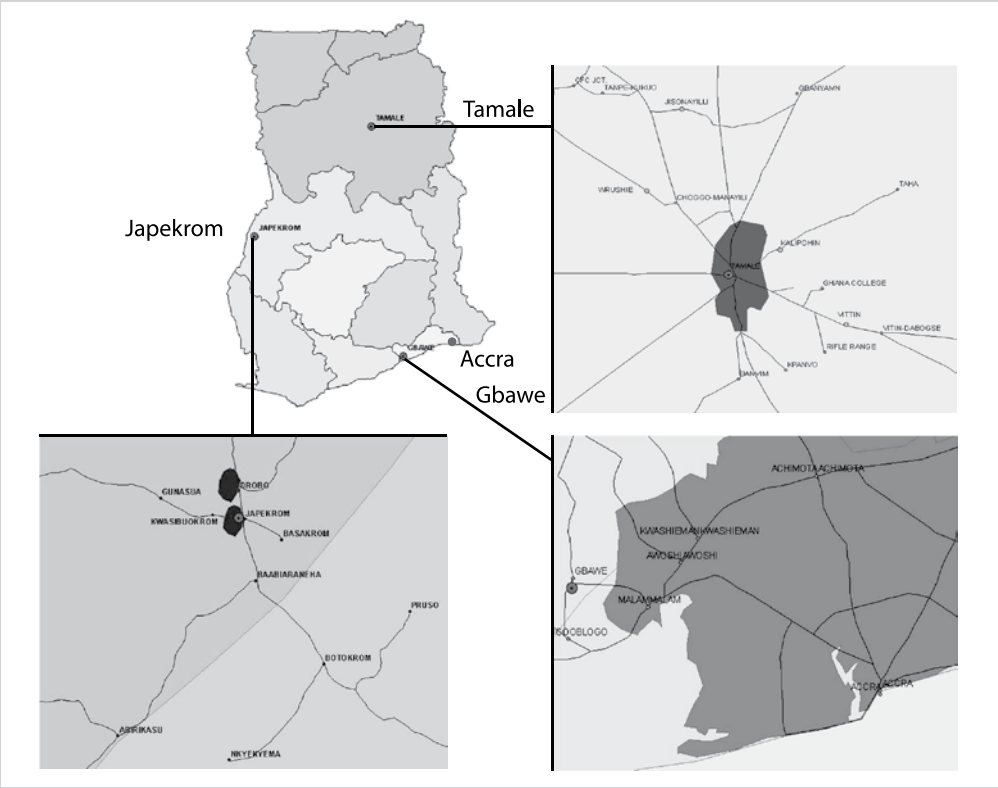
The local institutional capacity analysis is a supply analysis that aims to investigate the institutional capabilities of customary communities involved in LA. The local institutional capacity analysis is also conducted at two levels. First, CTIs in the three study areas in Ghana – Japekrom, Tamale and Gbawe – are assessed with respect to the extent to which they meet good governance objectives in LA (Step 5b, described in Chapter 7). The assessment is based on indicators relating to five governance dimensions: participation, equity, transparency, accountability, and efficiency and effectiveness (Step 4, described in Chapter 5). In the second institutional analysis (Step 5c), a PGIS is employed as a means of mitigating inadequacies in human and financial LA resources in local communities (Chapter 8). It is often assumed that PGISs can empower local people and promote participation (Kyem, 2004; McCall and Minang, 2005). For this reason, I examine the potential of PGIS to uncover IK for identifying rights to customary land and to support LA. The study uses a range of PGIS tools (see Chapter 8).

In Step 6, a cross-case analysis of the three issues investigated in the case study is undertaken, in order to appraise the theoretical framework and determine whether the customary tenure systems in peri-urban Ghana meet LAS requirements. Based on this analysis, strategies for designing and implementing LASs based on customary tenure frameworks are articulated. These strategies address how LASs in customary areas can cope with the dynamics of tenure and can be adapted to local institutional frameworks of customary tenure.

1.7.2 The case study areas

Three customary areas in Ghana were selected as case study areas, to provide empirical evidence to highlight the issues being investigated in this study.

Figure 1.2 The three study areas in Ghana



These are Japekrom stool, Tamale skin and Gbawe-Kwatei family (Figure 1.2). The diversity in tenure, customary institutional structures, land-use actors and changes in tenure due to rapid urbanisation were the main criteria used to select these areas. In addition, they were chosen in order to achieve a fair representation of the three land-owning groups in Ghana, and to determine whether the situation in these particular areas also reflects a growing national problem. Although statutory tenure arrangements do exist in these areas, most land users access land through customary institutional arrangements.

Japekrom stool, which represents the central area of the country and agricultural regions, belongs to the Akan[3] ethnic group, where allodial ownership is vested in stools. Tamale skin belongs to the Dagbon ethnic group, where allodial ownership is vested in skin; this area represents the North. Tamale is one of the fastest-growing cities in Ghana (Ghana Statistical Service, 2005). Gbawe family belongs to the Ga ethnic group in the south of the country,

3 The Akan people constitute the largest ethnic group in Ghana, making up about 42% of the population. The group is composed of several sub-ethnic groups, divided into over a dozen different kingdoms, or states; these include the Asante, Bono, and Fante groups. The Akans occupy southern half of Ghana-south and west of the Black Volta. The Akans also live in the neighbouring countries of Ivory Coast, Togo, and Benin.

where allodial ownership is vested in families. Detailed descriptions of the land tenure systems, the customary tenure institutional structures and the land development activities of the case study areas are given in Chapter 5.

1.8 Scope of the study

This study aims to investigate how LASs in peri-urban areas can be adapted to the tenure forms and institutional frameworks of customary systems. The study focuses on tenure security, even though LASs have three core functions; namely, tenure, valuation and use (Dale and McLaughlin, 1999). Furthermore, the study examines how we could design a LAS strategy that focuses on the integration of the dynamics of tenure into LA, in order to secure a continuum of rights in customary land. The study focuses on the institutional aspects of the strategy, while paying less attention to the financial, technical and legal aspects.

The study addresses knowledge gaps in LA in three areas. First, it provides new insights into the formalisation of customary rights and new ways to deal with the dynamics of tenure. Since customary tenure systems have internal mechanisms for managing tenure dynamics, analysing the dynamics of tenure provides insights into which types of tenure can be secured at which moment in time, and also into which institutional processes are required to secure tenure in customary areas. Adapting LASs to the institutional framework of customary land delivery will help LA to evolve to deal with tenure dynamics, particularly if tenure institutions are supported in the right way. Second, good land governance discourse and research into LA has been limited to statutory institutions and regulations. This study contributes to land governance by looking beyond formal institutions. Analysing how the principles of good land governance can be applied or introduced in customary tenure institutions – an issue that has received little attention from scholars and policymakers in LA reform – will enhance our ability to address governance problems holistically. Third, while PGISs have been used as tools for enhancing indigenous knowledge in the areas of forestry, natural resource management and land-use planning in many developing countries, little is known about PGISs in the context of LA. This study thus provides insights into the potential of PGISs for eliciting IK for use in LA.

1.9 Structure of the thesis

This thesis seeks to develop a LAS strategy that can be adapted to the dynamics of tenure and institutional frameworks of customary tenure, by means of a multi-level analysis of the literature and a case study on peri-urban Ghana.

The thesis has therefore been divided into three parts, which make the links between the theoretical and empirical chapters explicit. Ten chapters address a range of issues at various levels. Each chapter presents a unique perspective that corresponds to each stage of analysing the main research problem and answering the research questions.

Chapters 1, 2, 3 and 4 constitute Part I of the thesis, which describes the theoretical framework of the study. Chapter 1 introduces the study and presents the problem statement, the research objectives and questions, the methodology used and the structure of the thesis. Chapter 2 provides the theoretical basis of the study and an overview of current trends in LAS development. Chapter 2 offers an overview of concepts of customary tenure and the theories that shaped the formalisation of customary tenure and land reform approaches in Sub-Saharan Africa. Furthermore, the chapter highlights some innovative tools that can provide legal recognition of customary rights and rights in informal settlements. It also discusses key issues related to weak governance in customary tenure systems in peri-urban areas, and concepts of good governance in relation to land administration. The lessons learnt from these concepts feed into the analysis of the requirements and options for administering land in peri-urban customary areas (Chapter 4).

Chapter 3 discusses the legal framework for administering land in Ghana. The chapter first discusses customary landholding in Ghana. It further describes the government's influence on customary land management, highlighting the historical developments. The chapter discusses the extent to which, how, and with which objectives government policies have sought to regulate customary land management, and the consequences of these regulations. The functioning of government institutions, the Land Sector Agencies (LSAs) and current institutional reform activities undertaken in the LAP are analysed. These descriptions aim to highlight the extent to which the institutional framework supports customary LA at the local level.

Chapter 4 focuses on the conceptual approaches that lie at the heart of the study. The chapter explores the links between underlying theories of customary tenure systems, LA systems, good land governance, and the realities of the framework for administering land in Ghana, in order to conceptualise the framework for the study. It discusses the key requirements and the framework for designing alternative LASs for peri-urban customary areas. Furthermore, the chapter generates the requirements for assessing land governance in customary tenure institutions. This land governance assessment framework is used in Chapter 7 to assess CTIs of three peri-urban customary areas in Ghana.

Part II of the thesis (Chapters 5, 6, 7 and 8) is concerned with the design and description of the case studies. Chapter 5 focuses on the field study design, explaining the methodology used to carry out the field study. It discusses in detail the methods used to collect and analyse the field data, in order to investigate the issues at stake and answer the research questions.

The field design is described in terms of the research objectives. Furthermore, the chapter provides a detailed description of the study areas, including locations, tenure systems, customary tenure institutional structures and land development activities.

Chapters 6, 7 and 8 present the results of the field studies, and describe the various issues that were researched. Chapter 6 discusses trends in customary tenure practices in three peri-urban areas of Ghana: namely, Japekrom, Tamale and Gbawe. The chapter provides a detailed analysis of the changes that have occurred in customary land practices in these areas. The analysis covers changes in land ownership, land-use rights, modes of transferring interest in land, tenure security, social settings and tenure rules, land use, and changes in the institutional framework for customary land tenure. The chapter elaborates upon the factors underpinning the changes in tenure and the implications of these for LAS design.

Chapters 7 and 8 analyse the capacity of CTIs for LA. Chapter 7 presents the results of the investigation into the extent to which customary tenure institutions in peri-urban Ghana meet good governance objectives in LA. The assessment is based on indicators developed in Chapter 4, which cover five governance dimensions – participation, equity, transparency, accountability, and efficiency and effectiveness. The assessment focuses on customary tenure institutions in the three study areas: Japekrom, Tamale and Gbawe. Chapter 8 completes the empirical research and the institutional capacity assessment by examining the potential of PGIS and IK for LA. The chapter presents a case study of two peri-urban communities in Tamale, in which a PGIS technique was employed to assess the usability of the tool to elicit IK and empower the local community.

Based on the requirements from the literature and the conclusions drawn from the fieldwork, Part III of the thesis (Chapters 9 and 10) looks towards how solutions might be found to the research problems outlined in the study. Chapter 9 discusses the key research findings and the development of the framework for adapting LAS to the institutional framework of customary tenure, by means of cross-case analysis. The chapter further develops the strategies that are needed to design and implement LASs that can meet land administration requirements in peri-urban customary areas. Specifically, the chapter discusses a potential approach to dealing with the dynamics of tenure and adapting LA to the institutional framework of customary tenure. The types of tenure that could be recorded and secured at the different phases of tenure evolution are discussed.

The final chapter, Chapter 10, presents a summary of the findings and conclusions that has been derived from the results of the methodology applied and the analysis performed, in accordance with the study's five objectives. The chapter also addresses the study's contribution to science and to the literature, and makes recommendations for future research.

2 Customary tenure, formalisation and concepts of good governance

2.1 Introduction

Chapter 1 provided an overview of the issues related to tenure insecurity and the ineffectiveness of land administration systems (LASs) in peri-urban areas, and explained the need for a new paradigm for the formalisation and administration of customary rights. This chapter discusses the theories on customary tenure systems and formalisation strategies that have been adopted to secure land rights and administer customary land. Section 2.2 describes concepts of customary tenure, how customary tenure is changing and the drivers for change. Section 2.3 analyses the concepts that lie behind the formalisation strategies or models that have been adopted to secure rights in customary land. The section also highlights the various debates that relate to these formalisation models. Developing a deeper understanding of these formalisation strategies and debates will help us to better comprehend the consequences of these strategies, and to identify which issues should be considered when designing LASs that are based on existing systems in customary areas. Furthermore, it will help us to evaluate and compare these strategies, and as such, will provide valuable information for policymakers who face the challenge of building new LASs or reforming existing ones. The section also highlights some examples of successful, innovative tenure tools and approaches that have been adopted to secure customary and informal rights in Africa. Section 2.4 discusses concepts of good governance and approaches to assessing good governance in LASs. These concepts, debates and examples will be linked to the need for an alternative approach to LA, and form the basis for the design of the framework for administering land in peri-urban customary areas that will be introduced in Chapter 4.

2.2 Concepts of customary tenure systems

The term 'customary' is very ambiguous. As a concept, 'customary tenure' has been used in several ways in different contexts. In many contexts, the terms 'traditional', 'communal' and 'indigenous' have been used interchangeably to describe all indigenous tenure systems in Africa. Some scholars (Noronha, 1985; Migot-Adholla and Bruce, 1994; Nkwae, 2006) have contested such generalisations. These scholars argue that describing all forms of indigenous tenure as 'customary' or 'communal' reveals misconceptions about the different forms of indigenous tenure systems in Africa. For example, Nkwae (2006) argues that using the term 'communal' to describe all indigenous tenure systems in Africa implies group management, ownership, exploitation, control and use of land. He argues that such a description is misleading in that it presupposes that individual members of the group do not have exclusive land

rights. Nkwae's argument is supported by Ostrom (2000), who asserts that findings from many studies on common property-rights systems consistently indicate that such systems do not exist in isolation of, but usually in conjunction with individual rights. In a similar argument, Noronha (1985) notes that the use of the term 'communal' to describe customary tenure systems oversimplifies a complex tenure relation in the customary systems, and therefore should be avoided.

In this study, the term 'customary' is used to describe a 'system of authority that is based on anteriority and alliance, in which access to resources depends on social belonging, and in which rights are allocated under the auspices of land management institutions' (Cotula, 2007: p. 35). In this study, 'customary tenure' therefore refers to:

1. 'indigenous' tenure systems that have evolved locally;
2. land that is held on the basis of group and individual rights; and
3. the mechanisms for obtaining, using, distributing and disseminating these rights, which arise as a result of accepted practices based on the customs and traditions of a group (Kalabamu, 2000; Cotula, 2007).

These traditional societies or groups have developed various ways of controlling land rights in different situations. These cover how land is managed in relation to members of communities; how land rights can be transferred within the group; and how land rights can be transferred to other persons outside the group (Österberg, 2002). The major difference between customary tenure systems and other common property regimes is that the former usually includes both use rights allocated to households or individuals, and also common use rights. Common property regimes, however, describe joint use and access by community members of common pool resources (Otsuka and Place, 2001: p. 12). Given the remarkable diversity in the composition of the groups, their structure, culture and the physical environment, it is not surprising that customary tenure systems exhibit a wide range of different tenure relations.

2.2.1 Essential features of customary tenure systems

Despite the diversity in tenure relations, a review of literature indicates that, customary tenure systems are governed by several common principles. The right of disposition of customary land lies in the hands of kinship or political groups (Kalabamu, 2000; Nkwae, 2006). These political groups, which can take the form of homesteads, families, villages, chiefdoms, ethnic societies or other groups or networks, exercise control over land use. The groups regard themselves as stewards of the land for future generations, rather than owners, on the grounds that the land has been given to them by their ancestors and by land gods (Pottier, 2005, Ollenu, 1962). This traditional system guides

people's way of life and forms the very essence of their land tenure practices. The use of land concerns with the living and the dead. Man's role is one of stewardship, and therefore is required to preserve land for future generations (Ollenu, 1962). Land is therefore mostly conceived as an unbounded resource to be used, not as a commodity to be measured, plotted, sub-divided, leased, pawned or sold (Pottier, 2005). These religious, political and social conceptions of land are intertwined with land-use practices, making it difficult to separate tenure from people's culture.

Theoretically, customary tenure systems are grounded in two basic principles (Pottier, 2005). First, every indigene, by virtue of his or her membership of the group, has access to land. This principle, which Biesele *et al.* (1991) refer to as the right of avail, is a key feature of the various kinds of customary tenure system. Right of avail, which is also referred to as 'general rights based on citizenship', is uniformly applied to all and automatically shared by all people belonging to a particular community, tribe or clan. All rights – individual or common – are deduced from the right of avail. The second principle, which is described as 'probably equally ancient' (Pottier, 2005: p. 58), is the recognition of an individual's right to anything that he or she has created in land, whether this is a homestead or field. Such a right can be inherited according to the regular rules governing the inheritance of private property. These rights in improved land can thus become the particular rights of an individual and can be transferred to another in the lifetime of the right-holder.

In general, families enjoy fairly well-defined spatial and temporal rights of use over parcels of cultivated land, which are then transmitted to succeeding generations in accordance with the prevailing rules of succession, usually through inheritance (Migot-Adholla and Bruce, 1994). In a similar way, every member of the group has a right to a piece of land for his own use. These use rights, often referred to as usufructuary rights (Meek, 1968), are lifelong rights for group members. Such rights are transferable through inheritance, but not through sale. Non-indigenous members, such as migrants, may also be allocated a piece of land, provided that vacant land is available and that the recipient respects the community's traditions and customs.

Rights in customary land exist as complex, interlocking tenurial rights consisting of individual and collective rights (Pottier, 2005), usually referred to as a 'bundle of rights'. These overlapping, multiple land rights include 'operational rights' (the right to access land, to cultivate it, to withdraw produce, and so forth) and 'management rights' (the right to allocate and transfer land) (Cotula, 2007: p. 66). Thus, for a given piece of land, customary tenure may allow for multiple resource use, including farming, fishing, hunting, grazing, mushroom collecting, building, and so forth. These use rights may exist concurrently or may succeed one another over different seasons, according to agreements. Logically, these rights cannot be recognised unless one simultaneously recognises the existence of the customary regimes that sustain them

(Alden Wily, 2008). Therefore, whether they are individual or shared, customary interests and/or rights gain their existence and legitimacy from group or community support (Agbosu, 2000).

Customary law

In customary tenure systems, the control of land is based on customary law. Customary law is a body of what are usually unwritten rules, with a legitimacy that is grounded in 'tradition' (Cotula, 2007). These rules are based on social constructs, developed over time to accommodate a particular group of people's way of life and interpretation of their physical environment (Kalabamu, 2000). Generally, customary law defines how rights to land are to be allocated within societies; how access is granted to rights to use, control, and transfer land, as well as associated responsibilities and restraints. These rules also regulate issues such as marriage, divorce, inheritance and the membership of kinship groups and lineages (Joireman, 2008). Being traditional and socially constructed, the essential elements of customary rules are passed on orally, by way of example or in the form of practice from generation to generation (Kalabamu, 2000). The content of customary law is extremely diverse, and varies between communities. In addition, customary rules are not static, but evolve continually in response to diverse factors, including cultural interaction, population pressure, socio-economic change and political processes (Cotula, 2007).

Customary tenure institutions

The rules governing access to and the use of customary land are implemented and regulated by customary authorities or institutions, whose legitimacy derives from 'both anteriority of presence (the founders, or those who define themselves as such) and recognition of the "magico-religious alliance" that they have formed with the local genies on the one hand and with political forces on the other' (Cotula, 2007: p. 36). These institutions are usually composed of a chieftain or priests who serve land and earth deities. These land priests, tribal chiefs or heads of clans exercise trusteeship over the land on behalf of the group. They are therefore entrusted with managing the land within their territory and making decisions regarding the land allocated to community members. Customary tenure institutions regulate access to land and resources, and thus manage the tension 'between land security as individual good' and 'land security as a common good' (Cotula, 2007: p. 37). They grant access to resources to certain stakeholders, and may protect resources by banning certain land-use practices. Like all formally-recognised communal systems, the governing system of customary tenure is usually nested in a series of governance units, which complement the organisational skills and knowledge of those involved in making decisions in the smaller units (Johnson, 1972). These indigenous governing institutions may exist as autonomous

bodies or as organised bodies in a hierarchical structure that is headed by 'paramount chiefs' and manned by different levels of sub-chiefs and committees, depending on the tenure arrangements in the area in question (Cotula, 2007).

Strengths and weaknesses of customary tenure systems

A stable customary tenure system is a source of social security and continuity. In general, in well-defined and socially cohesive groups, individual land rights have proven to be secure, long-lasting, and in most cases, inheritable and transferrable (Deininger, 2003). At least when land is plentiful, farmers have no need to 'own' land, in the western sense. The continuous, unchallenged use of land by individuals and the recognition of individuals' land rights by the group mean that indigenous people in such systems do not face the problem of insecurity of tenure. Likewise, access to land and security is potentially guaranteed to those who do not belong to the group. Security of tenure not only relates to land use, but also to the transfer of and investment in land (Kasanga, 1999). Farmers have long been prepared to invest in perennial crops, such as coffee, in the knowledge that their investments were secure. This security is guaranteed both to those who inherit and to those who buy land. Members of the group can invest in the land or arrange contracts with non-members. Such forms of flexible tenure arrangements bring the advantage of helping people who do not have the means to invest in land to benefit from the land indirectly.

Nevertheless, in the wake of many colonial-era policies that discriminated against customary tenure,[4] particularly in Sub-Saharan Africa, a large part of the population that depends on customary tenure systems faces the consequences of falling outside the scope of formal land transactions and access to credit (Deininger, 2003). Landholders are finding it difficult to access credit from lending or financial institutions, because they are required to show valid documents to prove their rights to occupy land (Durand-Lasserve, 2006). This, in turn, discourages people from making the necessary investments for development in agricultural areas. Furthermore, in areas where patrilineal inheritance is practised, women have not gained access to holding land in their own right (Dowuona-Hammond, 2003; Kotey and Yeboah, 2003; Obioha, 2008), a phenomenon which prevents legitimate members of the group from accessing land.

In the pre-colonial era, customary tenure systems were based on continuous observation and practices. In such systems, the boundaries of land parcels were usually identified with non-permanent landmarks such as streams, shrubs and trees. Furthermore, transactions in customary land were not

4 This might not be true for countries that have legal recognition of customary tenure.

recorded in writing, but were instead legitimated and publicly endorsed at public ceremonial gatherings (Agbosu, 2000). The use of these non-permanent boundary indicators, some of which are difficult to trace with time, and the absence of basic data concerning transactions, however, has led to many land-related problems, including land disputes and litigation (Kasanga, 1999; Deininger, 2003). In many customary areas, customary land conflict resolution has proved to be an effective response to these problems (Kasanga and Kotey, 2001). Customary land conflict resolution is usually based on consensus-building, mediation and arbitration. Having a flexible, informal, confidential environment is essential for maintaining peace within customary communities (Paterson, 2001), scaling down or avoiding litigation, and reducing costs. On the whole, decisions relating to conflicts resolved using customary procedures bind the parties, although such decisions can be appealed in higher customary courts.

2.2.2 Development and changes in customary tenure systems

It has been observed that customary tenure systems can adapt to changes that take place over time (Noronha, 1985; Bruce, 1988). One might explain such evolution on the grounds that customary tenure systems are adaptive arrangements that are fluid, open and negotiated by the various actors who use their social networks to redefine and renegotiate customary relations (Berry, 1993). The evolution of customary tenure systems occurs as land is transmitted from generation to generation, with modifications and changes occurring in response to internal or external pressures (Boydell and Holzknecht, 2003). In the course of transmission over time, as well as through experimentation, some key, workable elements of a tenure system are retained, while others are dropped (Kalabamu, 2000; Törhönen, 2004; Cotula, 2007). The ways in which customary systems respond to such changes vary substantially, due to the great diversity of local contexts (Deininger, 2003; Cotula, 2007). Examples from West Africa indicate that while in some cases, customary systems have maintained or even consolidated their power and effectiveness, others have been undermined by profound changes and/or have lost their legitimacy (Cotula, 2007). A synthesis of the literature on customary tenure systems in Africa indicates that several changes have occurred in tenure relations. Most studies (Kasanga and Kotey, 2001; Kombe, 2005; Pottier, 2005; Abdulai and Ndekugri, 2007; Cotula, 2007; Obioha, 2008) report major changes in the mystical and social value of land, intra-family land relations, land management institutions and land transfer mechanisms, particularly in peri-urban areas.

One important observation concerns the concept of property rights, showing a transition from more diffuse and collective rights to more specif-

ic, exclusionary individual rights (Migot-Adholla and Bruce, 1994). This process of individualisation suggests the privatisation of rights to specific parcels of land, along with a loss of control by the community as a whole (Simpson, 1976). These changes reflect the basic principle of the 'evolutionary theory of land rights', which claims that demographic growth tends to push societies towards greater levels of individualisation and the commercialisation of land rights (Boserup and Abernethy, 2005; Fitzpatrick, 2005).

The individualisation of customary tenure has affected social and intra-family land relations. Studies on how land rights have been distributed and managed by lineages and extended families indicate changes in intra-family land relations. Cotula and Chauveau (2007) have documented changes in intra-family land relations in West Africa. Their study finds that:

> The significance of the wider family as a source of land, and the degree of negotiability of land claims via extended kinship relations appear to be diminishing. Consequently, the content and scope of individuals' rights varies according to status within the family group (determined by age, gender and proximity to family heads or founding lineage members), with lower status members having limited rights. Family heads and higher status individuals with land management rights and responsibilities have regard for various considerations in allocating and restricting land rights (Cotula, 2007).

As suggested above, colonialism also had a major impact on customary tenure systems across Africa (Pottier, 2005; Cotula, 2007). Colonial administrations manipulated customary law in many respects. The interpretation of customary law by the colonial courts, usually achieved by filtering the law through western or European legal concepts (Berry, 1993; Pottier, 2005), resulted in an over-simplification of complex tenure relations and rules. Decades of colonial and post-independence legislative interventions by governments, such as nationalisation, centralised resource management, land registration programmes and the devolution of land management responsibilities to local government bodies, have also affected customary tenure relations (Cotula, 2007). According to Pottier (2005: p. 57), the contested meanings of customary tenure relations that can be observed today stem from concepts that arose from colonial encounters, which 'promoted politically expedient appropriation' of land. The codification of customary rules and law was undertaken to benefit colonial administrations and to complement modern economic systems (Pottier, 2005). Colonial institutions gave customary authorities more power over their subjects. In some areas, the fiduciary relationship between the customary authorities and other members of the landholding groups has broken down. The relationship has sometimes been reduced to one of 'landlord' and 'tenant' in the absence of any defined obligations (Kotey and Yeboah, 2003; Ubink, 2008a). In some areas, consultations that had been required by customary law, involving the customary authorities and oth-

er members of the group, have broken down.

Urbanisation, population growth and capitalist aspirations have diluted the socio-spiritual values attached to customary land, giving way to 'a more utilitarian approach whereby land value is derived from its economic returns as a primary asset, as a factor of production and as a source of wealth' (Boydell and Holzknecht, 2003: p. 204). In pre-colonial Africa, customary land was traditionally conceived as a sacred, social and religious entity. However, these perceptions changed under colonialism, when customary land assumed economic importance (Obioha, 2008). The introduction and encouragement of economic development in customary land diverted some land to new uses; cash cropping replaced subsistence farming, for example. Consequently, over time, land became a commodity.

The changing value of customary land also affected land transferral mechanisms. The nature of pre-colonial customary land transfer was such that agreements could be made based on the assumption that the subsistence and security of the granting group would not be affected (Pottier, 2005). A large body of research from many parts of West Africa suggests, however, that the emergence of new forms of land transaction, such as sales and rentals, are replacing customary mortgages, leases, gifts and tenancies (Mathieu *et al.*, 2003; Cotula and Toulmin, 2004). These new forms of land transaction developed between settlers and indigenes, and then between settlers, but not – or only marginally – between indigenes from the same landholding group (Cotula and Toulmin, 2004). Settlers are also entering into short- and long-term leasehold/tenancy agreements with land-owning groups (Mathieu *et al.*, 2003). These changes have brought about new practices, including written contracts, which have replaced oral transactions (Cotula, 2007).

Trends in customary tenure also reveal changes in land management institutions. These changes are strongly related to the 'power over people', 'power over resources' and socio-political structures of the institutions (Cotula, 2007: p. 36). Although in some cases, for example in Ghana, CTIs have managed to maintain or strengthen their ability to control land, in other parts of Sub-Saharan Africa, CTIs are being eroded by legislation. In some cases, customary institutions compete with central or local government institutions to control land. These institutional changes are undermining the effective mobilisation and utilisation of indigenous principles in the management of conflicts (Fred-Mensah, 1999).

The developments described above suggest that changes in customary tenure systems are being influenced by demographic change, commercialisation, urbanisation and land development, and by social and economic change. Furthermore, wars, conquests, religious conversions, state policies, and technological changes have historically tended to influence such changes. Cotula (2007) noted that conflict and the HIV/AIDS epidemic have affected many forms of tenure relationship in Africa. According to Cotula and Chauveau,

the HIV/AIDS epidemic has had a major impact on land use, and may have important implications for land rights, including a change in customary practices. The epidemic may lead to land-loss due to the distress sale of land by poor households, who may be forced to sell their land to pay for medical care and funerals. Examples from Kenya, Lesotho and South Africa also indicate that widows created by the epidemic are often deprived of access to their husbands' lands (Drimie, 2002; Cotula, 2007). In addition, armed conflicts may disrupt local tenure systems and thereby contribute to changes in customary rules and institutions (Cotula, 2007). For example, in Burkina Faso, the large-scale return of migrants from war-torn Ivory Coast increased pressure on land, and contributed to the increasing monetisation of land relations.

The flexibility and fluidity of customary regulations and institutions is an additional factor lying behind the changes observed in tenure systems (Delville, Ouedraogo *et al*., 2002). Customary law allows people to re-integrate and renegotiate, and is thus able to accommodate different perspectives and interests. Juul and Lund (2002) argue that fluidity not only results from the nature of the customary system but also from the interaction between customary systems and the other institutions, especially in pluralistic legal systems.

Customary tenure systems have shown remarkable powers of responsiveness to change, owing to the fact that tenure rules and institutions can remain adaptable and flexible in different conditions. While they are responsive, however, customary tenure systems are often unable to deal with modern challenges. The flexibility in customary rules creates room for manipulation and the advancement of individual interests (Ubink and Quan, 2008). In peri-urban areas, many kinds of tenure insecurity problems can be observed, such as the loss of agricultural land and usufructuary rights, forced evictions, and disenfranchisement, when cross-cultural marriage between 'matriarchal' and 'patriarchal' families leaves children without inheritance rights (Mathieu *et al*., 2003; Mahama and Dixon, 2006; Ubink, 2007).

Increasing urbanisation and land development, which entail the conversion of agricultural land into residential plots, leave usufructuary rights particularly insecure. Indigenous farmers can be forcibly evicted from their farmlands as a result of land development (Cotula, 2007; Amanor, 2009), leaving them landless and homeless (Kirk *et al*., 1998). The displacement of indigenous people creates misunderstandings and, sometimes, opens hostility between displaced families or individuals on the one hand, and traditional land custodians and new developers on the other (Alden Wily and Hammond, 2001; Kasanga and Kotey, 2001). Tenure insecurity also affects migrants and tenants, who find it difficult to access land or have to do so on more severe terms, for shorter periods and for financial sums that are often equivalent to having purchased the land outright (Delville, Toulmin *et al*., 2002; Cotula, 2007).

Although in theory, land is not sold in customary tenure systems, due to

the development of land markets, land sales have become more or less acceptable in peri-urban areas (Mathieu *et al*., 2003). In peri-urban areas, there is a broad range of contracts allowing access to land between prospective developers and indigenous land-owning families, community members and chiefs. With this development, inheritance rights to land under customary tenure are no longer guaranteed, as many people belonging to land-owning families are left to compete for less land (Amanor, 2006). Consequently, there have been bitter struggles between indigenes/families and chiefs over the right to sell land, and the conversion of farmland into residential land in particular. Various kinds of informal land transaction are occurring, coupled with the widespread use of middlemen, as observed in Nigeria (Ikejiofor, 2006). Informal transactions in peri-urban areas have a direct impact on tenure security, as they expose landholders, especially strangers, to fraudulent transactions, such as the selling of the same piece of land to several persons. In other cases, land has been illegally allocated to prospective developers. Invariably, these land developers have to pay more money in order to regularise their transactions and avoid losing the land acquired. These kinds of informal land transactions often breed conflicts over land.

The account given above indicates that, although customary tenure systems show remarkable powers of responsiveness to change, in many peri-urban areas, they have proved unable to withstand the pressures of urbanisation, land development and other social economic changes (Aryeetey, Kotey *et al*., 2007). Some have argued that these problems justify governmental intervention in land-use planning and control, and in land management (Boydell and Holzknecht, 2003). In the next section, the concepts, models and debates pertaining to a number of approaches to the formalisation of customary tenure systems will be discussed.

2.3 Concepts and models for customary tenure formalisation

The term 'formalisation' is often used to describe the process of identifying, adjudicating and registering interests in land (Meinzen-Dick and Mwangi, 2009). Formalisation is not 'merely an aid to solve particular problems, but an essential part of transition towards structured governance, order, and ultimately civilisation' (Benjaminsen *et al*., 2009: p. 28). The formalisation of customary tenure is not a new phenomenon in Sub-Saharan Africa; it dates back to the colonial period, when laws and institutions were imposed on customary and indigenous African institutions. From the nineteenth century onwards, several formalisation strategies and land policies were adopted in Sub-Saharan Africa. These aimed to improve tenure security and encourage economic development in customary lands. Most of these strategies and policies

were based on theories and concepts that tended to replace or modify customary tenure with freehold tenure options, and made state institutions responsible for land management. These replacement formalisation strategies have been influenced by the activities of donor agencies in the region. Over the last few decades, legal scholars and economists have questioned the appropriateness of these formalisation strategies. Their debates have often centred on the efficiency, equity and sustainability of private property as compared to common property, and the security of common property rights (Ostrom, 1999). This section discusses four models that have played a key role in property formalisation theories and debates on property rights in the literature.

2.3.1 The replacement model

The basic principle of replacement formalisation is that customary tenure systems are replaced with statutory LA and management systems. Replacement models tend to be linked to the substantive reformation of customary rights towards the consolidation of holdings and freehold tenure (Sjaastad and Cousins, 2009). The model is 'fused with the logic of market economies to make real property a freely tradable good' (Oestereich, 2000: p. 224). The conventional logic governing replacement models can be summarised as follows:

- customary tenure systems are dominated by group rights and do not promote individual rights, which leads to tenure insecurity among individuals (Peters, 2009);
- customary rights are inalienable and thus do not promote investment, and therefore hinder development and impede progress (Dorner, 1972); and
- common property in customary tenure is a vestige of a past system that is likely to disappear in future (Ostrom, 2000).

The roots of these views can be found in the work of economists such as Alchian, Demsetz, Ault, and Rutman (Alchian and Demsetz, 1973; Ault and Rutman, 1979). They also draw on the work of Hardin (1968), Harrison (1987) and Meek (1968), who questioned the efficiency of customary tenure systems in many respects. In Hardin's (1968) essay on 'the tragedy of commons', he argues that it is inevitable that communally-controlled property leads to overuse, overgrazing and the degradation of the natural resource base. According to Hardin, degradation is inevitable because each user has every incentive to use as many resources as possible. In a similar way, Harrison (1987) argued that customary tenure systems are deeply embedded in cultural and political systems that generally offer the members of a particular social group overlapping, multiple rights of land use, but which tend to exclude non-members of the group from land transactions. According to Harrison, such exclusion undermines the full integration of rural economies into national and inter-

national markets. In addition, Harrison argues that because customary tenure practices permit partible inheritance, they contribute to land fragmentation and encourage litigation. Fragmented landholdings and collective use of land are portrayed as messy obstacles to modernisation, justifying the devising and enforcing of rules of various kinds in order to simplify and make these practices more comprehensible for state institutions (Scott, 1998). Meek (1968) also described customary tenure as an inalienable system that was designed to meet the subsistence needs of agriculture. According to Meek, such arrangements do not encourage individuals to invest in land-based economic activities, and therefore constitute a hindrance to development and an impediment to progress. Notably, all of these arguments emphasise the need to individualise customary rights. In particular, it is argued that the individualisation of tenure through the titling of land was needed to ensure the commercialisation of agriculture (Chimhowu and Woodhouse, 2006). These arguments have been echoed in many policy documents produced by African governments, international development agencies and some academics (World Bank, 1974; De Soto, 2000).

Replacement models are described as 'market-based' models, because they hold that market mechanisms based on individual 'ownership' rights form the foundations of economic development. Advocates of this model believe that private property rights play an essential part in the economic development process, due to the incentives associated with the various kinds of property relations. They argue that the vesting of exclusive ownership rights in individuals generates incentives that lead to higher levels of productivity. In other words, advocates of replacement models believe that individual private property rights lead to successful land development, increasing credit opportunities, the promotion of land markets and effective conflict resolutions (Nkwae, 2006). They hold that security of tenure can only be achieved within a state-organised framework, and therefore tend to empower state institutions to manage and control land (Meinzen-Dick and Mwangi, 2009). Hence the replacement approach emphasises individual property rights for landholders (privatisation) and the establishment of freehold titles to land through land titling and registration. In replacement models, statutory law replaces customary law, while state institutions are substituted for customary tenure institutions.

Replacement formalisation concepts lay behind many of the land reform activities in Sub-Saharan Africa from the 1970s to the 1990s that were sponsored by international financial institutions, especially the World Bank. During this period, much of the literature was devoted to testing and promoting the superiority of freehold tenure and the necessity of creating title deeds to African land (Dorner, 1972; World Bank, 1974). In particular, the World Bank argued that customary tenure systems should be replaced with property rights, which were seen as preconditions for development (Peters, 2009). For

example, the World Bank's 1989 report on Sub-Saharan Africa stated that agricultural modernisation combined with population pressure will make land titling necessary, and therefore the traditional tenure systems need to be codified (World Bank, 1989). These development strategies changed the rules governing access to land and introduced new LA institutions (Migot-Adholla and Bruce, 1994).

Market-based and replacement formalisation models have been criticised for being rooted in western (Roman, French and English) concepts of land tenure. Advocates of the replacement model conceive of property rights in a narrow sense as ownership, instead of understanding them as overlapping bundles of rights (Meinzen-Dick and Mwangi, 2009). Replacement models tend to ignore the multi-functional importance of customary land, and thus underrepresent the multiple rights and interests associated with ownership, while also failing to reflect local realities (Platteau, 2000; Kanji *et al.*, 2002; Mathieu *et al.*, 2003; Cotula and Chauveau, 2007; Quan, 2008). Creating ownership and individualising customary land rights creates an exclusivity of rights that tends to benefit primary right-holders, because issuing freehold titles terminates specific second-party rights (Österberg, 2002; IIED, 2006; Benjaminsen *et al.*, 2009); leads to increased marginalisation as wealthier and more powerful groups acquire rights at the expense of the poor and weaker groups (Migot-Adholla and Bruce, 1994; Meinzen-Dick and Mwangi, 2009); and leads to higher levels of conflicts over land (Deininger and Castagnini, 2006; Bassett *et al.*, 2007; Benjaminsen *et al.*, 2009; Peters, 2009).

The critics' arguments are based on research dating from the 1970s, which revealed the failure of land registration and titling programmes across Sub-Saharan Africa to achieve their stated goals (Peters, 2009). Critics of market-based models make a number of claims:

- Advocates of private property models misunderstand the concept of communal tenure (Gluckman, 1969; Noronha, 1985). Crocombe (1974) and Noronha (1985) argue that communal rights do not mean that individual land rights do not exist in customary tenure. This argument is based on the fact that in customary tenure systems, communal rights do not exist in isolation, but in conjunction with individual rights (Ostrom, 2000).
- Gluckman (1969) argues that using the term 'usufructuary' rights to describe individual rights in customary tenure is misleading, because it does not capture the full range of customary land rights. As understood in Roman Law, usufructuary rights allow holders to collect the fruit of these rights over their lifetime and are not transmissible to heirs, as they are in the case of customary landholding.
- Customary tenure systems cannot be compared to 'open access' in common property systems, where specific rights are not assigned to anyone (Nkwae, 2006: p. 91). The fact that each member of a customary landholding group has the freedom to use any part of the land, as long as nobody occu-

pies it, does not mean that there are no control measures relating to the use of land. There are rules that regulate the use of the land, and these are implemented by the authorities representing the group.

- The claim that individual rights in customary tenure systems are insecure, and therefore present an obstacle to investment, is unconvincing for two reasons (Gluckman, 1969; Coldham, 2000; Peters, 2009): first, customary tenure practices provide sufficient security of tenure to the group, individual members of the group and non-members of the group. Transactions in land, including share tenancies, borrowing, pledging and purchases are accorded sufficient recognition and as much protection as the formal titles is likely to give (Migot-Adholla and Bruce, 1994; Peters, 2009). Second, with time and, customary tenure systems allow individuals to obtain heritable long-term rights, and dealings with non-members tend to develop as the value of the land increases (Platteau, 2000).
- The link between titling and tenure security is debatable. Tenure security is not automatically generated by the registration and titling of land. Migot-Adholla and Bruce (1994) argue that the right to the continuous, unchallenged use of land is perhaps the most critical measure of security of tenure. Formal title certificates or other official documents are, at best, merely an affirmation of this social guarantee; they do not create it.

2.3.2 The De Soto model

Like the replacement model, De Soto's approach to the formalisation of property rights is described as market-based, because his model assumes that formal titles to land are needed in the form of title deeds, licenses, permits and contracts. While De Soto's model is based on land titling (including agricultural land), he emphasises other instruments in addition to titles. In particular, the model supports the conversion of 'extra-legal' into formal legal property rights, in order to encourage investment, allow for the use of titles as collateral, and to facilitate the development of the market (Meinzen-Dick and Mwangi, 2009). De Soto argues that the main cause of poverty is the continued lack of access to formal property rights among poor people in developing countries. De Soto stresses that property held by the poor is 'dead capital' (De Soto, 2000: p. 7), which only becomes useful when it is recognised by a formal system. Therefore, 'capitalism can work to the advantage of the poor if their rights in land are formalised' (Peters, 2009: p. 1319). De Soto further argues that formalising land rights would not only lead to increased economic activity and growth, but would also enable governments to improve tax networks. De Soto's book *The Mystery of Capital* has been influential since it was published in 2000, particularly among politicians and in the international development industry (Benjaminsen *et al.*, 2009).

An important difference between De Soto's approach and other econom-

ic property rights models is that De Soto's model is based on a pragmatic strategy that is grounded in the registration of informal arrangements and the *de facto* use of land (De Soto, 2000). While other market-based formalisation models tend to focus on the substantive reform of rights in the direction of the consolidation of landholdings and freehold tenure through titling, De Soto's formalisation model stresses the desirability of formalising already-existing rights (Benjaminsen *et al*., 2009; Sjaastad and Cousins, 2009). Furthermore, De Soto underlines the importance of 'integrating formal property representations, and the information contained within them, into a unified, accessible registers' (Sjaastad and Cousins, 2009: p. 2).

De Soto's formalisation-based approach has generated a number of concerns and has been debated in the popular and academic media during the last two decades. Critics point to the risks inherent in the formalisation process, including the high costs involved, and the propensity of land markets to magnify wealth differentiation and inequality. The assumption that governments possess the willingness and the capacity to create institutions in a pro-poor and democratic manner, to prevent domestic elites from abusing the process, and to effectively enforce the rights once they have been formally established, has also been challenged. Meinzen-Dick and Mwangi (2009) note that particularly in rural areas, the introduction of formalised property systems tends to compete with, and even to destroy, well-established and effective local systems, opening the door to opportunism and possible chaos. Bromley (2009) argues that a familiar, legitimate and permanent customary system would seem more attractive than deficient, non-functioning state institutions. Apart from the adequacy and competency of state institutions, the willingness of the state to transfer power and authority to the local level in formalisation programmes, as proposed by De Soto, has also been challenged (Sjaastad and Cousins, 2009).

Others object to the treatment of the poor as an undifferentiated group in De Soto's model, rather than recognising the diverse rights and claims of other groups, such as young and the old, males and females, locals, migrants and immigrants (Benjaminsen *et al*., 2004; Toulmin, 2009). Like the poor, these other groups may be unable to benefit from formal rights. As with other market-based models, the issuing of titles increases land values and tends to make tenure security expensive, and thus difficult for many vulnerable groups to access (Benjaminsen *et al*., 2009). There are legitimate concerns that De Soto's approach proposes a simple approach to the complex relationships between people and land in customary tenure systems. Such complex social and political relationships make it difficult to establish and enforce clear, secure property rights using De Soto's approach. Like the replacement model, De Soto's model does not recognise the complex and overlapping nature of property rights, the high risks for secondary right-holders of individual property titles, and the vital importance of common property resources to many rural

dwellers (Toulmin, 2009). Even where secure property rights are desirable, the implementation of De Soto's model through titling introduces an unintentionally inequitable property rights system (Joireman, 2008).

Although there is evidence to support the idea that property formalisation, documentation and the issuing of title deeds are positively associated with investment and agricultural productivity (Johnson *et al*., 2002; Smith, 2004), there is less evidence that the formalisation of land rights has facilitated access to credit in any African country as of yet (Holden *et al*., 2008). Titling and property rights can lead to other improvements in people's lives, but they do not lead to the immediate availability of capital (Joireman, 2008). Thus, titling and property rights may provide a good stimulus when credit is required, but they themselves do not create credit markets – unless the poor require credit, the mere rationalisation of titles will not make credit available to them. De Soto's theory requires more solutions to secure tenure; aside from the market, there are other factors that contribute to investment (Gilbert, 2002).

2.3.3 Multiple or dual tenure models

Multiple or dual tenure models promote legally-recognised dual tenure regimes – that is, customary and statutory tenure – that regulate land use in parallel (Spiertz, 2000). In multiple tenure systems, some land is held under western European law, while other land is held under customary law (albeit law that has been formalised by legislation). Land held under customary tenure is regulated by indigenous tenure institutions and practices, while statutory tenure is regulated by statutes and state land management institutions. The main driving force behind the dual tenure model is the realisation that the complete phase-out of customary systems is ineffective, because in many places, people continue to access land using indigenous tenure practices. In many African countries, customary tenure systems proved resilient, even after colonial governments (and sometimes post-colonial governments) introduced statutory land laws fashioned along the lines of those used in western or European economies (Bruce, 1988). In Sub-Saharan countries such as Uganda, Nigeria and Tanzania, where land is administered using a dual tenure system, statutory tenure operates in cities, while customary tenure systems operate in rural areas under the aegis of local communities (Batungi and Ruther, 2008).

Multiple or dual tenure options have been criticised on the grounds that they keep customary and statutory tenure systems distinct, and thus fail to benefit from the possible synergies between them (Mulolwa, 2002). The coexistence of customary tenure with statutory tenure in peri-urban areas leads to complex legal problems, tenure insecurity and management uncertainties. This is fuelled by competition between customary and statutory law, and

clashes between the two cultures (Nkwae, 2006). The conditions for accessing and securing rights under customary tenure are different from those using formal legislation. Such differences inevitably create uncertainty of tenure, and situations in which those rights that are legitimate under customary rules are not recognised by legislation (Dowuona-Hammond, 2003). Furthermore, it is argued that multiple institutional and legal structures result in contradictions and insecurity regarding whose rights count, whose rights will be supported in the event of a contest, and which decision-making structures are paramount (Meinzen-Dick and Pradhan, 2002; Benjaminsen *et al.*, 2009; Toulmin, 2009). Multiple structures lead to 'institution shopping' (Toulmin, 2009: p. 13), a situation whereby people seeking justice will use those institutions that are most likely to rule in their favour. Actual attempts to introduce dual systems have encountered difficulties, as shown by Indonesia in the 1960s and Niger in the 1980s (Zevenbergen, 2002; Benjaminsen *et al.*, 2009).

2.3.4 The adaptation model

The adaptation model is emerging from current research in the social sciences. The model is based on notion of a return to the autonomous management of land by local communities (Delville, 2010). The view expressed in this formalisation strategy is that customary tenure is derived from social relationships and institutions, and that changes in tenure and property regimes therefore have implications for the social, spiritual and political ties that link kinship groups. In particular, the individualisation of rights in customary land undermines the social cohesion of groups and communities. Therefore, where tenure arrangements are structured to meet various objectives, it is not possible to use tenure reform strategies that are driven by economic efficiency alone (Payne, 2004). The scholars behind this theory, who are sometimes referred to as 'evolutionist', argue that historically, customary systems have demonstrated some flexibility and responsiveness to social and economic circumstances (Deininger, 2003; Cotula, 2007). The World Bank has given its support to the argument that customary tenure systems can provide tenure security. In one World Bank report (Deininger, 2003), it is argued that customary tenure systems provide tenure security to groups at a relatively low cost. The report further indicates that usufructuary rights in customary systems can encourage appropriate forms of investment, in the way that long-term leases can generate substantial investment in western economies. Proponents of this model advocate the establishment of locally-based LASs that are built on indigenous institutional structures. The model also supports hybrid institutional systems and the recognition of group and individual rights in LA. A number of well-known adaptation-related approaches to the formalisation of customary rights are discussed below.

Locally-driven tenure models

Locally-driven tenure models provide transitional and alternative tenure arrangements for various customary groups at the local level. The assumption behind these models is that customary tenure systems have diverse rules, norms, and practices that can differ according to the tribe or community concerned. This makes it both expensive and difficult to integrate all varieties of tenure in a unified system (Toulmin, 2009). Furthermore, introducing a formalised property system into these diverse customary systems might lead to competition with, and even destroy, established local systems, thereby creating opportunism and chaos (Meinzen-Dick and Mwangi, 2009). Proponents of the model also argue that central governments lack the capacity to implement large-scale registration. For example, Toulmin (2009: p. 12) suggests that 'it is better to develop locally appropriate systems, rather than "single standard blue print "solutions"'.

Unlike replacement models, locally-driven tenure models allow local communities to participate in tenure formalisation programmes by deciding on which rights are important and should be recorded. Local participation is crucial, because it makes local communities less likely to resist what seems to them to be inappropriate formalisation (Sikor, 2004). Another advantage of this approach is its flexibility, which allows for different strategies for securing property rights for groups and individuals, and for different local situations. This flexibility allows local communities to use simple and low-cost technology, tools and accessible language to record land tenure information that is based on local customs (Toulmin, 2009). This is important, because many local communities cannot meet the high capital costs of establishing land rights and maintaining up-to-date land registers. Local tenure models can be found in many countries across Sub-Saharan Africa. For example, in Botswana, Ethiopia, Kenya and Niger, local institutions received support for LA activities (Fitzpatrick, 2005; IIED, 2006; Toulmin, 2009).

Fitzpatrick (2005: pp. 457-465) distinguishes between four broad institutional models that support locally-driven tenure models. The 'minimalist' approach is captured by the statement that 'customary rights to land are recognised' (Fitzpatrick, 2005: p. 457). This means that there should be no legal intrusion into areas that are demarcated as customary and governed by customary law. Fitzpatrick considers this an appropriate approach for relatively isolated communities that are unaffected by changing market dynamics and have few internal problems. Second, according to the 'agency' approach, customary groups are represented by 'agents' who represent the groups in all land transactions. The advantage of this approach is that outsiders can deal with group representatives with formal legal confidence that any agreement with the representative is binding on the group. According to the third approach, 'group incorporation', a corporate structure grants formal legal identity to a traditional group, enabling it to enter into legally secure transac-

tions with external investors, should it wish to do so. According to the fourth approach, community members elect persons to 'land boards' in democratic elections. These boards are mandated to allocate land, adjudicate, and carry out land-related activities such as planning and collecting rents. For example, a number of land boards were established in Botswana in the late 1980s.

Locally-driven tenure models have been criticised on the grounds that they are vulnerable to inequalities within communities. It has been argued that while customary tenure is characterised by flexibility and negotiability, these factors do not prevent – and can sometimes facilitate – the exclusion of some categories of users (Peters, 2009). The evidence suggests persistent competition and conflict over land, revealing processes of exclusion, deepening social divisions and class formation (Amanor, 2001; Peters, 2004). In addition, Toulmin (2009) notes that strengthening the capacity of chiefs, landlords and other powerful local institutions may have unintended negative effects, as these actors can take advantage of this power to exploit poor tenants. Examples from Zambia indicate that limited human resources are a problem for locally-driven models (Toulmin and Quan, 2000). In communities where customary institutions are very powerful, 'agency' methods would seem inappropriate, because they are likely to be challenged. With regard to the 'group incorporation' method suggested by Fitzpatrick (2005), Sjaastad and Cousins (2009: p. 6) question 'the *de facto* reach of the *de jure* corporate constitution, and whether one can expect a corporation to codify and enforce customs in the long run'. Sjaastad and Cousins argue that in practice, incorporation has often proved to be ineffective and has had a polarising effect on influence and wealth, particularly when the groups involved are large. Sjaastad and Cousins (2009) note that this may require governments to introduce key elements of customary law through national legislation and policy implementation.

Furthermore, locally-driven models are isolated models that do not facilitate decision-making by central governments, which may need the information that is stored at the local level. Any attempt to unify these isolated systems in a single information system might be time-consuming and prone to errors (De Vries, 2004).

Incremental or gradualist tenure models

The incremental approach supports customary systems that retain strong internal structures (Batungi, 2005). This method rejects the 'big bang' approach to formalising rights in customary areas. Instead, it favours the implementation of formalisation in a progressive, incremental and gradual manner. The incremental approach allows for the formalisation of multiple rights among multiple users (Benjaminsen *et al*., 2009). For example, Fitzpatrick (2005) notes that the incremental approach places relatively few demands on resources and institutional capacities. Furthermore, Fitzpatrick argues that the approach allows 'customary rights to evolve over time in response to popula-

tion changes and economic needs, without undue restriction or imposition by a formal legal regime' (*ibid.*, 2005: p. 458). Advocates of the incremental model do not reject the need to provide individual property titles, but consider this to be a long-term objective (Durand-Lasserve, 2006). The object of the model is to secure rights in a step-by-step, incremental manner; temporally-secured tenure can be upgraded to legalised tenure at a later time. Both Fitzpatrick and a study by the International Institute for Environment and Development (IIED) describe several examples of this approach (Fitzpatrick, 2005; IIED, 2006), notably the UN-HABITAT pro-poor management system, which has established a continuum of rights and a flexible tenure system in Namibia (see Section 2.3.5).

The incremental approach has been criticised on the grounds that it can only provide transitional solutions. Experience in Zambia and Kenya shows that the process of migrating to the final tenure status can be perpetually delayed, thus lengthening the formalisation process (Mulolwa, 2002). In this view, transitional solutions merely increase the number of steps in an already highly-bureaucratic process. In addition, it has been argued that the model gives a comparative advantage to elites, which may have more information and better contacts, thereby leading to corruption (Fitzpatrick, 2005; Sjaastad and Cousins, 2009).

Unified tenure models

The unified tenure model is founded on the principle of securing individual rights based on market models and principles grounded in the security of collective rights and social cohesion, as outlined in locally-based models. Scholars who promote this model argue that rather than replacing customary land rights with formal rights, or securing land rights in an incremental manner, 'hybrid tenure' (unified tenure) is proposed. Unified tenure models build on the identified strengths of existing customary tenure by incorporating some non-conflicting elements of formal tenure concepts (Mulolwa, 2002). According to Mulolwa, by building on existing customary systems, unified models minimise the risk of severing tenure linkages and foster kinds of tenure that are much closer to indigenous models. One of the key pillars of the unified tenure model is its emphasis on rights to use land resources, rather than ownership (Mulolwa, 2002). Unified tenure models explore new institutions and approaches to the recording, registering and maintenance of land tenure information, to serve the interests of customary communities and investors alike. Cotula *et al.* (2004) argue that 'hybrid' tenure models promote democracy, human rights and gender equality. For instance,

> legislation may give land users a menu of tenure options, including recognition of customary rights, or may flexibly define and regulate the institutions empowered to hold and manage land, so as to allow communities to devise their arrangements on the basis

> of their specific needs and to retain the elements of customary systems they find useful (Cotula *et al.*, 2004: p. 7).

Hybrid or unified models have been implemented in various contexts. In Benin, the customary land rights registration (PFR) is a hybrid registration system, which institutes a shift in focus from an oral tradition to the written documentation of customary transactions (Delville, 2010). The PFR uses systematic procedures for identifying and mapping land rights, and for generating a register of rights that is based on the principle of land registration. However, the level of rights to be registered – that is, whether they are individual or collective – is determined by local actors, on a case-by-case basis. In the Narok district of Kenya, the fundamental principle of the unified tenure model is based on issuing individual titles to land, while the use and sale of land are still governed by communal rules (Amman and Duraiappah, 2004).

The main criticism of the unified model is how to determine the best balance between local and public regulations, and the extent to which customary laws and statute can be used (Delville, 2010). Like the dual tenure model, the unified model's multiple institutional and legal structures leave the approach vulnerable to contradictions and insecurities. It is difficult to provide a clear legal framework that recognises the legitimacy of local rights and arrangements, which does not contradict the fundamental principles of the statutory system in question. Determining when and where it is appropriate to introduce statutory law is both crucial and difficult.

2.3.5 Innovative approaches to formalisation – examples

Over the last few decades, countries in Sub-Saharan Africa have introduced a number of innovations in land tenure and administration. These aim to improve security of tenure and property rights for the urban and rural poor, through the use of 'pro-poor' tools (Augustinus and Deininger, 2005). Innovative land tenure tools, such as occupancy licenses, starter titles and certificates of occupancy, have been implemented in various ways to secure a continuum of rights (UN-HABITAT, 2004). Some of the useful rights that are usually recorded using these innovative tools include anti-eviction rights, occupancy rights or the right of possession, adverse possession rights and group rights (Augustinus and Deininger, 2005). This section highlights some of the well-known innovative land tools that are used to deliver affordable security of tenure in Sub-Saharan Africa. Although they do not specifically deal with customary systems, the lessons learnt can be drawn upon when designing LASs in customary areas.

Community land trust (CLT) in Kenya

CLT is new form of tenure in Kenya, which awards group ownership rights to urban land in informal settlement upgrading projects. The approach is based on the American CLT model, which splits the ownership of real property (Bassett, 2005), and combines communal and market-based individual ownership. In principle, while the land itself is owned by communities, improvements that are made to the land – such as houses – are owned by the individuals who use the land on a long-term lease basis.

Since the mid-1990s, CLT has been used in a number of Kenyan towns, such as Voi, as a means of providing affordable access to land for housing and related activities. The basic principle of the trust is to make the best possible use of the collective strengths of local communities, in their ability to obtain permits and infrastructure, keep all land under one title, and to encourage members to invest in their homes and in environmental improvements (Durand-Lasserve, 2006). As a pre-condition to holding land in perpetuity – an express objective of the CLT – communities have to organise themselves as 'settlement societies' (Bassett, 2005: p. 378). These act as legal entities that organise the day-to-day land management functions of the CLT. The settlement society, in turn, has to form a trust, an entity that holds the legal title to the land. This arrangement has the potential to control property transfers and discourage land speculation (Durand-Lasserve, 2006).

The implementation of CLT in Kenya has its shortcomings. The lease fee appears unaffordable for some communities, and the ability of less wealthy people in these communities to pay the lease fees to enable them keep their landholding over time remains a key problem. In some communities, CLT projects produced more squatters, when they were intended to prevent squatter settlements from developing. This problem has been attributed to weaknesses in community participation in land management activities (Bassett, 2005). Other problems observed in the CLT relate to a lack of understanding on the part of administrators, lengthy documentation processes, and a disincentive to invest in communal ownership, especially when people are not free to sell directly to outside buyers (Durand-Lasserve, 2006).

Despite these shortcomings, the CLT model has a number of positive features, including community participation in land management; a ban on absentee ownership; restrictions on the sale of land; provisions for community control of land; and the retention of individual ownership rights, such as the right to sell improvements (Bassett, 2005). Community participation in land management activities creates empowerment. Land users are entitled to make decisions about land use, acquisition and financial management, and select the leaders of the trust. This improves transparency and accountability to a certain extent. Furthermore, retaining ownership in the community and providing leaseholds to land users make the approach useful for customary areas, even in peri-urban and urban areas.

Certificates of Rights (COR) in Botswana

The Certificate of Rights (COR) model was one of the innovative tenure options introduced in Botswana in the 1970s. The approach targeted the needs of the urban poor, particularly those in informal (squatter) settlements. The second objective of COR was to provide a secure and inexpensive form of tenure to support site and service schemes for the urban poor (Nkwae and Dumba, 2009). COR provides landholders with the right to use and develop land, while retaining state ownership (Durand-Lasserve, 2006). In other words, the plot holder maintains the usufructuary rights, while the state maintains ownership. Usufructuary rights are inheritable, and can be assigned, pledged and ceded with the consent of the city/town council concerned (Nkwae and Dumba, 2009). To meet the objective of providing a secure and inexpensive form of tenure, the boundary of the COR plot is demarcated on the basis of general plans or block diagrams. Over time, the COR is upgradeable to a full title – a Fixed Period State Grant (99-year lease). This occurs after a cadastral survey has been carried out, and the title registered (Durand-Lasserve, 2006; Nkwae and Dumba, 2009). The municipal authorities are responsible for administering the COR. The standardised procedures for allocating COR require an applicant to be a citizen of Botswana, and to have been a resident of the town in question for at least six months. The town council handles disputes relating to allocations, encroachments, inheritances, the illegal building of additional structures, loan repayments and service levies.

The implementation of the COR concept in Botswana has its limitations. The administrative work involved is the same as that for allocating full property titles (Durand-Lasserve, 2006). The demanding process and a lack of human resources have over-stretched the administrative capabilities of the agencies implementing the COR (Nkwae and Dumba, 2009). Although the system protects the poor, the conditions for the allocation of the COR have the potential to exclude non-community members' access to land. Another limitation of the COR concept is that it has not been accepted by formal private-sector financial institutions as collateral for loans (Durand-Lasserve, 2006).

Nevertheless, the COR concept offers flexibility in laws and processes, allowing for the use of low-cost methods to define the boundaries of plots, and for the alteration of plans without recourse to the Land Survey Act and Deeds Registry Act. The upgradeability of the tenure from rights of occupancy to leaseholds allows it to serve the needs of all categories of people. Legal flexibility and upgradeability of tenure have important implications for customary areas. Flexible and low-cost tools are needed to identify and record rights in customary land, particularly where strict cadastral rules have proved unable to capture and represent the complexities of rights. In addition, different types of use rights in customary land can be secured, and even upgraded, while the ownership of the land remains vested in the group. This is important for customary areas, where there is a greater need to secure individual

use rights and, at the same time, preserve communal tenure.

Decentralised registration and certification in Ethiopia

Land in Ethiopia is state property, and citizens have use rights. These land-use rights can be inherited, but they cannot be mortgaged. Prior to the 1990s, there was high tenure insecurity in Ethiopia, with arbitrary evictions and great inequity in land ownership. Land was highly under-utilised, which affected productivity and investment (Deininger *et al*., 2008). To reduce widespread tenure insecurity and its negative impact on investment, and to promote land conservation, a land certification programme was introduced (IIED, 2006; Deininger *et al*., 2008). The programme, which began in the late 1990s in the country's main regions, was based on the systematic registration and certification of land-use rights.

The certification programme is carried out via a decentralised, low-cost registration system that is implemented at the community level. Although there are regional differences in approach, in general, the programme starts with the forming of land-use and administration committees. Committee members are elected by popular vote and tasked with voluntarily implementing the field process. Complete participation on the part of the local community is required (IIED, 2006). The registration of plots is a public process, with people's neighbours present in the field (Deininger *et al*., 2008). The certification process is supervised by a survey team and a staff composed of students and farmers, who have been trained in land measurement and registration (Toulmin, 2009). The certification process entails the use of simple, traditional tools to demarcate and measure plots.

Land registries are established at village and district levels in the form of hand-written registry books. Information on the boundaries of plots is entered into an official form, with a stamp and a photograph of the farmer and his wife attached. Once registration is complete, households are given a registration certificate. These are issued as a single page, with the name of the head of household and details concerning the size, location and quality of the farm plots, and the names of the neighbours of each plot. Land is registered in the names of both spouses. Female-headed households (widows, divorced and single women) also receive certificates in their name for the land in their possession (Holden *et al*., 2009). Farmers may rent or lease their land, but the time period allows for regional differences, and also depends on the technology used to till the land (IIED, 2006).

An important lesson to be drawn from the Ethiopian decentralised registration and certification programme relates to its successful use of low-cost technology and participatory processes to adjudicate boundaries and register land rights. About 20 million plots and some 5.5 million households have received title certificates in a very short time, and in a cost-effective manner (Deininger *et al*., 2008). This achievement is unprecedented in Africa, both

in terms of scale and cost (IIED, 2006; Deininger *et al*., 2008). The use of simple tools and local language makes the certification process transparent and accessible for most land users. The flexibility in the general laws guiding the certification programme allows for implementation in different regions. This kind of flexibility is crucial for customary areas, where it may be necessary to introduce organisational and institutional changes in order to tailor LASs to diverse tenure systems, rules and conditions.

Namibia's flexible tenure and registration system

Like the other innovative systems discussed above, Namibia's flexible tenure system is built on the assumption that supports a change in perceptions of freehold titles as the only possible vehicle for economic development. The motivation behind the flexible tenure system is that poor families do not need freehold titles, but they do need the security that will prevent them from being evicted from their land without compensation (Christensen *et al*., 1999). Therefore, the main goal of the flexible tenure and registration system is to provide a simple, affordable and fast form of secure tenure to low-income communities and informal settlers in particular (Christensen, 2005).

Flexible tenure offers different levels of tenure at different costs, with the ability to move from one level to the other. Two new tenure types (starter and landhold titles) have been introduced, in addition to the existing freehold tenure. These two new tenure types are based on two principles: they function both in parallel and interchangeably with existing freehold titles (Christensen, 2005). They function in parallel in the sense that parallel institutions will be responsible for the registration of the different tenure types. Starter and landhold titles can be registered at the land hold registry at the community level, and the Registrar of Deeds at the main Windhoek registry. They are interchangeable in the sense that the different tenure types that are catered for in the parallel registries should be upgraded, over time, from an initial base that offers basic security, into an individual's full ownership of a freehold title. These arrangements are made in accordance with the needs of individual households (Durand-Lasserve, 2006).

Starter titles are basic forms of individual title that are provided on a group basis (Augustinus and Deininger, 2005). The starter title is an individual type of tenure, in that one person, such as the custodian for a family or household, is allocated a right to an unspecified site. It is also group-based, however, in that each household within a block parcel must abide by the rules of the community that have been laid down by the community association (Christensen, 2005). Starter titles are thus registered in respect of a block of land or settlement block that has been approved by a local authority (Kock, 2006). In principle, it should be possible to sell, donate and inherit starter titles, subject to restrictions that may be imposed by a group-agreed constitution, or other rights recognised by the group (Christensen, 2005). Starter titles rely on

simple survey descriptions and registration, thus enabling poor landholders in informal settlements to achieve security of tenure over the land on which they have settled. The periphery of a block of land is surveyed and registered, providing the holders with a perpetual occupation of a site within the block. However, the various land units within the block are neither surveyed nor registered. A starter title can be upgraded to a landhold title and then to a freehold title, or a starter title can be upgraded to freehold title.

Landhold titles are a more advanced form of tenure, which are registered parallel to the freehold title. This is a statutory form of tenure with all of the most important aspects of freehold ownership, but with a limited range of associated transactions (Christensen *et al*., 1999). In principle, the most important aspects of ownership (including mortgages) are allowed, but not the full range of transactions that might arise from freehold ownership. Like starter titles, the underlying parcel of land on which landhold title rights are registered would remain registered in the Windhoek Deed Registry, but endorsed to the effect that it is subject to the registration of landhold title recorded in the landhold-title register (Christensen *et al*., 1999; Christensen, 2005). Landhold-title holders are permitted to build permanent structures.

Freehold title is the final step towards a full cadastral title and, as such, has to follow the procedure of conducting a survey and proclaiming the whole settlement block development as a new extension of the town.

This innovative incremental tenure and registration project was piloted in the late 1990s. The government of Namibia approved the principles of the flexible land tenure system in 1997. The final draft of the Flexible Land Tenure Bill was produced in 2004. Translating this draft law into practice has been a difficult and slow process, however. To date, the bill has not been passed by the Namibian Parliament (Christensen, 2005). As it has not been implemented, its real effect cannot yet be determined, but some lessons can still be learnt. The main advantage of the proposed system lies in its social benefits, which result from communities obtaining full ownership of the land on which they live, in a quicker, easier and cheaper way than that offered by the existing freehold system (De Vries and Lewis, 2009). However, problems have been identified relating to cost, delays and information flow (De Vries and Lewis, 2009); the extensive technical resources needed, even without the need for professional surveyors (Christensen, 2005); and the potential risk of creating informality in the long term (Van Asperen and Zevenbergen, 2007).

Nevertheless, an important lesson that can be learnt from Namibia's flexible tenure system is that the formalisation of customary rights can secure both group and individual rights. Thus, a continuum of rights in customary land can be secured at different levels, by individuals or a family, or collectively by a group, as the case may be. While the customary group boundary is secured (such as the block in the Namibian case), provisional titles can be issued to usufructuary right-holders, which can be progressively upgrad-

ed in accordance with the changing needs of individuals and the group. Such arrangements can preserve the social link within communities, and also give communities time to adapt (Durand-Lasserve, 2006). However, in customary tenure systems, the issuing of freehold titles can erode the allodial ownership held by the group. In customary systems, the concept of leasehold would seem appropriate and acceptable under customary law, because it at least meets the objective of securing land for future generations (Ollenu, 1962; Curry, 2001). The group can opt not to renew a lease if the land is needed for group use (Nkwae, 2006). At the same time, leasehold meets the interests of the present holder, because land can be used as a commodity during the leasehold period, even as collateral to secure a bank loan (Nkwae, 2006). Furthermore, it has been argued that allowing members to hold leasehold in group titles makes it possible to control transfers and discourage speculations (Durand-Lasserve, 2006).

2.4 Good land governance and land administration

2.4.1 The importance of good governance in land administration

As LASs are increasingly confronted with global developments (Williamson *et al.*, 2010) that affect the use and management of land as a resource, there is a crucial need to introduce good governance in LA and formalisation strategies. Awareness of the importance of good land governance in institutions can be summed up in the statement made by Deininger *et al.* (2010: p. 188), that 'it is now increasingly recognised that, in practice, the establishment and maintenance of institutions to define rights, record and maintain information about these rights, and make information on them available is an important public sector role'.

Bad land governance is related to growing insecurity in property rights and a high level of bribery and corruption in LA activities, especially in the developing world (Bell, 2007; Van der Molen and Tuladhar, 2007). Indigenous farmers, the poor, women and other vulnerable groups in the society are most affected by bad land governance. In the public land sector, bad governance is linked to: weak institutional frameworks governing security of tenure, inadequate, incoherent and improperly-enforced legal provisions, a lack of transparency, inequity, a lack of accountability, and institutional irresponsiveness to the plight of land users (Deininger, 2005; Burns, 2007; FAO, 2007; Kaufmann *et al.*, 2007; UN-HABITAT, 2007). Slow and bureaucratic procedures and the high cost of LA services give rise to bribery, corruption and the misappropriation of public resources (Zakout *et al.*, 2007). Weak governance distorts offi-

cial decision-making processes (formal and informal) and leads to inequality, which in turn impedes economic development (Zimmermann, 2006).

In customary systems, bad governance is manifest in forced evictions, the manipulation of customary law, the abuse of power by chiefs, a lack of transparency in land allocations and the prevalence of outdated tenure practices (see Sections 1.4 and 2.2.2). Indigenous farmers and the poor in customary areas can be forcibly evicted from their land (Toulmin and Quan, 2000; Ubink, 2008a). The rich and powerful claim the land of weaker groups, thereby causing land disputes and conflicts (Mathieu, 2006). Millions of women's rights to own, inherit, manage and dispose of their land are abused around the world, particularly in customary areas where patrilineal inheritance is practised (Zimmermann, 2006). However, in LASs, access to land and the objective of protecting land rights is not only a public sector role, but also that of indigenous tenure institutions. It is thus important that principles of good governance are promoted in all institutions involved in LA, including CTIs. Extending good land governance to CTIs presents an opportunity to analyse and reform LA, which would not be possible if the exercise were limited to formal institutions and legislation.

Good land governance is a critical precondition for sustainable development in a number of respects. Good land governance encourages long-term investment; protects the livelihood of vulnerable groups; facilitates low-cost transfers; encourages private sector investment; and enhances local government accountability (Deininger *et al*., 2010). Many international organisations and donor agencies recognise that the quality of land governance is an important factor in improving tenure security, and thus contributes to the eradication of poverty and the achievement of sustainable development goals (UNCHS-HABITAT, 2000; UN-FIG, 2001; World Bank, 2001; UNHS and Transparency International, 2004). It is argued that clear and transparent rules, efficient processes, access to land information, improved tenure security and the reduction of corruption have a direct impact on improving the lives of the poor and achieving sustainable development goals. In addition, the need for good land governance has recently been reinforced by the increased demand for rural and urban land, as a result of higher and more volatile commodity prices and population growth (Deininger *et al*., 2010). Consequently, since the declaration of the Millennium Development Goals, governance does not only occupy central stage in the development discourse, but is also considered a crucial element of development strategies. Governance is often considered to be the fourth dimension of sustainable development, in addition to its economic, social and environmental dimensions (Burns and Dalrymple, 2008). Furthermore, over the last decade, the International Monetary Fund (IMF) and the World Bank have embraced 'good governance' as a set of principles to guide their work with member countries (Woods, 2000). The evolution of the World Bank's land-related projects indicates that since the year 2000, the

Bank has focused its attention on institutional reform and good governance (Bell 2007). As most LA reform activities in developing countries are funded by the World Bank and IMF, governments who display elements of good governance are likely to benefit from these financial institutions.

Recognising the importance of good land governance, a number of initiatives have recently been introduced to address weak governance in LA. In the following sections, concepts of good land governance and approaches to good land governance assessment in LA are discussed.

2.4.2 Concepts of good governance

While the concept of governance is not new, it means different things to different people and institutions. In practice, the concept's meaning is generally influenced by the scope, rationale or objectives of the approach being followed (Bell, 2007). One can distinguish between different contexts of governance, such as corporate governance, international governance, national governance and local governance. The broad meaning of the term means that whenever it occurs, however, its definition varies slightly. For instance, to the World Bank, 'good governance' encompasses the form of a political regime; the process by which authority is exercised in the management of a country's economic and social resources for development; and the capacity of governments to design, formulate and implement policies and discharge functions (Thomas *et al*., 2000; Kaufmann *et al*., 2007). Governance in public administration, meanwhile,'embraces structures, processes, players and their relationships, rules, control, enforcement and accountability mechanisms, incentives and in general all elements bearing on decisions in the public sphere' (Longo, 2008: p. 194). To the Food and Agriculture Organisation (FAO), governance is 'the way in which society is managed and how the competing priorities of interests of different groups are reconciled, and includes the formal institutions of government but also informal arrangements for achieving these ends' (FAO, 2007: p. 5).

Although there is neither one single and exhaustive definition of good governance, nor is it possible to limit the scope of the concept in a way that is universally accepted, one can identify a number of principles that are thought to strengthen good governance in any society. Depending on the context and the overriding objective at hand, good governance has been said at various times to encompass: respect for human rights, the rule of law, predictability, responsiveness, effective participation, multi-actor partnerships, political pluralism, transparent and accountable processes and institutions, an efficient and effective public sector, legitimacy, access to knowledge and information, the political empowerment of the people, equity, sustainability, and attitudes and values that foster responsibility, solidarity and tolerance (UNDP, 1997; Woods, 2000; Kaufmann *et al*., 2007; UN-ESCAP, 2009).

Kaufmann *et al.* (2007) identify three pillars of governance: economic, political and administrative. Economic governance includes decision-making processes that affect countries' economic activities and their relationships with other economies. Political governance is the process of decision-making to formulate policies, while administrative governance is the system of policy implementation. It can therefore be deduced that good governance relates to the ways in which important decisions are made by societies, organisations or group of persons, and that it encompasses the choices made by people to participate in such decision-making, as well as who renders – and how to render – an account of the entire process.

There are no universally accepted indicators for assessing and evaluating good governance in LA (Burns and Dalrymple, 2008). However, the land governance assessment frameworks presented below can provide important input into the assessment of governance in LA. The framework is based on some useful guidelines on what constitutes good governance in LA, which have been developed by international organisations, corporate bodies and individuals.

2.4.3 Approaches to governance assessment in land administration

Various governance indicators have been developed in the literature, which can be categorised as either 'rule-based' or 'outcome-based' (Kaufmann and Kraay, 2008: pp. 4-10). The former uses indicators that assess whether the institutions that are generally presumed to be associated with good governance are indeed in place. In the latter, assessment is based on broad citizen perceptions, and the extent to which users feel that public institutions are easily accessible and responsive to their needs (Deininger *et al.*, 2010).

In LA, indicators based on the opinions of land sector experts have been most frequently used (Deininger *et al.*, 2010). At the multilateral level, the indicators used to address governance in land tenure and administration include the World Bank Governance and Doing Business Index by Kaufmann *et al.* (2007), the United Nations Development Programme Governance Indicators (UNDP, 2006), the UN-HABITAT governance indicators (UNHS and Transparency International 2004; UN-HABITAT, 2007), the FAO's indicators on good governance in land tenure and administration (FAO, 2007), and the World Bank and FAO's indicators of the success of LA reform (Burns, 2007). These organisations emphasise the role played by state structures in ensuring good governance. The World Bank's Governance and Doing Business Index uses several hundred indicators that address six key aspects related to accountability, political stability, the rule of law, and control of corruption (World Bank, 2006). The UN-HABITAT urban governance indicators assess the many ways individuals and institutions (private and public) plan and manage a city

(Stewart, 2006). The UN-HABITAT Transparency International Toolkit (2004) provides tools to support transparency in local governance. The FAO land tenure studies provide guidelines on what the FAO and its many international collaborators have discovered to be 'good practice' for a particular aspect of land tenure and administration (FAO, 2007). The World Bank and FAO indicators of success in LA reform suggest that security, clarity and simplicity, timeliness, fairness and accessibility are needed to improve the quality of land information systems (Burns, 2007). These LA reform indicators use indicators such as the total number of parcels registered, the number of land transfers registered, the time taken for registration and the annual running costs, in order to evaluate the effectiveness of tenure security in LA (Chimhamhiwa *et al.*, 2009). The UN-FIG Bogor and Bathurst declarations on cadastre and LA, FIG-Agenda 21 and FIG-Guidelines on Women Access to land (UN-FIG, 1996; 1999; 2001) are additional guidelines that have been developed to ensure that the activities of professional surveyors meet good governance objectives in LA.

These indicators reveal a long list of variables, which include participation and empowerment, transparency and access to information, equity and fairness, legitimacy, accountability, efficiency and effectiveness, the rule of law, legitimacy and responsiveness. All of these variables are key issues in LA governance, and emphasise the different ways in which power relations are structured in a given society.

In a similar way, Burns and Dalrymple's (2008: p. 6) framework for assessing governance in LA advocates that governance assessment should concentrate on 'political economy', by primarily looking at factors that affect historical and current LA arrangements and policies, land market activities, and other social and economic drivers for development. The framework addresses eight key objectives:

- land policy in line with principles of fairness and equity;
- legal recognition in property rights;
- justification of land management instruments;
- clarity and transparency of the mandate of land management institutions;
- reliability and accessibility of information;
- transparent public management processes;
- property valuation that serves market and support land policies; and
- accessibility of judicial and non-judicial institutions.

Equally important is the work of Zakout *et al.* (2007), which identifies eight key dimensions for assessing good governance in LA. These dimensions, which could be applied more generally to the governance of the civil service (Bell, 2007), focus on the protection of property rights and the development of an efficient land and property market. They emphasise that good service standards – defined in terms of time and cost – are needed to guarantee the

implementation of good governance principles. Good service includes clearly-defined steps, transparent and fixed transaction fees, the use of standard forms, transparent procedures and the availability of complaints mechanisms.

Deininger *et al.* (2010: p. 191) discuss a more specific approach to assessing land governance, both as basis for 'diagnosis and policy dialogue' and to generate data in a replicable and cost-effective way. Their assessment identifies five key areas of good land governance, namely:

- a legal, institutional and policy framework that recognises existing rights and enforces them at a low cost;
- arrangements for land-use planning and taxation, conducive to avoiding negative externalities and supporting effective decentralisation;
- clear identification of state land and its management in a way that effectively provides public goods;
- public provision of land information in a way that is broadly accessible, reliable and cost-effective; and
- accessible mechanisms to authoritatively resolve disputes and manage conflicts at a low cost.

It is evident that governance in LA can be assessed through several governance principles and indicators. These indicators are not exhaustive, and each can be contested depending on how they are being used (Stewart, 2006; Van der Heijden, 2009). Whichever combination of governance principles and indicators is used for the assessment, they cannot stand alone (Kaufmann *et al.*, 2007) and therefore should be mutually reinforced. However, the goals to be pursued, the object of the assessment and the context within which the assessment is being applied should determine what to measure and how to measure it.

2.5 Concluding remarks

This chapter has reviewed theories of customary tenure systems and the strategies that have been adopted in the formalisation of customary land rights. In the last section, the concept of good land governance was examined. The aim was to understand the theories behind customary tenure systems and the strategies that are used to formalise rights in customary tenure, and the contexts in which these strategies have been implemented. The lessons drawn from the formalisation strategies and key issues in current debates on customary tenure formalisation and good land governance will help us to develop appropriate strategies for designing LASs for customary areas.

Several strategies have been adapted to formalise customary rights in Africa. Nevertheless, the debate on formalising rights in customary land

and administering land in customary areas often tends to focus on whether tenure security should be provided using property titles and land ownership based on the replacement of property rights (market-based models), or by using alternative unconventional approaches, which emphasise social and economic integration and the security of the commons; and whether LA should be based on state-led institutions or locally-based, indigenous institutions.

The classic concept of formalising land, based on registration and the issuing of ownership titles, as used in the replacement, market-based and De Soto models has been directly inspired by standard western ownership rights. This view has been countered by scholars who use empirical studies to question the applicability of such concepts in Africa (see Section 2.3.4). These critics see the state as a source of problems and conflict over land, since successive colonial and post-independence governments have imposed unsuitable models on customary systems. Their main argument is that customary tenure systems are not compatible with western concepts of property rights. Instead, they are embedded in complex social processes, and attempts to change them therefore involves prohibitive risks and costs, such as high administrative costs, elite capture, a lack of state capacity to implement policies nationwide, inequality, too great an emphasis on technical specifications, the disintegration of bundles of rights in customary land, and the creation of exclusive rights that are based on the western concept of ownership, which undermines social networks in customary areas and amplifies tensions between individual and communal rights. Drawing on current social scientific research, these thinkers advocate the use of adaptation models. Adaptation models formalise customary tenure incrementally, using a community-based approach. The historical timelines of the models indicate a paradigm shift, from replacement theory in the 1950s to adaptation theory in the 2000s (see also Nkwae, 2006).

The adaptability of customary tenure to the various formalisation strategies proposed, particularly in the African context, continues to be a topic of debate. The literature discussed above shows that many of the formalisation approaches that have been adopted to administer customary rights in Africa have yielded abysmal results. A number of issues in the debate on formalisation of customary tenure are reflections of social and political authority over land and people, access to land and its use, or local and national authority over land. Yet, researchers like Batungi and Ruther, still argue that the assumption that indigenous people are unable to adapt to western forms of individual ownership is a 'political gimmick aimed at supporting and justifying the mandatory acquisition and formalisation of customary land for exclusive use of non-Africans' (Batungi and Ruther, 2008: p. 127). Their argument is that both 'negotiated and enforced non-negotiated formalisation approaches' (Batungi and Ruther, 2008: pp. 126-127) adopted in Uganda proved to be suc-

cessful, and are preferable in the African context.

The literature shows that customary tenure systems in areas with low population densities, and where land is plentiful, are largely successful in providing secure tenure for groups and individuals. However, in peri-urban areas, demographic change, urbanisation, colonialism, socio-economic and cultural change, legislation and pressure from land development are stretching tenure institutions to their limits, and they are failing to provide adequate tenure security. Peri-urban areas present a particular set of problems that require innovative and unconventional approaches to securing land rights (Van der Molen, 2006b; Toulmin, 2009). Thus, the new forms of tenure observed in peri-urban areas can only be supported by new systems with an enhanced range of skills and institutions, which can accommodate group and individual rights, and which can integrate both social and economic perspectives on tenure. The lesson from this literature review is therefore that a more specific and flexible approach is needed, which pays attention to local settings, specific objectives and tools. It is important that in customary areas where socio-cultural issues are paramount, formalisation should not be seen merely as a technical tool, but must also take account of politics and culture (Sjaastad and Cousins, 2009). The strategies should also be able to provide security to the whole continuum of rights in customary land, ensure community participation, allow the use of low-cost procedures and also allow for adaptation to local institutions. These conditions suggest that adaptation models offer a potentially useful approach to designing LA in peri-urban customary areas.

Adaptation models allow for socio-cultural and economic factors, and can therefore be adapted to local situations. The ability to accommodate intermediate rights makes the adaptation model suitable for dynamic tenure environments, such as peri-urban customary areas. Nevertheless, the question remains as to what constitutes an appropriate institutional framework for administering rights in customary areas, so as to minimise the problems associated with the formalisation of customary land rights. This study relies on the three concepts in the adaptation models discussed above – namely, that they are locally-based, incremental and that tenure is hybrid – in its development of the strategies required to design an appropriate institutional framework for administering land in peri-urban customary areas. Taking account of the hybrid nature of contemporary land tenure in peri-urban areas and the great diversity of tenure situations, it is important to build dynamic links between local laws and statutory laws, and to draw links between legitimacy, legality and actual practice. On the one hand, to design a LAS that can manage the dynamics of tenure, it will be necessary to take an incremental approach. On the other hand, adapting the principle from locally-based tenure models will allow us to design a LAS that can be adapted to the diverse conditions in various customary areas.

In so far as it is important to decentralise and adapt LA to local institutions

in order to secure rights, it is also important for indigenous institutions to adhere to principles of good governance. Thus, adapting LA to the institutional framework of customary tenure will also require extending the principles of good governance to indigenous institutions. As discussed in Chapter 1 and in Section 2.2.2, the development of the customary tenure system raises several issues relating to weak governance in customary tenure institutions. The activities of CTIs are often characterised by the abuse of power, land grabbing, conflicts, evictions, tenure insecurity and a lack of accountability (Alden Wily and Hammond, 2001; Ubink, 2007; Toulmin, 2009).

So far, good governance assessment in LA has paid attention to civil society, the performance of statutory institutions and regulation. These assessments emphasise how formal and public institutions can be reorganised using policy reforms and institutional measures. It is equally important to consider how CTIs can provide equitable, transparent, efficient and effective land delivery services in order to meet good governance objectives in LA. Assessing governance in CTIs presents an opportunity to analyse and reform LA.

The next chapter looks at how Ghana embraced the formalisation and land reform agenda during the colonial and post-colonial eras. Lessons from these formalisation strategies, governance principles and the characteristics of customary tenure will then be used as a basis for developing a framework for designing LA in peri-urban areas (Chapter 4).

3 The legal framework for administering customary land in Ghana

3.1 Introduction

In Chapter 2, it was observed that since the colonial era, a number of formalisation strategies have been adopted in Sub-Saharan African countries with the aim of improving tenure security, increasing agricultural productivity, promoting investment and regulating customary tenure. These objectives were pursued by means of various policy and legislative interventions and land reform programmes. This chapter discusses how, to what extent and with what objectives government policies have sought to regulate customary tenure and land management systems in Ghana. It analyses how the current framework of administering land in Ghana supports or inhibits the administration of customary land at the local level. Understanding the policy framework and the institutional development for governing customary land in Ghana will help us to identify the challenges that will need to be overcome when adapting LA to the local institutional framework of customary tenure. First, the chapter sets out the background to LA (Section 3.2) and customary land management (Section 3.3) in modern Ghana, paying particular attention to peri-urban areas. Second, the framework of LA in Ghana is discussed by examining trends in legal, organisational and institutional reform, and in the management of customary land (Section 3.4). In Section 3.5, particular attention is given to the Land Administration Project (LAP), a long-term multi-donor support project that is currently underway in Ghana. The chapter ends with an analysis of how the legal framework supports or inhibits the decentralisation of the administration of customary land at the local level (Section 3.6).

3.2 General environment

Ghana's administrative territory of land and inland water areas covers a total of 238,539 square kilometres. The country is rich in land and natural resources, upon which its political and material strength and sustainable development are built (National Land Policy, 1999). Gold, timber, and cocoa production are major sources of foreign exchange. The domestic economy continues to revolve around subsistence agriculture, which accounts for about 36% of GDP and employs about 60% of the workforce, mainly small landholders (Ghana Statistical Service, 2005).

Ghana is a unitary republic that has ten administrative regions, subdivided into 170 districts (as of 2010). There are over 60 ethnic groups, 52 major languages and hundreds of spoken dialects. The Constitution of Ghana (1992) is the supreme law of the country. The constitution recognises the roles played by socio-cultural institutions (e.g. chieftaincy), customary law and customary land management in reaching sustainable development goals. Customary

land management is the main source of access to land (80%). In the Land Policy (1999), Ghana recognises that the social, cultural and economic activities of its people are closely linked to the country's highly-valued but limited natural resources and therefore there is the need for prudent measures to protect land resources.

The country's estimated population is about 24.2 million, a provisional figure from the 2010 Population and Housing Census (Ghana Statistical Service, 2011). It is estimated that there are 5.5 million households in Ghana (Ghana Statistical Service, 2008). Projections indicate that by 2030, more than 51% of the total population will be living in urban areas (Farvacque-Vitkovic *et al.*, 2008). The statistics available also indicate a 60% housing deficit across the whole country. Thirty-one per cent of adults, representing a little over 4 million people, have never been to school. For the economically active population aged 15 years or older, the unemployment rate is estimated at 10.4%. The majority of the working population (60%) is employed in agriculture, and 35% of household income in Ghana comes from agricultural activities. Food accounts for two-fifths of total household expenditure (Ghana Statistical Service, 2008).

The statistics above show that demand for land for housing and agriculture is high in Ghana, making land a valuable asset in the country. The prudent management of land and natural resources, ensuring easy access to land, tenure security and the judicious use of land, is therefore vital. With high unemployment, high poverty levels, and with customary land tenure being the main source of access to land, measures that emphasise pro-poor land management and that are adaptable to customary systems can improve LA in Ghana. The subsequent parts of the chapter analyse how land is administered in Ghana.

3.3 Land tenure system in Ghana

Ghana has a dual tenure system, in which statutory and customary land management run in parallel to one other. In the customary system, land is owned by traditional societies that take the form of tribes, clans or families. Customary lands are managed by the head of the corporate bodies – chiefs and family heads, who have the authority to enforce rights and obligations related to the land that has been granted. These arrangements are supported by the Constitution of Ghana, 1992 (Article 267). Unlike some countries in Africa, such as Nigeria and Malawi, where customary tenure only prevails in rural areas, in Ghana, customary tenure exists in both rural and in peri-urban and urban areas. In these areas, customary tenure institutions (CTIs) play a pivotal role in land allocation, land-use planning and the management of the land under their jurisdiction. In general, the state does not own land, ex-

cept for lands acquired by lawful proclamation, ordinances, statutory procedures or international treaties (Kuntu-Mensah, 2006). Such lands are managed by statutorily-established state institutions or land agencies. The five broad classes of land ownership in the current tenure regime in Ghana are described below.

Stool/Skin land – These are customary lands vested in a traditional chief, or other community leaders, on behalf of and in trust for the tribe (stool/skin), in accordance with customary law and usage. These lands include all those lands that are at the disposal of local communities. The heads of the groups of chiefs and councils of elders are responsible for managing the land on behalf of the Stool or Skin. However, the Constitution of Ghana, 1992 (Article 267 clause (3)) requires that the disposition of stool lands must receive the approval of the Lands Commission, and must be consistent with the approved development plan for the area concerned (Government of Ghana, 1993).

Family land – These are customary lands that are collectively owned by families or clans with a common ancestor, who might have acquired the land through purchase, long settlement, or conquest. The term 'family'in this sense, means a group of persons all related exclusively through either a patrilineal or matrilineal line.

Individual or private land – These are lands that have been acquired by individuals as private property. These lands have been either purchased or otherwise acquired or inherited, and are at the disposal of the individual. Individual lands are not subject to any family sanctions or restrictions, and holders have freehold rights over such lands.

State land – These are lands that have been formally acquired by the state in the public interest. They include lands that belong to the state at all levels of government – local, urban, departments, state corporations, and so forth. Under the provisions of the State Lands Act, 1962 (Act 125), the President can acquire an absolute interest in any land in the country. Such acquisitions are made through the publication of an Executive Instrument, which clearly identifies the required area of land and declares that the land is needed in the public interest. The public interest concerns the development and utilisation of any property in a way that is of benefit to the public, whether this is for defence, public safety, public health, or town and country planning (Constitution of Ghana, 1979; 1992). On the publication of the Instrument, the absolute interest in the land is vested in the state. The National Land Policy (1999) provides for the payment of compensation when land is de-vested, and the Lands Commission is responsible for the management of such lands.

Vested land – This is land that previously belonged to a given indigenous community, but that has been declared under the appropriate instrument to be vested in the state. In 'vested land', dual ownership is created, whereby the legal title is transferred to the state, whilst the beneficial interests reside in the stool or community. The President of Ghana is vested with the power to

administer such lands. In practice, the President may take all decisions relating to alienation and utilisation of such lands, without any reference to the affected stool or community. Under the vesting order, the government does not pay any compensation. However, any income from the land vested is paid into the respective stool land and is dispersed according to the constitutional sharing formula (see Section 3.4.3).

3.4 Customary tenure

3.4.1 The nature of customary landholding in Ghana

Customary tenure is the primary source of all landholding in Ghana with varying tenure and management systems (Larbi, 1994; Kasanga and Kotey, 2001). Customary land tenure provides land for the residential and other economic activities of most Ghanaian citizens. Prior to colonisation, Ghana consisted of highly centralised and 'independent traditional states', with unique traditional structures. These traditional states were made up of people who formed tribes of the same lineage, and shared religious beliefs and language. Land was one of the strong unifying forces in these people's existence, and access to land was therefore an integral part of social relations. There are over 100 linguistic and cultural groups, clans and states in Ghana, each with its own identity. There are clear north-south differences, as well as differences between the centralised 'chiefdoms', which are based on the matrilineal system of the Akan and the lineage-based landholding systems of the patrilineal Ewe and Ga (Aryeetey, Ayee *et al.*, 2007: p. 17). Although customary systems vary in terms of culture and place, they have some commonalities when it comes to ownership, use, institutions and land management practices.

Customary tenure systems in Ghana fall into two distinct categories. The first category, land ownership is vested in communities that exist as chiefdoms. In this category, land tenure relations are based on territorial control, in which access to land is governed by a complex network of reciprocal bonds within families, lineages and larger social units (see Section 2.2.1). This tenure relation is common in Southern Ghana, mainly among the Akans, in whose system the stool is the 'embodiment of a political community in which allegiance also implies recognition of rights over land' (Crook *et al.*, 2007: p. 28). Such communities are represented by chiefs and councils of elders, who govern and manage land within their jurisdictions on behalf of their communities.

In the second category, common among non-Akan communities, land ownership is vested in clans, not stools, as is the case for tribes such as the Ga Adangme and the Anlo (Crook *et al.*, 2007). In such groups, land is collectively owned by clans, which may in turn have inherited the land from a common ancestor. In northern Ghana, land ownership rights traditionally resided

in the tindambas or land priests, who undertake rituals for maintaining the sanctity of the land, and are responsible for the allocation of land and settlement of disputes (Aryeetey, Kotey *et al.*, 2007).

In all the above categories of customary groups, the main modes of land acquisition are through one (or a combination) of the following: discovery and uninterrupted settlement; conquest through war and subsequent settlement; gift from another land-owning group or traditional overlord; and purchase from another land-owning group (Ollenu, 1962). Whether ownership is vested in communities or families, chiefs or family heads hold the land in trust for group members and are therefore accountable to them. These traditional authorities are responsible for allocating land and for the overall management of the customary land in their jurisdiction. However, in the urban areas where there is the need for land-use planning, environmental monitoring, and provision of infrastructural services, customary tenure institutions have practically ceased to manage land on behalf of communities. In such areas, customary authorities have almost become landowners, as they only take decisions in relation to land ownership.

3.4.2 Rights and interests in customary land

Customary tenure systems are characterised by a co-existence of different interests in land (Asante, 1975). Fundamentally, landownership under Ghanaian customary tenure is based on an absolute allodial title, from which all other lesser titles, interests and rights in land can be derived. These lesser titles include usufructuary and individual cultivators' rights in the form of tenancies.

Allodial title – This is the highest interest in land under customary law (Kasanga and Kotey, 2001). It is absolute and permanent, and sometimes referred to as a 'radical' or 'ultimate' interest, because the holder of the allodial title has complete authority to deal with the land (Ollenu, 1962; Woodman, 1966). Allodial titles are vested in communities, which are represented by stools, substools, skins, clans and families. An allodial title is vested in a continual flow of people, and remains in them for generations (Woodman, 1966). Although allodial titles belong to the whole community, the right to alienate or dispose of lands is vested in the chief or family head, or other traditional leaders, as the case may be. The holder of the allodial title acts as a trustee, holding the land for use by the community or family. The holder 'executes judicial, governance, and management functions' (Kasanga and Kotey, 2001: p. 13), but cannot dispose of the land without the consent of the members of the community.

Usufructuary estate – A usufructuary estate is an extensive interest in customary land, and is sometimes referred to as ownership (Woodman, 1966). Such rights are normally owned by the subjects of stools, skins or families. These subjects may exercise their inherent right to develop any vacant virgin com-

munal land (Ollenu, 1962; Da Rocha and Lodoh, 1995). Usufructuary estates give the holder a beneficiary occupation right in the land concerned, and they can be inherited (Woodman, 1966). Usufructuary estates can include the right to use land for farming, building, grazing, growing subsistence crops, gathering minor forestry products, or fishing. The holder of a usufructuary estate has security for use, and the right is only terminable upon abandonment, forfeiture or failure in succession (Mahama and Dixon, 2006). The holder of usufructuary estate may dispose of his interest to other subjects as he pleases, and cannot be deprived of any of the rights that constitute the interests. However, complete alienation to a stranger can only be effected with the consent of the whole community.

Tenancies and farming rights – Tenancies are share-cropping contractual arrangements made between allodial title holders or usufructs, and strangers. These interests allow the holder to occupy and use the land for a definite period. In tenancy agreements, a tenant farmer gives a specified portion of the produce or the farm to the landlord at each harvest time. The two best-known tenancies in Ghana are the abunu and abusa.[5] The decision to split land into abunu or abusa depends on the tenurial practice in the customary area. Nevertheless, land availability, the kinship of the landlord or social connections linking the two parties, the intensity of labour required for cultivation, and the reputation of the farmer have also been identified as factors that can affect the decision to split land into abusa or abunu (Blocher, 2006). Sometimes, these annual contributions serve as a form of rent on the use of the land, and also as an acknowledgment of the community's allodial rights over the land.

All of the above-listed rights can co-exist on the same piece of land. For example, for a piece of land in which the allodial interest is vested in a chief, a subject who has usufructuary rights over the land during his or her lifetime can give the land to other tenants under other contractual tenancy agreements. At the same time, other subjects in the customary area may have the right to collect fruit or pass on the land.

3.4.3 Transfer of interests in customary land

Rights in customary land can be transferred in many ways, including via grants, rents, sharecropping contracts, inheritances and gifts. The roots of these land transfer mechanisms are embedded in tradition, and reflect the

5 In abunu tenancy, the returns from the farm or the farm itself are shared equally (i.e. 50-50) between the landowner and the tenant. This form of tenancy often occurs where a person who has already cultivated the land hands it over to another person to maintain it. The two people then share the land or the proceeds from the land at the end of the season. In abusa, the farm or produce is shared according to a ratio of 1:2. In this arrangement, the landlord takes one-third, while the tenant takes two-thirds.

socio-economic arrangements of the area where the land is located (Agbosu, 2000). Customary land may be transferred to settlers or strangers through grants, contracts, or any of the above-mentioned means. However, long-term undisturbed occupation by a stranger does not mature into ownership (Agbosu, 2000; Blocher, 2006). Whether customary land is transferred to an indigene or a stranger, the recipient is required to offer some customary drinks to indicate his acceptance of the transfer, and to publicise and guarantee the transaction (Fred-Mensah, 1999). Several forms of land alienation can be identified in Ghanaian customary tenure jurisdiction:

- *Sale* – The sale of customary land transfers all the interests that the transferor has in the property to the transferee, unless expressed to the contrary. The sale of customary land involves agreeing to part with one's interest in a given tract of land and actually parting with it in return for an item of value, generally money (Da Rocha and Lodoh, 1995).
- *Gift* – A voluntary transfer of land to another, where the recipient has the right to the land without paying rent or discharging any obligation to the landowners (Da Rocha and Lodoh, 1995). A gift of right in land can be made to members or non-members of the community. A gift, however, cannot override allodial interests in the land (Levina, 1992; Agbosu, 2000). The donor must be the owner and must have the capability to transfer the land.
- *Pledges* – Land pledging is an indigenous form of collateral system. A pledge transfers the right to use the land to a creditor, to hold and use it until such time that the money owed the creditor has been fully paid, or an obligation has been fully discharged (Da Rocha and Lodoh, 1995). The creditor may use the land and enjoy the products from the land, as a form of accruing interest on the money owed, until the payment is made. The creditor is not answerable for any deterioration that is a natural result of usage.
- *Customary mortgage* – 'Mortgage' is defined in Ghanaian customary law as a conveyance of land or an assignment of chattels as security for the payment of the debt or the discharge of some other obligation for which it was given (Da Rocha and Lodoh, 1995). The difference between a customary mortgage and a pledge is that the debtor continues to use the land during the period of the mortgage. In the case that the debtor refuses to pay the debt on the expiration of the specified term, the creditor takes possession of the land and continues to use the land until the debt is settled.
- *Customary lease* – This is the grant of the use of land for the purpose of cultivation for a period of time. The lease terms involve an agreement on a period for the use of the land. The lessor can take the land back if the contract is breached.
- *Inheritance* – Land can be inherited through matrilineal and patrilineal systems. In the former, land is transferred along a line of succession, which descends by seniority of brothers from the same mother and nephews. Matrilineal inheritance is mainly to be found in the Akan ethnic group. In

patrilineal systems, land is transferred through male members of the same group from successive generations, by seniority or by rotations of segment of a group. Patrilineal inheritance is common in the Greater Accra, Northern, Upper, and Volta regions of Ghana.

In the customary institutional set-up, land management activities have several informal characteristics. In some areas, the stools/skins and the landowning institutions may differ. Land allocation processes may be controlled by several people, who work in an uncoordinated manner. Furthermore, all land transfers and transactions used to be oral (Woodman, 1988). Such arrangements have created a number of problems, including uncertain boundaries of adjacent customary areas; protracted chieftancy disputes within particular stools and families; the allocation of the same piece of land to two or more persons; and informal land markets.

3.5 Statutory tenure and land administration

Land tenure in Ghana is administered in a plural environment, with statutes and customary laws and norms, public and indigenous institutions, traditional and corporate norms all operating alongside each other. The Constitution of Ghana (1992) recognises the following sources of laws in the country: the Constitution; Acts of Parliament; orders; rules and regulations; common law; and the judicial decisions of the Superior Court of Judicature (Article 11). Currently, there are over 100 statutes on land ownership, tenure, planning and use, in addition to the various customary laws that pertain to specific locations (Larbi, 2006). The legal, organisational and institutional frameworks for administering land in Ghana are discussed below.

3.5.1 Legislative framework

The legislative framework for administering customary land in Ghana has a long history. The state has made several interventions to regulate customary tenure. Since the colonial era, pre–independence and post-independence governments have promulgated various pieces of legislation that have sought to introduce new land-governing systems in customary areas. Governments have justified their interventions in LA on the grounds of: the satisfaction of public interests, the public good and national interest; the correction of abnormalities in the customary land delivery processes; the introduction of written records as a means of promoting investment; and the acceleration of development by easing land acquisition and documentation procedures (Kasanga and Kotey, 2001). However, these new land governance systems did not only limit indigenous institutions' control of customary land, but were also used as a means by

which the government could accumulate land for itself. The statutory measures that were instituted were different, depending on the area in which the land was located and the nature of land tenure in that area. Below, the discussion of the historical development of the legislative framework has been categorised into pre-independence and post-independence interventions.

Colonial legislative interventions

Colonial statutory intervention to regulate and control customary tenure dates back to the late nineteenth century. Between 1891 and 1897, two unsuccessful attempts were made by the colonial government to intervene in customary tenure by vesting the administration of unoccupied lands in the Crown. First, in 1894, the Crowns Land Bill was proposed to vest all lands, including the forest and mineral lands of the Gold Coast (modern Ghana) in the English crown. The effect was that any future grant of such lands or minerals was to be made by, and at the discretion of, the then Governor of the Gold Coast, and would confer absolute title to the grantee (Aryeetey, Ayee *et al*., 2007). The bill stated clearly, however, that this would not affect indigenous rights under native law. The second intervention was the Public Lands Bill of 1897, the aim of which was to declare all unoccupied communal or tribal lands as public (Abdulai and Ndekugri, 2007). The Public Lands Bill also vested the power of administration of all public lands in the colonial state. These proposed bills, which were to be adopted in other British colonies and protectorates, were ultimately dropped in the Gold Coast due to mounting opposition (Branney, 1959). The main opposition came from the Aborigines Rights Protection Society, which represented the interests of chiefs, traditional elders, native lawyers, the nascent middle class, the educated elite and European firms (Agbosu, 2004).

Instead of the abortive Crown Lands Ordinance, the Concessions Ordinance of 1900 was promulgated to ensure security of title for investors in the mining and timber industries. Although the Concession Ordinance of 1900 did not make any attempt to take over or interfere with the rights of indigenous owners, the affected chiefs protested against its introduction (Aryeetey, Ayee *et al*., 2007). Despite this, the Ordinance was successfully passed.

Between 1900 and 1950, several other legislative efforts were made to regularise customary landholdings in the country as a whole, or some parts of the country. Those pieces of legislation that were enacted for specific areas aimed to obtain administrative control over forest or mineral resources in those areas. For example, the Stool Property Protection Ordinance (Ordinance No. 22 of 1940) was specifically meant to protect the stool property of the Ashantis. Other legislation included the Forest Ordinance of 1912 (cd. 6278); the Native Administration (colony) Ordinance of 1927 (Ordinance No. 18); the Native Administration (Treasures) Ordinance of 1951 (Cap. 96); the Kumasi Lands Ordinance of 1943 (Cap. 145) for Kumasi areas; and Local Government Ordi-

nance of 1951 (Ordinance No. 29, Cap. 64). These laws were enacted to control customary land revenue administration and the overall management of customary land (Agbosu, 2004).

The effect of colonial influence differed in northern and southern Ghana. In the South, where the chiefs tended to be more powerful, land ownership was retained by customary chiefs under a system of indirect rule (Amanor, 2008). By contrast, in the North, the Administration (Northern Territories) Ordinance of 1902 (Cap. 111) and the Land and Native Rights (Northern Territories) Ordinance of 1931 (Cap. 143) were passed by the colonial government to control and manage land in the Northern Territories of the Gold Coast, on behalf of the people. The former gave the Commissioner power to acquire land in the Northern Territories for public use, while the latter vested control of all lands in the Northern region in the Governor, with rights to grant and charge rent for land occupancy by both natives and non-natives (Aryeetey, Ayee *et al.*, 2007). With these acts, while land was legally owned by individuals and families, the state's general *modus operandi* was to take land for public purposes without giving compensation. Under these conditions, it was difficult to differentiate between public land and land that was merely vested in the state (Lund, 2009).

In all, several attempts were made to regulate the management of revenue from tribal and family lands and to vest ownership and administrative control in the state. Although most of the colonial government's attempts were fiercely opposed by stronger tribes, the measures had a severe impact on customary tenure practices in Ghana, with weaker tribes mainly being affected. In sum, indigenous communities lost their customary land under colonial laws and policies. A vast amount of communal land was vested in the state. The rights of indigenous community members were greatly affected by the colonial government's capitalistic land agenda. Individualised property rights replaced communal rights. Usufructuary rights in particular were affected, as they were not recognised as complete titles. In some regions, the colonial rules provided opportunities for powerful chiefs to centralise their political control, including their control over land. For instance, the institution of paramount stools or skins, in which particular chiefs were regarded as the highest authority, came to predominate in customary territories (Quan *et al.*, 2008). In fact, the customary values that were retained were often those which suited the objectives of colonial rule (Ranger, 1993; Pottier, 2005).

Post-colonial legislative interventions

Like those by the colonial government, many legislative interventions have been made by the government since independence to lay the foundations for managing customary land. The post-colonial interventions started in the 1950s, when the Convention People's Party (CPP) assumed some control of government business. The CPP government passed a number of

laws aimed at weakening chiefs' financial bases, by transferring the 'control and management of stool lands and stool revenue' from the chiefs to newly-established councils (Ninsin, 1989: p. 167). Among the laws that were introduced to achieve this aim were the Local Government Ordinance of 1951, State Council (Ashanti) Ordinance No. 4 of 1952, State Council (Northern Territories) Ordinance No. 5 of 1952, and the State Council (Colony and Southern Togoland) Ordinance No. 8 of 1952. Other more explicit laws included the Akim Abuakwa (Stool Revenue) Act of 1958 (Act 8), the Ashanti Stool Lands Act of 1958 (Act 28) and the Stool Lands Control Act of 1960 (Act 79). For example, the Ashanti Stool Land Act was introduced to control and administer all land in the Ashanti Kingdom. These laws, 'in various ways, gave the state power over stool and other lands; power to authorise the acquisition and use of such lands for either private or public purposes; and (the power) to regulate the collection and use of stool revenue' (Aryeetey, Ayee *et al*., 2007).

The policy reforms that were adopted in the 1960s also strengthened state control over customary land. The government passed various laws that facilitated the acquisition of land from tribes. The Administration of Lands Act, 1962 (Act 123) and the State Lands Act, 1962 (Act 125) were enacted for the acquisition and management of land in the interest of the people of Ghana. The Administration of Lands Act repealed most of the enactments made during the colonial period. Nevertheless, the act's power to vest customary landholdings is extensive, whilst the State Lands Act embodies sweeping power with regard to compulsory acquisition and compensation (Kasanga, 1988). The Administration of Lands Act empowers the President to use the stool land for any purpose that is deemed necessary for the welfare or interest of the state. The State Land Act has been used extensively to acquire land for public bodies, such as government ministries and departments, corporations, and so forth. The Administration of Lands Act and the State Lands Act now govern all land transactions in Ghana (Kasanga, 1988). Other legislation also confers on the state the authority to collect revenue on customary land. For example, the Administration of Lands Act 1962 made the state responsible for collecting stool land revenue, and also made the state responsible for overseeing and regulating transactions in stool land.

Furthermore, the co-existence of customary tenure and a market economy concealed the fact that investors and urban real estate developers continued to be hampered by insecure titles, resulting in the promulgation of other statutory regulations. The Survey Act, 1962 (Act 127), Land Registry Act, 1962 (Act 122), the Conveyancing Decree, 1973 (NRCD 175), and later the Land Title Registration Law (PNDCL 152), were enacted to provide secure titles for land users. The Local Government Law, 1988 (PNDCL 207) provides for the decentralisation of the decision-making machinery, with all important decisions relating to land development to be taken at the regional and district levels. These enactments and others form the basis of the institutional and organi-

sational frameworks for current LA in Ghana (Sections 3.4.2 and 3.4.3).

A major land policy reform took place in 1979. In 1979, the land in Northern Ghana was returned to customary custodians as a result of a 'sustained campaign of northern elites and chiefs' (Amanor, 2009: p. 100). This policy reform allowed the affected customary areas full ownership of their land and gave the country a unitary LAS. As a result, with the exception of land legally acquired under the State Lands Act (Act 125, 1962), all other lands were returned to the respective customary authorities (Lund, 2009).

The National Land Policy and land reform

The major land policy reform in Ghana took place since the 1980s. This reform became necessary due to the effects of long-term environmental change coupled with economic liberalisation, which resulted in stress on traditional livelihood resources and worsening hardship in many parts of Ghana (Aryeetey, Ayee *et al.*, 2007). To facilitate investment, the state designed an enabling legal and institutional environment to attract both local and foreign investors. The government perceived a need for a radical overhaul of the land tenure system in the country, justified by the numerous problems that had been associated with the customary tenure system (Agbosu, 2004). One of the main policies that was introduced was the enactment of the Land Title Registration Law (see Section 3.5.2).

In 1999, a comprehensive National Land Policy (NLP) was launched to provide a policy direction for managing all land in Ghana, including customary areas. The development of the NLP dated back to 1973, when the Law Reform Commission submitted its Interim Report on the Reform of Land Law in Ghana (NLP, 1999). The major development in the current Ghanaian LAS occurred between 2000 and 2003, when a Land Administration Project (LAP) was developed with assistance from the World Bank and other donors. The LAP was intended to elaborate on the broad thrust of the NLP, and brought about legal and institutional reform in LA service delivery. A major component of the LA reform is the enactment of the Lands Commission Act, 2008 (Act 767), which consolidates all of the major land sector agencies in a New Lands Commission (see Section 3.4.3).

In sum, it seems that there was no major shift in approach from the colonial and to the post-colonial land reform activities. One of the most important issues covered in the laws enacted during both periods has been the vesting of ownership of customary land in the state. In many areas, the government has acquired large amounts of land through compulsory acquisition from tribes, most of which have yet to be compensated. Such lands are still the subject of considerable tensions between traditional authorities and the state (Kasanga and Kotey, 2001). In some areas, these lands have not been used for the purposes for which they were acquired.

3.5.2 Institutional framework

The state management of land, which is principally carried out using the legislation and instruments discussed above, usually involves the administration of land (consent and concurrence for validation of the grant of stool and skin lands, and the collection and distribution of revenue), land registration, surveying and mapping, and land-use planning.

Administration of land

The state provides a legislative framework that regulates the administration of customary land. As indicated above, the Administration of Lands Act, 1962 (Act 123) makes provisions for the vesting of stool land in the state. Although in principle, ownership is still vested in the stool, the Act empowers the state to administer the affected land on behalf of the community. In general, the state takes administrative control of customary land for a number of reasons: those relating to politics, chieftaincy and land disputes, and land-use planning (Dowuona-Hammond, 2003). For example, where there is conflict over land ownership between customary areas, the state may take administrative control of such lands until the dispute has been resolved. For the prudent management of forest and mineral resources, there are instruments that allow the state to manage such resources on behalf of a customary area.

In addition, Section 8 (1) of the Administration of Lands Act, 1962, makes it compulsory for all dispositions of stool lands to non-members of the stool to be granted concurrence from the Lands Commission. However, under the Lands Commission Act, 1994 (Act 483), the Lands Commission is only required to certify that the disposition or development of stool land is consistent with development plans drawn up or approved by the local planning authority. Further control relates to the management of stool/skin land revenue. The Office of Administrator of Stool Lands Act, 1994 (Act 481) empowers the state to manage all revenues due to stools/skins in the form of rents, compensation and so forth, to be paid to the Office of the Administrator of Stool Lands, and to disburse these to beneficiaries according to a predefined formula (Section 3.4.3).

Some of the measures put in place to administer customary land have certain shortcomings. For example, the communities who are beneficiaries are not involved in the collection of ground rents, and the process is instead handled by state institutions. Transparency in the collection and disbursement of such revenues has been an issue of concern among the traditional rulers. Although Act 481 indicates that a 22.5% share should be given to the stool/skin for its maintenance, there is no legal requirement for the stools to account for such revenues in the community. The absence of such requirements creates room for greedy and corrupt chiefs to use the revenues to further their own interests. With regard to the state acquisition of customary land, annual rents and compensation are rarely paid to the affected com-

munities and stools (Kasanga and Kotey, 2001). Some of these expropriations are carried out without the knowledge of local people; local leaders only find out about them when development starts on the land (Kasanga, 2003). Consequently, there have been persistent calls by some traditional rulers for the return of all state-acquired land to stools/skins. These chiefs argue that they have enormous responsibilities towards their people, and therefore they should have control over the use of the land and resources in their jurisdictions (Aryeetey, Ayee *et al*., 2007).

Land registration

Registration entails the recording of all interests in land. Two forms of registration are currently used in Ghana, namely deeds and title registrations.

Deeds registration

Deeds registration has been used since the nineteenth century, when the Land Registration Ordinance of 1883 (which was repealed by the Land Registry Ordinance of 1895) was introduced to govern the registration of deeds on land transactions. Since independence, the Land Registry Act, 1962 (Act 122) has provided for the registration of all instruments affecting land in the whole of Ghana. With the exception of a judge's certificate, the Land Registry Act requires all instruments to be registered. The Act requires all instruments to be registered to have a site plan that describes the land. The registration of deeds is recorded by the Deeds Registry, which operates under the Lands Commission Secretariat.

Deeds registration has been criticised on several grounds. First, the law allows only the documents to the land to be registered, meaning that the registration process does not ensure sufficient investigation of titles prior to registration. Second, whereas in English common law, execution of the document by the parties has the effect of delivering the title to the purchaser, this is not the case under deed registration in Ghana (Asiama, 2003). For example, Section 24(1) of the Land Registry Act, 1962, indicates that at best, 'the process of registration grants equitable interest to the purchaser, rather than transfers a right as is probably understood by the party involved' (Agbosu, 2003). Both educated and uneducated individuals would find it difficult to comprehend such details (Zevenbergen, 2002; Aryeetey, Kotey *et al*., 2007). Third, and most importantly, the Land Registry Act provided for the registration of land with written titles, and therefore excluded the registration of oral transactions to land under customary law (Kasanga and Kotey, 2001; Aryeetey, Aryee *et al*., 2007). The written documents contained 'technical expressions' (Zevenbergen, 2002: p. 168). Consequently, people had to incur expenses by relying on lawyers to draw up transaction documents. The parties acquiring the land therefore declined to register their acquisitions, and only those people who sought to secure credit from banks, or who preferred greater security of ten-

ure than they believed could be attained under the customary system, registered their land. Furthermore, most cadastral plans attached to these deeds were improperly surveyed, and were therefore unable to help with the identification and establishment of boundaries (Zevenbergen, 2002). This led to multiple registrations of the same piece of land and a relatively large amount of land litigation in state courts. Thus, the Land Registry Act of 1962 and the deed registration system failed to achieve what had been intended.

Land Title Registration

The persistence of the problem of tenure insecurity in land titles and uncertainty of land transactions prepared the ground for radical change. The Land Title Registration Law (LTRL), 1986 (PNDCL 152) was enacted to register titles to land. The objective of land title registration was to create certainty, facilitate proof of title, render dealings in land simple, safe, and cheap, and prevent fraud (LTRL, 1986). The LTRL was designed to provide the machinery for compulsory title registration, and to provide for the registration of all interests in land, including customary law and common law. Stools, skins and families can be registered in the name of a corporate group (Section 110). Other interests in land that may be registered under the LTRL include usufructs (customary freehold), freehold, leasehold, customary tenancies, concessions and mining licenses. Under this law, the right of the registered proprietor is indefeasible and 'is held by the proprietor with all privileges and appurtenances attached to it free from all other interests and claim whatsoever' (Section 43). Section 123 of the law also provides for compensation for people who have suffered damage as a result of the registration of an interest in land.

The LTRL applies only to areas that have been declared Registration Districts by the Minister for Lands and Forestry. The first registration follows a systematic adjudication process. According to this, when an area is declared a Registration District, the Survey Department prepares a cadastral map (sectional maps) for the entire District. In this way, all land within the areas affected by the declaration is demarcated and surveyed (Section 5). Within 14 days, the Chief Registrar must issue notice to claimants of land within the area to submit their applications for the first registration (Sittie, 2006). In this first registration, unregistered lands or registered instruments under the Land Registry Act, 1962 (Act 122) are added to the Land Register.

The registration of titles in Ghana has been criticised on many grounds. First, the need for title registration is contested. According to some critics (Zevenbergen, 2002), the deed registry's main drawbacks stem from technical, organisational and legal aspects of the existing system. According to Zevenbergen, some of these problems are obvious flaws that could have been repaired gradually, instead of introducing land title registration (Zevenbergen, 2002). Second, the implementation of the LTRL has also experienced difficulties. One major setback has been the failure to check and convert the infor-

mation on the registered deed into the provisional titles and register (Zevenbergen, 2002; Kuntu-Mensah, 2006; Sittie, 2006). This has discouraged people who had registered their documents under the deed system from re-applying for title registration. It is also argued that in a country where customary law over land is predominant, the implementation process should have started with allodial titles and moved down to the village and individual levels, instead of starting with individual certificates (Zevenbergen, 2002). Furthermore, on paper, land title registration was supposed to be compulsory and systematic. However, implementation seems to be sporadic. Land title registration has been very slow; since its inception in 1986, the land title registration has only covered Accra, Tema and parts of Kumasi. This is partly attributed to undue delays caused by the fact that cadastral plans can take 3-12 months to prepare.

Apart from these design and implementation defects, the LTRL has had a number of effects on customary tenure systems and the peri-urban poor. In principle, the LTRL recognises that usufructuary rights can be registered. In trying to recognise these usufructuary rights, however, the LTRL more or less introduces a number of overriding interests, some of which cannot be registered. For example, usufructuary rights, such as the right to collect fruit and forest products, cannot be registered separately. Also, in practice, usufructuary rights are registered as an 'encumbrance on communal interests' (Asiama, 2002: p. 28). Consequently, since the inception of land title registration, no customary freeholds or tenancies have been registered.

Furthermore, the LTRL has failed to secure the land rights of poorer and more marginal groups. The law's design does not appear to have been based on any deliberate attempt to incorporate the specific needs of poorer groups (Dowuona-Hammond, 2003). The technical language used and the other standards required cannot be met by the majority of the poor and by illiterates. Although the full cost of the first registration is borne by the state, many landholders cannot afford the registration costs. The cost of registering land tends to be high in terms of money, time and effort effort[6]. Applicants have to make a number of visits to all of the land sector agencies involved in the registration process, including the Land Title Registry, the Lands Commission, the Land Valuation Board (LVB) and the Survey Department. This creates opportunities for the use of middle-men to track the various stages of the registration processes. The cumbersome, bureaucratic, time-consuming and expensive registration process makes registration unattractive to land users, and deters the poor from registering their documents.

6 By law, all instruments attract stamp duty, which is often based on the value of the property.

Land surveying and mapping

Another element for controlling customary land management is the requirement for land transactions to be surveyed and mapped in accordance with the Survey Act, 1962 (Act 127). The Survey Act empowers the Director of Surveys to carry out all aspects of surveying, including cadastral, topographic, aerial, engineering, and hydrological surveying. The Act gives the officers of the Survey Department the power to go onto any land to conduct surveys. The Act also empowers the Director of Surveys to check surveys, to ensure that they comply with the requirements specified in the law, and to impose sanctions for non-compliance.

Act 127 also provides for a system of survey work. This is complemented by the Survey (Supervision and Approval of Plans) Regulations, 1989 (LI 1444). Act 127 and Legislative Instrument (LI) 1444 require that all land allocations, land registration and land-use planning activities be preceded by surveying and mapping, which should be undertaken by governmental or private surveyors. Regardless of whether these surveys are carried out by the government or by private licensed surveyors, they have to be approved by the Director of Surveys or his representative at the regional level. The approval of surveys is a rigorous process involving site inspections, examinations of field documents and computations, and cartographic checks. LI 1444 also specifies technical standards and regulates the conduct of surveyors.

The major problem associated with surveying and mapping processes relates to the strict technical requirements and standards for the various types of surveys defined by LI 1444. In general, demarcation and surveying in Ghana are based on fixed boundary concepts, where the boundaries of land are defined by accurately positioned beacons.[7] Some of these technical standards have been constructed using outdated equipment and techniques, and therefore need to be revised to commensurate with modern equipment. Strict adherence to these technical standards also creates bureaucracy and slows the mapping process. The Survey Act 127 requires that base maps for development planning are prepared by licensed surveyors, and should be approved by the Director of Surveys. However, in most peri-urban areas, this directive is not followed, due to lengthy approval processes and the high cost of land surveying services. Most often, the customary authorities are too impatient to wait until the lengthy approval pro-cess is completed before using a map. Consequently, in most cases, customary authorities rely on unlicensed and unprofessional surveyors to provide land surveying services. This has resulted in many land conflicts and the construction of buildings in unapproved locations.

7 In some areas, aerial photos have also been used in mapping.

Land-use planning

A number of laws empower state organisations to control land-use developments and planning. The Town and Country planning Ordinance, 1945 (Cap. 84), the Town and Country Planning (Amendment) Act of 1960 (Act 33) and the Local Government Act of 1993 (Act 462) provide for the establishment of planning authorities and for the supervision, land-use control, preparation and implementation of development plans. The Act 462 requires villages and towns to draw up land-use planning schemes, aided by the Town and Country Planning Department (TCPD) and the District Assemblies (DAs).

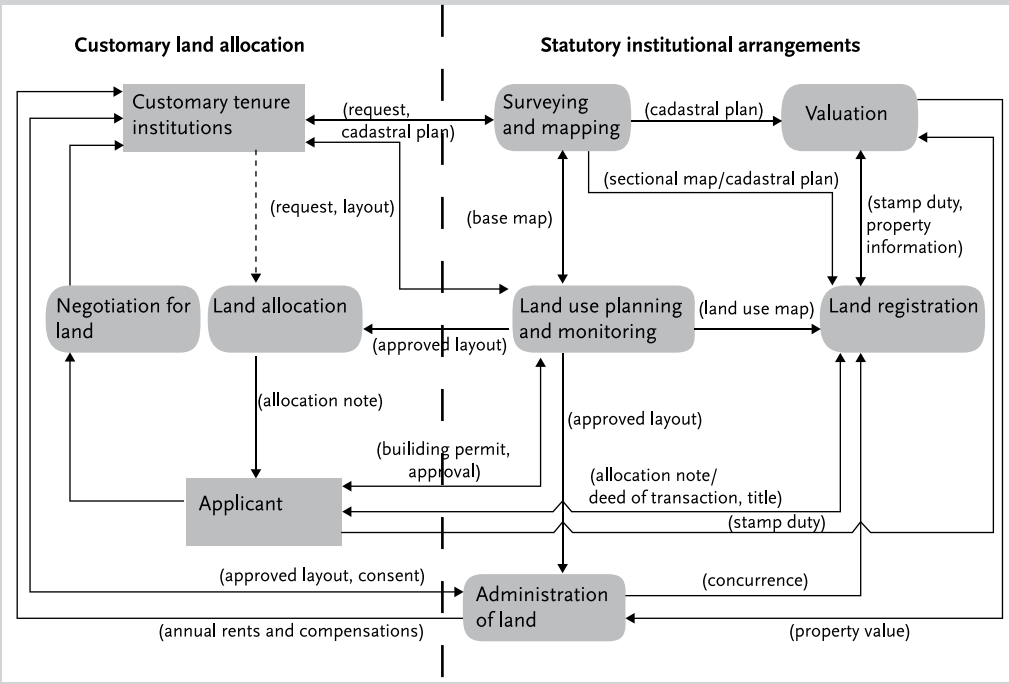
Section 4 (10) of Act 462 provides that no physical development can be carried out without prior approval, in the form of written permit granted by the DAs. In addition, the laws require land to be allocated only when the layouts for the allocations have been approved by the DAs who are the planning authorities in the given area. Therefore, the preparation and approval of planning schemes, the granting of planning permission and development permits, and enforcement and sanctions all rest with the DAs. However, this regulation is only enforced when prospective developers apply for building permits. The TCPD department within the DAs then checks whether the site plan conforms to the area's planning scheme. Furthermore, the laws require the DAs to collaborate with customary authorities in the planning of customary areas.

In practice, there is no collaboration between the planning authorities and customary communities. In some peri-urban areas, especially in the district and regional administrative capitals, where the authorities engage in urban planning, there is no community input into the planning processes. In most peri-urban customary communities, especially where demand for land is very high, customary authorities independently prepare the layout schemes by making private arrangements. To be able to raise enough money to offset the cost of surveying and planning, customary authorities sometimes allocate land to users prior to the approval of the layout schemes. Furthermore, most land developers do not seek for approval from the DAs before erecting their structures. Most often, developers apply for a permit only when they are summoned to produce a permit. These inefficiencies are attributed to the lack of adequate skilled manpower and logistics within the DAs (Kasanga and Kotey, 2001).

The institutional framework for administering customary land is shown in the activity diagram in Figure 3.1.

The land acquisition process starts with the customary tenure system and moves through to formal institutional processes. This makes land acquisition cumbersome, creating management and administrative uncertainties for land users. When there are problems in the acquisition processes, landholders are uncertain as to which mechanisms they should use to solve them.

Figure 3.1 Institutional framework for administering customary land



3.5.3 Organisational framework

Enabled by the wide array of legislation discussed in Section 3.5.1, the state has established a formal administrative framework, consisting of a number of land sector agencies, to facilitate a rational LA system. The main institutions involved in LA are the Lands Commission, the Office of Administrator of Stool Lands, the Land Title Registry, the Lands Valuation Board and the Survey Department. These institutions lie under the Ministry of Land and Forestry (MLF). The TCPD, which falls under the Ministry of Environment and Science, is another department that provides LA services. Other institutions that are more marginally involved in LA include the Metropolitan/Municipal/District Assemblies, the State Courts, and the Traditional Institutions (Traditional Councils and House of Chiefs). The structures of these institutions are discussed below.

Lands Commission

Established by the 1992 Constitution of Ghana and under the Lands Commission Act, 1994 (Act 143), the Lands Commission is the main body that administers all public and vested lands. The Lands Commission (LC) first came into existence following the 1969 Constitution, under the Lands Commission Act of 1971 (Act 362). The LC is decentralised, and has offices in all of the ten regions in Ghana.

The duties of the LC, as spelt out in the 1992 Constitution (Article 258), include the management of public lands and other lands vested in the Presi-

dent or the Commission on behalf of the government; the making of recommendations for national policy on land use and capability; and the maintaining of up-to-date records on public lands. The Commission is therefore responsible for advising the government, local government authorities and traditional authorities on land policies. The LC also oversees the disposition of stool lands and grants consent to them (Constitution of Ghana, 1992). The LC is also the central government body responsible for the expropriation of land for all public services. In addition, the Commission is responsible for the registration of deed documents.

The dual role assigned to the LC as both an administrative body in charge of public land management, and as a regulatory body that grants consent to customary land acquisition, has the potential to generate conflict. Conflicts have occurred over the extensive compulsory acquisition of land for public use, state administrative authority over customary land and communal agitation over unused land and low levels of compensation (Aryeetey, Kotey *et al*., 2007).

Office of the Administrator of Stool Lands[8]

The Office of the Administrator of Stool Lands (OASL) was established under the 1994 act of the same name (Act 481). Prior to the 1992 Constitution, the OASL functioned as part of the Lands Commission. The OASL is decentralised to district level, and has offices in almost all of the regional capitals and several districts. The district offices are mainly revenue-collection points where ground rents – annual governmental fees payable on land leases – are collected. The main responsibility of the Office is to establish stool/skin land accounts, into which the Administrator pays rents, royalties, compensations and other revenues, whether these are in the form of income or capital collected on behalf of the respective stool/skin (Article 267 (2) of Constitution of Ghana, 1992; Section 2, OASL Act 1994). In addition, the OASL is responsible for coordinating with other land sector agencies stools and skins on issues relating to the administration and development of stool/skin lands, including the policy framework.

The OASL is also responsible for disbursing stool/skin land revenues, in accordance with a disbursement formula specified by the 1992 Constitution and Sections 2 and 8 of the OASL Act of 1994 (Act 481). The disbursement formula is as follows: OASL – 10% for administrative expenses;[9] stool/skin – 22.5% for maintenance; Traditional Council – 18%; and the District Assembly – 49.5%. Despite an improvement in the revenue-disbursement formula that seems to favour the stools/skins, the OASL has attracted a lot of criti-

8 OASL was established for stool lands, but its functions were later extended to cover skin lands.

9 Before the 1992 Constitution and under the Lands Commission Act 401, 1980, the disbursement of revenue was as follows: the stool/skin – 10%; Traditional Council – 20%; Local Government Council – 60%; and Government – 10%.

cism from traditional authorities, which see it as irrelevant. Chiefs and other traditional authorities regard the establishment of the OASL as an imposition. Nevertheless, the state justifies the disbursement on the grounds that it is the state that has provided public amenities and infrastructure in customary areas over the years, not the customary authorities. The OASL can withhold payment of any disbursement to a stool/skin if there is a dispute regarding the occupancy of the stool or ownership of the stool lands, or has reason to believe that the monies would not be spent responsibly.

Survey Department

Established by the Survey Act, 1962 (Act 127), the Survey Department is the central government department responsible for all surveying and mapping in the country, including cadastral, geodetic, topographic and hydrographical surveys. The Survey Department is responsible for the approval of base maps for development planning in all communities, including customary areas. The Survey Department maintains regional offices in all of Ghana's ten regions. The Survey Department has played an instrumental role in the land title registration process (Kasanga and Kotey, 2001; Asiama, 2003; Aryeetey, Kotey *et al*., 2007). Under Section 3 of the Land Title Registration Law, 1986 (PNDC 152), the Survey Department is responsible for providing sectional maps covering the declared registration districts and individual site plans. The Survey Department supervises and endorses all site plans and maps prepared by licensed surveyors. However, a lack of equipment and adequate staff has slowed the preparation of base maps. This has led to the production of inaccurate and unreliable maps, which has been cited as a major contributing factor to multiple land sales, uncontrolled development in urban areas and numerous land disputes in many parts of Ghana (Kasanga and Kotey, 2001).

Land Title Registry

The Land Title Registry, established under the Land Title Registration Law, 1986 (PNDCL 152), is responsible for the registration of titles to interests in land in a parcel-based registration system. The Land Title Registry is divided into the Recording and Receiving Section, the Technical Section, the Records Management Section, and the General Administration Section. The Land Title Registry has its head office in Accra and two sub-offices in Kumasi and Tema, all of which have been covered by land title registration since the system's inception in 1986. Like the other departments discussed above, the Land Title Registry has inadequate human and technical resources. The available technology in the registry is unable to match current demand for land transactions (Kuntu-Mensah, 2006).

Land Valuation Board

Established in 1986 under Section 43 of the PNDC Proclamation (Supplementary and Consequential Provisions Law, 1982 (PNDCL 42)), the LVB was charged with responsibility for land valuation in Ghana. The Board has regional offices in all regions and in a number of districts in each region. The LVB has oversight responsibilities over the private sector, in so far as government interests are concerned (Asiama, 2003). The LVB's main functions as the government's valuer include:

- determining all matters of compensation for land acquired by the government or any of its agencies;
- preparing valuation lists for property rating purposes;
- valuation of interests in land, including all customary land, for the administration of stamp duty; and
- advising the Lands Commission and the Forestry Commission on royalty payments on forestry holding and products.

Like the other land sector institutions, the LVB lacks qualified and experienced valuers, and sufficient logistics capacity for field operations (Aryeetey, Kotey *et al*., 2007).

Town and Country Planning Department

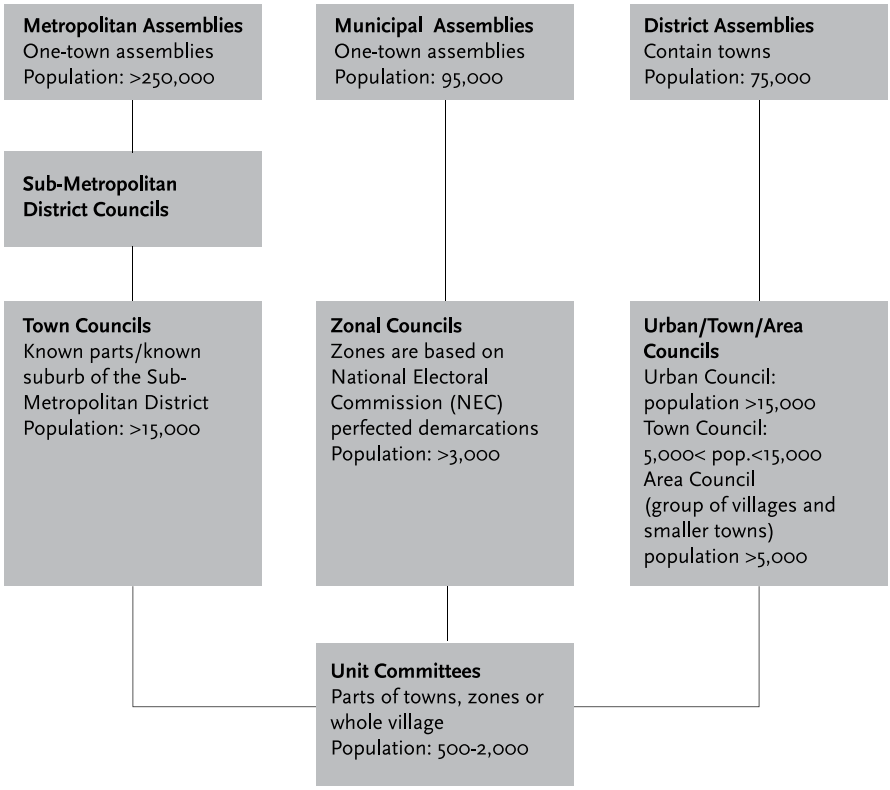
The TCPD is one of the departments whose functions are decentralised by the Local Government Act, 1993 (Act 462) and operates under the MMDAs. Governed by the Town and Country Planning Department Ordinance, 1945 (Cap 84), the TCPD is responsible for preparing land-use development planning schemes for the country. The National Building Regulations, 1996 (LI 1630) set standards for structural and zoning requirements. The TCPD operates at the national, regional and district levels. At the regional level, the department is responsible for interpreting national policy, developing plans on broad issues such as the environment and transportation, and approving layout plans developed at the district level and forwarding them for approval at the national level (Asiama, 2003). At the district level, the department is responsible for planning, and serves as Secretary to the District Planning Committee.

Although the TCPD is decentralised to the district level, over the years, the TCPD's activities have focused on urban areas. Consequently, many rural areas lack development plans, a situation that has contributed to haphazard land development in Ghana.

Metropolitan, Municipal and District Assemblies

The local government system is made up of Metropolitan/Municipal/District Assemblies (MMDAs), Urban/Zonal/Town/Area councils and Unit Committees. The MMDAs were created as a pivot for administrative and developmental decision-making in districts, and are therefore the basic unit of government ad-

Figure 3.2 Structure of the local government system



ministration. The governing body of the MMDAs is made up of Chief Executives, government appointees and Assemblymen. The Chief Executives are the heads of local governing councils, who are appointed by the President. Assemblymen are elected persons representing the towns and villages that constitute the local council. The urban, zonal, town and area councils form a sub-political administrative structure within the MMDAs. Urban, zonal, town and area councils are responsible for the management, implementation and enforcement of local policies. Unit Committees are responsible for implementing these policies at the community level (see Figure 3.2).

The establishment of MMDAs dates back to 1986. Given legal backing by the 1992 Constitution and the Local Government Act, 1993 (Act 462), the MMDAs have legislative and executive powers to plan for the overall development of districts. With regard to land administration, the MMDAs have legislative powers to make by-laws in respect of building, sanitation and the environment. The preparation and approval of planning schemes, the granting of building permits and the enforcement of regulations and sanctions for non-compliance all rest with the Assemblies (Kasanga and Kotey, 2001).

State courts

The state courts play an essential role in solving disputes of all kinds in customary areas, whether these relate to chieftaincies, boundaries, titles, and so forth. The state courts thus play a crucial role in ensuring certainty regarding land transactions and titles. There are various levels of court, and there are magistrate and high courts in all regions. Nevertheless, the court system is confronted with a number of problems that have reduced its effectiveness in land dispute resolution and adjudication. Land cases are reported to form about 40% of all cases filed in the state courts (Dowuona-Hammond, 2003). The state courts are finding it difficult to cope with the volume of disputes, resulting in a backlog of unresolved cases. Notwithstanding the large volume of cases in the state courts, many land conflicts never even reach the state courts.

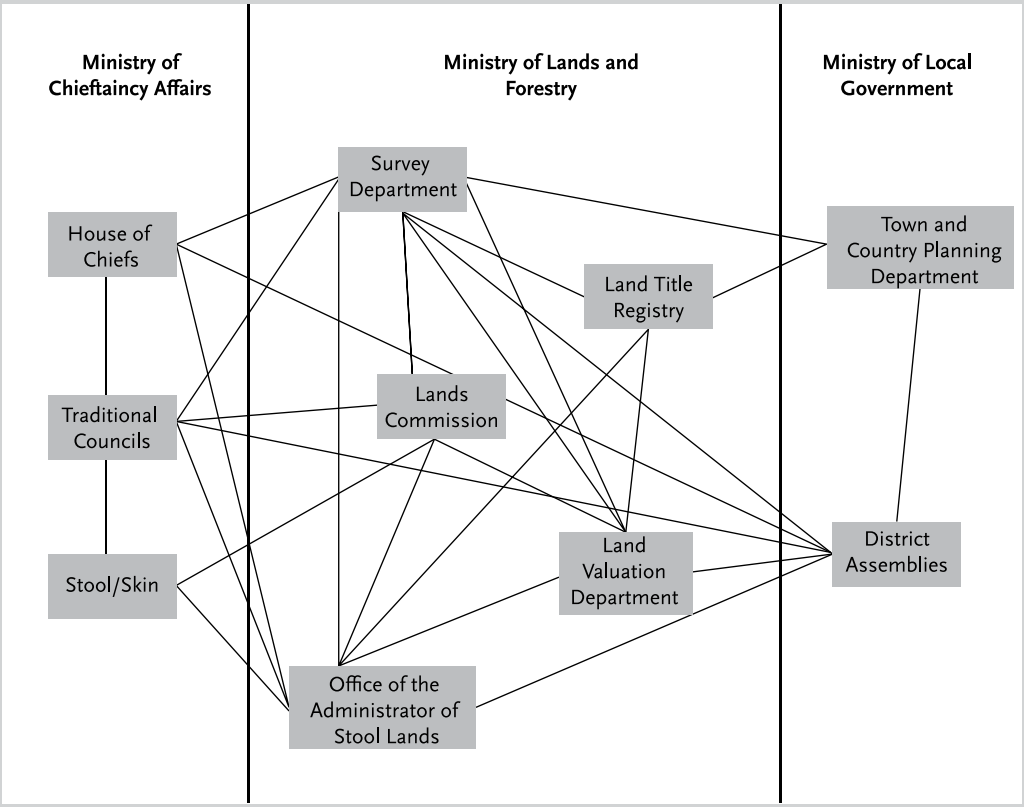
Even when some of these land cases are resolved, the courts' decisions seem to have a minimal effect. Some of these cases reappear in the state courts for various reasons, including: the inability of the state courts to implement their solutions; the inability of the affected parties to agree to the court decision; or the nature of the conflicts and their interpretations create room for alternative interpretations. This seems to suggest that the state law courts are inefficient when dealing with land cases, especially when the causes of the conflicts are embedded in chieftaincies over which the courts have no jurisdiction (Ubink and Quan, 2008). These issues highlight the need for attention to be paid to establishing mechanisms and adopting procedures that are not only accessible to those in need of redress, but are also affordable for the majority of people. A system of alternative dispute resolution (ADR) can be used to complement the state court machinery, and ADR conflict resolution mechanisms have proved to be effective in many instances (FAO, 2006).

Traditional Councils and Houses of Chiefs

In accordance with customary law, the Constitution of Ghana (1992) established Traditional Councils (TCs), Regional and National Houses of Chiefs. Each TC is made up of Divisional Chiefs and some Sub-chiefs under stools/skins that exist as paramount areas, with the Paramount Chief as the head. The TCs serve as a link between indigenous communities and the DAs. TCs are responsible for the welfare and progress of their traditional areas. All development matters affecting traditional areas are discussed by the TCs. TCs have judicial committees that handle all cases pertaining to land and chieftaincy disputes, except when these involve the paramount chief.

The Regional Houses of Chiefs are non-political institutions made up of mostly paramount chiefs from the various TCs in the regions. The Regional Houses of Chiefs are responsible for resolving all matters related to the nomination, election, selection, installation or disposition of chiefs, including paramount chiefs. The National House of Chiefs is made up of five elected para-

Figure 3.3 Interaction between statutory institutions in charge of managing customary land



mount chiefs from each of the ten regions. The National House of Chiefs has responsibility for regulating customary law, solving chieftaincy problems and gazetting chiefs[10]. The National House of Chiefs serves as a link between the chieftaincy institutions and the central government, parliament and the judiciary, and plays a major role in the governance of the country. The institution is represented in the Council of State. The interaction between the statutory institutions that manage customary land is shown in Figure 3.3.

The organisational structure shows that the establishment of the various institutions to administer the different aspects of LA in Ghana has resulted in the fragmentation of agencies, duplication and overlapping functions. These agencies administer different aspects of the LA process and maintain land records, but lack appropriate mechanisms for coordination, cooperation and consensus. Some of these agencies are engaged in different but complementary processes relating to a single transaction. For example, in the management of vested lands, the operations of the LC and the OASL overlap, while the operations of the LVB in relation to assessing rent are duplicated by the

10 In Ghana, recently appointed paramount chiefs can only be recognised by the state only when their names have been placed on the Gazette list for publication at the National House of Chiefs. This process is preceeded by the traditional installation process.

LC, as well as the Forestry and Mineral Commissions (Asiama, 2003). Other problems arise due to the dual management responsibilities held by the Lands Commission: first as an authority for the management of state lands, and second, as the giver of consent and concurrence for stool land transactions. Some of these functions seem to conflict with the managerial functions of the customary authorities, as enshrined in the constitution. The consequence is that consent for an allocation of stool land is never sought by chiefs (Ubink and Quan, 2008). Only lessees who wish to formalise their acquisitions seek concurrence from the LC, which is a highly bureaucratic and complex process.

3.6 The Land Administration Project and institutional reforms

The Land Administration Project (LAP) is a multi-donor assisted project that seeks to restructure LA in Ghana. The project was designed as a 15-year project of LA reform, beginning with a five-year pilot phase running from October 2003 to 2008 (World Bank, 2003). The LAP seeks to address the principles presented in the NLP of 1999, which emphasise stimulating economic development, reducing poverty, promoting social stability by improving security of land tenure, simplifying the process for accessing land and making it fair, transparent and efficient, developing the land market and fostering prudent land management (Ministry of Lands and Forestry, 1999). The LAP is the first phase in the LA reform project, which lays the foundations for the implementation of long-term (15-25 years) LA reform. A major feature of the LAP is its role in providing an enabling environment for exploration, testing and learning by doing. The goals of the programme include:

> Enhancing economic and social growth by improving security of tenure, simplifying the process of acquiring land, developing the land market and fostering prudent land management by establishing an efficient system of land titling, registration and administration based on clear, coherent and consistent policies and laws supported by appropriate institutional structures (World Bank, 2003: p. 102).

The LAP has four components (World Bank, 2003):

- the harmonisation of land policies and the legislative framework with customary law, for sustainable land administration;
- institutional reform and development;
- improving land titling, registration, land use planning and valuation; and
- project management, monitoring and evaluation.

The long-term programme aims at: clarifying customary land holding, foster-

ing links to land-use planning, encouraging active participation and engagement with customary land owners in decision-making, clarifying the roles defined for the land sector agencies, and fostering coordination and cooperation among the land sector agencies, DAs, customary authorities and the private sector (World Bank, 2003). The Customary Land Secretariat (CLS) and the New Lands Commission are the two main institutional reforms that have taken place in the LAP.

The Customary Land Secretariat (CLS)

The goal of the programme establishing the CLS is to 'lay the foundations for a clearer and more cohesive development in the customary land administration sphere and for its further consolidation and evolution in subsequent land administration projects' (World Bank, 2003: p. 47). To achieve this, the CLS aims to help customary authorities to improve and develop customary land administration. In the long-term, the CLS will 'provide effective land management harmonised with government land agencies and district assemblies, so as to establish unified, decentralised public record of land availability, use and transactions' (Ubink and Quan, 2008: p. 205). This is to promote confidence-building between customary authorities and the government, especially to improve trust in the manner in which DAs utilise revenues generated by stool and skin lands.

Institutionally, in some areas, the CLSs are established as centralised secretariats modelled on the customary institutional framework of the area in question (Asantehene's Land Secretariat and the Gbawe-Kwatei Family Land Secretariat). In others, village land allocation committees or similar institutions have emerged as the administrative authority, under the aegis of the local chief or family head. In all of these set-ups, the aim is to increase the accountability of traditional authorities to their constituent land holders (World Bank, 2003). Among other things, CLSs also aim to assist community members to resolve disputes, adopt simple land-use planning procedures, develop landholding rules, and establish simple registries to record land allocations.

Since 2004, a number of pilot CLSs have been established. These CLSs operate either at a stool level under a paramount chief, or under the land-owning families. Thirty-eight land secretariats had been established in all ten regions as of 2009, when the pilot phase of the programme ended. The implementation of the CLSs has encountered a number of challenges. In some cases, the computers and other office equipment provided were not appropriate, and the draft guidelines needed more discussion (Aryeetey, Ayee *et al.*, 2007). According to the LAP's project management, monitoring and evaluation section, the biggest challenge has been the implementation of the project as a mainstream activity in both 2004 and 2005 (Ministry of Lands and Forestry, 2005). The report notes that the use of the same staff members carrying out

the statutory mandates of the agencies are expected to drive the LAP activities within the strict requirement of project implementation; the demand inconsistent with mainstreaming.

The new Lands Commission

In order to fulfil the LAP's objective of reforming and developing land sector institutions, the Lands Commission Act, 2008 (Act 767) was introduced. Act 767 establishes a new Lands Commission, which merges all five land sector agencies in a single administrative unit. The new Lands Commissions thus have five divisions: Surveying and Mapping (formerly the Survey Department); Land Registration (which combines the former land title registry and deeds registry); Land Valuation (Formerly the LVB); Public and Vested Lands Management (activities carried out by the former Lands Commission); and any other divisions that the Commission may decide to create. The Commission, which came into force during the last quarter of 2009, is entrusted with functions that include (Lands Commission Act, 2008 (Act 767), Section (5)):

- advising the government, local authorities and traditional authorities on the policy framework for the development of land in Ghana;
- formulating recommendations on national policy with respect to land-use sustainability;
- advising and assisting with respect to the execution of comprehensive land title registration throughout the country; and
- ensuring sustainable land-use planning.

While the objective of achieving coordination and synchronisation in the delivery of LA services is clear and commendable, combining all of the land sector agencies in one single administrative unit is likely to lead to problems. The agencies have entrenched identities, and any such change is likely to cause disruption (Karikari *et al*., 2005).

3.7 Concluding remarks

This chapter has given an overview of the legal framework of LA in Ghana. It has examined the different legal, institutional and organisational structures in peri-urban areas and, in particular, the interaction and areas of overlap between customary systems and statutory structures. The purpose was to discuss how, the extent to which and with what objectives government policies have sought to regulate customary tenure, and to analyse how the current framework of administering land in Ghana supports or inhibits the administration of customary land at the local level. This helps to highlight the challenges that need to be tackled when adapting LA to the institutional framework of customary tenure.

The analysis shows that Ghana has broad institutional and legal frameworks for LA. It has been described as a country with a comprehensive land policy that recognises customary tenure in LA (Deininger, 2003). However, the orientation in current policy interventions still follows colonial models. The trend in the administration of LA is towards replacement, rather than adaptation to existing customary practice. The De Soto approach to land tenure formalisation has been the main driving force of the land tenure reform programmes in the country, with its emphasis on land title registration as the sole means of securing rights. Furthermore, both colonial and post-colonial land policy interventions introduced legal and institutional changes that restrict customary land management in several ways. These policies appropriate vested customary land for the state, restrict the management of revenues from customary land, and impose state institutions on indigenous institutions. The state land management machinery continues to be the main instrument for pursuing the formalisation and administration of customary land. In addition, *ad hoc* legal and institutional arrangements have generated complexities in the Ghanaian LAS. Having too many regulations and badly coordinated institutions result in delays, high transaction costs and tenure insecurity.

In the present situation, ambiguities and misunderstandings tend to dominate discussions on the appropriate way to securing tenure relations and design LASs in Ghana. Large parts of the current debate among stakeholders stem from misunderstandings concerning the dynamics of land tenure relations in customary areas, the need for pro-poor policies to secure land, and the need for community participation and the empowerment of local institutions to manage their land. Although the policy reforms recognise tenure insecurity as a major problem in the LAS and seek to address it, the policies seem to lack a clear pro-poor vision. For instance, the NLP document fails to address how to protect the land rights of vulnerable groups, such as tenants, migrant farmers, women, young people and low-income groups (Aryeetey, Ayee *et al*., 2007). The vision of extending land title registration across the country, and the continuing use of technocratic approaches in various aspects of the LA process, rather than simple and innovative tools, tend to exclude the poor.

The LAP, which establishes CLSs, seems to support the objective of decentralising customary land administration to the local level. However, the various policies and institutional arrangements that prevent the CTIs from independently carrying out LA activities have not been modified. A new legal framework will be needed to effectively adapt LA to the institutional framework of customary tenure. Furthermore, this new land reform framework pays little attention to analysing the institutional capacity of CTIs to effectively administer land.

In the next chapter, the requirements and the framework for design-

ing LASs in peri-urban customary areas will be analysed. This analysis will be based on observations made in the legal and institutional framework for administering land in Ghana and the formalisation strategies outlined in Chapter 2.

4 Requirements and framework for designing land administration for customary areas

4.1 Introduction

The preceding chapters offered a historical overview and analysis of the approaches that have been adopted to formalise rights and administer customary land in Sub-Saharan Africa (Chapter 2) and Ghana (Chapter 3). In these Chapters, it became clear that in an attempt to create tenure security in customary areas, governments have sought to individualise customary rights and regulate the social norms and values of customary tenure with statutory regulatory frameworks. This approach reflects the ideological assumptions that underpin replacement formalisation models. In practice, these approaches have led to social and economic conflict, and to many tenure insecurity problems in LA in customary areas (Section 2.4). In addition, from the debate on formalisation in Chapter 2, it was observed that there is a need to support a wide range of tenure forms and incorporate the social dimensions of tenure, in order to effectively address tenure insecurity problems in customary areas. These requirements have led to a new trend, based on adaptation formalisation strategies, in which alternatives for administering customary land are grounded in local customary institutions (Section 2.3.4). The argument is that customary tenure systems are dynamic and adaptable to change, and thus securing land rights can be achieved gradually at the local level. Most of these adaptation models are implemented in the form of a hybrid system, in which tasks and responsibilities in LA are shared between the state and CTIs.

It has been acknowledged that formalising rights and incorporating the social dimensions of customary tenure into formal LASs is a complex undertaking. It is complex in the sense that a critical system analysis is needed in order to meet all of the diverse needs of the people and the local land rights associated with it, and to create a suitable institutional framework that can adequately administer these rights. Addressing these complexities in peri-urban environments is even more complicated. Several LA issues highlighted in Section 1.4 and Section 2.2.2 indicate that peri-urban customary areas are characterised by a rapidly-changing tenure environment. Alternative and innovative LASs are thus needed in order to respond to this particular challenge. Identifying the distinctive characteristics of institutional arrangements will help us to design a more effective and efficient system for administering customary rights in peri-urban areas, and developing a general framework is an important step towards doing so.

The aim of this chapter is to analyse LA requirements and to develop a framework for designing LASs for peri-urban customary areas. The key requirements for designing alternative LASs to address the major issues affecting LA functions and processes in peri-urban areas are discussed in Sec-

tion 4.2. A conceptual framework for designing LASs for peri-urban areas is discussed in Section 4.3. The framework examines three priority issues that should be considered when designing LASs for peri-urban areas: the dynamics of tenure and institutional arrangements; good land governance; and indigenous knowledge and institutional capacity enhancement. A brief summary in Section 4.4 concludes the chapter.

4.2 Key requirements for designing a land administration system for peri-urban customary areas

The literature identifies the important requirements for establishing well-functioning LASs as: simplicity, accuracy, timeless, security, clarity, fairness, accessibility, cost effectiveness, sustainability, expedition, acceptability and good governance (Simpson, 1976; FIG, 1995; UN-ECE, 1996; Dale and McLaughlin, 1999; Williamson *et al.*, 2010). These requirements are general and applicable to all LASs, regardless of the environments in which they are established. Apart from these requirements, effective and sustainable mechanisms for securing tenure and administering land in peri-urban customary areas must satisfy six other key requirements, namely: adaptability, flexibility, upgradeability, affordability, legitimacy and credibility of institutions, and good land governance. The choice of these key requirements draws on the literature on the characteristics of customary tenure systems, the debates on the formalisation strategies and good land governance introduced in Chapter 2, and the realities of the framework for administering land in Ghana discussed in Chapter 3. In the following paragraphs, I offer a general description of these requirements and explain the reasons for selecting them. The requirements are summarised in Table 4.1.

4.2.1 Adaptability

The ability to respond and adapt to change is an important requirement for LA (Williamson and Ting, 2001). Nevertheless, one of the main criticisms of the replacement and other market-based formalisation strategies is that they are based on western concepts of tenure, which are foreign to customary tenure systems and cannot be adapted to them (Migot-Adholla and Bruce, 1994; Platteau, 2000; Toulmin and Quan, 2000; Kanji *et al.*, 2002; Mathieu *et al.*, 2003; Cotula and Chauveau, 2007; Quan, 2008; Meinzen-Dick and Mwangi, 2009; Nkwae and Dumba, 2009). It is generally acknowledged that LA models cannot be transplanted from place to place (Deininger, 2003). The adaptability of LA to local situations and conditions should therefore be a core principle of designing LASs in peri-urban areas.

As discussed in Chapter 2, customary land tenure is diverse and unique, reflecting the cultures, attitudes, governance, environment, and social stability of the areas. Adaptability in the design of LASs for peri-urban areas should be addressed through the use of unique approaches that are sensitive to local issues and tailored to local customs and norms. The tools used to administer rights should thus be designed with the operation of customary tenure arrangements in mind. It may not be necessary to adopt every aspect of the indigenous arrangements. However, adopting some of the practical and proactive elements of the tenure and institutional arrangements of customary tenure systems would seem appropriate. This may require a critical examination of local tenurial and institutional arrangements in the administration of land rights.

This study emphasises two important aspects of adaptation: first, adaptation to the dynamics of tenure, and second, adaptation to local institutional arrangements relating to customary land delivery. In the former, adaptability means that the procedures and processes for administering land rights must accommodate the actual dynamics of tenure and changing societal needs. As discussed in Chapter 2, customary tenure systems are under threat in peri-urban areas, mostly from population increases and the general transition from more traditional systems of tenure to the modern social, economic and political order. The LASs designed for these areas need to be sensitive to these threats and patterns of tenure change. At some stage of the tenure evolution, it may be necessary to secure group rights, while at another stage, individual rights may need to be secured. Adaptability to these changing needs and tenure dynamics may demand that the formalisation approach is executed in a gradual and incremental manner, not as a massive, one-off effort (Sjaastad and Cousins, 2009).

Adaptation to existing institutional arrangements requires formalisation to be based on local institutional arrangements for accessing land. The use of local institutional frameworks for allocating land rights and solving disputes may be crucial. This may also mean that LASs may have to be based on a variety of institutional frameworks, at different levels, whether these are those of the family, clan or village, depending on the institutional structure of the customary area. When LA can be adapted to the framework of customary tenure systems, the group can decide which rights need to be recorded. In addition, this allows local mechanisms for allocating these rights and solving conflicts related to such allocations to be used. Customary land rights registration (PFR) in Benin (Section 2.3.4) and decentralised registration and certification in Ethiopia (Section 2.3.5) are both examples of innovative land tenure tools that have embraced the principle of adaptability.

4.2.2 Flexibility

In view of the arguments advanced by advocates of the various formalisation strategies in Section 2.3, it can be seen that flexibility plays a crucial role in the arrangements for administering land rights in peri-urban customary areas. Other scholars have used flexibility to justify a shift in focus from a replacement paradigm in LA to adaptation formalisation strategies (Österberg, 2002; Fitzpatrick, 2005; Nkwae, 2006). As discussed in Chapters 1, 2 and 3, conventional LASs are often based on rigorous, top-down legal, institutional and technical procedures. These arrangements make it difficult to implement LA in a 'flexible customary tenure' environment, where tenure systems are dynamic, and the technical, human and financial capacities of tenure institutions are inadequate and unable to cope with rigid rules. Flexible legal, institutional and technical arrangements are therefore crucial when designing LASs for peri-urban customary areas, and these are discussed below.

Legal flexibility

The main function of a LAS is to protect the rights that people have in land and property (Dale and McLaughlin, 1999). The details and structure of the laws regulating land rights are therefore important (Bogaerts, 1999). As discussed in Chapters 2 and 3, the legal framework for administering rights in conventional LASs is based on rigid statutory laws. Having a rigid legal framework makes it difficult to administer land in a customary tenure environment, where social norms and values control tenure relations. To effectively secure tenure and administer land in peri-urban customary areas, there should be flexibility in the legal arrangements. The term 'legal flexibility' has been used by scholars to mean the development of a variety of legal systems, to ensure fair assessment of compensation for expropriations of customary land (Nkwae, 2006). In this study, legal flexibility means that LASs should be adaptable to various customary laws and also to some aspects of statutory law.

Customary law varies from place to place, as do tenure systems. Therefore having a flexible legal framework also means, being able to adapt to an area's specific customary laws. Legal flexibility also means that legal recognition of customary rights and land registration should not alter the existing rights in customary land, but record them as they exist (Österberg, 2002). The laws should be flexible enough to allow the local communities to determine the level of rights to be recorded or registered (collective, usufructuary, tenancy and other contractual arrangements). Most importantly since many interests that co-exist in customary land change over time in response to changing conditions, there should be flexible policies and laws that can accommodate diverse land tenure models within this process of evolution. The legal framework should thus be sufficiently flexible to recognise the continuum of rights that may arise during the tenure evolution.

Institutional flexibility

Conventional LASs are based on standardised and rigid institutional arrangements, which involve several investigative and approval-related steps based on statutory law. Applying these rigid institutional arrangements in a customary tenure environment, where access to land rights and land management are based on negotiation and local knowledge (Amanor, 2008), would seem problematic. A flexible institutional infrastructure is required to implement LA in such a complex and dynamic environment, and this should therefore be an important requirement for the design of LASs for peri-urban areas. In a customary tenure environment where socio-cultural norms, practices and indigenous knowledge govern access to land, the response to formal institutional requirements that are based on rigid statutory specifications and rules becomes complex, and may be well beyond the skills and capabilities of many local communities in customary areas (Mathieu *et al*., 2003; Meinzen-Dick and Mwangi, 2009). Thus, it is important for unconventional tools to be used in approaches towards securing rights and administering land in customary areas (Van der Molen, 2006b). Flexible institutional arrangements are needed to allow for the use of low-cost, innovative and unconventional tools in LA processes. Institutional flexibility means adopting flexible procedures for administering customary rights, by taking a 'snapshot' of local practices for accessing and allocating land. Furthermore, flexibility in institutional arrangements also implies allowing a variety of non-conflicting institutions, both formal and informal, to undertake various responsibilities in the LA process, and allowing new roles and responsibilities to be incorporated, when and where necessary.

Technical flexibility

It has been recognised that information has to meet certain standards in order to be transparent and reliable (Steudler, 2004). Conventional LA, and in particular cadastral systems, is based on certain standards, which in most cases exclude non-standardised information from playing a role in LA. Considering the general situation in customary areas, and in particular the human and financial resource constraints and the variability in land values in different areas, it is vital to have flexible technical standards for administering rights. For example, it may be important to rely on different data sources; one LA system might combine sketch maps and satellite imagery with rigid survey data. Technical flexibility means that there should not be strict adherence to conventional technical standards for administering rights. Flexibility in technical specifications will allow for the use of these different types of data and information quality. It means that there should also be a compromise between standards of accuracy and the socio-economic objectives of designing LASs for these areas.

Achieving flexible technical arrangements may seem complex from an

information system development point of view, as it may be affected by heterogeneity and interoperability problems (De Vries and Lewis, 2009). However, such problems can be solved with the aid of technical tools (Ezigbalike *et al.*, 1995). More importantly, however, flexibility in technical specifications and standards will reduce the cost of demarcation, surveying, and mapping, recording and registration, the adjudication of rights, and conflict resolution. Having flexible legal, institutional and technical arrangements, for example, is the basic principle of Botswana's COR and decentralised certification in Ethiopia. Flexible legal, institutional and technical arrangements allow programmes to be adapted to suit local conditions and reduce costs (Durand-Lasserve, 2006; Deininger *et al.*, 2008).

4.2.3 Upgradeability

As discussed in Chapter 2, in customary systems, rights to land and natural resources often form complex sets of individual and collective rights at different levels and exist as 'bundles of rights' (Platteau, 2000; Meinzen-Dick and Mwangi, 2009; Delville, 2010). While some of these rights are for temporal use, others can be enjoyed over the lifetimes of the landholders (Cotula, 2007). Different use rights may also emerge at different times, as a result of tenure evolution. A range of authors and agencies (Arko-Adjei, 2001; UN-HABITAT, 2004; Fitzpatrick, 2005; Benjaminsen *et al.*, 2009) advocate an alternative solution based on locally-based systems, which provide temporal and partial – rather than full – rights to these 'bundles of rights'.

In peri-urban customary areas, it should be possible for the system for administering rights to evolve to provide alternative solutions, which provide partial interests that can progressively be upgraded in accordance with the changing needs of individuals and the group, thus reflecting the dynamics of tenure. Upgradeability of tenure and rights should therefore be seen as an integral part of the requirements for designing LA in peri-urban customary areas. Upgradeability will help LASs achieve the objective of securing a continuum of rights that can cut across all tenures, and that can cater for different categories of land-users at different times (UN-HABITAT, 2004;2008). Upgradeability of rights is a characteristic feature of the flexible tenure system in Namibia (Christensen, 2005) and COR in Botswana (Durand-Lasserve, 2006), both of which are targeted to the needs of the urban poor, particularly those in informal settlements (see Section 2.3). The provision of partial and provisional titles, and the possible upgrading of these titles, can preserve social links within communities, give communities time to adapt (Durand-Lasserve, 2006) and reduce costs. Such arrangements can also help to produce alternative rights for various different groups in customary areas, and ensure that indigenous members of the group do not lose their rights.

Nevertheless, since the objective of the adaptation tenure model is to pro-

tect all rights and preserve social links in customary systems, upgrading should emphasise improving tenure security in a way that does not cause the bundle of rights to disintegrate, especially when the bundle is stable. In other words, measures should be taken to avoid making some rights stronger than others. Tenure upgradeability also leads to institutional upgradeability. This means that systems need to be designed in such a way that it is possible to upgrade institutional arrangements to meet tenure upgrading objectives. For example, while no special arrangements may be needed to secure tenure during the early stages of tenure evolution, over time, it may be necessary to upgrade institutional arrangements in line with new demand and standards. However, at this point, it may be necessary to undertake thorough assessments to determine the answers to questions such as, 'when it is appropriate to upgrade tenure', 'who determines the appropriate time' and 'under what conditions should tenure be upgraded'?

4.2.4 Affordability and pro-poor objectives

Several scholars and international bodies emphasise cheapness and affordability as crucial factors that determine the success of conventional LASs (Simpson, 1976; FIG, 1995; Deininger, 2003). These publications emphasise the need for measures that ensure cost recovery. In particular, they recommend that in order to avoid overburdening land users, costs should be recovered in such a way that development costs should not be absorbed by land users (FIG, 1995). One World Bank report recommends that tools used for administering rights should be free from costs that result from technical and legal complications (Deininger, 2003). This means that activity cost transactions (Chimhamhiwa *et al.*, 2009) – the cost of carrying out the formalisation activities – should be minimal. This can be achieved by adopting different mechanisms to minimise the operational cost for identifying and recording land transactions. For example, the operational cost of surveying and registration can be reduced by implementing simplified procedures (Sjaastad and Cousins, 2009).

Yet, one of the main criticisms of market-based formalisation approaches is the high cost involved in securing rights in land, which gives a comparative advantage to the rich (see Section 2.3.2). Obviously, expensive systems of securing rights in peri-urban areas will not be effective, because they are not used and do not benefit many people who are below the poverty line (Meinzen-Dick and Mwangi, 2009). This makes affordability and the need for pro-poor objectives critical, and an important requirement in the design of LASs for peri-urban customary areas.

When designing LASs for peri-urban areas, the principle of affordability should lead to an emphasis on the use of simple and innovative tools to define rights in ways that facilitate the identification and exchange of land at a cost that is low and affordable for all. Using simple and innovative tools

that are easily comprehended by land users can reduce or remove the cost implications from the technical and legal complexities, allows customary tenure institutions to be self-financing, and ensures sustainability (Deininger, 2003). The need to use innovative and pro-poor land tools to secure tenure has been highlighted by several publications and projects undertaken by the UN-HABITAT Global Land Tool Network (UN-HABITAT, 2003;2004;2008).

4.2.5 Institutional legitimacy and credibility

One important issue that has featured prominently in debates about formalisation and decentralisation in LA (Chapters 2 and 3) is that of the legitimacy and credibility of the implementing institutions. As discussed in Section 2.3.1, in conventional LASs, it is perceived that an effective provision of tenure security can only be achieved within state-organised institutional frameworks (Meinzen-Dick and Mwangi, 2009). However, state institutions to enforce property rights are not available in all areas, particularly in many rural and peri-urban customary areas. Even if they are available, the potential advantages brought by these institutions are unlikely to materialise when they are unable to understand and interpret tenure issues that relate to local cultural norms and values (see Chapter 3), or lack legitimacy in local communities. Instead, they create 'a vacuum that often lead to power struggles at the local level' (Deininger, 2003: p. 163).

Based on these observations, one can note that although institutions responsible for administering customary land require adequate legal backing (Deininger, 2003), and the use of state institutions may be important, the social legitimacy and credibility of these institutions are equally important. The notion of institutional legitimacy is a central concept underpinning adaptation models (Section 2.3.4). The legitimacy and credibility of the implementing institutions is important, because the ability to enforce land rights depends on the ease with which rights holders can access the required institutions and obtain legally binding decisions from them (Deininger, 2003).

The formalisation of rights and the administration of land in peri-urban customary areas should therefore put emphasis on credible institutions that enjoy local and social legitimacy and support (Deininger, 2003; Lund, 2006). Social legitimacy and credibility are important, due to the danger of creating 'empty institutions' rather than 'credible institutions' (Ho, 2009: p. 8). Empty institutions are those that, despite having legal recognition, tend to be ineffective because they do not enjoy social recognition. Particularly in areas where there are many potential sources of land-related conflict, due to tenure transition, these institutions should not only have the power to rule over conflicts, but they should also have the legitimacy to implement and enforce rulings.

Table 4.1 Requirements for designing a land administration system for peri-urban areas

Land administration objective	Requirements
Adaptability	LA should be adaptable to changing needs, the dynamics of tenure and to the local institutional framework of customary land tenure.
Flexibility	Legal, institutional and technical arrangements should be flexible to allow for different customary laws, data types and technical standards for administering land.
Upgradeability	Provision must be made to secure temporary or partial rights in land that can be upgraded along a continuum of rights. It should be possible to upgrade the institutional arrangements along the continuum.
Affordability and pro-poor objectives	Cost of securing rights must be affordable for all social groups. LA should emphasise the use of innovative tools that are easily understandable and free of technical and legal costs.
Institutional legitimacy and credibility	The institutions responsible for administering land should not only have the legal power, but also the local and social legitimacy to implement all decisions related to land.
Good land governance	Land governance must emphasise active participation by community members in decision-making relating to the use of their land, in order to enhance equity, transparency, accountability and efficiency.

4.2.6 Good land governance

Chapters 1, 2 and 3, we discussed that though there are internal mechanisms that ensure 'good' governance in traditional societies, a number of issues related to 'bad' land governance in current approaches to accessing land and administering land rights in customary systems have been observed. Specifically, these issues relate to the accessibility of land, forced eviction, diminishing stewardship and abuse of power by customary authorities, lack of transparency in the land delivery processes, lack of participation by community members in decision-making, supremacy of custom and usage, a lack of accountability, the inequitable distribution of land resources, and inefficiencies in customary land management. These issues indicate that it is important to include good land governance as a requirement in the framework for designing LASs for peri-urban areas.

Current trends in land administration practice and research indicate that good land governance is directly linked to tenure security, sustainable development and poverty reduction (FAO, 2007; Deininger et al., 2010; Williamson et al., 2010). A more detailed framework on assessing land governance in customary tenure institutions in peri-urban areas is provided in Section 4.4.2.

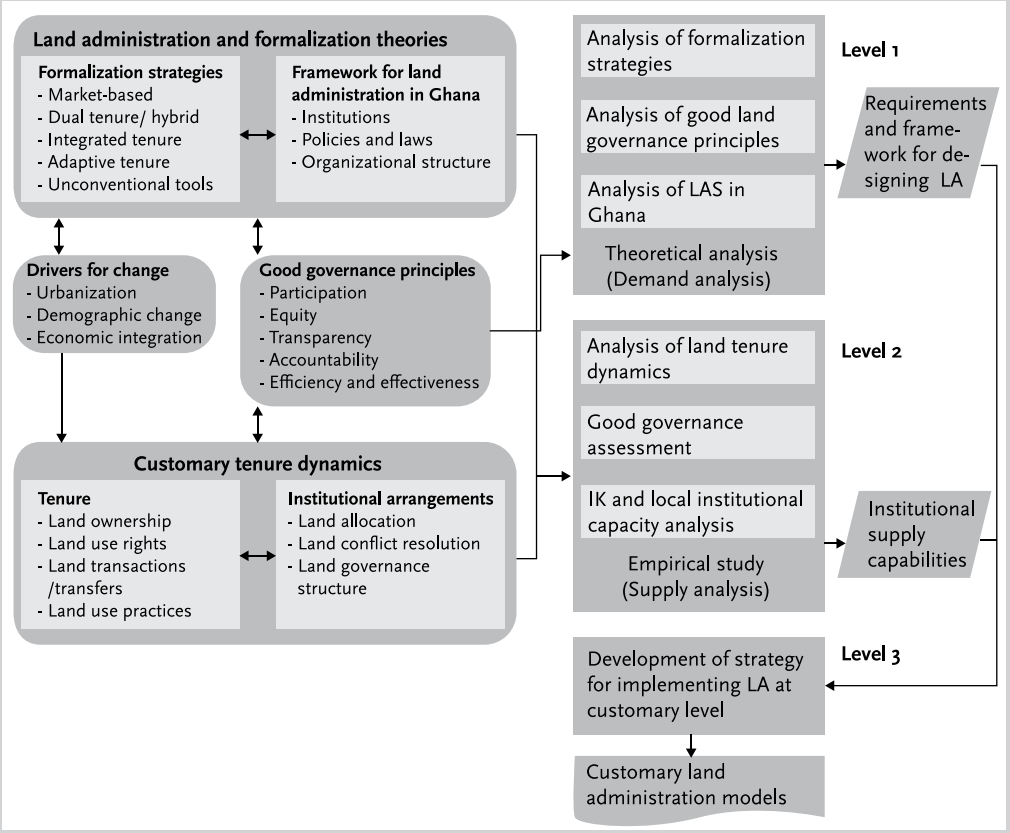
4.3 Conceptual framework of the study

This study investigates how we can design LASs in peri-urban areas that can be adapted to the dynamics of tenure and to the institutional frameworks of customary tenure. In doing so, I explore the links between the underlying theories of customary tenure systems, LASs, good land governance and the realities of the framework for administering land in Ghana. These links are summarised in the conceptual framework presented in Figure 4.1.

The conceptual framework contains three levels of analysis:

1. A multi-level demand analysis to determine the requirements for designing LASs in peri-urban areas (Figure 4.1 (Level 1)). This theoretical analysis is

Figure 4.1 Conceptual framework showing the three levels of analysis



presented in Section 4.2;

2. A multi-level institutional capability analysis of customary tenure systems, to determine whether or not it is feasible to adapt LA to the institutional framework of customary tenure. This supply analysis involves an analysis of the dynamics of tenure and local land management capability analysis (see Figure 4.1 (Level 2));
3. The development of strategies for designing LASs based on the institutional framework of customary tenure (see Figure 4.1 (Level 3)).

In the following paragraphs, I examine three aspects of customary tenure systems that are central to the question of whether it is feasible to adapt LA to the institutional framework of customary tenure. These are: (1) an analysis of the dynamics of tenure; (2) the good land governance assessment; and (3) IK and the local capacity for LA. These three issues were identified in Section 1.5 on 'problem definition'.

4.3.1 Dynamics of tenure and institutions

As discussed in the introduction and in Chapter 2, customary tenure systems constantly adapt and change in response to the prevailing conditions. These changes can be caused by factors such as population growth, urbanisation and colonial legislative influences. Customary tenure systems have their own mechanisms of adapting to specific conditions. Kalabamu (2000) explains that some aspects of tenure practices that are out of step with the prevailing conditions are dropped, while others are maintained. As explained in Section 2.2.2, the ways in which customary tenure systems respond to such changes vary substantially according to context. In general, however, the dynamics of customary tenure are manifested in tenurial practices and the institutional framework of the land delivery process. This study assumes that it is important to explore and understand the dynamics of customary tenure and the uniqueness of the environment. Therefore, the dynamics of customary tenure are taken as the point of departure.

In the analysis of the dynamics of customary tenure, two main aspects are investigated: first, tenure and second, institutional arrangements (see Figure 4.1 (Level 2)). The former investigates how the various aspects of tenure, including ownership, use rights, modes of transferring land rights, and land use practices, change over time. In the latter, emphasis is placed on how the institutional arrangements for accessing and managing land, including land allocation processes, conflict resolution mechanisms, and the socio-political governance structure, adapt to changes in tenure. These two aspects will help us to understand the dynamics of diverse people-to-land relationships and the need to incorporate them in LA. Furthermore, it will also help us to understand which aspects of tenure are sustainable and can be protected, and which aspects of customary institutional arrangements can be adapted or enhanced.

4.3.2 Good land governance

In Section 4.2.6, a number of key issues related to land governance in peri-urban areas were discussed. Importantly, these help us to identify which land governance dimensions will be critical when designing LASs for peri-urban areas. Acknowledging that others may also play important roles, it is essential to consider five dimensions – participation, equity, transparency, accountability, and efficiency and effectiveness – in any thorough assessment of land governance in customary tenure institutions. This choice was based on the following factors:

- the dimensions selected were found to be common to what is considered as good governance in LA;
- they are related to key issues of critical importance in customary land

Table 4.2 Requirements for good governance in customary land administration

Governance dimension	Governance assessment determinant
Participation	The various groups in customary areas should be represented. Community members should be involved in decision-making processes. CTIs should collaborate with professional institutions in the administration of land.
Equity	Land should be accessible to all community members, male and female. Access to information, tenure security and land dispute resolution should not be handled in a discriminatory manner. Measures should be put in place to ensure access to land for future generations.
Transparency	Institutions and land information should be accessible. Decision-making processes should be open to all stakeholders in customary land. Customary laws should be clear to all community members.
Accountability	CTIs should regularly report on their stewardship to community members by responding to questions, explaining actions and providing evidence of what they have been entrusted to do.
Efficiency and effectiveness	Procedures for allocating land must be clear and simple. Customary laws should be implemented well. Adequate mechanisms must be provided to ensure certainty and security of tenure. Adequate human resources capacity is needed to ensure the efficient and effective administration of tenure.

delivery in peri-urban areas; and
- to some extent, these dimensions overlap and ensure that a wider spectrum of governance issues is considered.

The following paragraphs discuss the characteristics of the selected governance dimensions, and are summarised in Table 4.2.

Participation

Participation requires that all people have a voice in decision-making, either directly or through legitimate institutions that represent their interests (Kaufmann et al., 2007). Participation entails consultation, cooperation and collaboration, representativeness and interactive approaches to decision-making, and is built on freedom of association and speech (Kaufmann et al., 2007). Participation creates representation, which is a key indicator of empowerment, and hence the extent to which people have a voice on issues that affect their future (Blair, 2000). Participation in customary land delivery leads to improved accountability, reduction of conflicts, more flexible and efficient land management, increased legitimacy, the potential for the better use of place-specific knowledge, and so forth.

Many recent attempts to decentralise LA have had limited success, partly because they have failed to give a voice to local communities and have not allowed them to effectively articulate their demands (Deininger, 2003). Landholders tend to ignore many statutory restrictions and decisions in which they play no part. In the customary land delivery process, several people have a stake in decision-making on the use of land, and community participation should be seen as an integral part of good land governance assessment. Community participation in LA is cited as important for promoting group members' sense of ownership, and the collective need to safeguard heritage and ensure sustainable land usage (Dorner, 1972).

Any assessment of participation in LASs for peri-urban areas should address membership composition, selection procedures, and the level of diversity in the representation of interest groups. Effective participation in

the customary land delivery process would entail diversity in the composition of participants in decision-making, as well as the inclusion of highly-skilled facilitators who have knowledge of the process. The subgroups within land-owning groups, gender groups and other stakeholders should be well-represented in the decision-making process. CTIs should collaborate with professional institutions in the land delivery process. An approach that involves consultation, cooperation, collaboration, representativeness and interactive participation, where individuals and groups choose to take an active role in making decisions that affect them, can improve tenure security.

Equity

Equity means fairness of outcomes, both now and in the future, with respect to who benefits from – or is included in – the process of decision-making for development action (Brown and Corbera, 2003). In LA, equity is based on the notion that all people should have the same access to land tenure information and justice delivery and receive the same service standards (Kaufmann et al., 2007; Zakout et al., 2007). In the framework for designing LA for customary areas, the assessment of equity should look at the extent to which CTIs deal fairly and impartially with community members and settlers by providing non-discriminatory access to land, land tenure information and justice delivery. Specifically, the customary land delivery processes should address how the needs of all interest groups – sub-families and members constituting the land-owning group – are considered in the land allocation process and distribution of proceeds accrued from land resources.

Curry (2001) discusses equity from two perspectives: those of distributional and intergenerational equity. The former refers to how land rights are distributed fairly across existing population of interests. Distributional equity ensures that the needs of minorities and vulnerable groups in the society are provided for. In the latter, the focus is on how rights are apportioned such that they are used effectively and efficiently at present, without compromising their use by future generations. Intergenerational equity addresses the mechanisms that ensure that the resources being utilised today will be available for use by future generations. In the design of LASs for peri-urban customary areas, the assessment of equity should further emphasise measures that protect women and vulnerable groups, and ensure that future generations are not deprived of communal resources.

Transparency

In simple terms, transparency means sharing information and action in an open manner (UNDP, 1997). Transparency means providing a right of access to full, reliable and timely social and economic information, for use by all relevant stakeholders (Fraser and Ellis, 2009; Kolstad and Wiig, 2009). Transparency is built on the principle of the free flow of information between stake-

holders (Kaufmann et al., 2007), enabling them to uncover abuses and defend their interests (UNDP, 1997). Although transparency can be addressed from several perspectives (UN-HABITAT, 2007), in the design of LASs for peri-urban customary areas, accessibility, clarity and openness are crucial for assessing transparency.

Access to information is a central component of transparency (Deininger, 2003; Piotrowski and Van Ryzin, 2007). Transparency in the design of LA for customary areas should stress the need for access to information about the existing situation, decisions, actions and the people entrusted to keep such information. Other measures, such as clarity of land delivery processes and customary laws, are important for improving transparency in CTIs. In addition, openness of decisions on who occupies or uses land and other community resources is worth considering. Clarity in the procedures for acquiring land and openness to all stakeholders are also crucial. Clear and comprehensible laws will remove any ambiguities in the role to be played by community members and their leaders in the land delivery process. Good transparency practice is achieved when the rules governing land delivery processes are made clear to all stakeholders, and when possible, customary laws are coded and recorded for future reference.

Accountability

Accountability means demonstrating of stewardship, and has been cited as important for reducing bribery and corruption (FAO, 2007). Accountability is closely related to transparency in the discourse of good governance, as both concepts emphasise the need for institutions to open up their activities to their clients (Schultz, 2008). An assessment of accountability in the design of LASs for customary areas should emphasise the factors that make CTIs accountable to community members: reporting on what they have been entrusted to do, responding to questions, explaining their actions and providing evidence of their performance (FAO, 2007). Factors such as the frequency of interaction with community members, feedback and record-keeping are an important measure of accountability in CTIs. It is important to consider measures for ensuring financial accountability within CTIs in the governance assessment. Achieving accountability would not only prevent corruption and the abuse of power by customary authorities, but could also constitute a basic step towards commanding confidence and trust in these authorities' stewardship over the resources that have been placed in their care.

Efficiency and effectiveness

Most problems in customary land delivery are related to tenure insecurity. Therefore, efficiency and effectiveness to improve tenure security for all land users should be the main goal of the governance assessment. Efficiency and effectiveness are related to all of the other dimensions, and thus play a spe-

cial role in this study. Indicators such as the implementation of customary laws, measures to address tenure insecurity, use of competent staff, the existence of well-established information desks, clarity of land delivery processes and the enforcement of resolved land conflicts are all potential determinants of efficiency and effectiveness in customary land delivery. The choice of these indicators was determined by the argument that efficiency and effectiveness require the formulation of strategies that enable the production of results that meet the needs of society (Kaufmann et al., 2007), and the development of policies and programmes that enable the delivery of high-quality services and standards (FAO, 2007).

Efficiency should emphasise that procedures for allocating land and resolving land conflicts should follow due process, as defined by customary law. An efficient customary LAS is when CTIs develop new ways to record and maintain land information, so that service delivery can be achieved within a reasonable time. Equally important in the assessment is the need for a well-established information desk that can link the customary authorities to the land-users, thereby providing accessible land information. Efficiency in customary LASs should examine the clarity and simplicity of procedures for allocating land and resolving conflicts. When the procedures are clear and land information is accessible, there are fewer opportunities for corruption. Effective customary land delivery also ensures that the rights of all groups and stakeholders of the landholding groups are respected and protected. The use of competent staff to control important aspects of the land delivery process, thereby producing accurate work, is an important measure of effectiveness. Furthermore, effectiveness in customary land delivery can be assessed by looking at the extent to which customary laws regulating land tenure and justice delivery are enforced. In addition, as a good practice, CTIs should enforce and respect community decisions and the decisions taken on resolved land conflicts. Professional advice from statutory institutions and other professional bodies should also be sought. When customary laws are followed and competent staff members are used, it is likely that the incidence of land conflicts will fall, thereby improving tenure security for all land users.

4.3.3 Indigenous knowledge and local capacity for land administration

The need to decentralise LA to the institutional framework of customary tenure implies that technical capacity will be required. As explained in Section 1.5, the question of how to develop the necessary technical capacities in customary environments poses a considerable challenge. A customary tenure system is a socio-cultural humankind-to-land relationship, based on traditional local knowledge or IK that has developed within a particular geographical area. Such knowledge grows within a social group, incorporating learning

from experiences over generations, and underpins access to land rights and decision-making in land management, agriculture, and other activities within customary areas (World Bank, 2005).

It is generally agreed that the concepts of 'indigenous knowledge', 'traditional knowledge', 'local knowledge', 'community knowledge', 'rural peoples' knowledge' have many commonalities – central of it being the purpose the concept is used and also the fact that local people own the knowledge (Minang and McCall, 2006). IK is described as an information base that facilitates communication in local decision-making. As such, it may be the only resource that the locals, especially the 'resource-poor', genuinely own (McCall, 2003). Ownership by a local community implies a connection with local priorities. IK has become an important and valuable aspect of the management of sustainable development programmes (Ngulube, 2002). It has proved to be useful, complementing scientific knowledge in land-use planning, forestry and natural resource management (Kyem, 2002; Tripathi and Bhattarya, 2004; Minang and McCall, 2006).

In the design of LASs in customary areas, where information on the historical, social and cultural value of land is needed, one cannot separate IK from scientific knowledge. For the effective administration of customary land, IK is critical when making decisions about what to collect, how to collect it, what to store, how to store and process information about all the rights that exist in land. Acknowledging this has important consequences for how one views institutional capacity and attempts to establish LASs that are based on the institutional framework of customary tenure. In this study, it is argued that if IK can be enhanced, local community capacity for LA could be improved. Here, the use of IK as a means of enhancing local capacity for LA is the key issue of investigation.

PGIS has become synonymous with integrating IK with participatory approaches (Jankowski, 2009). PGIS consist of a variety of approaches that aim to make GIS and other spatial decision-making tools more accessible and meaningful to local communities that have limited resources. PGIS practice is geared towards eliciting and adding value to IK (McCall, 2006; Wang et al., 2008). PGIS has proved to be effective in empowering local communities and promoting interactive participation by all stakeholders in the generation and management of indigenous information (Rambaldi, Kyem et al., 2006) (McCall, 2003). The practice of PGIS helps to narrow communication gaps between villagers and outsiders (Rambaldi, Chambers et al., 2006). This study also examines these characteristics of PGIS, and explores how PGIS can help elicit IK on tenure and enhance local capacity for LA.

4.4 Concluding remarks

This chapter has described the theoretical framework for designing alternative LASs in peri-urban customary areas. First, the requirements for designing LASs were developed. LASs designed for peri-urban areas need to satisfy six key requirements, namely: adaptability, flexibility, upgradeability, affordability, institutional legitimacy and credibility, and good land governance. The legal, institutional and technical processes need to be flexible and adaptable to changing tenure and socio-economic patterns, and should be built on socially and politically legitimate customary tenure institutions. The system should be affordable, and should be capable of securing a wide range of temporal rights that can be upgraded along a continuum of rights.

Examining the nature of land tenure and administration issues in peri-urban areas, the requirement of good land governance should focus on participation, equity, transparency, accountability and efficiency and effectiveness. Participation should be examined by looking at group membership participation in selection of community ledearship and decision-making processes, and collaboration with professional institutions. Equity must be addressed with respect to distribution and access to land, access to land information, and justice delivery. Transparency should be addressed with respect to access to information, the accessibility of CTIs, clarity of land allocation processes and clarity of customary law. Accountability encompasses measures that ensure that CTIs provide evidence of stewardship. Efficiency and accountability must be addressed on the basis of those measures that are necessary to provide certainty of rights and improve tenure security.

Having discussed customary tenure systems, formalisation strategies and problems associated with securing land rights and administering land in peri-urban customary areas in Chapter 2, the legal framework for administering land in Ghana in Chapter 3, and having dealt with the key requirements for designing LA for peri-urban areas (Section 4.2), it can be concluded that in order to design LASs for peri-urban areas, there should be a paradigm shift away from conventional top-down LA models based on state-led strategies, towards adapting LA to the institutional framework of customary tenure. In this study, conventional LA concepts are modified to suit a perspective that sees the institutional frameworks within customary tenure systems as the foundations for LA. The strategy of adapting LA to the local institutional framework of customary tenure gains support from Ho's (2009) argument that if tenure insecurity means the possibility that the land-user may lose his rights at a certain point in time, it should also be understood that eliminating such a risk can be achieved not only through a formal LA framework, but also through customary tenure institutional frameworks. This argument is supported by Bromley (2009), who claims that it would be better to have a familiar, legitimate and 'ever present' CTIs than deficient state institutions.

In the literature, the idea of 'adapting' LA to customary tenure is not new (see Section 2.3.4). This study will elaborate on the idea, however, by linking it to the dynamics of tenure to explore and explain the logic behind adapting LASs to the institutional framework of customary tenure. In this study, I will investigate three aspects of customary tenure systems to establish whether or not it is feasible to adapt LA to the institutional framework of customary tenure. These are: (1) the dynamics of tenure; (2) good land governance; and (3) IK and local capacity for administering land. The analysis of these three aspects of customary tenure, which form the basis of the field study, will help us to develop the needed strategy for establishing affordable and sustainable LASs that are built on the local institutional framework of customary tenure. In the next chapter, I will discuss the research design and methodology used in the field study.

5 Empirical study design and methodology

5.1 Introduction

The goal of this study is to investigate how land administration systems (LASs) in peri-urban areas can be adapted to tenure and the institutional framework of customary systems. In Chapter 4, it was argued that LASs should satisfy six important requirements, namely those of adaptability, flexibility, upgradeability, affordability, legitimacy and credibility, and good land governance. The field study examines and explains whether the customary tenure systems of Ghana meet these requirements, by focusing on the dynamics of tenure, good land governance and local capacity for LA. To do this, qualitative and quantitative research approaches were considered.

The basic difference between qualitative and quantitative research methods is one of flexibility (Krefting, 1991; Creswell, 2003; Yin, 2003; Collier et al., 2004; Mack et al., 2005). On the one hand, the study aims to provide an in-depth understanding of the dynamics of customary tenure by examining local knowledge relating to norms, values, practices and experiences in the context of local tradition. This analysis will require a qualitative research approach that is appropriate for providing information about the 'soft' sides of problems (Yin, 2003). On the other hand, since the study aims to analyse and compare responses across respondents and study areas, the use of quantitative methods is appropriate (Krefting, 1991; Creswell, 2003). Quantitative research methods are often considered to be rigorous and reliable, and employ valid investigative approaches that are outcome-oriented and therefore genuinely scientific (Yin, 2003).

This chapter aims to explain the methodology and methods that were used to carry out the field studies and analyse the case evidence reported on in Chapters, 6, 7 and 8, and the reasoning behind them. Since there has been much debate on the characteristics of qualitative and quantitative research and, in particular, on case study research techniques, in Section 5.2, I first briefly explain the reasons for developing the case study research design. I discuss why the case study approach was used and its applicability to achieving the objectives set. Section 5.3 covers the selection and description of the case study areas. Section 5.4 describes the research methods used for the field study. The section highlights the quantitative and qualitative data collection and analytical tools used to represent the case evidence. The descriptions of the methods are based on the three main areas of investigation, namely: the dynamics of tenure; good governance assessment; and IK and local capacity enhancement. An outline of the limitations of the applied research methodology is offered in Section 5.5, and the chapter ends with concluding remarks in Section 5.6.

5.2 Case study research

Yin describes case study research as an empirical enquiry that investigates a contemporary phenomenon within its real-life context, using multiple source of evidence (Yin, 1994; Yin, 2003). Although case study research involves distinct procedures (Yin, 1994; Yin, 2003), these leave far more room for discretion on the part of the researcher than other research methods (Zevenbergen, 2002). As discussed in Section 1.7, this flexibility makes case study methodology suitable for addressing problems that are 'unstructured' or 'soft' in nature (Yin, 1994). Unstructured or soft problems might include a situation involving obscure or conflicting goals that revolve around human understanding and interpretations of an environment, or a situation in which there are multiple variables that can be influenced over time (Barry and Fourie, 2002). These characteristics can be seen in customary tenure systems and the problems being addressed in this study. Case study research methodology has been used in related research in LA (see Silva and Stubkjaer, 2002).

A case study is not intended as a study of an entire system, organisation or object. Rather, case studies are intended to focus on a particular issue, feature or unit of analysis (Noor, 2008). The unit of analysis is therefore a critical factor in case study research. In this study, the customary tenure system (in a broad sense, as described in Chapters 2 and 3) within each study area was chosen as the unit of analysis. Nevertheless, the focus in each investigated customary area is mainly on tenure and the tenure institutions, each of which is taken as a distinct unit of analysis. To be able to adequately analyse complex tenure and institutional arrangements in customary systems requires an analysis of several sub-components or sub-units. This study therefore involves multiple case studies, consisting of three cases and several sub-units of analysis. The multiple case study approach is one of the most appropriate strategies for investigating systems containing more than one unit of analysis. It allows a multiplicity of methods to be applied within the sub-units, and the detailed information on each sub-unit of analysis to be integrated in the final analysis (Scholz and Tietje, 2002). The use of multiple sources of evidence provides a rich store of information that permits the analysis of a single issue from several perspectives, a process known as 'triangulating data' (Chaiklin, 2000; Yin, 2003).

Case study research involves multi-spectral analysis, and therefore the researcher considers not just the voice and the perspective of the stakeholders, but also relevant groups of actors and the interaction between them. Customary tenure is a socio-cultural system involving several complex tenure relations and institutions with different stakeholders. Multiple sources of evidence and multiple methods of collecting data are therefore needed to adequately understand and represent such complex and dynamic human-kind-to-land relationships. In this study, the interactions between CTIs and a

number of actors, including community members, strangers, government officials and private organisations, have been investigated.

Many well-known case study researchers (Stake, 1995; Chaiklin, 2000; Yin, 2003; Noor, 2008) have written about case study research, and suggested procedures and techniques for designing, organising and conducting case study research successfully. This study draws upon their work. While it is desirable to have a protocol for all studies, Yin (1994) states that case protocol is essential in a multiple-case study research design. Case protocols make it easier to replicate the research, which is a prominent feature of scientific research (Zevenbergen, 2002). A case protocol should include:

- the background to the case (project objectives and the reasons for the study);
- case selection;
- field procedures (data collection methods that provide credible data sources);
- case study questions that the investigator should always keep in mind during the data collection; and
- a guide for reporting that provides the outline and format of the report (Yin, 1994).

This case protocol has been used in the case study. The background to the case that explains the reasons behind the study is described in Section 1.7.2 above. The other parts of the case protocol are elaborated in the sub-sections below.

5.3 Selection and description of case study areas

A multiple case study design was used to provide empirical material for understanding and describing individual and societal behaviour, individuals' relationships with land and land management practices. In customary tenure systems, land tenure practices cut across different peoples, cultures, economic and political landscapes and processes, with the result that these practices are diverse and vary from place to place (see Chapters 2 and 3). It was not possible to find cases suited to literal replication, and a balance was therefore sought between predictable similar and predictable contrasting results. As a strategy, therefore, it was necessary to confine the study to three cases in order to build generalisations for similar customary groups.

The selection of the case study areas was identified through site visits and a literature review, which provided insights into current customary tenure issues and the stage of development in the areas. Japekrom, Tamale and Gbawe are the three peri-urban customary areas that were selected as appro-

priate locations for conducting the field study. The selection of the three customary areas was based on the following criteria:

- diversity in tenure, customary institutional structures, land use actors;
- changes in tenure due to rapid urbanisation;
- demand for land;
- levels of development and a variety in land development activities;
- fair representations of the three types of land-owning group in Ghana; and
- determining whether the changes that occur in land tenure systems and their effect on security of tenure is a growing national problem that affects all three customary tenure groups in Ghana.

The three case study areas are described in terms of their locations, demographic information, land tenure systems, customary tenure institutions and the development of land-use activities.

5.3.1 Japekrom stool land

Location and demographic information

Japekrom is an ancient community, located about one kilometre of the centre of New Drobo, the district capital of the Jaman South District, in the Brong-Ahafo region. The community has borne the brunt of urbanisation, and the area has undergone a gradual transformation in terms of tenure and livelihood, due to increasing demand for urban land. The population of Japekrom, the seat of the paramount area, is estimated as 5,600 (Ghana Statistical Service, 2005). Most of the inhabitants of the Japekrom customary area are subsistence farmers. The stool is rich in natural resources such as timber, forest, and arable agriculture. Faago, Kwasibuokrom, Botokrom and Kojokesekrom are the sub-stools of the Japekrom customary area that were used as study sites.

Land tenure system

The land tenure system of Japekrom customary area is based on absolute allodial ownership. Allodial ownership in the customary area is held by the stools and sub-stools that constitute the customary area. However, the allodial title is vested in the paramount chief, who holds the land in trust for the people. Community members of the stool and sub-stools enjoy all forms of usufructuary rights – farming, building, hunting, and so forth – which remain in the possession of the holders throughout their lifetimes. These usufructuary rights can be transferred through inheritance, tenancy, customary lease, pledge, gift and other tenurial arrangements, as permitted by the customary law of the area. The transfer of land through family succession is determined by matrilineal inheritance – the relationship to mothers and sisters. Matrilineal inheritance allows a man's valuable property, including land, to be

passed on not to the man's children, but to his brother or sister's son (Woodman, 1966). Migrant farmers also gain access to farmland freely of charge, at very little cost, or through tenancy agreements. However, these arrangements have changed since the mid-1970s. With increasing cash crops and the high demand for land, all land allocation has to pass through the paramount chief, including land for farming. At present, the commonest form of accessing land is through short- and long-term leasehold arrangements.

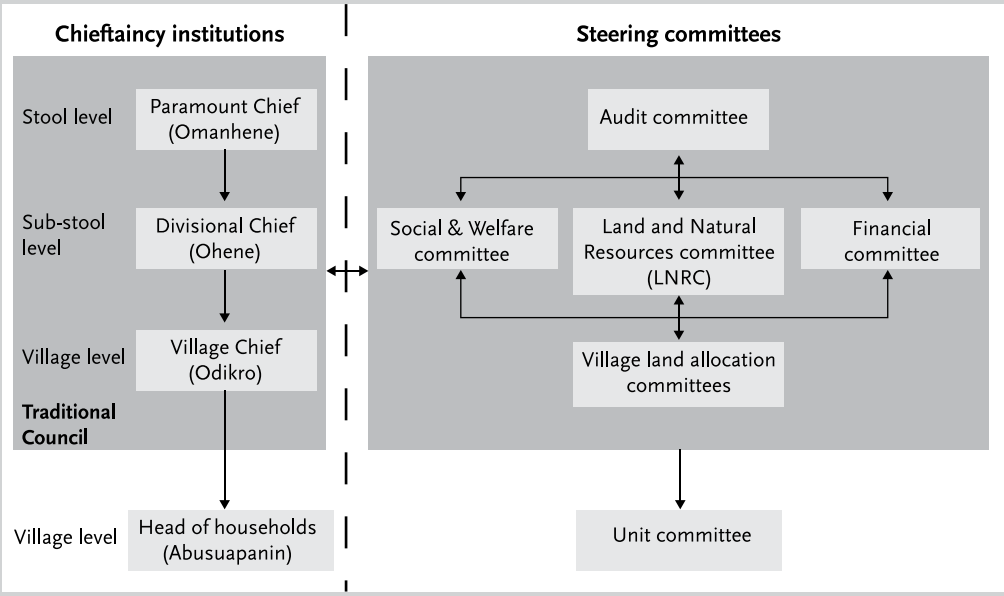
Tenure institutions

The tenure institutional structure of Japekrom customary area, like any Akan cultural group, is based on kingship, which is organised in a hierarchy of chieftaincy institutions and steering committees. The basic structure of the chieftaincy institutions includes: the Abusuapanin (head of the household), the Odikro (chief of the village), the Ohene (the territorial chief, at the sub-stool level), and the Omanhene (the paramount chief). Most chiefs are men, but women are also elected as chiefs – 'queen mothers'. Queen mothers are traditional female leaders who represent women in governance structures.

Six territorial chiefs and about 60 sub-chiefs represent the various arms of the chieftaincy institutions. The territorial chiefs, together with their queen mothers, constitute the Mpuasu-Japekrom Traditional Council. The paramount chief is the head of the TC and represents the traditional area at all levels of governance. The TC has a Registrar, who is a civil servant appointed by the state. The registrar records meetings and handles all correspondence between the TC and the state/other chiefs/traditional councils.

The day-to-day management of land in the traditional area is vested in the chiefs of the various settlements in the customary areas. The steering committees assist these chiefs in day-to-day land management (see Figure 5.1). Each sub-stool has a land allocation committee that is responsible for allocating and taking decisions on use of land in the community. At the stool level, there is a Land and Natural Resource Committee (LNRC), mandated to ensure the resourceful use of all natural resources, including land, in the paramount area. The LNRC is a ten-member committee responsible for land allocations, strategic planning on the use of land resources and advising chiefs on land issues. The LNRC is made up of a surveyor, a planner, lawyer, and six representatives from the sub-stools or communities constituting the traditional areas. The LNRC is chaired by a sub-chief, who represents the TC. Other oversight committees also take care of other aspects of indigenous government structure in the customary area. These include: the Social and Welfare Committee, responsible for socio-economic welfare of community members; the Finance Committee, responsible for financial matters; and the Audit Committee, responsible for auditing all of the other committees. Some of the members on these steering committees have been drawn from the representatives of the local councils and unit committees so that the community's govern-

Figure 5.1 Customary institutional structure in Japekrom customary area



Source: Interview with Chairman, Japekrom LNRC

mental structure can fit into the local government system (see Section 3.5.3). The steering committees work together with land allocation committees in the villages.

Developments in land-use activities

In the early 1970s, cocoa farming and yam production were the main livelihood activities in the customary area. Since the creation of the Jaman district administration in 1989, there has been a large influx of migrants, resulting in high demand for land for housing and commercial activities. The demand for land has meant that development activities have undergone a rapid transformation over the last 20 years. The government acquired large tracts of land from the stool for the construction of public and social amenities, particularly offices and housing facilities for government officials who work at the district headquarters. Cash cropping and other farming activities at the town's periphery have been significantly reduced. Many people in the communities now engage in petty trading, while a few others engage in cashew plantation and other subsistence farming activities. Until 2005, when the new paramount chief of the customary area was installed, land management activities, particularly surveying and planning, were carried out by non-professionals. These resulted in haphazard land-use development activities. Over the last five years, land allocations have been based on land-use plans. These plans were prepared using private arrangements between the stool and private planners.

5.3.2 Tamale skin land

Location and demographic information

Tamale is the administrative capital of the Northern Region of Ghana, and has been the fourth-largest urban settlement in the country since 1970. With a population of about 550,000 and a growth rate of 3.5%, it is one of the fastest-growing cities in Ghana (Ghana Statistical Service, 2005). Tamale serves as a hub for all administrative and commercial activity in the Northern region. Economic activities in Tamale revolve around farming and petty trading. Islam is the predominant religion in the area. The inhabitants of Tamale and its surrounding villages are Dagombas, belonging to the Dagbon ethnic group. Four peri-urban communities in Tamale, namely Jisonayilli, Vittin, Wroshie and Kalpohin, were used as case studies.

Land tenure system

The customary tenure system of Tamale and its environment is based on absolute allodial ownership and Dagbon customary law. Land is controlled by subgroups or sub-families, which ensured that individuals in these families had access to land for various purposes. Individuals within subgroups have usufructuary rights, which allow farming, fishing, hunting, building and other uses on an unconditional basis, as long as communal interests remain unaffected. These usufructuary rights can be inherited through the patrilineal system, where land is inherited from father to the eldest son. Generally, women have use rights only on agricultural land, but they cannot own land, as they are excluded from land inheritance. Under this tenure system, immigrants – who are also known as settlers or strangers – who have no customary rights in land can acquire land without payment, usually by land gifting (Kasanga and Kotey, 2001).

Like other customary areas in northern Ghana, the indigenous tenure system underwent two periods of radical change. Between 1900 and 1979, control over land ownership was vested in the Governor of the Gold Coast. While land was legally owned by individuals and subgroups, the general *modus operandi* of the state was to take land for public purposes without compensation. However, in 1979, the Constitution of Ghana divested land from the state to customary tribes, thereby allowing the latter full ownership (see Section 3.5.1). The state acquired large tracts of land for institutional (primary education and health), residential, agricultural and industrial uses. At present, different arrangements exist for accessing land in peri-urban Tamale. Settlers have acquired land through several tenure arrangements for households, private schools, filling stations and farms, usually through leasehold. These leasehold agreements are usually granted by the community with certain conditions attached.

Tenure institutions

Prior to colonisation, the indigenous communities of Dagbon had no structured kingdom or political system. Chiefs were neither owners nor custodians of the land. Land ownership rights resided in the tindamba (earth priest), who managed rituals for maintaining the sanctity of the land, and who was responsible for the allocation of land and the settlement of disputes. The tindamba acted as a link between the community and the spirits of ancestors. Chieftaincy was introduced by the colonial governments (Kasanga and Kotey, 2001). Chiefs were appointed by the government as the spokesmen of the people. In spite of the greater prestige that is enjoyed by the appointed chiefs, there has always been a clear distinction between the duties of a chief and those of a tindamba. By and large, the traditional rights of the latter over land have survived. With the promotion of TCs and chieftaincy institutions, the direct control and management functions of the tindamba in the traditional system have been assumed by local chiefs, who now administer customary land rights on behalf of their communities.

In the current institutional arrangements, the tenure institutions of Tamale customary area exist as an organised body, constituted by the Gulkpe-Naa (the Divisional chief of Tamale), sub-chiefs/caretaker chiefs, and the council of elders (see Figure 5.2). The Gulkpe-Naa grants land for the endorsement of the Yaa-Naa, who is the overlord of the Dagbon Traditional kingdom. At the village level, the sub-chiefs, caretaker chiefs and councils of elders administer land on behalf of the Gulkpe-Naa. At the divisional level, there is a land allocation committee that supervises all land allocations in local communities.

Developments in land-use activities

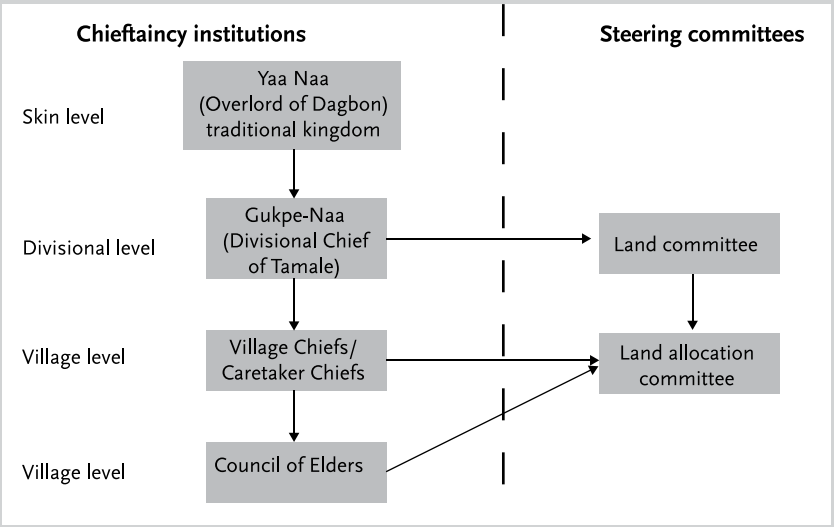
Since the 1990s, when the Rural Electrification Programme and the Northern Electrification Project were initiated, there has been significant demand for land for various purposes. Consequently, peri-urban Tamale has experienced rapid expansion and has witnessed many land-use developments and changes. These have triggered changes in the land tenure system. As far as rural land use was concerned, the main source of employment shifted from subsistence farming to residential and commercial activities. In all four peri-urban communities, land is allocated according to layout schemes prepared by the municipal TCPD.

5.3.3 Gbawe-Kwatei family land

Location and demographic information

Gbawe was once an ancient farming village, located about 10 kilometres west of the centre of Accra, the capital of Ghana. Gbawe was previously part of a number of satellite communities around the centre of what was then the Gold Coast. The Gbawe-Kwatei family belong to the Ga ethnic group, which is

Figure 5.2 Customary institutional structure in Dagbon customary area



Source: Interview with Chairman, Land Allocation Committee, Vittin, Tamale

found in and around Accra. Gbawe is one of the most populated communities in Ghana, with a population of about 29,000 (Ghana Statistical Service, 2005).

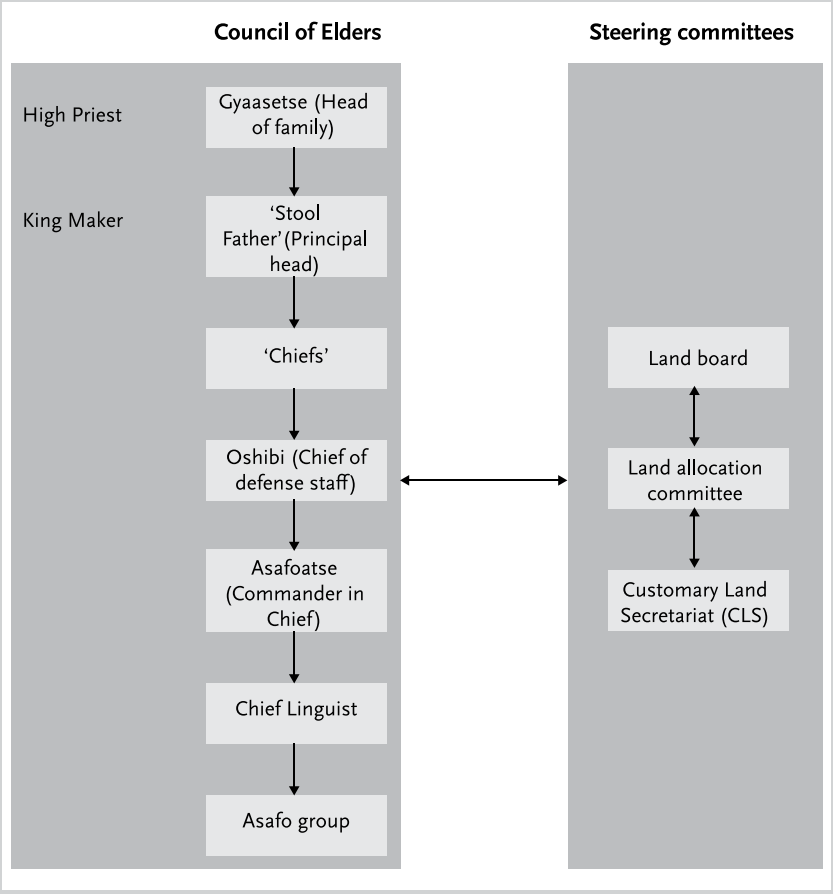
Land tenure system

The allodial title is vested in a family, whose ancestors were the hunters who first cultivated the Gbawe land six to seven centuries ago. The head of the family holds the allodial title in trust for the family members. Like the other customary areas, members of the family have usufructuary rights that permit them to use part of the land, rights they can enjoy throughout their lifetimes as long as they do not conflict with the wider interests of the family. Usufructuary rights can be transferred, but the level of freedom to do so depends on who receives the land. Land transferred to the members of the family, whether by grant, gift or by inheritance, is freehold, but does not require consent from the elders. The system of inheritance is patrilineal, which allows children to inherit land directly from their fathers. A woman can also inherit from her father, but only during his lifetime. Land transfers to strangers require the consent of the council of elders. Although freehold in family land is not prohibited, in Gbawe, settlers can only acquire land on leasehold. There are four main subgroups in Gbawe-Kwatei family: Ayama, Anyaa Mfuri, Twum-Tawiah and Odorkor. These groups hold the deed of gift and therefore operate as separate entities under the authority of the Gbawe-Kwatei family, the allodial holders. Plots of land have been licensed toTiase and Kokroko sub-families. The government has also acquired large pieces of land for urban development.

Tenure institutions

The tenure institution of Gbawe exists as an autonomous entity with four basic facilitating divisions: the Council of Elders (COE), the Land Board, the Land

Figure 5.3 Institutional structure of Gbawe-Kwatei customary area



Source: Interview with the Facilitator, CLS of Gbawe

Allocation Committee (LAC) and the Customary Land Secretariat (CLS) (see Figure 5.3). These divisions handle all decisions concerning the use of land. The COE, which is the family's highest decision-making body, is made up of 39 chiefs and elders, including 11 women. The members of the COE are selected from all the 'royal gates' of the Gbawe-Kwatei family. The COE is chaired by the family head, and is responsible for the final approval of all land transactions. The Land Board is an advisory body which advices the COE, the LAC and the CLS on prudent land resource management. The Land Board is made up of eight members, including the family head (as chairman), a lawyer, land surveyor, land economist, planner, the administrator of the CLS and two principal elders. The LAC is the technical wing of the institution, which is made up of nine people, including one woman. The main responsibility of the LAC is to implement the decisions made by the Land Board, and also to give the Land Board technical advice on land applications (Gyapong, 2009). The CLS records and maintains information on land transactions and collects ground rent. The CLS of Gbawe was among the first customary areas chosen as pilot areas for the LAP (see Section 3.6).

Developments in land-use activities

Accra is one of the most populous (1.7 million people) and fastest-growing metropolises in Africa, with an annual growth rate of 4.3%. Many people have moved from the inner city to the periphery to escape overcrowded conditions and high rent levels. Like other peri-urban areas in Accra, Gbawe has experienced a high influx of migrants since the 1990s. This influx has resulted in the development of new housing areas and high demand for land in Gbawe. Land in Gbawe, which was originally forest and used for agricultural purposes, has been converted into building plots. Farming activities are no longer carried out by the community. Portions of the land have been developed into salt ponds and quarry sites that serve as major occupations for the inhabitants in the community. At present, the Gbawe-Kwatei family has about 10,000 acres of land under its jurisdiction. The land has been schemed, demarcated, surveyed and a cadastral map has been prepared, which is used for land allocations. The pressure on land has led to contestation of the boundary between Gbawe-Kwatei family and its neighbours.

5.4 Data collection methods

The data collection methods used in this study are based on Yin's (1994: p. 80) tools for collecting data for case study research, including 'documentation', 'interviews', 'direct observation' and 'participation-observation'. Using these different tools to collect data from a variety of informants creates multiple sources of evidence, forming a source for triangulation and the assessment of information from different perspectives. Triangulation increases the reliability of the data and the process of gathering it (Yin, 1994; Yin, 2003). The findings for each data source were checked in two ways. First, data from individual interviews were compared with those obtained from the focus group discussions and literature. Second, the results were also presented at different occasions to experts in land tenure and administration in Ghana, and also to some international experts.The data collection methods are described with respect to the three issues investigated in the field study: the dynamics of tenure, good land governance assessment, and IK and local capacity for LA.

5.4.1 Analysing the dynamics of tenure

The first field study constituted the land tenure diagnosis phase of the study, and aimed to deepen our understanding of the customary tenure systems in the study areas and how these have evolved over time. In this study, emphasis was laid on how land ownership, land-use rights, modes of transferring interest in land, and land-use practices have changed over time. The study also aimed to understand the impact of these changes on the tenure security

of landholders, and how the CTIs have evolved to meet these challenges. The data collection for the tenure diagnosis took place between September 2007 and February 2008.

The primary method used for collecting the case information was a series of in-depth interviews, based on the interview protocol shown in Appendix A. The in-depth interviews were conducted with individuals and focus groups. These in-depth interviews with various interviewees offered sufficient flexibility to allow the reeracher to approach several respondents differently, while still covering the same areas of data collection (Yin, 1994). It gave the interviewees an opportunity to express their opinion, and allowed the researcher to use follow-up questions to deepen his understanding of the subject. In-depth interviews sought the opinions of several groups that have a stake and play diverse roles in customary LA. These include chiefs and elders, family heads, land allocation committee members, community members (indigenes and settlers) and experts from the LSAs in Ghana (see Appendix A, Tables A.1 and A.2).

The focus group interviews involved chiefs and elders, land allocation committees, and the unit committees in the communities. The interviewees offered their observations on the historical evolution of tenure in the communities, highlighting changing aspects of tenure, customary law and tenure institutions. The interviewees also gave their opinion on the reasons behind these observed changes. The focus group interviews were based on semi-structured interview techniques. Ten focus group interviews were held in Japekrom, seven in Tamale and six in Gbawe. Interviews were also conducted with LSAs, namely: the Office of the Administrator of Stool Land (two), the Lands Commission (two), the TCPD (three), the Survey Department (three) and private professional institutions (two), to understand their interaction with CTIs (see Table A.3). The interviews with the LSAs sought their own views on the tenure changes, and were also intended to cross-check the information obtained from the interviews with local community members.

Based on the initial analysis and findings from the in-depth interviews, appropriate questionnaires (open-ended and closed) were designed for the further gathering of quantitative data from a household survey. Four hundred landholders were used for the household survey. The main criterion used to select the households and respondents was that the landholder had to have lived in the customary area for 20 years or more. One-hundred-and-fifty landholders from Japekrom stool, 150 from Tamale skin and 100 from Gbawe-Kwatei family were involved in the household survey. Sixty per cent of the respondents were indigenes and 40% were settlers. The dominant groups of respondents were males (75%) and farmers (48%). The questionnaire was based on four main questions (see Appendix B, Section B.1):

1. What changes can be observed in land tenure systems (land ownership, communal rights, use rights, and modes of transferring interest in land)?

Table 5.1 Governance assessment determinants and questions

Governance dimension	Governance assessment question or determinant
Participation	■ To what extent are community members represented, and how are they involved in the selection of the community's leaders? ■ To what extent are community members involved in decision-making processes with regard to land use and management? ■ What is the level of collaboration and coordination with statutory land agencies and other land professional institutions?
Equity	■ Is land accessible to all community members, men and women alike? ■ Is access to land information and dispute resolution handled in a non-discriminatory manner? ■ Do indigenes and settlers have equal security of tenure? ■ To what extent do CTIs guarantee intergenerational equity?
Transparency	■ How accessible are institutions and land information to community members and the general public? ■ How open is the decision-making process to community members? ■ How clear are customary laws on land delivery to community members?
Accountability	■ To what extent do CTIs report on their stewardship to community members? ■ How adequate is the financial accountability?
Efficiency and effectiveness	■ How clear is the land allocation process? ■ To what extent are conflict resolutions enforced? ■ How adequate are the human resources for land governance? ■ To what extent are customary laws implemented in the land delivery process? ■ How adequate are the mechanisms for providing clear and secure land rights?

2. What changes can be observed in the institutional arrangements for land acquisition and dispute resolution?
3. How do these changes affect security of tenure and the social setting of the community?
4. What are the underlying causes of these changes?

Secondary data source obtained from the literature, government documents, maps and existing research reports on the subject were used to support the analysis.

5.4.2 Assessing good land governance

The second field study aimed to assess the extent to which CTIs meet good governance objectives in LA. The assessment was based on the good governance framework developed in Section 4.3.2. Drawing on the description of the dimensions in the governance assessment framework, relevant questions were put to stakeholders to seek empirical evidence. These questions were centred on the issues summarised in Table 5.1.

The field study was conducted in all three study areas between October 2008 and January 2009. The data in Gbawe were collected by an MSc student who contributed to this research study. As in the first field study, both qualitative and quantitative tools were used to analyse the interactions between CTIs and land users in the land delivery processes. The same data collection tools and interviewees that were described in Section 5.4.1 were used in this analysis. In the qualitative analysis, several in-depth interviews were undertaken with chiefs, elders, family heads, and members of the LACs in the study areas. The in-depth interviews focused on land allocation processes, mechanisms for recording and maintaining land information, land conflict resolu-

tion and enforcement, and how the CTIs deal with tenure insecurity issues. Eight in-depth interviews were held in Japekrom, eight in Tamale and two in Gbawe. Interviews were also conducted with LSAs, namely: the Office of Administrator of Stool Land (three), the Lands Commission (four), the TCPD (two), the Survey Department (three), the LVB (one), the LTR (one), the LAP (one), and professional institutions (two), to understand their interaction with CTIs (Appendix B, Section B.3).

In the quantitative analysis, a household survey was conducted, based on semi-structured interviews and open-ended questions. The household survey was used to obtain information about how the indigenes and settlers in the communities perceive the various aspects of land governance in customary land delivery processes. A detailed outline of the questionnaire is shown in Appendix B, Section B.2. In total, 450 landholders were randomly selected (95% confidence level with error margin of 5%): 170 from Japekrom stool land, 180 from Tamale skin land and 100 from Gbawe-Kwatei family land. Two-hundred-and-fifty (56%) of these were indigenes, 149 (33%) were females and 120 (44%) farmers. It was considered especially important to ask women and farmers about their perceptions, because they are most likely to be victims of bad land governance in customary land delivery.

5.4.3 Assessing indigenous knowledge and local capacity

The third field study aimed to: (1) identify the IK that local communities have on changes in the tenure system; (2) establish whether this knowledge can be represented on maps; and (3) explore how PGIS tools can enhance IK and local capacity for LA. This field study was conducted in two peri-urban communities in Tamale, namely Vittin and Jisonayilli. Due to the non-availability of high-resolution satellite images, it was not possible to carry out the patitipatory mapping (p-mapping) exercise in Japekrom customary area. Although high-resolution satellite images were available for Gbawe, due to the urbanised nature of the community, it was difficult to get people to participate in the p-mapping exercise.

The field study was conducted between September 2008 and January 2009, with the help of a second MSc student. The MSc student conducted the field study in Vittin between September and November 2008. In this field study, the PGIS approach and tools outlined by Rambaldi, Manila, Kyem et al. were used (Rambaldi and Manila, 2003; Rambaldi, Kyem et al., 2006). The main PGIS activities included p-mapping, GPS surveys, training and feedback forums. The p-mapping tools were used to uncover IK on changes in land ownership, use rights and land-use types over the period between 1998 and 2008. They were used to reconstruct and map the tenure situation as of 2008 (the year the study was carried out) and the situation ten years previously (1998), using a high-resolution satellite image. In each community, two focal groups, consist-

ing of elders and younger people and numbering about 20 each, were involved in the p-mapping exercises. The aim of distinguishing between the two groups was to use each group's work to validate the other, and to verify whether IK is transferred through the generations. The GPS survey was used to verify the accuracy of the p-mapping, using selected reference features. At the feedback forums, a large section of the community validated the sketch maps and appraised the entire p-mapping process. A validation workshop with the LSAs was used to validate the maps and the p-mapping approach used. To examine the quality of IK, the maps created by the locals were compared with existing maps. To facilitate easy analysis and appraisal of the PGIS approach, the detailed procedures followed in the study will be presented in Chapter 8.

5.5 Analysis and reporting

5.5.1 Analysis of case study evidence

The analysis phase is the least-developed aspect of case study methodology, and hence the most difficult (Tellis, 1997). Various forms of presenting case study evidence have been suggested: matrices of arrays, flow charts, means and cross tabulations. These should be preceded by an analytical strategy, however. Yin presents two strategies for analysing case studies: relying on and analysing the evidence based on the theoretical preposition of the study; and developing the case description, which is a framework for organising the case study (Yin, 1994; Tellis, 1997).

In Chapters 6 and 7, we will discuss the observations within each case area, across the cases and according to the perceptions of different groups, such as indigenes, settlers, women, men, and farmers. The distinction between the views of indigenes/farmers and settlers is important, because dynamics in customary tenure tend to favour settlers at the expense of indigenous farmers. In addition, indigenous farmers and women tend to be most affected by bad governance. The views from the LSAs and the professional institutions are used to validate the views of the distinct groups. Data from each case need to be analysed separately and compared with other cases. These between-case analyses can be understood as a form of pattern-matching, and the 'pattern-matching' and 'explanation-building' analytical technique (Yin, 1994; p. 33) was therefore used. This analytical technique consists of the examination, categorisation, tabulation and recombination of the evidence, in order to address the questions and propositions under investigation. Qualitative and quantitative analytical procedures were used to present data. For the qualitative methods, descriptive analytical procedures involving critical examinations and explanations of the field study data were are used.

Quantitative data analysis was used to describe the closed and open-end-

ed questions. For the purpose of the data analysis, open-ended answers were subjected to content analysis (Neuendorf, 2002). Content analysis includes a careful examination of the interactions between the elements under investigation. The data was processed using a systematic coding scheme. By coding the data, pieces of information could be put together in a comparable and systematic manner, and arranged according to the various questions. Cross-tabulations were used to represent the answers to closed questions. Cross-tabulations were performed between the various aspects investigated and the respondent's status in the community (indigene or settler) in order to establish whether there was any relationship. Again, the observed relationships were compared with other studies and existing research reports on the subject, as discussed in Chapters 2 and 3.

In the tenure diagnosis, where the aim was to understand trends in tenure, a comparative analysis of present and past tenure situations was undertaken. Data on the current and past situations obtained through interviews and existing documentation were used for the analysis. The interviews included retrospective data – information on how the tenure system used to be in the past. Retrospective data sources are considered to pose difficulties due to the 'remembrance of past' (Henry et al., 1994: pp. 92-93), but existing documents helped us to triangulate the retrospective data.

5.5.2 Case study reporting

In multiple case study research design, there are two levels of reporting: first, the writing of case reports about the cases studied; and second, providing the overall report of the study. Yin (1994), however, points out that it is important to start with 'parts' of the report. The second aspect relates to the reporting of the cases studied in the research project. During the data collection phases, several documents were written. In a similar way, at the end of the data collection phase, draft case reports were written based on all the information available and outlines of the key issues investigated in each case. These allowed us to identify some gaps and, where possible, fill them in the subsequent studies. These reports also served an important role in validating the case study research. In particular, the reports also helped us to further improve and refine the data collection process for the other cases. These reports were presented to different forums for comment.

The case reports and the main results of the study are presented in Chapters 6, 7 and 8. The reports are structured along the lines of the specific research questions investigated during each case study.

5.6 Limitations of the field study

The data collection methods in this study have been applied and used meticulously. These methods proved useful, yet some limitations remain.

First, for all qualitatative researches, the data collection approach based on interviews and focal group discussions represents the views and perceptions of selected groups of community members. Although respondents were carefully selected, their views are based on personal experiences, and may not reflect the views of every community member. The study also relies on experience from and the perspectives of selected groups of experts. Only the views of experts from the formal land sector agencies were sought. The views of many non-governmental agencies, state courts and the local governments involved were not obtained and incorporated into this study. Therefore, this field study lacks an analysis of the views of all stakeholders in customary LA.

The second limitation concerns the language and communication barrier. In Tamale and some parts of Gbawe, the researcher was completely dependent on a translator during the in-depth and household interviews and the coordination of the participatory mapping exercises. The translation of the questions and responses from the respondents' native language into English is likely to have affected the results. A combination of methods – in-depth interviews, focus group discussions and documention – was used as a source of cross-validation of the information recieved from respondents.

The third limitation relates to the PGIS approach. Only one of the customary areas – Tamale – was used for the p-mapping exercise. High-resolution satellite imagery was not available for Japekrom. Although a high-resolution image was available for Gbawe, meanwhile, it proved difficult to encourage people to participate in the p-mapping exercise. Most residents of Gbawe work in central Accra, and were therefore unavailable to participate in the p-mapping exercise. Although two study sites within the Tamale customary area were used as a multiple source of evidence, data limitations restricted the cross-validation of whether the p-mapping exercises could be used in the other customary areas. The results from the p-mappings may not be representative for all three customary areas. Furthermore, it would have been better to organise the validation workshop for the p-mapping exercise in Tamale, where the study had been conducted. However, due to resource limitations and the challenge of representing all of the LSAs, the workshop was held in Accra, which had the necessary facilities and would allow all of the LSAs to be fully represented. As a result, the analysis of the validation workshop may not represent the views of the Tamale LSAs who have personal experiences with the local communities, and on local specific issues in the studied areas.

5.7 Concluding remarks

This chapter has outlined the importance of case study research design to this study. The methods used to collect and analyse the data required to answer the study questions were also elaborated. A case study approach is an appropriate methodology for the empirical investigation, due to the nature of the investigation. Using case study research allowed for the use of multiple methods and procedures to collect data in each case, and to analyse them across the cases. The research was based on multiple cases, in the form of three cases selected to cover the three main tenure groups in Ghana. The field study was intended to collect empirical data on the three issues investigated in the study, including tenure dynamics, good land governance, and IK and local capacity enhancement.

Both qualitative and quantitative data collection methods were used for the study. In the first and second field studies, a qualitative method was used, in the form of in-depth interviews based on a semi-structured questionnaire. This technique was chosen to describe diverse humankind-to-land relationships and assess land governance in customary tenure institutions. The quantitative methods were based on household surveys. In the third field study, PGIS tools were used to assess the usability of IK for LA, and to assess the potential of these tools to enhance local capacity for LA.

The next chapter discusses how the customary tenure systems in peri-urban Ghana have evolved to deal with the changing needs of community members, demographic challenges, urbanisation and legislative influence.

6 Dynamics of customary tenure in peri-urban Ghana

6.1 Introduction

This chapter describes the field study that examined the dynamics of tenure in three peri-urban customary areas in Ghana: Japekrom, Tamale and Gbawe. The aim is to analyse and highlight how customary tenure systems have changed over the years to meet the challenges posed by urbanisation, demographic change, socio-economic and land development changes, and changes to the legal and organisational frameworks for LA. Although there are important differences between the tenure systems in the study areas, especially between the northern and southern Ghana, this chapter highlights some commonalities in the tenure dynamics that support the study's overall argument. The nature and extent of the tenure changes, the factors that brought about these, and their consequences for LA form the core of the presented findings.

Two major aspects of customary tenure dynamics are identified in this chapter: the dynamics of tenure arrangements, discussed in Section 6.2; and the dynamics of institutional arrangements for land delivery, discussed in Section 6.3. In the former, the discussion emphasises changes in the tenure rules, land ownership, land-use rights, land-use patterns and tenure practices, and the mode of transferring rights in land. In the institutional framework for customary land delivery, the discussion centres on how institutions are responding to changing tenure practices and the changing needs of society. It discusses changes in the political structure of chieftaincy institutions, institutional arrangements for land management and the innovations introduced in the land allocation process. The chapter discusses the underlying causes of tenure dynamics in Section 6.4. In Section 6.5, the chapter ends with a discussion of the implications of tenure changes for the design of an alternative LAS for peri-urban areas.

6.2 Dynamics of tenure arrangements

6.2.1 Changing tenure rules and social settings

As discussed in Chapters 2 and 3, customary tenure systems have developed along social lines (Ollenu, 1962). Land tenure practices in customary societies were intended to suppress individualism and encourage the placing of group interests above individual interests. These structures are based on customary rules. It has been argued that the introduction of a market economy leads to changes in tenure rules, particularly those that protect the integrity of the communal and social setting (Larbi, 1994; Cotula and Chauveau, 2007). In the field study, indigenes and settlers in customary areas were asked, 'do you agree that the tenure rules governing the use of land in this customary area

Table 6.1 Perceptions of changes to tenure rules

	Japekrom (stool)		Tamale (skin)		Gbawe (family)	
Response	Indigene (n=90)	Settler (n=60)	Indigene (n=85)	Settler (n=65)	Indigene (n=60)	Settler (n=40)
Strongly agree or agree (%)	64	83	65	68	7	25
Strongly disagree or disagree (%)	36	17	35	32	93	75
Total	**100**	**100**	**100**	**100**	**100**	**100**

Table 6.2 Perceptions of aspects of customary rules that have changed significantly

	Japekrom (stool)		Tamale (skin)		Gbawe (family)	
Response	Indigene (n=90) (Yes)	Settler (n=60) (Yes)	Indigene (n=85) (Yes)	Settler (n=65) (Yes)	Indigene (n=50) (Yes)	Settler (n=50) (Yes)
Access to land (%)	55	68	62	66	53	65
Transfer of land rights (%)	90	89	93	80	93	85
Land-use practices (%)	56	65	65	67	73	65
Dispute resolution (%)	6	3	5	12	3	5

are changing?' (see Table 6.1).

The statistics in Table 6.1 illustrate that with the exception of Gbawe, a significant proportion of indigenes and settlers perceived that the rules governing land tenure are changing. The informants claimed that many aspects of tenure rules had been modified by the customary authorities and community members in response to the current economic demand for land. The LSAs who support this claim argue that many aspects of customary tenure cannot support modern land management.[11] The contrasting response from Gbawe can probably be attributed to a number of prudent land management measures that have been taken by the family. Land has been distributed equally to family members, who can sublease or use it. The proceeds from the leases have been used for the public good.

The indigenous and settler landholders were also asked, 'which aspects of the customary tenure rules have changed significantly?' (see Table 6.2).

Table 6.2 indicates that although a significant proportion of the landholders perceived that the rules governing access to land, land-use practices and dispute resolution have been modified, most respondents from all of the study areas perceived that mainly the rules governing land transfers had been affected. The respondents claimed that the customary rules for transferring land are now unclear and constitute a huge source of tenure insecurity. They claim that the rules on inheritance and succession are becoming more individualistic. In particular, the inheritance rules specifying who inherits land and what portion should be given to the extended family are not being followed. Where pieces of land or proceeds from developed land were once given to the family or community to sustain the lineage, they are now being passed

11 Interview with Regional Stool Lands Officer of Tamale.

on to their own children.[12] Concerning land-use practices, the respondents claim that certain traditional rules and customs that had protected the community and ensured the proper use of land resources are now seen as out-dated. In Japekrom and Tamale, the respondents claim that such tenure practices are being violated because they are perceived as having a negative impact on agricultural productivity.[13] The indigenes and settlers also claim that the rules governing access to land no longer follow the tradition whereby one could access land through the elders of a family, but rather through the main chief of the town.[14]

Changing tenure rules and individualisation have weakened the social bonds of communities, creating social divisions in tenure groups. In the study areas, the intra-family land relationships that govern the way land rights are distributed and managed by the lineages and extended families have been greatly affected. Land held by patrilineal or matrilineal groups has succumbed to increasing fragmentation, and many plots are now too small to generate a reasonable return. Where there is lineage land for agriculture, family members cultivate and invest in this land privately. Individuals provide and restrict the land to their own offspring by writing wills that specify how their property, including their land, should be disposed of after their death.[15] Farmers in Japekrom survey and document their farmlands as a form of security against possible invasion by other family members. The in-depth interviews indicate that in Japekrom and Tamale, chiefs are selling communal land to settlers without the knowledge of community members. On the other hand, community members invest in land that belongs to the entire community so that they can claim it. With the cultivation of cash crops, farming has become more permanent and has entrenched an individual's rights over the land that he/she was the first to cultivate. With no more fallow land, the possibility of land reverting to the community becomes remote (Simpson, 1976).

The observations made on the three customary areas indicate that individual interests are superseding communal interests, creating social divisions. Similar observations concerning changing social settings are reported by Mathieu et al. and Berry (Mathieu et al., 2003; Berry, 2009). Amanor also reports a process of exclusion, deepening social divisions and class formation (Amanor, 2001). This has created tensions between different social groups: between the young and old; indigenous people and settlers; farmers and new investors; and between local actors and those from outside the village (Mathieu et al., 2003).

12 Interview with Gyaasehene of Japekrom, December 2007.

13 Interviews in Basakrom, Japekrom (December 2007) and Vittin, Tamale (January 2008).

14 Interview in Kalpohin, Tamale, November 2007.

15 The person's declaration of their intentions may be in writing or orally.

6.2.2 Changing allodial ownership and use rights

Although the permanent alienation of land is against customary practice (Section 3.4), increasing land development and the rising value of land in these areas have led to some chiefs making a kind of freehold grant, through the sale and gift of land. Until recently, the land gift system was commonly used in all three areas. Under this system, communities give land to individuals or groups who have supported the community in diverse ways, particularly for the construction of schools. Land gifting is benevolent and permanent. Whether they occur between communities and individuals/groups or between friends and relatives, gifts cannot be reversed. In this way, a number of freehold interests have come to exist in customary areas.

With increasing land values, all of the informal transactions and mechanisms whereby settlers could obtain land for farming and building for free, or through tenancies, are being replaced with leasehold. Various forms of leasehold agreements (long- and short-term) can be found in all of the areas studied. Government interventions to regulate and prevent the permanent alienation of customary land have also supported the introduction of leasehold in customary land transactions (Government of Ghana, 1973; 1992). The leasehold is granted either by the holder of the allodial title or by a customary freeholder. The lessee pays for the right to occupy the land, usually with an annual rent, and must respect covenants that specify the manner in which the land is to be used. The duration of the leasehold depends on whether the lessee is a citizen of Ghana or not, and/or the purpose of acquiring the land. While Ghanaians can acquire leasehold interests on residential plots for a maximum period of 99 years, non-Ghanaians have a maximum leasehold period of 50 years. For land acquired for commercial purposes, a maximum leasehold period of 50 years applies to both Ghanaians and non-Ghanaians (Government of Ghana, 1992). Although current customary land allocation processes in all of the areas studied require 'allottees' of customary land to register their land as leasehold, this concept appears to be foreign to some chiefs. Most of the chiefs that were interviewed in Tamale and Japekrom seemed not to understand the concept of leasehold. For example, when these chiefs were asked, 'for how long do you give land to settlers for building and for other development?', the response was, 'when land is allotted to people, it is given to them forever'.[16] The renting of land has also become common practice in peri-urban Tamale. Indigenes and settlers enter into various land rental arrangements, and lease their land for short periods to be used for commercial purposes. Such arrangements are made privately by the parties involved.

16 Interview with Yipel-Naa of Jisonayilli (Tamale) and Kwadwokesekrom (Japekrom).

Table 6.3 Landholders' perceptions of their landholding type

	Japekrom (stool)		Tamale (skin)		Gbawe (family)	
Type of landholding	Indigene (n=90) (Yes)	Settler (n=60) (Yes)	Indigene (n=85) (Yes)	Settler (n=65) (Yes)	Indigene (n=60) (Yes)	Settler (n=40) (Yes)
Use right under communal ownership (%)	48	11	19	11	56	15
Ownership (%)	52	89	81	89	44	85
Total	**100**	**100**	**100**	**100**	**100**	**100**

It is generally assumed that statutory intervention and the high market value of land make land-users exercise full rights of ownership over land. This assumption is supported by the argument that colonial development policies converted 'use' into 'ownership', 'users' into 'owners', and 'rights as persons' into 'rights to specific pieces of land' (Pottier, 2005: p. 60). The indigenes and settlers in the three customary areas were asked, 'what rights do you hold in your land: use rights under communal ownership or ownership?' (see Table 6.3)

Table 6.3 shows that most respondents who hold use rights perceived their landholding to be a form of ownership. These respondents thought that the principle of communal ownership applied to farmland and public places. Many indigenes in Japekrom are subsistence farmers who cultivate communal lands, and therefore perceive their farmland to be a community resource. This explains why a significant proportion (48%) of the indigenes in Japekrom, are of the opinion that their landholding is a use right. In Gbawe, meanwhile, the enforcement of customary rules explains why 56% of indigenes perceive their landholdings as use rights under communal ownership. The large sums of money (between GH¢1000-GH¢1500)/hectare)[17] paid by landholders to allodial owners as 'drink money'[18] for a plot of land may also account for the landholders' general perception that they have ownership rights. This sum is equivalent to the market value of the land and therefore makes it difficult to draw a distinction between a sale and this form of transaction (Kasanga et al., 1996).

6.2.3 Changing usufructuary rights

The current status of usufructuary rights

As discussed in Chapters 2 and 3, members of customary groups enjoy usufructuary rights, which allow them to freely develop any virgin land or enter any vacant land without necessarily seeking the consent of the allodial titleholder. In the pre-colonial era, the usufructuary estate-holders' rights of use were secure, and their rights were only terminable upon abandonment or forfeiture (Ollenu, 1962). Indigenes were secure in their usufructuary rights because these rights of occupation and use were recognised by the community (Section 2.2). In all of the areas studied, there is no longer any unoccupied

17 The exchange rate in December 2007 was 1 USD = Gh¢0.93.

18 The offering of 'drink money' to traditional authorities is an established Ghanaian tradition. Drink money is customarily offered to all traditional authorities throughout the country as a form of courtesy.

Table 6.4 Payment for the land acquired

	Japekrom (stool)		Tamale (skin)		Gbawe (family)	
Response	Indigene (n=90)	Settler (n=60)	Indigene (n=85)	Settler (n=65)	Indigene (n=60)	Settler (n=40)
Yes (%)	32	86	59	100	12	96
No (%)	68	14	41	0	88	4
Total	**100**	**100**	**100**	**100**	**100**	**100**

virgin land because all land has now been appropriated by families who own the usufructuary estate; and even if there is, group members can no longer appropriate it without approval of chiefs, and in some cases, Local Government Authorities. As a consequence, usufructuary rights and their benefits have been curtailed. In Japekrom and Tamale, some indigenous members indicated that they have to go through the same acquisition process as settlers, or pay for the land acquired if they wish to protect their rights. Both indigenous and settler landholders were asked, 'did you pay for the land you hold?' (see Table 6.4)

Table 6.4 shows that a significant proportion of indigenous landholders in Japekrom and Tamale indicated that, they had paid for their land. However, most of the indigenes indicated that they had paid fees that were lower than those paid by settlers. In Gbawe, indigenes only pay for the cost of surveying and preparing the site plan for the acquired land.

Tenure security of usufructuary rights

As discussed in Chapter 3, the reasons for the insecurity of usufructuary rights in peri-urban customary areas are many, and the issue has been discussed extensively in the literature (Alden Wily and Hammond, 2001; Abudulai, 2002). The loss of indigenous farmland to residential use is a major source of insecurity (Ubink, 2008a). This study therefore examined the extent to which indigenous members of the community face tenure insecurity by investigating the incidence of forced evictions. Indigenes were asked, 'have you or any of your close relations been evicted from your land?' (see Table 6.5)

The statistics in Table 6.5 show that a significant proportion of the indigenes studied, or their close relatives, have been evicted from their land. Most of the indigenes that were forcibly evicted from their lands in Japekrom and Tamale are indigenous farmers, whose farmlands were converted for residential land use. In Gbawe, most indigenes lost their land as a result of compulsory acquisition by the state. As a result, these farmers use all sorts of mechanisms to protect their interests. For example, some indigenous members of Japekrom privately survey and even register their farmland at the Deeds Registry, without the knowledge of the committee responsible for land allocation[19]. One consequence of the diminishing tenure security of usufructuary rights has been disputes between indigenous farmers/families and chiefs. Usually these disputes revolve around who has the right to dispose of the land on which the indigenes have been farming. An example of such a dispute is a case that went before the High Court in Sunyani, in which an indi-

19 Interview, Gyaasehene of Japekrom, December 2007.

Table 6.5 Eviction of indigenous members of the community and payment of compensation

	Japekrom (stool)		Tamale (skin)		Gbawe (family)	
Response	Absolute (n=90)	%	Absolute (n=85)	%	Absolute (n=60)	%
Yes	38	42	32	38	38	63
No	52	58	53	62	22	37
Total	**90**	**100**	**85**	**100**	**60**	**100**

Table 6.6 Right to transfer interests in land

	Japekrom (stool)		Tamale (skin)		Gbawe (family)	
Land transfer	Indigene (n=90) (Yes)	Settler (n=60) (Yes)	Indigene (n=85) (Yes)	Settler (n=65) (Yes)	Indigene (n=60) (Yes)	Settler (n=40) (Yes)
Sale (%)	76	86	82	86	47	100
Inheritance (to own offspring) (%)	81	86	96	98	100	100
Gift (%)	78	88	88	90	44	98
Tenancy (%)	83	87	82	87	83	80
Customary mortgage (%)	78	87	86	91	66	100
Land-pledging (%)	76	82	87	84	68	98

gene from Japekrom asked the court to prevent the paramount chief from imposing a customary punishment on him after he had disposed of his farmland to settlers for residential use without the chief's consent[20].

6.2.4 Changing modes of transferring interest in land

Traditionally, the mode of transferring land rights to community members have been gifting, inheritance and pledging (Sections 3.4 and 5.3). Land rights could also be transferred to non-members of a lineage through gifting, renting, sharecropping contracts (tenancies), customary mortgaging and land pledging. The right to transfer land using any of these mechanisms is rooted in local tradition and customary law, and reflects any given area's socio-economic situation. The shift from traditional to market land values and the increasing commoditisation of land have led to land users violating these customary restrictions. Landholders were asked, 'do you have the right to sell, gift, lease or mortgage your interests in land?' (see Table 6.6)

Table 6.6 suggests that most landholders perceive that they can transfer their land free of any restriction through sale, leaving it to offspring (inheritance), land gifting, tenancy, customary mortgage and pledging. This clearly indicates that the traditional notion of land being 'an unbounded resource to be used, and not as a commodity to be sold or alienated' (Pottier, 2005: p. 57), is no longer relevant. In Japekrom, for instance, the paramount chief complained bitterly about the haphazard sale of customary land. Indigenes of Japekrom prepare site plans for their farmlands, subdivide and sell them, without the consent of the chief or anybody in the family.[21] One settler in Tamale voiced what is a typical view of his interest in the acquired land: 'I

20 Interview, Gyaasehene of Japekrom, December 2007.

21 Interview, Japekrom, December 2007.

have properly acquired the land from the chief, and the necessary customary obligations and rites have been performed. This land is therefore my bona fide property. I can sell or transfer my right to anybody if I so wish'.[22]

This finding conflicts with Bugri's (2008) findings from Northern Ghana, where farmers confirmed that there were restrictions on their right to sell their land. This difference in findings might be explained by the fact that a significant proportion of respondents in this study had acquired their land for residential purposes. These landholders pay huge sums of money as 'drink money', and therefore generally assume complete legal power over their land. By contrast, strict adherence to customary rules governing land transfers in Gbawe might account for why 47% indigenes perceive that they have the right to sell their land.

Some of the changes observed in modes of transferring rights are also based on personal decisions by landholders. Although the respondents acknowledged that there are no restrictions on land pledging and customary mortgages, they mentioned that the possibility of acquiring credit from microfinance institutions no longer make land pledging and customary mortgages worthwhile.[23] Another reason why landowners prefer not to take out customary mortgages is that they often lead to contractual disagreements and conflicts. A significant proportion of landholders in all of the areas studied perceived that there are no restrictions transferring their land rights to their own children (via inheritance). Landholders use the intestate succession law (PNDCL 111) to back this claim. This law allows the children of a deceased parent to benefit from his assets. In this case, landholders were unable to distinguish between private individual property and family property.

6.2.5 Changing land values and land-use patterns

As discussed in Section 2.2, prior to colonisation, customary land was valued for its religious, political and social significance, but not for its economic value. From a religious perspective, land transcends the material realm and assumes a spiritual nature as the final resting place of one's ancestors (Ezigbalike et al., 1995). The possession of land was a source of prestige and social power. It was also believed that the more land a tribe had, the greater its strength. Indigenous land-use management practices were strictly based on these concepts. It has been argued that when customary land is commercialised, it loses its communal and social value (Larbi et al., 2004). In this regard, the study has attempted to investigate whether the ways in which land is valued by indigenes has changed. Indigenous landholders were asked, 'how do

22 Interview, Jisonayilli, January 2007.

23 Interview, Japekrom, December 2007.

Table 6.7 Ways in which indigenes value customary land

	Japekrom (stool)		Tamale (skin)		Gbawe (family)	
	Absolute (n=90)		Absolute (n=85)		Absolute (n=60)	
Land value (significance)	Yes	%	Yes	%	Yes	%
Spiritual or religious	38	42	37	44	28	47
Political	47	52	48	56	28	47
Social or communal	30	33	35	41	50	83
Economic	79	88	76	89	56	93

you value customary land today?' (see Table 6.7).

Table 6.7 shows that indigenes in all of the areas studied valued land more in terms of its economic significance than in terms of its spiritual or religious, political, or social and communal significance. It is possible that the interventions made by the Gbawe family to sustain traditional social and communal values account for the opinion of the indigenes surveyed (83%). This change in traditional conceptions of land can be explained by the introduction of economic concepts of land as a result of colonisation (Obioha, 2008).

The field study also revealed significant changes in indigenous land-use practices and land-use patterns in the three areas. Subsistence farming based on food cropping, which used to be the main source of livelihood for many people, has been replaced by cash cropping. Agricultural lands have been transformed for residential use. The change of land use from agriculture to residential is also well observed in the the findings of the Institute of Social Statistics and Economic Research (ISSER) household land survey, which indicates that in peri-urban areas in Ghana, land is increasingly being converted from agriculture to residential use, at an average rate of about 55% per annum (ISSER, 2005). As a result, farmers have to travel long distances to farm, a situation that has affected the livelihoods of many people. Unlike in pre-colonial times, when family heads could allocate lands to strangers to farm, it is now obligatory that all land use, including land for farming, is approved by the village chief, and sometimes by the paramount chief. Statutory institutions have also placed restrictions on land use, including land for farming.[24]

6.3 Dynamics of the institutional arrangements of customary tenure

6.3.1 Erosion of traditional political authority

The political structure of customary institutions in the areas studied is based on kinship. Each lineage is a political unit with its own headman, who represents the lineage at a higher council (see Section 5.3). At each level of the hierarchy, the headman is morally and customarily responsible for planning

24 Land use is restricted by regulations on building, farming, subdivision and the environment. According to the respondents, they are now prevented from farming in certain areas and even from erecting particular kinds of structures in certain places. They are also not permitted to start building within a number of years after land has been allocated to them (interview with Gyaasetse, Gbawe-Kwatei family).

and land management, defence, law and order, maintenance of amicable relations within the group and the maintenance of adequate communications between the ancestors and the living (Section 2.2). These responsibilities created close household units, allowing the head to easily and quickly solve any problems that may arise between them. Traditional custodians-chiefs and family heads–therefore had dual lineage roles: those of political leader and land manager.

New forms of governing customary land have eroded the political authority of the chief.[25] As discussed in Chapter 3, various laws have been introduced to control chiefs' powers over land. Some legislation has divided the administration of customary land between the government and traditional custodians (see Section 3.5). For example, the local government system has curtailed chiefs' administrative power, and now they have to liaise with local government authorities in order to plan and administer their communities. The only power that the chiefs have held on to is that of the possession of and allocation of land and other property of the customary area, as defined by the Chieftaincy Act (1971).

6.3.2 Innovation in the institutional arrangements of customary land delivery

In spite of the erosion of traditional political authority, recent developments in the areas studied point to innovation in the institutional arrangements of customary land management. These represent an attempt by the traditional authorities to reaffirm their control over their territories and resources. In all three areas, traditional authorities have set up structures for improving land management activities, including creating new procedures for acquiring land, resolving conflicts, recording land transactions and information, and strengthening chieftaincy institutions. The innovations in the institutional arrangements observed in the three areas studied are discussed below.

Land acquisition processes

In the past, when land was in abundance, indigenes acquired land by means of appropriation: they had the right to farm vacant land of any size that belonged to the family. However, in order to avoid clashes with individuals who already occupied the land, it became necessary for indigenes and settlers to ask for express grants of land from the head of the family. When land became scarce and the economic value of land increased, all land allocations, including land for development and farming, had to pass not only through the vil-

25 The statutory arrangements have given chiefs more power over the usufructs (Alden Wily and Hammond, 2001).

lage chief, but also the paramount chief, who gave their final approval.

In the modern land acquisition processes, communities rely on the services of surveyors and other professionals for land allocation, which is carried out using private arrangements. Allocations are based on land-use planning schemes (rudimentary or statutorily approved).[26] In all three areas, local land management committees have been established that have clearly defined roles (see Section 5.3). Such an arrangement dissociates the political role of chiefs from their land-related roles, both of which were previously handled by chiefs (stool/family lands) and family heads (family lands).

The new procedures for allocating land that have emerged in all of the areas studied require both indigenes and settlers to apply for land using specially-designed application forms that specify the applicant's personal details, the amount of land required and the intended use (see Appendix C, Figure C.2).[27] In all three areas, allocations for residential plots are based on well-designed layouts. The cadastral plans issued to allottees are endorsed by the head of the customary areas. The use of an 'allocation note', which is a one-page document indicating that a piece of land has been allocated by the chief, has become common practice. The allocation note contains the terms in the contract agreed by the allodial owner and the land user. In some customary areas, the allocation note commits the person to whom land has been allocated to commence development of the land within a specified period and to pay annual ground rent. The allocation note also contains the provision that non-observance of the conditions stipulated in the contract could lead to the land being re-possessed by the grantor. The allocation note is signed by the chief (in the case of Japekrom and Tamale) or the family head (Gbawe). The allocation note is subsequently used by landholders during the land registration process. In our study, indigenous and settler landholders were asked, 'does the allocation note offer you a proof of title and enough tenure security?' (see Table 6.8).

Table 6.8 shows that both indigenes and settlers in the three study areas were of the opinion that the allocation note does serve as a proof of title to the acquired land, and offers them enough tenure security. Nevertheless, a significant proportion of settlers are of the opinion that the allocation note does not offer them enough security to guarantee their titles. These settlers claimed that their titles are only guaranteed when the land has been regis-

26 Land-use planning schemes are prepared by village chiefs, who either act alone or in collaboration with the DA. Even in rural areas, chiefs employ rudimentary means to prepare land-use plans. Sometimes land allocations start before land-use planning schemes have been approved.

27 The information on the forms is vetted and approved by the LACs before land is allocated. In some communities, two forms are used: the first form is vetted by the LAC, which makes recommendations to the paramount chief before the second form is issued.

Table 6.8 The allocation note as a proof of title

	Japekrom (stool)		Tamale (skin)		Gbawe (family)	
Response	Indigene (n=90)	Settler (n=60)	Indigene (n=85)	Settler (n=65)	Indigene (n=60)	Settler (n=40)
Yes (%)	75	65	85	63	87	50
No (%)	10	26	5	32	10	40
Don't know (%)	15	9	10	5	3	10
Total	**100**	**100**	**100**	**100**	**100**	**100**

tered in the statutory system.[28] The respondents also argued that their inability to use allocation notes as guarantees to secure loans is a limitation.

The writing and recording of land transactions

Although most land transactions in rural customary areas (where people do not need documentation to guarantee their interests) continued to be oral, the desire of landholders to secure credit from financial institutions that require well-documented information has led to more customary land transactions being written down. Spurred by the laws such as the Conveyancing Decree (1973) (NRCD, 175), which requires the transfer of any interest in land to be recorded in writing and signed by the parties involved, the writing of land transactions has spread to all customary areas. Interviews with respondents in the areas studied indicate that what were previously oral wills and pledges, have also become written transactions.

Conflict resolution mechanisms

Conflicts over customary land in the three areas occur at various levels: between landusers, allodial titleholders, and in some cases, between landusers and allodial titleholders. The most common forms of land conflicts are those of 'indeterminate boundary' and the 'double allocation' of plots.[29] Whatever form of conflict occurs in a customary area, it is the responsibility of the CTIs to exercise their judicial role through indigenous conflict resolution mechanisms. As discussed in Chapter 2, these mechanisms are rooted in African culture and history, and are in certain respects unique to each community. The customary courts rely on the goodwill of society to secure compliance. The process involves mediation and arbitration, based on customary law and local knowledge. The parties to the conflict are summoned to a common platform (in the presence of the chief and in the field) to testify to solve the conflict amicably. Nowadays, in areas like Japekrom, land surveyors are called upon to conduct surveys for arbitration, and to demarcate when the conflict has been resolved. Allocation notes have also been used as tools for solving land conflicts (Interview with the Administrator, Gbawe-Kwatei Family Customary Land Secretariat).

Proliferation of literate and educated chiefs

As discussed in Chapters 2 and 3, the primary form of customary landhold-

28 Interviews with settler respondents in Gbawe and Tamale.

29 Indeterminate boundary' refers to uncertainty surrounding the boundary of a parcel of land. Sometimes, the same piece of land is intentionally or unintentionally allocated to two or more people.

ing is the family – the basic unit in a society based on lineage. Lineage determines local identity, individual status, the inheritance of wealth and political office, and even basic relations within communities. Chiefs are elected within a lineage. The basic requirements for electing a chief include good character, knowledge of the relevant customs and the candidate's acceptance by the entire community. The chief should have no disability that can hinder him to effectively carry out his work. However, a modern chief needs to have other qualities, and being educated is important. As customary authorities have to liaise with statutory institutions, it is a matter of practical necessity that chiefs are able to read and write. Recently, people from outside the royal family have been appointed chiefs, with the intention of tapping their knowledge, skills or resources for the benefit of the community.[30] In many communities, one finds sub-chiefs appointed to perform certain tasks in a community, which was rarely the case in the pre-colonial era. For example, the Nkosuohene (development chief) is a title created to honour someone who is not a member of a royal family, but who has been made responsible for the development of a region.

6.4 Perceptions of the possible causes of tenure dynamics

Chapter 2 argued that demographic, economic, institutional and social drivers are responsible for changes in tenure relations in peri-urban areas. Factors such as urbanisation, increasing demand of land for housing (economic factors), colonisation and statutory interventions, the adoption of Christianity and Islam (as opposed to traditional African religions) and the flexibility of customary law have been highlighted as major underlying causes. Another factor that emerged from the in-depth interviews is the proliferation of literate and educated chiefs. The impacts of each of these factors varies, depending on the nature of the land development activities taking place in urban settings. For this study, landholders were asked, 'which of the following are the major factors underlying tenure changes in this area?' (see Table 6.9).

Table 6.9 shows that in all three areas, landholders perceived population growth, the increasing demand for land and the proximity of a settlement to an urban setting as the major factors underlying land tenure dynamics. Colonisation and statutory interventions were also perceived to be a major cause. Although the landholders perceived the dynamics to have been caused by the proliferation of literate and educated chiefs, and religion (Christianity and Islam), in their opinion, the impact of these factors has not been as pro-

30 Interview with Bottin-Naa, Jisonayilli, Tamale, January 2008.

Table 6.9 Perceptions of the possible causes of land tenure dynamics

	Japekrom (stool)		Tamale (skin)		Gbawe (family)	
	Absolute (n=150)		Absolute (n=150)		Absolute (n=100)	
Factor	Yes	%	Yes	%	Yes	%
Population growth	142	65	132	88	98	49
Increasing demand for land	144	66	124	83	88	44
Proximity to an urban setting (urbanisation)	146	66	123	82	96	48
Colonisation and statutory intervention	93	43	105	70	65	32
Religion (Christianity and Islam)	81	35	106	71	53	16
Flexibility of customary law	63	29	72	48	36	18
Proliferation of educated chiefs	45	21	117	78	24	12

nounced as that of other factors. For example, respondents from Gbawe and Japekrom were uncertain as to whether religion has had a major impact on tenure dynamics. However, 71% of respondents from Tamale perceived religion to be a major underlying tenure dynamics. The introduction of Christianity and Islam has pushed out traditional customary practices and sanctions, which are considered old-fashioned and unworkable.[31] For example, it is difficult to separate the Dagbon tenure system from Islamic doctrine, as is shown by the fact that women have been prevented from becoming involved in land issues. Also, 78% of respondents from Tamale perceived proliferation of literate and educated chiefs as a factor. These landholders argued that it contradicts customary law to select a chief on the grounds of education. They complained that these educated custodians 'sometimes modify some of the indigenous tenure regulations to bring them into line with modern times'[32].

6.5 Concluding remarks

This chapter aimed to analyse and highlight how customary tenure systems in Ghana have changed in response to urbanisation, demographic change, socio-economic pressures, and statutory interventions for administering land. The analysis of tenure focused primarily on the developments taking place in peri-urban Ghana. The analysis shows that customary tenure systems are indeed dynamic, and that the extent of the changes depends on the economic, social and spiritual significance of land at any given time. Although there are variations in the extent of change across the three study areas, the general trend shows changes in land ownership, land-use rights, modes of transferring interest in land, value attached to land and land use practices.

Customary land practices are becoming increasingly individualised and commercialised. There has been a major shift towards the outright sale of land and land leasing for cash. A number of transformations in tenure rules support these new forms of tenure and the individualisation and commercialisation of customary land rights. Tenure rules that previously prevented complete alienation and protected families within customary groups are

31 Interview with Bottin-Naa, Vittin, Tamale, January 2008.

32 Interview in Jisonayilli, December 2007.

being modified in line with individualist and commercial agendas. Communal rights are being changed to individual rights, while land-use rights are being replaced with ownership. Restrictions on the transfer of customary land rights are being violated for economic reasons. These transformations have also been observed in previous research studies (Juul and Lund, 2002; Cotula, 2007; Obioha, 2008), which indicate a transition from community-based arrangements to individualised tenure arrangements.

The results also confirm earlier findings in literature, as discussed in Section 2.2.2, which show that the evolution of tenure relations over the years has been associated with new trends and problems that constrain socio-economic development in peri-urban areas. These problems are usually related to tenure insecurity and land conflicts, and include evictions, loss of usufructuary rights, injustices, loss of stewardship on the part of customary authorities, the manipulation of customary law, inter-family conflicts and struggles for land among the members of landowning groups (Cotula, 2007; Amanor, 2008; Ubink, 2008a). In particular, usufructuary rights to customary land are not guaranteed under the current land development framework.

More importantly, however, this study observed that the institutional arrangements for customary land delivery are dynamic. The flexibility in the customary tenure system has allowed CTIs to introduce several innovations in the institutional arrangements for land allocation and the political chieftaincy institutions. These innovations in the CTIs occurred in response to the changing needs of their communities, and represent the CTIs' attempt to re-assert control over their land resources. Oral transactions in customary land management are being replaced with written documentation. The use of professionals in land allocations and dispute resolution processes can be observed in all of the customary areas.

The new challenges that are emerging can only be met using innovative systems, backed by an enhanced range of skills and institutions for undertaking LA activities. Over the years, customary tenure systems have developed their own ways of adapting to these changing demands. The innovations that have been introduced in customary land delivery could be a starting point for finding appropriate LASs for customary areas. In the next chapter, the field study seeks to investigate whether customary tenure institutions can meet good governance objectives in LA.

7 Customary tenure institutions and good land governance in peri-urban Ghana

7.1 Introduction

As discussed in Chapter 2, current trends in debates on secure land tenure and formalisation strategies indicate that customary tenure systems present the best option for accountable, low-cost and decentralised LA. However, Chapters 2, 3 and 6 show that customary tenure systems are dynamic and are usually influenced by demographic and socio-economic changes, urbanisation, land developments and statutory interventions. Although the dynamics of tenure have led CTIs to innovate in the customary land delivery process (Section 6.3.2), the changes put tenure institutions under considerable strain. Consequently, customary land management is often marked by abuse of power, land grabbing, conflicts, evictions, tenure insecurity and a lack of accountability (see Section 2.2.2, Section 2.3.6 and Section 6.2.3). These observations raise the question as to how CTIs perform with regard to indicators of good land governance.

This chapter presents the results of a field study that assessed the extent to which CTIs in peri-urban areas meet good governance objectives in LA. CTIs are used to describe a system of indigenous authority that is made up of chiefs, councils of elders and steering committees, which are responsible for regulating access to land, managing conflicts and maintaining land records. The assessment is based on the interaction between CTIs, community members and statutory institutions. The five good governance dimensions developed in Section 5.4 were used to assess good land governance in three peri-urban areas in Ghana, namely Japekrom, Tamale and Gbawe. The results of the study are presented in Section 7.2. The results are based on the questions outlined in Table 5.1, and are presented in the context of the five particular dimensions: participation, equity, transparency, accountability, and efficiency and effectiveness. Section 7.3 discusses the findings in each of the governance dimensions within each case and across all of the cases. Section 7.4 draws conclusions on the governance assessment in the three customary areas, and highlights a number of measures that might be taken to improve governance in customary land management.

7.2 Good land governance assessment

7.2.1 Participation

This study addresses participation in terms of how community members are represented, the extent of their involvement in the selection of community

Table 7.1 Community members' involvement in the selection of leaders

	Japekrom (stool)		Tamale (skin)		Gbawe (family)	
Community leadership	**Indigene**	**Settler**	**Indigene**	**Settler**	**Indigene**	**Settler**
Chiefs/Family heads	P	N	N	N	P	N
Council of elders	N	N	N	N	N	N
Land Committees	P	P	N	N	P	P
Local Council members	S	S	S	S	S	S

S = significantly involved, P = partially involved and N = not involved

leaders, land allocation, dispute resolution and other decision-making processes. The research also addresses the level of the CTIs' collaboration and coordination with government land agencies, as well as with other professionals in the land delivery process.

Representation of members in tenure institutions

As described in Section 5.3, the CTIs in the areas studied are composed of chiefs, councils of elders and steering committees, which facilitate the various aspects of land governance. Although some common features are to be found across all of the institutions, each steering committee is different, having been set up in accordance with the needs and aspirations of each landowning group. In Tamale area, a few people from the royal family (mostly people close to the sitting chief) manage the land delivery process. However, in Japekrom and Gbawe, the land management activities are controlled by land committees that have clearly-defined roles (Sections 5.3.1 and 5.3.3.). These land committees serve as links between the CTIs and the general public.

In all of the areas studied, the sub-families constituting the landowning groups are fairly represented in the chieftaincy institutions and steering committees. Women are fairly represented in the institutional structure of Japekrom and Gbawe (see Section 5.3.). For example, the secretary of the LNRC of Japekrom is a woman.[33] In Tamale area, however, there is no female representation in the committee or council of elders, because customary practices do not allow women to play an active role in land governance.

To further investigate the issue of representation, the respondents were asked whether they had a say in who should represent them at the various organisational levels. Indigenes and settlers were asked, 'to what extent are community members involved in the selection of community leaders?' (see Table 7.1).

Table 7.1 indicates that community members' involvement in the selection of community leaders varies among indigenes and settlers across the study areas. Chiefs, family heads and councils of elders are elected according to custom (mainly through kinship – see Section 5.3), and therefore their selection is restricted to kingmakers. Nevertheless, the nominations of chiefs in Japekrom and the family head of Gbawe have to be endorsed by indigenes, particularly those from 'royal families', hence the partial involvement. In a similar way, all community members (indigenes and settlers) in Japekrom and Gbawe are required to endorse the members of the Land Com-

33 Interview with the Chairman, LNRC of Japekrom.

Table 7.2 Community members' participation in decision-making

	Japekrom (stool)		Tamale (skin)		Gbawe (family)	
Response	**Indigene (n=90)**	**Settler (n=60)**	**Indigene (n=85)**	**Settler (n=65)**	**Indigene (n=60)**	**Settler (n=40)**
Use of community resources						
Significantly involved (%)	66	59	22	0	37	38
Partially involved (%)	32	20	37	39	54	40
Not involved (%)	2	21	41	61	9	22
Subtotal	**100**	**100**	**100**	**100**	**100**	**100**
Land allocation						
Significantly involved (%)	5	0	2	0	7	0
Partially involved (%)	19	13	5	1	28	35
Not involved (%)	76	87	93	99	65	65
Subtotal	**100**	**100**	**100**	**100**	**100**	**100**
Dispute resolution						
Significantly involved (%)	2	3	2	0	12	0
Partially involved (%)	14	8	10	1	14	9
Not involved (%)	84	89	88	99	74	91
Subtotal	**100**	**100**	**100**	**100**	**100**	**100**

mittees, who are usually nominated by the chiefs and elders, hence the partial involvement. In Tamale area, however, community members do not play any active role in the appointment of chiefs and land committee members. The members of the local councils who are representatives of the communities in the Town and Area Councils and DAs (see Section 3.5.3) are elected in national elections, hence the significant involvement of community members in their selection.

Community members' participation in decision-making processes

As in all customary systems, all decisions concerning the use of land in all of the areas studied are vested in CTIs. The CTIs are responsible for taking decisions on who should use which land, and what land resources should be used for what purposes. In all of the areas studied, regular and ad hoc meetings take place in which the chieftaincy and the steering committees take stock of their activities and make decisions. These meetings are held at least once every fortnight, or whenever the need arises.[34] There are structures that allow community members to contribute to the decision-making processes, either through their representatives, any other member on the committee, or the chief/family head. In addition, the annual general meetings/assemblies provide opportunities for community members to contribute to decision-making processes.

Indigenes and settlers were asked, 'to what extent are community members involved in decision-making on the use of community resources, land allocation and dispute resolution?' (see Table 7.2).

Table 7.2 shows divergent views among the indigenes and settlers from the three areas concerning the involvement of community members in decision-making on the use of community resources. About 66% of indigenes and 59% of settlers in Japekrom perceived that community members are significantly involved in decision-making on the use of community resources. Only 22%

34 Interview with the Abusuapanin of Japekrom, chief of Vittin and chief linguist of Gbawe-Kwatei family.

of indigenes in Tamale and fewer than 40% of respondents in Gbawe had the same view. Nevertheless, a significant proportion of respondents across all three areas were of the view that community members are partially involved in decision-making on the use of community resources. Significant proportions of respondents in Tamale (41% of indigenes and 61%settlers) perceived that community members are not involved in decision-making on the use of community resources. The results also show that more respondents perceived that community members are not involved in land allocation and dispute resolution processes, which are restricted to the committee members who perform these tasks. The significant partial involvement of community members in allocation and dispute resolution in Gbawe and Japekrom is partly explained by the structures of the customary land secretariat (Gbawe) and the LNRC (Japekrom), which allow community members to suggest or provide input into the decision-making process.

Collaboration with LSAs and other professional institutions

The involvement of LSAs and professional organisations is generally based on collaboration, and differs across the areas studied. Whereas some institutions are mandated by law to collaborate with CTIs on land management, others are involved via private arrangements. For example, the Acts that established the OASL (Act 481) and the LC (Act 143) allow these organisations to act in an advisory capacity with respect to the use of stool and skin lands (see Sections 3.5.2 and 3.5.3). At present, however, these two agencies do not have any formal responsibilities relating to the management of family lands, and their involvement is based on private arrangements. Japekrom and Gbawe rely on the services of private surveyors and planners, who prepare base maps and land-use maps. These maps are usually approved by the Survey Department and the TCPD. In Tamale, surveying and planning are executed by state institutions. In general, the LSAs and other private institutions are not directly involved in customary land allocation processes. Their involvement is purely advisory, with the exception of those private surveyors who provide technical services.

7.2.2 Equity

With regard to equity, the field study investigated whether CTIs ensure that all community members (male and female) have equal access to land. It also assessed whether or not access to land information, distribution, the utilisation of community resources, and dispute resolution are handled in a non-discriminatory manner, and examined the extent to which CTIs provide equal security of tenure to indigenes and settlers. Measures taken to ensure that future generations have equal access to land were also examined.

Table 7.3 Community members and equal access to land

	Japekrom (stool)		Tamale (skin)		Gbawe (family)	
Response	Indigene (n=90)	Settler (n=80)	Indigene (n=110)	Settler (n=70)	Indigene (n=50)	Settler (n=50)
Strongly agree or agree (%)	94	91	54	59	84	89
Neither agree nor disagree (%)	6	9	43	30	14	7
Disagree or strongly disagree (%)	0	0	3	11	2	4
Total	**100**	**100**	**100**	**100**	**100**	**100**

Table 7.4 Equal access to land by gender

	Japekrom (stool)		Tamale (skin)		Gbawe (family)	
Response	Indigene (n=50)	Settler (n=40)	Indigene (n=85)	Settler (n=25)	Indigene (n=30)	Settler (n=20)
Strongly agree or agree (%)	94	88	52	45	79	69
Neither agree nor disagree (%)	4	9	12	11	14	20
Disagree or strongly disagree (%)	2	3	36	44	7	11
Total	**100**	**100**	**100**	**100**	**100**	**100**

Community members and land access

Land in the areas studied belongs to the sub-families that make up the land-holding group. In essence, access to land is a right, and is inheritable along the family line. Individual members invariably have access to a plot of land from their leaders. Equitable access to land has become an issue of major debate in customary tenure systems (Ikejiofor, 2006; Amanor, 2009). Indigenes and settlers were asked, 'do you agree or disagree with the statement that "in reality, all community members have equal access to land"?' (see Table 7.3).

It is clear from Table 7.3 that with the exception of Tamale, the indigenes and settlers were of the opinion that all community members have equal access to land. Although all members of communities have equal access to land, land is not equally distributed among community members.[35] Whereas land for farming can be equally accessed by all community members, the same cannot be said of land for housing. Land for farming is distributed among sub-families, whose leaders ensure that group members receive their share. The quantity of land one can access depends on family size and the amount of land owned and controlled by the subgroup.[36] In general, when land changes from farming to residential use, it falls under the control of the community leaders and may be treated as a 'negotiable instrument'. According to a respondent in Tamale, 'such lands are allocated to those who can afford to pay for the land. Indigenes may have to apply for such land, just like settlers'.

Indigenous members of the customary areas were also asked if women and men have equal access to land. The result is presented in terms of gender (see Table 7.4).

Table 7.4 suggests that with the exception of Tamale, indigenous male and female respondents were of the opinion that men and women have

35 Interview with the Gyaasehene of Japekrom, December 2008.

36 Interview with the Ankobeahene of Japekrom, December 2008.

Table 7.5 Equal access to information and dispute resolution

	Japekrom (stool)		Tamale (skin)		Gbawe (family)	
Response	**Indigene (n=90)**	**Settler (n=80)**	**Indigene (n=110)**	**Settler (n=70)**	**Indigene (n=50)**	**Settler (n=50)**
Access to information						
Strongly agree or agree (%)	98	87	58	49	86	94
Neither agree nor disagree (%)	2	5	15	36	6	0
Disagree or strongly disagree (%)	2	8	27	15	8	6
Subtotal	**100**	**100**	**100**	**100**	**100**	**100**
Dispute resolution						
Strongly agree or agree (%)	84	79	52	55	78	77
Neither agree nor disagree (%)	9	15	17	23	13	11
Disagree or strongly disagree (%)	7	6	31	22	9	12
Subtotal	**100**	**100**	**100**	**100**	**100**	**100**

equal access to land. Japekrom's matrilineal inheritance system (see Section 5.3.1) gives men and women access to land. Although the tenure system of Gbawe is based on patrilineal inheritance, women have equal access to land, and their interests are included in the distribution of land. In Gbawe, land is made available to all sub-families who are responsible for allocating land to their members, including women.[37] The results show that only 52% of indigenous male respondents and 45% of indigenous female respondents in Tamale strongly agree or agree that women and men have equal access to land. This low response is explained by the area's strong adherence to a patrilineal system of inheritance and a cultural system that forbids women from holding land in their own right. The respondents of Tamale who strongly agree or agree that women and men do have equal access to land claimed that under the present arrangements, access to residential land depends on the land user's ability to pay for the land, and women with money can access land just like men.

Discrimination in access to information and dispute resolution

Indigenes and settlers were asked 'do you agree or disagree with the statement that "all community members and the general public have equal access to land information"?'; and 'are all land users given the same opportunity to present and defend their claims during dispute resolution?' (see Table 7.5).

Table 7.5 shows that with the exception of Tamale, most respondents agree that community members have equal access to land information. Only about half of the indigenes and settlers in Tamale shared this same view. The significant number of indigenes and settlers in Tamale who strongly disagree, disagree, or neither agree nor disagree claim that it difficult to find out who is the appropriate person to contact for land information. Nevertheless, in Gbawe, the respondents indicated that one sometimes has to pay for land information. In a similar way, the findings indicate that there is no discrimination in the disputes resolution mechanism. According to the respondents, the parties to a dispute are given equal opportunities to present and defend their claims, and both have the right to appeal if they are not satisfied with the ruling. However, a significant proportion of indigenes and settlers in Tamale who

37 Interview with the chief linguist of Gbawe family, October 2008.

Table 7.6 Equal tenure security for indigenes and settlers

	Japekrom (stool)		Tamale (skin)		Gbawe (family)	
Response	Indigene (n=90)	Settler (n=80)	Indigene (n=110)	Settler (n=70)	Indigene (n=50)	Settler (n=50)
Strongly agree or agree (%)	77	54	67	52	76	77
Neither agree nor disagree (%)	18	44	24	28	24	19
Disagree or strongly disagree (%)	5	2	9	20	0	4
Total	**100**	**100**	**100**	**100**	**100**	**100**

disagree strongly, disagree or remain neutral indicate that the dispute resolution mechanism is unfair.

Tenure security of indigenes and settlers

The ability of modern CTIs to provide equal tenure security for community members has been debated at length in the literature. Community members were asked whether they agree or disagree with the statement that 'CTIs provide equal tenure security for both indigenes and settlers?' (see Table 7.6).

Table 7.6 shows divergent views on the part of indigenes and settlers in the three customary areas. With the exception of Gbawe, there are significant differences between the views of indigenes and settlers in Japekrom and Tamale. While 77% and 67% of indigenes in Japekrom and Tamale respectively strongly agree or agree that CTIs provide equal tenure security for indigenes and settlers, only 54% and 52% of settlers in the respective customary areas have the same view. The settlers claim that current practices offer better protection for indigenous community members than for settlers. To the LSAs tenure security for indigenes or settlers depends on the level of urbanisation. The LA professionals were of the opinion that settlers have higher levels of tenure security in highly urbanised areas, whereas indigenes have higher levels of tenure security in rural areas.[38] They argue that because settlers in peri-urban and urban areas pay a lump sum for their acquisitions, they receive more protection from CTIs.

Intergenerational equity

To further investigate equity, the study examined whether CTIs have adequate mechanisms to protect the rights of future generations to their ancestral land. The results from all of the customary areas indicate that measures have been taken to ensure that indigenous members of future generations can still access the land. For example, it was observed that although land gifting is accepted in customary tenure systems, the practice has ceased to exist. In all of the areas studied, the highest individual interest one can acquire in land is that of leasehold. Leasehold arrangements have even been adopted in Gbawe, where tenure arrangements do not forbid the creation of freehold interest in family land. In an interview, an elder from Gbawe claimed that 'such arrangements are made to ensure that future unborn generations are not deprived of their ancestral land'. These arrangements are supported by the Constitution of Ghana (1992), which does not permit the creation of freehold in stool and skin lands.

38 Interviews with TCPD, Survey Department and LC in Tamale, Sunyani and Accra.

Table 7.7 Accessibility of land information

	Japekrom (stool)		Tamale (skin)		Gbawe (family)	
Response	Indigene (n=90)	Settler (n=80)	Indigene (n=110)	Settler (n=70)	Indigene (n=50)	Settler (n=50)
Very good (%)	20	12	34	11	55	67
Good (%)	65	75	40	49	31	24
Satisfactory (%)	12	9	11	30	6	2
Bad (%)	2	4	12	8	6	6
Very Bad (%)	1	0	3	2	2	1
Total	**100**	**100**	**100**	**100**	**100**	**100**

7.2.3 Transparency

With respect to transparency, the field study addressed the following key issues: the extent to which the institutions in charge of land allocation and land information are accessible to community members; the extent to which decision-making processes are open to community members; and the clarity of customary law.

Access to institutions and land information

One of the key pillars of transparency in land governance is that of the accessibility of information and the institutions in charge (FAO, 2007). In all of the areas studied, access to tenure institutions appeared to be good. The institutional structures of the customary institutions and their location within communities made them readily accessible to community members. Community members experienced no difficulties interacting with chiefs, TCs, councils of elders or any of the locally-established land committees. Community members can access ownership data, data on unallocated land, cadastral plans and land-use plans from CTIs. However, the CTIs place restrictions on information relating to judicial judgements. Investigating further, the study asked indigenes and settlers about their impressions of the accessibility of land information from CTIs (Table 7.7).

Table 7.7 indicates that access to land information appears to be good. The 30% of settlers in Tamale who indicated that access to land information is satisfactory claimed that they had had difficulty identifying the right person to contact for the land information. The LSAs agree with this claim. The head of the OASL in Tamale expressed a typical view when he commented that, 'though land information is readily available, they are disorganised, making it difficult to access them. In some customary areas, one may find inconsistencies in the information because [the records have] been kept by different people'. Furthermore, the absence of a Yaa-Naa as a result of a prolonged chieftancy dispute between two royal gates of Dagbon, has effect on access to land information in Tamale. According to the Regional Lands Officer, the absence of a Yaa-Naa has made it difficult to complete lease documents since he is the final authority in the land delivery in Tamale and Dagbon traditional areas. Apart from Gbawe, where the CLS keeps information on ownership, traditional and statutory judgements and ground rents, the quality of the information kept by the Japekrom and Tamale CTIs is questionable.

Publishing land-related information has never been a responsibility of the CTIs. Information on customary land management currently enters the pub-

Table 7.8 Openness of decision-making processes

	Japekrom (stool)		Tamale (skin)		Gbawe (family)	
Response	Indigene (n=90)	Settler (n=80)	Indigene (n=110)	Settler (n=70)	Indigene (n=50)	Settler (n=50)
Yes (%)	95	92	68	59	72	68
No (%)	5	8	32	41	28	32
Total	**100**	**100**	**100**	**100**	**100**	**100**

Table 7.9 Familiarity with and clarity of customary laws

	Japekrom (stool)		Tamale (skin)		Gbawe (family)	
Response	Indigene (n=90)	Settler (n=80)	Indigene (n=110)	Settler (n=70)	Indigene (n=50)	Settler (n=50)
Yes (%)	86	73	44	37	82	70
No (%)	3	3	10	39	2	6
Somehow (%)	11	24	46	24	16	24
Total	**100**	**100**	**100**	**100**	**100**	**100**

lic domain when tenure institutions notify people about claims regarding boundaries, judicial judgements and rent information.

Openness of decision-making in land delivery processes

As discussed in Section 7.2.1, although there are structures that do allow community members to contribute to decision-making processes, in practice, decisions regarding the use of land are mostly restricted to people who have been entrusted to make these decisions. Indigenes and settlers were asked, 'is decision-making on the use of land open to all community members?' (see Table 7.8).

Table 7.8 shows that in general, indigenes and settlers perceive that decision-making processes are open to community members across all three areas. The significant proportion of indigenes and settlers in Tamale and Gbawe who indicated that decision-making is not open to all community members claimed that community members are occasionally asked to provide input. They claim that most often, community members are only informed about decisions once they have been made. This claim is supported by the LSAs, who indicate that decision-making on the use of land is usually restricted to chiefs/family heads, elders and facilitating groups.[39]

Familiarity with and clarity of customary laws

As discussed in Chapters 2 and 3, the laws regulating customary tenure systems are neither written nor recoded. Community members become familiar with laws by word of mouth as they are passed on from generation to generation. According to the CTIs, this practice makes the customary laws clear to the community members. A typical view to support this claim was given by an elder of Gbawe, who claimed that all members of the community were by definition aware of the rules regarding land delivery process (Gyapong, 2009). Indigenes and settlers in the communities were asked, 'are you familiar with the customary laws regulating land management in this area and are they

39 Interview with OASL (Accra) and LC (Tamale) in October 2008 and December 2008 respectively.

Table 7.10 Reporting on stewardship to community members

	Japekrom (stool)		Tamale (skin)		Gbawe (family)	
Response	Indigene (n=90)	Settler (n=80)	Indigene (n=110)	Settler (n=70)	Indigene (n=50)	Settler (n=50)
Quarterly or less (%)	2	3	6	4	18	20
Twice yearly (%)	11	12	5	3	22	10
Once yearly (%)	62	66	25	22	48	46
Less than once per year (%)	22	18	8	3	10	8
Not at all (%)	3	1	56	68	2	16
Total	**100**	**100**	**100**	**100**	**100**	**100**

clear to you?' (see Table 7.9).

Table 7.9 shows that with the exception of Tamale, the majority of indigenes and settlers felt that they are familiar with the customary laws regulating land management, and that these laws are comprehensible. A typical explanation for misgivings on this point in Tamale was offered by an indigene from Jisonayilli, who stated that 'the new procedures for acquiring land require land users to interact with customary and statutory institutions. It is therefore unclear whether the acquisition process follows customary or statutory laws'. In peri-urban Tamale, modern land acquisition procedures require land users to submit their allocation notes as evidence of allocation to the TCPD. The TCPD then issues a cadastral plan for the acquired land – a process that community members often describe as 'opening a file'. In Japekrom and Gbawe, land users only interact with statutory institutions when they want to formally register their land. The significant proportion of the settlers in Japekrom and Gbawe who remained neutral claimed that not every aspect of customary law is clear to them.

7.2.4 Accountability

With regard to accountability, the field study looked at the extent to which CTIs report on their stewardship to community members, and extent to which there is financial accountability.

Reporting of stewardship

In all the communities, there are various structures in place that enable CTIs to report on their stewardship to community members. Weekly meetings, annual gatherings and other specially-arranged meetings are used as feedback sessions, during which the CTIs inform, explain and substantiate their activities. In practice, however, the level of utilisation of these structures differs across the three areas. Indigenes and settlers were asked, 'how often do chiefs and steering committees report on their stewardship to community members?' The response from the community members is shown in Table 7.10.

Table 7.10 indicates that the majority of respondents from Japekrom were of the opinion that community leaders report on their stewardship to community members once every year. The respondents claim that these meetings are usually held during the annual munufie festival. In Tamale, few respondents claimed that meetings are held once a year and the majority of respondents felt that such meetings are rarely held. In Gbawe, the majority of

Table 7.11 Accounting of revenue from informal transactions

	Japekrom (stool)		Tamale (skin)		Gbawe (family)	
Response	Indigene (n=90)	Settler (n=80)	Indigene (n=110)	Settler (n=70)	Indigene (n=50)	Settler (n=50)
Strongly agree or agree (%)	66	79	30	20	71	70
Neither agree nor disagree (%)	5	6	3	7	8	10
Disagree or strongly disagree (%)	29	15	67	73	21	20
Total	**100**	**100**	**100**	**100**	**100**	**100**

respondents indicated that these meetings are held once a year, or less than once a year.

Financial accountability

In the past, land could be acquired without any monetary consideration. The requirement was that land users present a 'customary drink' to acknowledge that they had been given land. The customary drink in the Ghanaian tradition symbolises one's acceptance and appreciation of a land transaction. In the past, traditional drinks, cola nuts or some token monetary payment were usually presented. Over time, as the economic value of land has increased, the presentation of a traditional 'customary drink' was replaced with money, usually referred to as 'drink money'. As observed in this study (Section 6.2.3) and also reported by Kasanga and Kotey (Kasanga and Kotey, 2001), in some areas, it is difficult to distinguish between the land price and drink money, and the latter can be exorbitant. In a situation in which lump-sum 'drink money' has replaced the customary drink and when even indigenous members of communities pay for their land (Section 6.2.3), financial accountability has become an issue of major concern in customary land delivery.

When landholders were asked if they were given any evidence of payment, all the respondents confirmed that they had received a receipt of payment that had reflected the amount paid. The investigation revealed weak accounting procedures in all the study areas, however. In particular, receipts are not given for all land transactions. Furthermore, the customary authorities claim that drink money is a customary obligation and therefore cannot be accounted for. A similar observation was made by Ubink and Quan (2008: p. 200), who assert that some chiefs perceive that drink money is not the purchase value of land but rather 'an acknowledgement of the ownership of the land, to show allegiance towards the chief, and for customary pouring of libation on the ground to seek the blessings of the gods'. Indigenes and settlers were asked, 'do you agree or disagree that all forms of revenue received from customary transactions should be accounted for?' (see Table 7.11).

Most indigenes and settlers in Japekrom and Gbawe strongly agree or agree that all forms of transaction should be accounted for, citing the lump-sum drink money they pay for acquiring land as an example. The respondents of Tamale who expressed a different opinion argue that such revenues are customary and must be treated in that respect.

The indigenes and settlers were also asked, 'how often do the customary authorities present financial statements on dividends that accrue from land allocations to community members?' (see Table 7.12).

Table 7.12 shows that practice relating to the declaration of financial statements on dividends accrued from the use of land appears to be good in

Table 7.12 Frequency of presentation of financial statements

	Japekrom (stool)		Tamale (skin)		Gbawe (family)	
Response	Indigene (n=90)	Settler (n=80)	Indigene (n=110)	Settler (n=70)	Indigene (n=50)	Settler (n=50)
Quarterly or less (%)	0	0	2	6	19	11
Twice yearly (%)	3	0	2	6	12	9
Once yearly (%)	69	61	4	4	60	64
Less than once per year (%)	27	38	6	4	3	9
Not at all (%)	1	1	86	80	6	7
Total	**100**	**100**	**100**	**100**	**100**	**100**

Japekrom and Gbawe. The majority of respondents in Japekrom and Gbawe thought that financial statements are presented to community members on an annual basis. However, in Tamale, a majority of indigenes and settlers were of the view that financial statements are never presented to community members.

7.2.5 Efficiency and effectiveness

Although some of the issues addressed in the sections on participation, equity, transparency and accountability covered efficiency and effectiveness, this section looks further at efficiency and effectiveness in the sense of: clarity of procedures for accessing land; dispute resolution and enforcement; the adequacy of human resources for land governance; the extent to which customary laws are implemented in land delivery processes; and the mechanisms for providing certainty and security of land rights.

Clarity of procedures for accessing land

Two clearly-defined procedures exist for accessing land in the three areas studied. These vary with respect to land usage (farming or housing), and also vary slightly for indigenes and settlers. The procedure for accessing land for farming is simple, and is usually handled by the head of the sub-family/household. Indigenes are only required to notify the head of the family about their intention to use the vacant land. Settlers have to be introduced by someone in the community who knows them (usually the house owner), who is willing to guarantee his/her land use of the land.[40] The arrangement for accessing farmland has changed in recent years, as there is no more vacant land. Nowadays, individual households take control of the areas that they have been farming. The head of the sub-family is only called upon when there is a dispute over boundaries. Settlers can also acquire farmland based on contractual agreements with the indigenous members of communities. According to an elder from Japekrom, 'money does not feature in this type of land allocation, unless the land is required for commercial farming. In that case, the applicant follows the same procedures laid down for acquiring land for housing purposes'.

Accessing land for residential purposes, however, follows a strict procedure

40 Interview with Abusuapanin of Japekrom stool, December 2008.

Table 7.13 Time taken for land acquisition

	Japekrom (stool)		Tamale (skin)		Gbawe (family)	
Time	Indigene (n=90)	Settler (n=80)	Indigene (n=110)	Settler (n=70)	Indigene (n=50)	Settler (n=50)
Less than 1 month (%)	49	32	45	30	55	20
1-3 months (%)	37	35	34	36	35	37
3-6 months (%)	2	12	6	16	2	31
6-12 months (%)	1	8	5	12	2	6
More than 12 months (%)	2	8	4	4	2	6
Don't know (%)	9	5	6	2	4	0
Total	**100**	**100**	**100**	**100**	**100**	**100**

that consists of well-defined steps:

1. Client applies for land by completing and filing an 'application form' with the Land Committee;
2. Land Committee receives application and makes recommendation to Chief or Family Head;
3. Chief/Family Head approves the allocation;
4. Client pays drink money (fee);
5. Land Committee allocates site and prepares site plan;
6. Chief/Family head endorses site plan and issue an allocation note.

Depending on the institutional set-up in the customary area concerned, this procedure can pass through different sub-units of the steering committee involved in the approval process (Gyapong, 2009). However, on average, the allocation process for housing in all of the customary areas ranges from four to seven steps in total. Indigenes and settlers were asked, 'how long did it take you to complete the land acquisition process?' (see Table 7.13).

Table 7.13 suggests that acquiring land from CTIs usually takes less than three months. Only in Gbawe did a significant proportion (31%) of settlers take 3-6 months to acquire their land. The settlers of Gbawe explained that, due to the high incidence of land disputes in Accra and its surroundings, they had used the statutory institutions to conduct searches to establish whether the land had already been acquired by someone else, before entering into the transaction. This explains why the process took longer in Gbawe.

The indigenes and settlers were also asked, 'how satisfied are you with the current customary land acquisition process?' (see Table 7.14).

Despite the clarity and short duration of the land allocation process, Table 7.14 suggests that with the exception of Gbawe, a significant proportion of indigenes and settlers were 'somewhat satisfied' or 'dissatisfied' with the land acquisition process. Even in Gbawe, a significant proportion of settlers were 'somewhat satisfied' or 'dissatisfied' with the process. The indigenes and settlers who were 'somewhat satisfied' or 'dissatisfied' with the land acquisition processes complained that land transactions had become financial transactions. An Assistant Lands Officer at the LC in Tamale expressed a view that was typical of the LSAs:

> The inconsistencies in the land acquisition procedures, disjointed and fragmented pieces of information, are major problems in the land acquisition process. Sometimes the tension between main chiefs and sub-chiefs who do the allocations creates the problem of

Table 7.14 Community members' satisfaction with the land acquisition processes

	Japekrom (stool)		Tamale (skin)		Gbawe (family)	
Response	Indigene (n=90)	Settler (n=80)	Indigene (n=110)	Settler (n=70)	Indigene (n=50)	Settler (n=50)
Generally satisfied (%)	59	46	46	33	86	66
Somewhat satisfied (%)	32	52	32	42	8	22
Dissatisfied (%)	9	2	22	25	6	12
Total	**100**	**100**	**100**	**100**	**100**	**100**

Table 7.15 Effectiveness of the customary land dispute resolution mechanism

	Japekrom (stool)		Tamale (skin)		Gbawe (family)	
Response	Indigene (n=90)	Settler (n=80)	Indigene (n=110)	Settler (n=70)	Indigene (n=50)	Settler (n=50)
Very effective or effective (%)	71	58	70	52	75	54
Somewhat effective (%)	25	33	26	34	15	34
Ineffective (%)	4	9	4	14	10	12
Total	**100**	**100**	**100**	**100**	**100**	**100**

identifying the right person to transact land with.[41]

Land dispute resolution and enforcement

As discussed in Section 6.3, the main sources of disputes in the communities studied include uncertainty of boundaries and the allocation of the same piece of land to more than one person. Most of these disputes are solved by CTIs. In all of the areas studied, land disputes are resolved over two sittings. In the first sitting, the parties are allowed to present their cases, supported by their witnesses. Based on this evidence, the disputes are solved during the second sitting and finally settled in the field. As indicated by one respondent from Tamale, 'land disputes are resolved within one week, as long as the parties involved are available'. The customary dispute resolution mechanism is based on arbitration, and in most cases, one party is relocated. Indigenes and settlers were asked, 'how would you describe the effectiveness of the customary land dispute resolution mechanism?' (see Table 7.15).

Table 7.15 shows that more than 70% of the indigenes in all the communities perceived the customary land dispute resolution mechanism to be 'very effective or effective'. Only an average number of settlers had the same view. A significant proportion of indigenes and settlers perceived the land dispute resolution mechanism to be somewhat effective. The responses from the LSAs indicate that customary dispute resolution mechanisms are effective, and they are being adopted as an alternative dispute resolution mechanism as part of land reform at the national level.[42]

Landholders in the areas studied have various reasons for relying on the state courts or customary systems for dispute resolution. The indigenes and settlers were asked, 'which mechanism do you prefer to use for land dispute resolution: customary or state courts?' (see Table 7.16).

Table 7.16 indicates that most respondents, irrespective of their commu-

41 Interview with Assistant Lands Officer, LC, Tamale, December 2008.

42 Interview with Assistant Lands Officer, LC, Tamale, December 2008.

Table 7.16 Preferences regarding dispute resolution mechanisms

	Japekrom (stool)		Tamale (skin)		Gbawe (family)	
Dispute resolution mechanism	Indigene (n=90)	Settler (n=80)	Indigene (n=110)	Settler (n=70)	Indigene (n=50)	Settler (n=50)
Customary mechanism (%)	81	92	78	83	83	75
State courts (%)	19	8	22	17	17	25
Total	**100**	**100**	**100**	**100**	**100**	**100**

nity status, prefer customary dispute resolution mechanisms to state courts for solving land-related conflicts. Comparing this result to Tables 7.5 and 7.15, it can be concluded that although indigenes feel less protected, and settlers thought that customary dispute resolution is only 'somewhat effective', both groups prefer the customary dispute resolution mechanism to state courts. The reasons for this include the high cost of and bureaucratic processes involved in statutory court procedures. The accessibility of the CTIs and the institutions' ability to enforce their rulings and decisions were other reasons given by the respondents. The respondents claim that chiefs have more power to enforce their rulings than the state courts, which have to rely on the police and other institutions. Nevertheless, a significant proportion of indigenes prefer state courts to customary mechanisms. These indigenes claim that the indigenous dispute resolution mechanism has become non-transparent in its arbitration methods, and tends to favour settlers.[43] In Japekrom, some land disputes have been taken to the state courts as a result of the inability of the parties to reach agreement.

Adequacy of human resources

As discussed in Section 7.2.1, customary systems rely on local capacity for land delivery activities, much of which appears inadequate. The communities have brought in different mechanisms for improving human resource capacity for land delivery. While in Gbawe, private land surveyors, planners and lawyers have been contracted to provide technical services, the Japekrom stool relies on voluntary services provided by professionals who are citizens of the area. The situation is different in Tamale, where no member of any land committee has any technical knowledge on any aspect of the land delivery process. Although the local committees in the Tamale area are in charge of allocating land, the technical services are executed by the municipal authority.

Implementation of customary law in land delivery processes

Indigenes and settlers were asked about the extent to which customary laws are implemented in the land delivery process (see Table 7.17).

Our assessment of the extent to which customary laws are implemented in land delivery processes produced mixed results. While more than 70% of indigenes from all the study areas were of the view that customary laws are implemented well, only about an average of settlers shared the same view.

43 Interview with indigenes of Kalpohini, Tamale, January 2008.

Table 7.17 Implementation of customary law

	Japekrom (stool)		Tamale (skin)		Gbawe (family)	
Response	Indigene (n=90)	Settler (n=80)	Indigene (n=110)	Settler (n=70)	Indigene (n=50)	Settler (n=50)
Good (%)	70	54	70	54	79	46
Satisfactory (%)	19	42	11	19	17	38
Bad (%)	9	3	10	20	2	15
Very Bad (%)	2	1	9	7	2	1
Total	**100**	**100**	**100**	**100**	**100**	**100**

Table 7.18 Adequacy of compensation

	Japekrom (stool)		Tamale (skin)		Gbawe (family)	
Response	Indigene (n=38)	Settler (n=29)	Indigene (n=41)	Settler (n=12)	Indigene (n=32)	Settler (n=9)
Yes (%)	47	39	58	56	49	42
No (%)	53	61	42	44	51	58
Total	**100**	**100**	**100**	**100**	**100**	**100**

Mechanisms for providing certainty and security of land rights

Until recently, when land became scarce and customary land attained monetary value, customary communities did not recognise the need to record information on land transactions. In current land delivery processes (see Section 6.3.2), efforts have been made to improve land information storage and maintenance. Different mechanisms are used to record and store land information in all three areas. Gbawe has a computerised system for recording and disseminating land information. In Japekrom and Tamale, however, land records are kept in files or log books. These contain the reference numbers of the plots allocated, the names of the allottees and the dates on which land was allocated.

In Section 6.2.3 (Table 6.5), it was observed that significant numbers of indigenous community members have been forcibly evicted from their land. To further investigate the mechanisms for providing security of land rights, the study examined the adequacy of compensation given to those who had lost their land. Indigenes and settlers who had lost their land when it was converted from agricultural to residential land use, or had been subject to compulsory acquisition by the state, were asked if they had received adequate compensation (see Table 7.18).

Table 7.18 shows that in general, both indigenes and settlers had lost land as a result of the conversion of agricultural land believed that they had been inadequately compensated. For instance, farmers in Japekrom who lost their land claimed that they had been given a few of the urban plots that had been created, or had been asked to relocate their farm. According to these farmers, in most cases, they were required to make new land arrangements themselves. Indigenes from Tamale who had received compensation complained about the lack of transparency and equity in the compensation process. These findings are confirmed by other studies in Ghana, in which farmers who lost usufructuary rights due to residential development found that these were only compensated with the payment of the value of the crops they had lost, or were given alternative land, or a percentage of the plot that had been sur-

rendered (Kasanga et al., 1996; Alden Wily and Hammond, 2001). Many of these famers ended up being landless.

7.3 Summary and discussion of findings

This chapter has assessed the extent to which CTIs in peri-urban areas meet good governance requirements in LA. The assesement was related to participation, equity, transparency, accountability, efficiency and effectiveness.

Participation

Involving actors and building consensus in land delivery decision-making processes are important for local communities, and are major factors contributing to the success of community-based land management systems (Sjaastad and Cousins, 2009). Participation in decision-making processes in customary areas is generally based on representation. In all of the areas studied, subgroups consisting of land-owning groups are well represented in steering committees. Community members do not participate directly in the decision-making process. Only selected members of the steering committees take decisions on the use of land. However, there are structures that ensure community members participate in the decision-making process and in land governance. Over the years, these structures have ensured that CTIs are accountable to local communities (Kasanga and Kotey, 2001; Toulmin, 2009).

The study indicates that the structures that ensure community participation are used well in Japekrom and Gbawe, but not in Tamale. The decision-making process in Tamale reveals exclusion similar to that found in other areas in Africa (Amanor, 2001; Peters, 2004). The structures also allow outsiders, including land professionals, to contribute to the decision-making process. The CTIs in Japekrom and Gbawe have private contractual arrangements with LSAs and other professional institutions to provide technical services and advice. This finding contrasts to Mugyenyi's (1988) finding that decision-making in customary systems in Swaziland are controlled by conservative elderly individuals who are not receptive to modernisation or the introduction of new ideas and techniques relating to the use of land.

Equity

The study is inconclusive concerning equity in access to land, information, tenure security and the delivery of justice in the three study areas. All community members have equal access to land, but land is not equally distributed among community members. The land acquisition processes in some customary areas reveals some unfairness on the part of indigenes. In Japekrom and Tamale, indigenes may have to apply for residential land just like settlers, although they do not pay as much drink money as settlers. Ubink (2007: p.

59) reveals similar inequalities in her study on peri-urban Kumasi in Ghana, where some chiefs use the power vested in them to discriminate against indigenes. Ubink asserts that some chiefs have the opinion that 'land belongs to the royal family, since it was members of the royal family who fought for the land'and that land can be taken from community members when necessary.

The idea that women do not have the same access to land rights as men does not appear to be universally applicable. Such assertions tend to be based on hypothetical models and are generalised to cover all customary landholding practices (Amanor, 2001). This study found that women in Japekrom and Gbawe had full rights to agricultural and residential land, unlike women in Tamale. However, women in Tamale who have money can access land. Although in African patrilineal land tenure practice, women are not entitled to land in their own right (Ikejiofor, 2006), in Gbawe, residential land has been distributed to group members, including women. This result confirms the argument made by other scholars (e.g. Gyekye, 1997) that women's access to land has improved as a result of factors such as migration, education and economic change in rural communities. The recognition of women's rights to land has also been influenced by Ghana's intestate succession law (PNDCL 111), which allows a woman to inherit their husband's property, including land. In a free land market, women who have adequate financial resources can purchase land without any restrictions. However, the recognition of women's land rights tends to become less pronounced as one moves from urban centres to the hinterland, where culture and social norms tend to be strong (Kasanga and Kotey, 2001).

Transparency

The investigation reveals mixed results in terms of the accessibility and openness of decision-making processes in the three communities. While at first sight, the results suggest that tenure institutions and information are accessible to community members, the findings are different in the sudy areas. The setup of the land and steering committees in Japekrom and Gbawe makes the institutions accessible to community members. Access to land information is virtually unrestricted in all the communities, and is free of charge in almost all the study areas; the only limits relate to privacy issues. Nevertheless, in Japekrom and Tamale, some information may be distorted. The evidence from the study suggests that although in all the customary areas, there is some level of interaction between CTIs and community members, decision-making in Tamale is not open to community members. The 'annual community gathering' is one important means of making all activities known to community members, including the declaration of proceeds from land resources and the use of dividends. This approach promotes free access to land information and decision-making, which in turn promotes transparency. However, not every aspect of the decision-making process is made known to

community members. In particular, some CTIs allocate land without informing community members. This confirms other reports on Ghana, which indicate a lack of transparency in land delivery processes in many peri-urban areas (Berry, 2002; Aryeetey, Ayee et al., 2007; Amanor, 2008).

The findings of this study seem to depart from the claim that urbanisation and pressure fro the land market are undermining transparency in customary land delivery (Kasanga and Kotey, 2001; Toulmin, 2009). Although Gbawe is the most urbanised of the study areas, the institutional structures in place seem to promote transparency more than in the other areas. The example from Gbawe indicates that transparency in customary land delivery in fact benefits from the land market. When customary land attains economic value and transactions in land increase, while at the same time, interactions with government institutions increase, CTIs have little option but to make their activities transparent to community members, prospective buyers and professional organisations.

Accountability

The results from the three cases clearly indicate that customary tenure systems can, in theory, promote accountability. The structures on which CTIs are built – feedback sessions, regular and ad hoc meetings and other platforms – promote transparency and accountability. In terms of stewardship, the results from Japekrom and Gbawe seem satisfactory. However, as in other studies in Ghana (Kasanga and Kotey, 2001; Ubink, 2008a), the results from Tamale indicate that some CTIs no longer act as if they occupy a fiduciary position, but instead behave as if they own the communal land. CTIs in Tamale do not make their activities transparent to community members, and they hardly provide any account of their stewardship to community members. Even in Japekrom and Gbawe, where the results seem to be satisfactory, CTIs sometimes take unilateral decisions regarding the use of land. The absence of stewardship breaks the strong kinship ties within local communities (Clement and Amezaga, 2009).

Accounting for the monies that accrue from land transactions seems to be weak in all of the communities. Even in communities where CTIs account for land transactions, it takes about a year to present an unaudited financial statement to community members. As with the observations made in peri-urban Kumasi (Ubink and Quan, 2008), some chiefs avoid accountability on the pretext that the monies they receive are merely 'drink money'. In this study, community members disagreed with the chiefs, on the grounds that the lump sum they had paid for the land transaction could not be referred to as 'drink money'. Like other areas in Ghana, the value of 'drink money' is equivalent to the market value of the land (Kasanga and Kotey, 2001). Accountability in customary land delivery diminishes when structures that hold chiefs accountable collapse (Toulmin, 2009). Nevertheless, some efforts

are being made to improve accountability. For example, in Japekrom, an oversight committee regularly audits the activities of the committees. In a similar way, in Gbawe area, a distinction is made between the customary drink and other forms of payment. No receipt (or any form of evidence) is given for a 'customary drink'.

Efficiency and effectiveness

This study reveals some inefficiency in customary mechanisms for securing rights to land in modern peri-urban areas, thereby confirming the findings of (Alden Wily and Hammond, 2001). The investigation revealed some forced evictions in all three study areas. Even when land losers were compensated, they were not given adequate compensation. The study also indicates that there are weak mechanisms for recording land information and inequity in the distribution of land. In a similar way, although the allocation of land resources and dispute resolution are based on customary law, the influence of statutory law has affected the implementation of this law in all the study areas.

Yet, the study indicates that CTIs acknowledge the enormous challenge of providing tenure security to all land users. Various efforts have been made to improve efficiency in land delivery. The innovative use of well-designed land acquisition forms, the creation of land allocation committees, the use of professional services and the adoption of different means of maintaining land information are efforts that are intended to improve efficiency in customary land management. Innovations introduced in the recording of land information can reduce the incompleteness and distortion in land information observed in many customary areas. These efforts can increase transparency in the land delivery process, improve the accessibility of land information, and can reduce the possibility of allocating the same piece of land to different people. It is also important for efficient land delivery, because the 'ability to enforce rights depends on the ease with which rights holders can access the required institutions and information' (Deininger, 2003: p. 33). Some proactive CTIs, like those in Gbawe, recognise the enduring importance of improving and protecting the interests of vulnerable groups. The Gbawe family requires indigenes to prove they have the means to commence building before land is allocated to them. This decision aims to prevent indigenous members of the family from reselling the plots allocated to them and becoming landless.

Still, under customary land delivery, the procedures for accessing land are clear, straightforward and take much less time than acquisition using statutory institutions. For example, in Ghana, the process for government lease acquisition can involve 14 stages, can take from six months to ten years or more to complete, and there is no guarantee that the applicant will be allocated a plot (Kasanga and Kotey, 2001). Furthermore, dispute resolution mechanisms seem to be more effective. The majority of respondents prefer the cus-

Table 7.19 Qualification of governance dimensions

	Study area			Final result
Governance dimension	Japekrom (stool)	Tamale (skin)	Gbawe (family)	
Participation	v	-	v	Good
Equity	v	-	v	Good
Transparency	-	x	v	Satisfactory
Accountability	-	x	-	Weak
Efficiency and effectiveness	-	x	-	Weak
Overall governance	Satisfactory	Weak	Good	

Key: good (v), bad (x), neither good nor bad (-)

tomary dispute resolution mechanism to statutory law courts. The customary dispute resolution mechanism is cheap, accessible and timely. Unlike statutory court systems, whose decisions, even if they are final, are very difficult to enforce in practice (Cotula, 2007), the traditional authorities appear to offer effective dispute resolution (Burns, 2007). Examples from Ghana indicate that their decisions are respected and implemented accordingly (Kasanga and Kotey, 2001). Given the high costs, bureaucracy and delays in formal court procedures, and the fact that it would offer a more down-to-earth, local means of handling emerging disputes, the customary dispute resolution mechanism could become an alternative dispute resolution (ADR) mechanism to ease the workload of courts and troubled formal judicial systems (FAO, 2007).

Table 7.19 shows a summary of the results for each community with regard to the five dimensions investigated. The table makes inferences from the information obtained from the variables for each dimension investigated, and qualifies them as good, bad or neither good nor bad. Based on this information, the final results for each of the governance dimensions and the level of governance for the areas studied are qualified.

7.4 Concluding remarks

This chapter investigated whether customary tenure institutions in peri-urban Ghana meet good governance objectives in LA. The assessment was based on five dimensions: participation, equity, transparency, accountability, and efficiency and effectiveness. The assessment of the three customary areas indicates a mix of similarities and differences in the individual variables investigated under each governance dimension, and local variations in land governance dimensions. More importantly, however, drawing from the evidence from the customary areas, one can make a number of general observations (Table 7.19). On the one hand, comparing the five governance dimensions, one can conclude that participation and equity in customary land delivery appear to be good, transparency appears to be satisfactory, but accountability and efficiency and effectiveness appear to be weak. Comparing land governance across the customary areas, one can generally conclude that governance in the CTIs in Tamale is weak, whereas in Japekrom and Gbawe, land governance appears to be satisfactory, with Gbawe exhibiting elements of good governance. This confirms the observation made in the literature

that Gbawe is an example of 'progressive practice in customary management' (Ubink and Quan, 2008: p. 206).

Despite the local variations in the governance dimensions and the overall performance of governance across the study areas, it can be concluded that CTIs potentially meet good governance objectives in LA. The structure on which CTIs are built – feedback sessions, regular and ad hoc meetings and other platforms – promote participation, equity, and accessibility, which promote transparency and accountability in decision-making processes. The tenure institutions also enjoy broad legitimacy among community members. The interviewees suggested that CTIs are legitimate institutions in the sense that they provide: easy access to institutions and land information, clear and understandable procedures for accessing land, and effective land dispute resolution mechanisms and enforceable rulings; and they indicated a preference for customary conflict resolution mechanisms. Gaining access to land records and understanding the processes involved is essential for protecting the rights of land users (Toulmin, 2009).

Nevertheless, various measures can be taken to improve the weaker dimensions, in order to improve the ability of CTIs to govern land justly. To reduce the abuse of power by some chiefs, there is a need to promote voting in the election of land committee members. In addition, the quality of decision-making and transparency in customary land delivery can be improved through interactive participation, by which all people participate in joint analysis, leading to an action plan on the use of land. Greater levels of participation by community members will ensure that individual and group interests will be better taken care of. This will also improve the transparency and accountability of the system, and hence lead to better land governance. The autonomous nature of customary institutions, which prevents external financial auditing, has the potential to breed corruption and the abuse of power. Therefore, policies that will make CTIs more accountable to their communities, especially those that force CTIs to submit their financial statements to external auditors, are highly desirable.

The next chapter investigates how the use of PGIS could enhance IK, as well as local capacity for LA.

8 Indigenous knowledge and local capacity for land administration

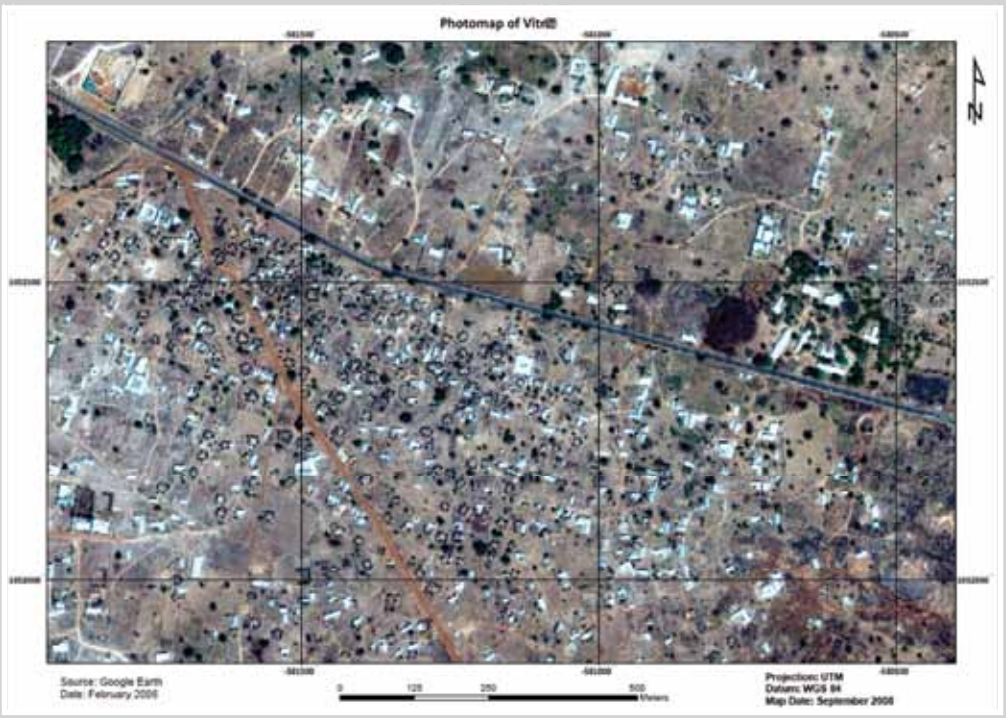
8.1 Introduction

In Chapter 7, it was observed that current skills and resources in customary areas fall short of the requirements for LA. Many CTIs lack the capacity to undertake proper data collection and document land information. The capacity problems highlighted above are one of the greatest constraints on the successful and efficient implementation of LASs that are adapted to local institutional frameworks of customary tenure. As discussed in Section 4.3.3, IK underpins access to land rights and decision-making processes in customary land management. IK can therefore function as a knowledge base for LA in customary areas. The potential of using PGIS as pro-poor tools to uncover IK and build local capacity for LA forms the main subject of this chapter.

The chapter has two objectives: (1) to identify the IK that is possessed by local communities with regard to changes in tenure systems in communities, and whether this knowledge can be represented on maps; and (2) to explore the usability of PGIS and the resulting maps for identifying underlying rights to customary land and supporting LA. Two peri-urban areas in Tamale, Vittin and Jisonayilli, were used as case studies. Apart from diversity and changes in tenure, the availability of high-resolution data for the p-mapping exercise and willingness of locals to cooperate were the main criteria used to select these communities.

The presentation of the case findings is based on the steps outlined in Section 5.4.3. First, the PGIS approach is presented in Section 8.2. Second, the results of the p-mapping exercise are presented and analysed in Section 8.3. In each case, counter maps (scale and sketch maps) showing how the elders and young people perceived changes in ownership, land-use rights and land-use types between 1998 and 2008, are presented. The results of feedback forums, follow-up community forums, the GPS surveys and the outcome of the validation workshop with the LSAs are also discussed. In Section 8.4, an appraisal of the PGIS approach and IK is outlined in terms of outputs and processes. The appraisal is based on the transfer of IK, the accuracy and representativeness of the maps, and the usefulness of the maps for communities and for LA. The appraisal also covers the usability of PGIS tools for local capacity enhancement (participation and empowerment). The chapter ends with some concluding remarks in Section 8.5.

Figure 8.1 Photomap of Vittin



8.2 The participatory GIS approach

8.2.1 P-mapping

Data and preparatory work

A Digital Globe Quick Bird satellite image recorded in February 2008, adopted from Google Earth, was used for the p-mapping exercises. After geo-referencing using the WGS84, UTM Zone 30N reference system, the image was overlaid with a coordinate grid, and the photomap was printed in tiles of A0 size at a scale of 1:2500 (see Figure 8.1). This scale enables objects to be easily identified. Printing at higher scales would cause too much blurring and would obstruct image interpretation by the human eye. To verify the p-mapping exercises, two types of map were acquired: (i) a 1:50,000 topographic map from 1967, compiled from aerial photographs taken in November 1960 and March 1962; and (ii) a town sheet at a scale of 1:2,500, created in 1997. A GPS (Silva navigator), which identifies coordinates with an accuracy of 10 metres (if no use is made of any GNSS infrastructure), was used to measure reference points to check the maps created during the p-mapping exercise. In each village, a table large enough to accommodate the photomaps was constructed.

The p-mapping approach adopted in this study can be subdivided into eight stages, which are described in the subsections below.

Figure 8.2 Approaching the community in Vittin

1. *Approaching the community* – Several meetings were organised to seek permission from chiefs to work in their communities, to explain the objectives of the study, its relevance and the researcher's expectations concerning the role to be played by inhabitants. The photomaps were displayed and the p-mapping exercise was explained (Figure 8.2). An observational walk around the study area was conducted to obtain first-hand information about the community's boundaries and current tenure situation.
2. *Focal groups* – In each of the two communities, two focal groups were selected for the p-mapping exercise. One group consisted of 20 elders (aged 50 and above), and the other of 20 younger people (aged between 25 and 49). The selection of the participants was made using snowball sampling techniques (Mack et al., 2005). The researcher did not influence the selection of the participants. Chiefs and community members used their social networks and local knowledge to select people who could participate in the p-mapping exercise. The selection criteria included: knowledge of the community's tenure system, length of stay in the community, and availability and willingness to participate. Furthermore, as a group, the participants represent a broad spectrum of stakeholders, including the council of elders, family heads, chiefs, the Land Town Development Committee (LTDC), indigenes and settlers who had lived in the community for more than 20 years.
3. *Training* – Community members selected two individuals, one from each focal group, for training. The selection criteria included the ability to read and write and the ability to act as an interpreter; in other words, they had to have mastery of both English and the local language. After being briefed on the objectives of the study and their own roles, the trainees were taught the basics of p-mapping. Next, they were trained in image interpretation, including photomap orientation, the identification of features on maps and the use of mapping tools. They were also given some information about the ethics of PGIS and taught how to carry out GPS measurements.
4. *Sketch- and scale mapping* – Overseen by the trainees and facilitated by the researchers, two one-day p-mapping exercises were conducted separately for the two focal groups in each community. To start with, participants created sketch maps to show their familiarity with their environment and to get to know the p-mapping tools and photomaps. On A0 sheets, each group drew the community boundary, the land controlled by the subgroups, farmland, residential areas, historical sites, main road networks and other features. Next, participants produced scale maps on transparencies, which were supe-

Figure 8.3 Participatory mapping

rimposed on the photomap. Using pictograms and coloured pens, the participants drew the boundary of the community, boundaries of land owned by subgroups, land ownership, use rights and land-use types for the present day (2008) and the year 1998 (see Figure 8.3). Each group produced six maps.

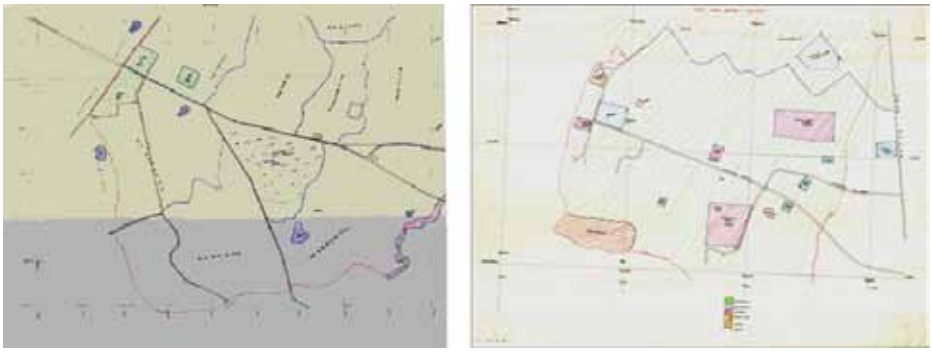
5. *Feedback forum* – For each community, the results of the p-mapping exercise were displayed during a feedback forum. During this forum, all other community members were able to validate the scale-maps and suggest additions and corrections. The evaluation focused in particular on the level of participation and the extent of the match between the maps produced by the elders and by the younger people. Fifty-two community members in Vittin and 58 in Jisonayilli participated in the feedback forum.

6. *Transects and GPS survey* – Based on the information from the p-mapping exercise, transects were designed to capture selected features, including roads, boundary points, rivers and shrines, using GPS. The survey aimed to verify the ability of locals to interpret the photomap and ascertain whether the maps reflected the actual state of the terrain.

7. *Data Processing* – After completion, the researchers processed the scale maps in a GIS (ArcGIS 9.3). The transparencies were scanned, geo-referenced, digitised and printed in tiles on the same scale as the photomap (1:2500).

8. *Follow-up community forum* – During a second forum, which was attended by community members, chiefs, elders and members of land allocation committees, inventories were made of how the PGIS exercise had been perceived as a whole. Community members assessed the usefulness of the map tiles and the usability of the p-mapping tools, including their possible role in formal LA activities. The discussions were facilitated by the researchers, assisted by a local interpreter. The forum ended with the handing over of copies of the photo-

Figure 8.4 Sketch maps drawn by the elders, showing important features



Vittin Jisonayilli

maps, sketch and scale maps, and a documentary video of the exercise to the communities. Seventy-two community members in Vittin and 65 in Jisonayilli participated in the follow-up forum.

8.2.2 Validation workshop

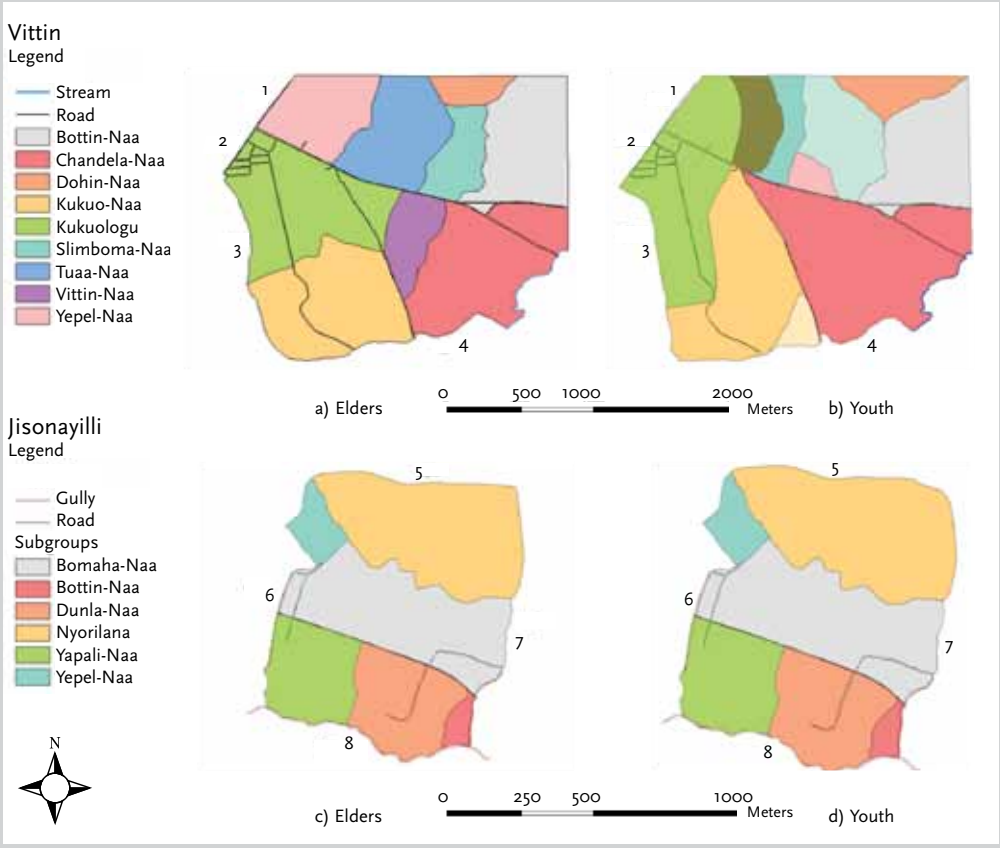
The results of the p-mapping exercises in Vittin and Jisonayilli were presented at a validation workshop, attended by representatives from all of the LSAs, namely: the LC, the Survey Department, the LTR, the OASL, the LVB and the TCPD. Also present were representatives from the Accra Metropolitan Assembly, the Land Administration Project Unit (LAPU) and other private land organisations. The aim of the validation workshop was to discuss the usefulness of the sketch and scale maps, and the applicability of the PGIS tools for LA. First, the PGIS approach adopted in the study was explained, the sketch and scale maps were exhibited and the documentary video of the exercise was screened. During the main part of the workshop, participants discussed the feasibility of scale maps as input for LA and how PGIS tools can support the LA process in Ghana. Next, the participants completed a questionnaire. The workshop ended with a discussion session.

8.3 Results and analysis

8.3.1 Sketch mapping

The sketch maps produced by the elders, who were asked by the researchers to map important features of their communities, show that locals are familiar with their environment, although the types of features mapped differed (Figure 8.4). Residents of Vittin valued the registration of subgroups, while those in Jisonayilli emphasised the new cemetery and local schools. This is probably due to differences in the timescale of urbanisation, which started around one decade ago in Vittin, but has already been underway in Jisonayilli for over 20 years.

Figure 8.5 Identified boundaries of subroups in Vittin and Jisonayilli



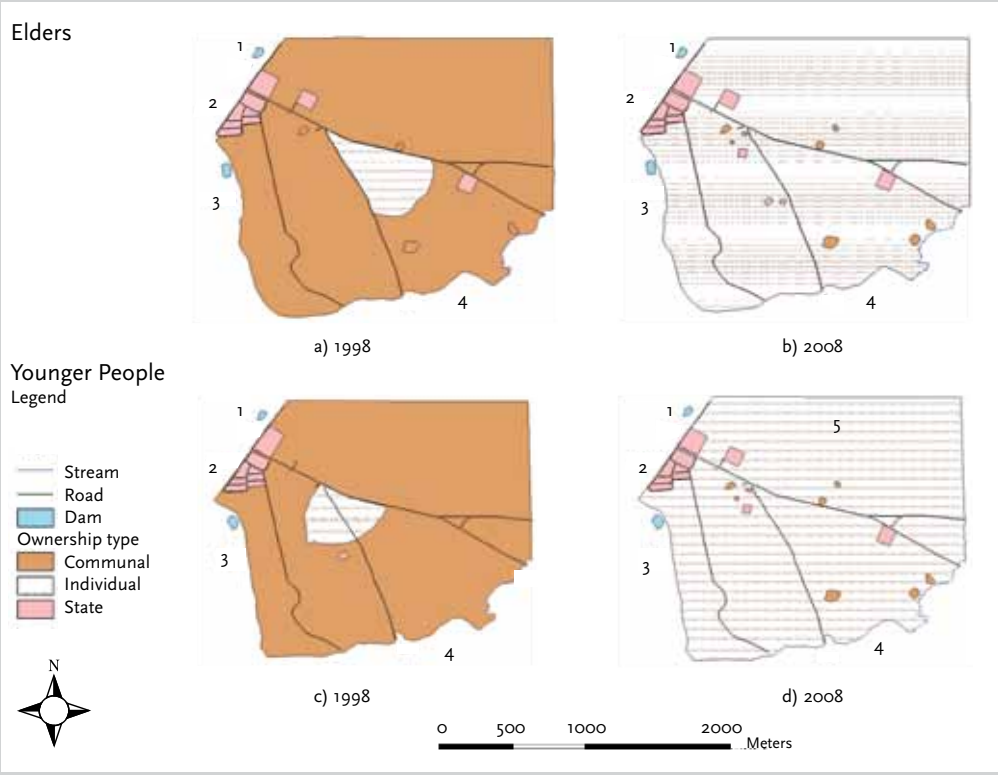
1 Kukuo
2 Dabokpaa
3 Kalariga
4 Tua
5 Zagyuri
6 Gurugu
7 Kanvilli
8 Chogu/Yapalisi

8.3.2 Scale mapping

Subgroups

As discussed in Section 5.3.2, customary land in peri-urban Tamale is controlled by subgroups or families, who manage the land on behalf of the chiefs. The boundaries of the land controlled by subgroups are not physically marked in the terrain, but follow natural features such as rivers, gullies and hills. In Vittin, nine subgroups were recognised by the elders group and 11 by the group of younger people (Figure 8.5a, b). There are minimal differences between the maps produced by the two groups, and these differences generally occur where the boundaries do not follow natural features. The younger group mapped areas controlled by caretaker chiefs, hence the resulting difference in the number of subgroups. In Jisonayilli, six subgroups were recognised by virtually all of the community members involved (Figure 8.5c, d). Although land acquisition by the state tends to reduce the amount of land controlled by some subgroups, the boundaries have remained unchanged.

Figure 8.6 Perceived land ownership in Vittin



1 Kukuo
2 Dabokpaa
3 Kalariga
4 Tua

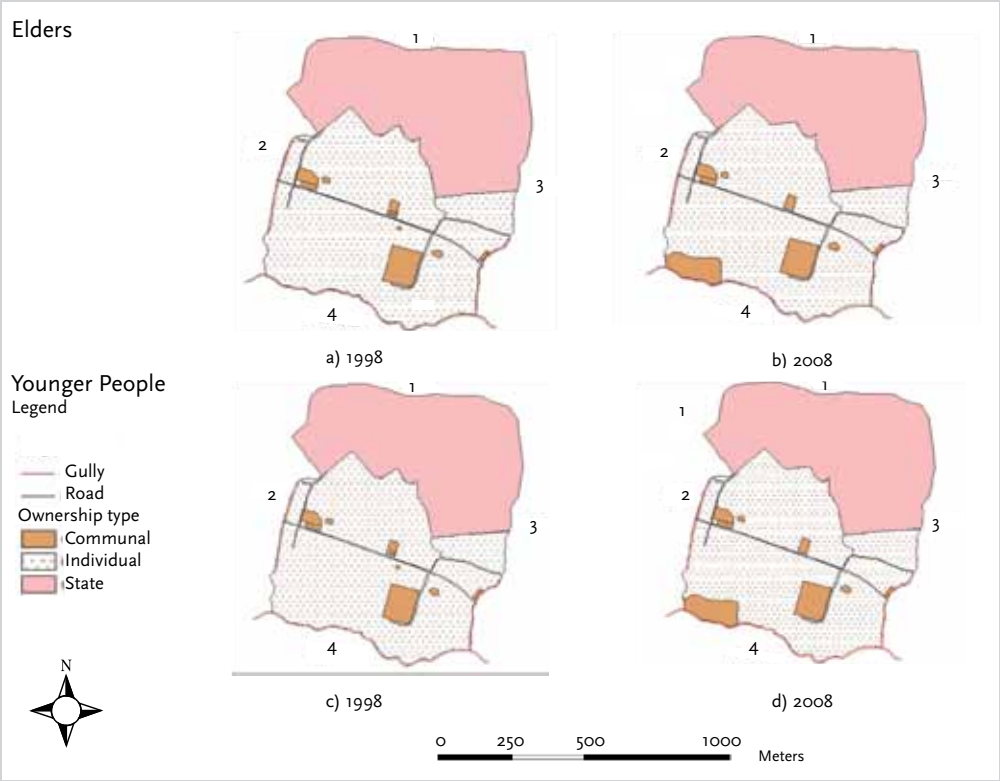
Table 8.1 Perceived changes in land ownership in Vittin over ten years

		Type of ownership			
Village/Group	**Year**	**Communal (%)**	**State (%)**	**Individual (%)**	**Total**
Elders	1998	91	3	6	**100**
	2008	1	4	95	**100**
Younger people	1998	93	2	5	**100**
	2008	1	3	96	**100**

Land ownership

In all of the communities, both the elders and the younger groups identified three types of land ownership: allodial (communal), state (public) and individual. In Vittin, the communal land includes the cemetery, the market, the dam, the shrine and the church. The estate residential area, public schools and other public areas are perceived as state land. All private houses and commercial areas owned by private persons or groups are classified as individual lands. The spatial extent of the perceived changes in land ownership over the last decade are mapped in Figure 8.6 and quantified in Table 8.1. The scale maps of Vittin show a significant decrease in the amount of communal land and a significant increase in the amount of individual land over the ten-year period.

Figure 8.7 Perceived land ownership in Jisonayilli



1 Zagyuri
2 Gurugu
3 Kanvilli
4 Chogu/Yapalisi

Table 8.2 Perceived changes in land ownership in Jisonayilli over ten years

		Type of ownership			
Group	**Year**	**Communal (%)**	**State (%)**	**Individual (%)**	**Total**
Elders	1998	3	42	55	**100**
	2008	5	42	53	**100**
Younger people	1998	3	42	55	**100**
	2008	4	42	54	**100**

The residents of Jisonayilli perceived communal land to be communally owned and used, and that this included schools, clinic, the refuse dump, the shrine, the church, the mosque, the market, reserve land and the cemetery. Individual lands are those acquired by individuals and corporate bodies. State lands are those perceived to be legally acquired by the state, and include residential areas for the Northern Region Rural Integrated Programme (NORRIP) and the VRA. Despite being controlled by the government, schools and public areas were classified as communal, since ownership of these is still vested in the community. The spatial extent of the perceived changes in land ownership during the last decade were mapped in Figure 8.7 and quantified in Table 8.2. The government has acquired a large portion (42%) of land in Jisonayilli.

Figure 8.8 Perceived land-use rights in Vittin

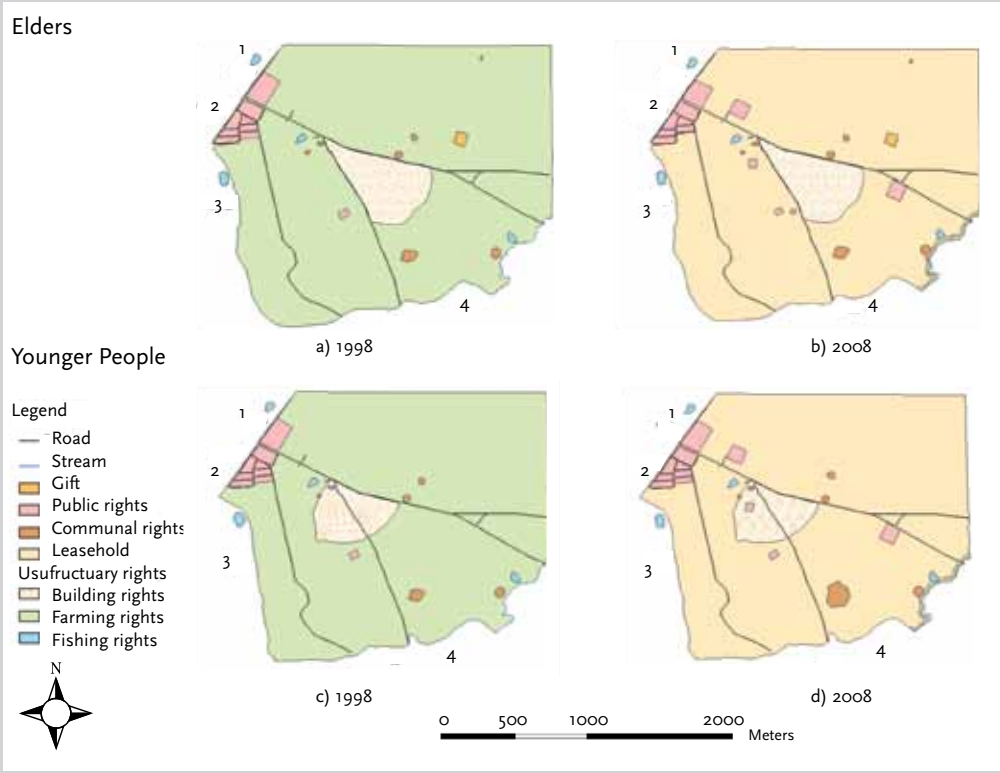


Table 8.3 Perceived changes in land-use rights in Vittin over ten years

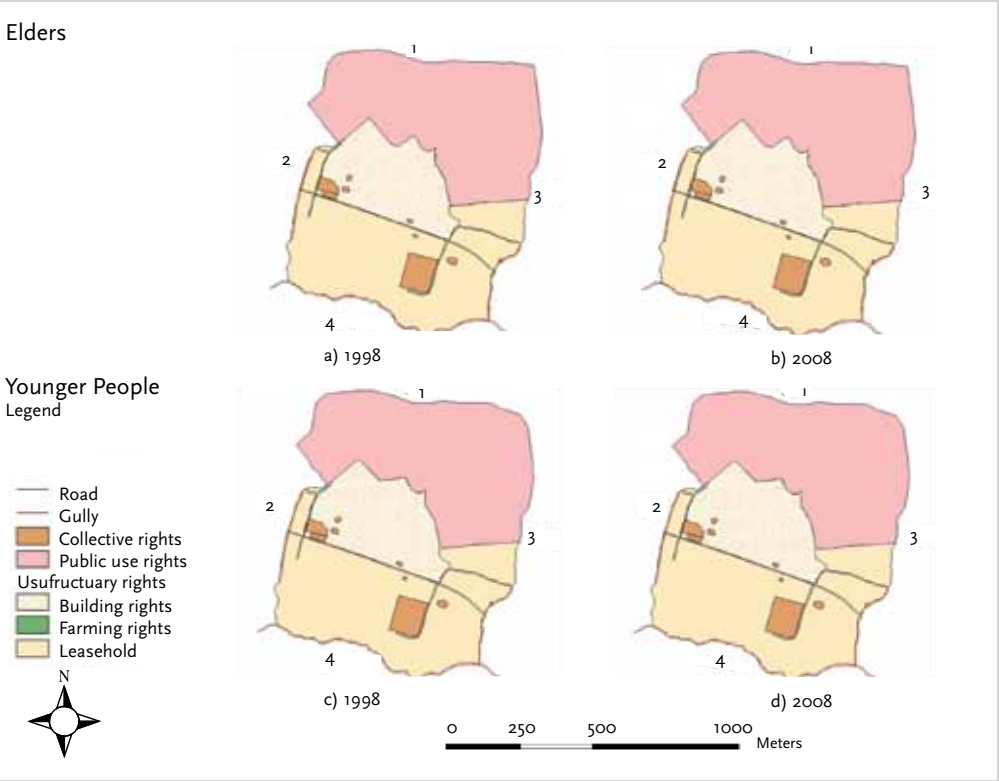
		Type of land-use right					
Group	**Year**	**Public (%)**	**Collective (%)**	**Usufructuary (%)**	**Leasehold (%)**	**Gift (%)**	**Total**
Elders	1998	3	<1	96	0	<1	**100**
	2008	3	<1	7	89	<1	**100**
Younger people	1998	3	1	96	0	0	**100**
	2008	3	1	6	90	0	**100**

Communal land has increased slightly, reflecting the conversion of land into a cemetery in the late 1990s.

Land-use rights

Five main land-use rights were identified: public, collective, usufructuary, leasehold and gift. Although rights such as short and long-term leasehold, freehold and licens can be identified for state-acquired lands, depending on the kind of instrument used for acquisition, this study refers to all such rights as public. Collective rights include burial and trading rights. Usufructuary rights can be categorised as building, fishing and farming rights. Although a gift is actually a form of freehold right, in the framework of this study, it

Figure 8.9 Perceived land-use rights in Jisonayilli



1 Zagyuri
2 Gurugu
3 Kanvilli
4 Chogu/Yapalisi

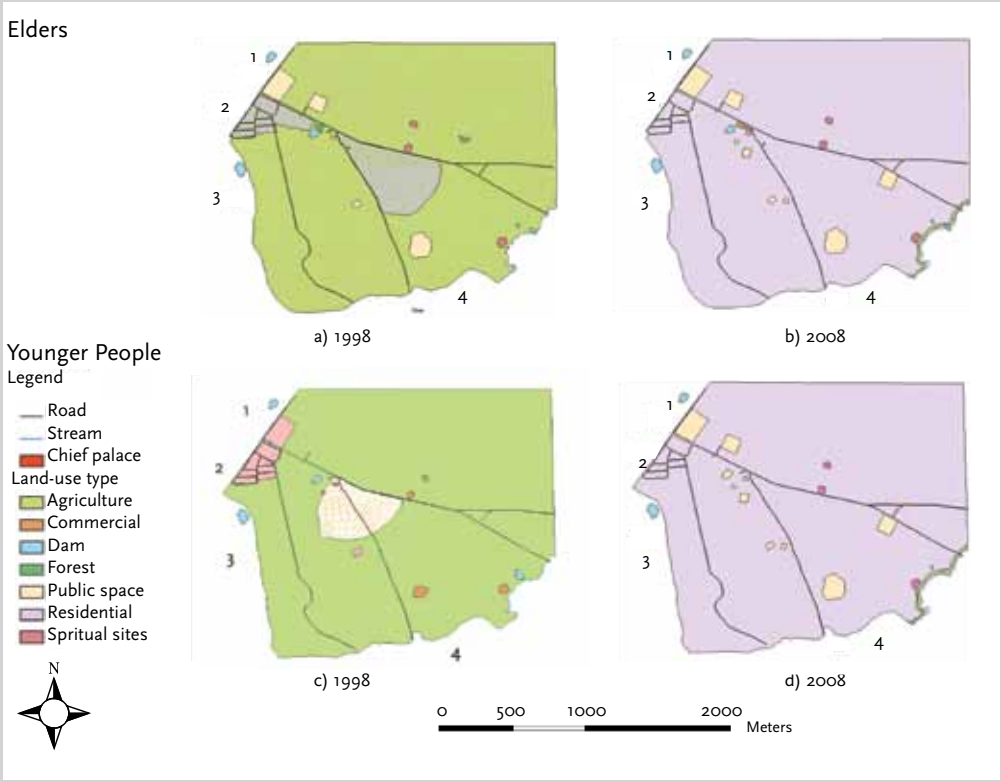
Table 8.4 Perceived changes in land-use rights in Jisonayilli over ten years

		Type of land-use right					
Group	**Year**	**Public (%)**	**Collective (%)**	**Usufructuary (%)**	**Leasehold (%)**	**Gift (%)**	**Total**
Elders	1998	42	3	16	39	0	**100**
	2008	42	5	16	37	0	**100**
Younger people	1998	41	3	18	38	0	**100**
	2008	42	4	17	37	0	**100**

is considered to be a use right. The scale maps produced by the elders and groups of younger people showed a decrease in usufructuary rights (about 90%), while leasehold (which did not exist in 1998) had significantly increased by the same percentage in 2008. The differences in public rights, leasehold and gift over the ten-year period were marginal. The spatial extent of the perceived changes in land-use rights over the last decade were mapped in Figure 8.8 and quantified in Table 8.3.

In Jisonayilli, four types of land-use rights were identified: public, collective, usufructuary and leasehold. For both the elders and the younger groups, public rights covered about 42% of rights in 1998 and in 2008. Collective rights increased by 2% over the ten-year period, while leasehold decreased by the

Figure 8.10 Perceived land-use types in Vittin



1 Kukuo
2 Dabokpaa
3 Kalariga
4 Tua

same percentage, due to the conversion of residential land into a cemetery (as mentioned earlier). No farming tenancies were indicated. The spatial extent of the perceived changes in land-use rights over the last decade were mapped in Figure 8.9 and quantified in Table 8.4.

Land-use types

Six types of land use were distinguished by the two communities:

- agricultural: including cropping, poultry, livestock-keeping and similar activities
- commercial
- forest
- public space: markets, schools, roads, the public cemetery, public toilets, the refuse dump, recreational areas and similar locations
- residential: land occupied by dwellings or earmarked for this purpose
- spiritual: shrines and other spiritual or historical features.

In Vittin, there were no significant differences between sketch maps produced by the younger group and the elders. The amount of agricultural land has decreased significantly over the decade, while residential land-use in-

Figure 8.11 Perceived land-use types in Jisonayilli

1 Zagyuri
2 Gurugu
3 Kanvilli
4 Chogu/Yapalisi

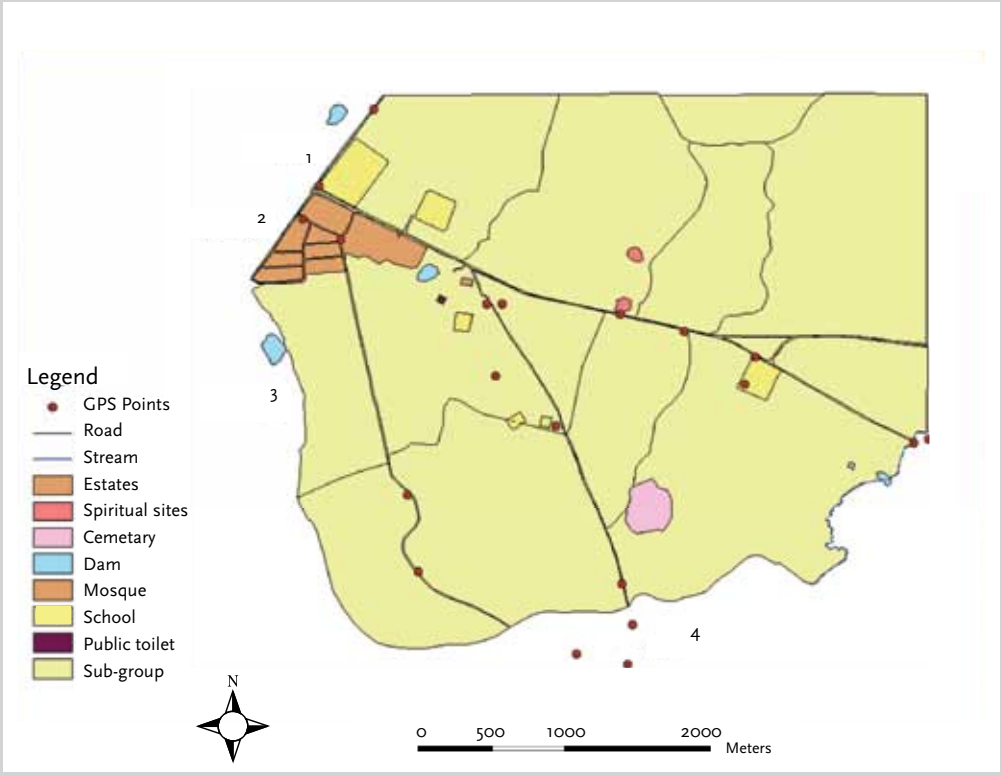
creased significantly by almost the same percentage. There were marginal or no changes in other land-use types. The changes in land-use types over the last decade have been mapped in Figure 8.10.

There were few differences between the maps produced by the younger groups and the elders in Jisonayilli. The amount of land for agricultural use has decreased significantly, with a corresponding increase in residential use. Some lands are used for commercial purposes. There is no forest in Jisonayilli. The amount of public space increased slightly over the period, due to the requirement that the amount of land for public amenities be increased. Figure 8.11 shows community members' perceptions of land-use patterns in Jisonayilli for 1998 and 2008.

8.3.3 The feedback forum

The purpose of the feedback forum was to allow those community members who had not participated in the p-mapping exercise to validate the scale maps. In Vittin, both the younger groups and elders identified land controlled by subgroups. The young people detailed all land allocated to caretaker chiefs, hence their identification of 11 subgroups. The elders emphasised the accu-

Figure 8.12 GPS points plotted on scale maps of Vittin



1 Kukuo
2 Dabokpaa
3 Kalariga
4 Tua

rate mapping of the boundary of the community, but they did not detail land allocated to caretaker chiefs within subgroups. Both the young people and the elders identified the three types of land ownership. There were disagreements as to which lands had been given as gifts. The elders indicated two spiritual sites, whereas the young people only indicated one; and the forest was only indicated by the young people.

In Jisonayilli, both the young people and the elders identified the boundary of the community and all areas controlled by subgroups. The elders did not indicate part of the state land, and neither the young people nor the elders identified land that had been given as a gift.

8.3.4 The GPS survey

A plot of GPS points on the scale maps shows that a vast majority of the locations of features measured by GPS coincided with locations on the map (Figure 8.12). The deviations can be attributed to the elders, who found it difficult to identify the smaller features on the photomap. Overall, it is clear that the participants know their environment well and can easily identify features on photomaps.

8.3.5 The follow-up community forum

At this forum, community members appraised the output and the PGIS processes that had been used in the study. In both communities, the elders were amazed that they could represent their knowledge of the history of the land tenure system on paper, and recognised that this could play a valuable role in transferring knowledge to future generations. The exercise enabled younger people to learn from the elders. Some appreciated having had an opportunity to learn about GPS and map-reading, both skills that can be developed with little or no support from professionals. Participants in the forum recognised that these skills would enable them to become more equal partners in the LA process, and that the scale maps are valuable for solving conflicts on boundaries and ownership.

8.3.6 The validation workshop

This workshop aimed to validate the output maps and appraise the utility and usefulness of the scale maps and the PGIS approach for LA. At the workshop, it was generally acknowledged that the scale maps could be used for resolving land conflicts, among other things. The scale maps showing the trends in ownership changes, land-use rights and land-use types are also important for orientation, reconnaissance and the planning of adjudication. Furthermore, the maps can provide officials with information about the tenure situation in a particular place, before they start mapping and land-use planning. During the workshop, representatives from the Survey Department expressed their concern that the quality of the scale maps did not meet the accuracy standards stipulated by Ghana's Survey Regulations for cadastral mapping and land title registration. With regard to the p-mapping process, all participants acknowledged that the process could be adopted for land adjudication in customary areas, when historical information is needed to provide certainty regarding customary boundaries and rights. Nevertheless, holding the workshop in Accra instead of Tamale could have affected the analysis in the workshop. For example, the experiences of the staff of the LSAs in Tamale and their interactions with the indigenous people place them in a position to evaluate the representativeness and usefulness of the scale maps better than those in Accra.

8.4 Appraising indigenous knowledge and PGIS

The benefit of PGISs can be divided into two types: those related to output and those related to process (Minang and McCall, 2006). With respect to output, our appraisal of PGISs paid attention to the transfer of IK, how the maps

reflect the terrain and their usefulness to the community and for LA. The process was appraised with respect to the ability of locals to use PGIS tools (usability) and to participation and empowerment.

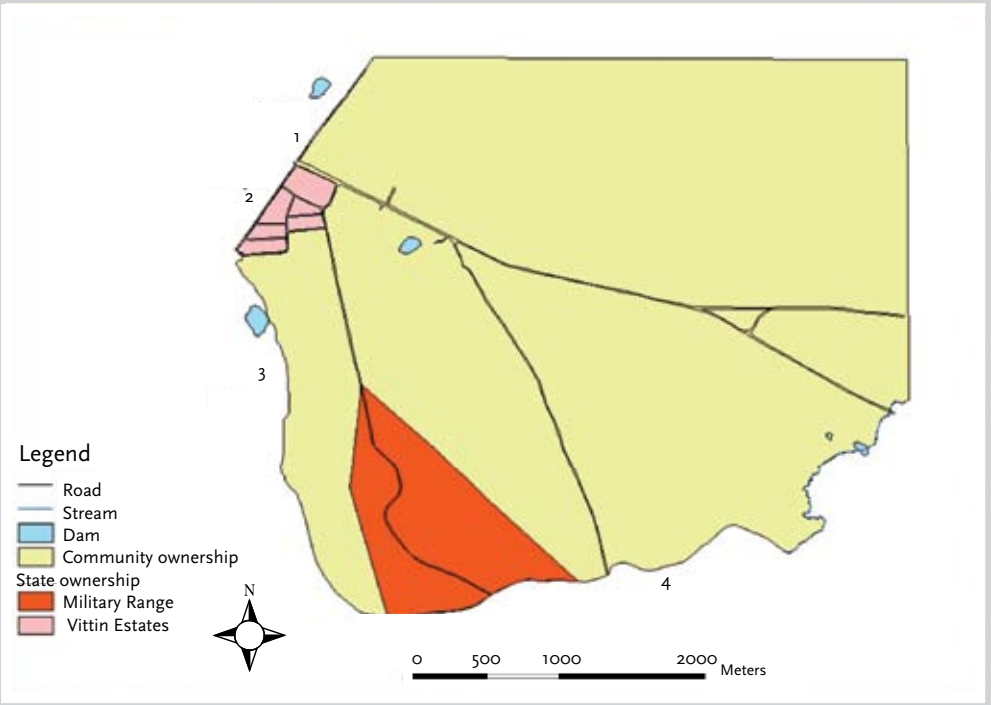
8.4.1 Dynamics of tenure

The results of the p-mapping exercise show that IK on land ownership, land-use rights and land-use types can be represented spatially. The scale maps show a significant change in the spatial extent of land ownership, land-use rights and land-use patterns, confirming the findings in Sections 6.2.2, 6.2.3 and 6.25. Like other areas in Ghana (Section 3.3), in all the communities, state ownership has been carved out of communal land. For example, Jisonayili has lost almost half of its land to the state. Furthermore, there has been a significant shift from collective land-use rights to individual land-use rights (see Figures 8.8 and 8.9). Individual land acquired through leasehold agreement increased significantly over the decade. Land use went under a significant shift from farming to residential development (see Figures 8.10 and 8.11). The scale maps confirm the increasing individualisation of collective rights observed in Chapter 6, and reported in other studies (Mends and De Meijere, 2006). The scale maps also confirm Pottier's (2005: p. 60) assertion that 'colonial development policy converts "use" into "ownership", "users" into "owners". Comparing the scale maps (Figure 8.6 with Figure 8.8, and Figure 8.7 with Figure 8.9), one can conclude that land given to individuals on leasehold is conceived as individual land.

8.4.2 Transfer of indigenous knowledge

In the two communities, it was established that IK on tenure is not formally recorded. Instead, such information is stored through continuous practice and memorisation. Younger generations learn from older ones via processes of observation, oral narration, storytelling and discourse. The results of the exercises indicate that IK is not lost, but instead transferred from generation to generation. There are small differences between how the young and old perceive their environment, and the elders were more knowledgeable than the younger groups. This became evident during the p-mapping exercise. The younger people found it difficult to sketch the boundaries of the subgroup, particularly those that did not follow any natural features. It took them longer than the elders, because they had to debate for some time before they were able to start sketching.

Figure 8.13 State-acquired land in Vittin, 2008



1 Kukuo
2 Dabokpaa
3 Kalariga
4 Tua

8.4.3 Accuracy of the maps

The GPS survey (Figure 8.12) indicates that IK reflects reality, and that local communities have a rich knowledge of their environment. The town sheet of 1997 shows a level of urbanisation that is similar to that on the scale maps created by locals, representing the situation in 1998. The land-use map of 2008 indicates that Vittin is a predominantly residential area. Scale maps showing land ownership could be compared with records from the LC, which indicated that a larger portion of the land is communally owned. The locals were also ignorant of the fact that the government had acquired land for military purposes (Figure 8.13).

The absence of military land on the scale maps may be due to a lack of communication between the Yaa-Naa who signs transfer agreements with the government and the chief of Vittin; or the knowledge may have been lost over time. The absence of a Yaa-Naa did not allow us to verify this information. Indeed, IK weakens over time; some participants found it difficult to reconstruct the tenure situation that had existed ten years previously. This corresponds with the observation made by Minang and McCall (2006), that deficiencies in the way that information is stored and communicated are a key weakness of IK. IK can be incomplete, meaning that local experience should

be used as a starting point to complement scientific and other technical knowledge.

8.4.4 Usefulness of the maps

The scale maps (Figures 8.6, 8.7, 8.8 and 8.9) provide an overview of rights to ownership and use on customary land. The maps clearly show the hierarchy of complex rights and interests associated with the ownership, control and use of customary land, confirming claims made by Österberg and Larbi (Österberg, 2002; Larbi, 2006). The maps also show that customary land rights, which are only documented in local memory, can be revealed along historical time lines (Lamptey, 2009). The validation workshop for the LSAs and the follow-up forum with the locals revealed that the maps created using PGIS tools are appropriate for several, but not all, LA purposes. Boundary representation using the p-mapping approach was not up to cadastral mapping standards. This limitation raises the argument about the purpose of maps discussed in (Alcorn, 2000). Since maps are made for different purposes, this limitation does not necessary mean that the sketch maps are not useful. Accurate boundaries are one of the many characteristics of a map, are important for specific purposes (including LA) and may require the use of technical tools. An obvious solution would be to identify and delineate general boundaries using p-mapping, after which professional land surveyors could measure the boundaries accurately using tools (if necessary). More importantly however, this so-called 'accuracy standard limitation' emphasises the need to have flexible survey and mapping standards for peri-urban areas (see Section 4.2.1).

Many land disputes pending in statutory law courts lack vital information regarding tenure (Kasanga and Kotey, 2001). Indeed, the resolution of these disputes is hindered by the absence of information on root titles in customary land. P-mapping using PGIS would provide this information. Scale maps could also act as a key source of information for dispute resolution.

8.4.5 Usability of PGIS tools

The PGIS tools appeared to be readily accessible, understandable and usable, all essential features given local skill and education levels. When the researchers first approached the communities, the locals were immediately able to identify features such as schools, dams and the chief's palace on the photomap. In Vittin, the locals soon realised that the photomap did not cover the entire community. These examples show that locals are capable of reading and interpreting photomaps. They do not require special skills, as is the case for interpreting standard maps. The use of simple map symbols, such as rectangles for dwellings, makes the p-mapping exercise easier to follow. Us-

ing a PGIS is thus not only a usable method for mapping indigenous lands, as Anderson and Chapin et al. have shown (Anderson, 2000; Chapin et al., 2005), but also for mapping the multiplicity of rights in customary land.

8.4.6 Participation and empowerment

This study has demonstrated that locals can independently and actively participate in LA activities. There was high participation by community members in the p-mapping process. Contrary to the argument made by Mosse (2001), that some members of communities can be marginalised during p-mapping, in the case areas, all locals were invited to contribute, and those participating were actively involved. This reflects the notion that the practice of PGIS promotes interactive participation of stakeholders in generating indigenous information (McCall, 2003; Kyem, 2004). P-mapping using easily accessible tools, that is, inexpensive geo-data collection tools, can encourage locals to document their own knowledge relating to tenure. The exercises made them aware of the need to regularly record IK on land tenure, before it disappeared from collective memory. The learning aspects of participating in joint activities are a further aspect of empowerment, as is the ability to master modern geo-information technology, such as GPS.

8.5 Concluding remarks

This chapter described a case study investigation that explored the potential of PGIS for uncovering IK and enhancing local capacity for LA. The locals proved to be knowledgeable about the changes that had occurred in the land tenure systems in their communities over the past ten years. Given that locals are well informed about local conditions, it would be counterproductive to overlook this knowledge when developing mechanisms to record and secure rights, particularly if the measures proposed are not suitable for the local conditions and aspirations. PGIS proved to be useful tool for uncovering IK.

The PGIS tools also promote interactive participation by community members and promote empowerment. Both literates and illiterates can use PGIS tools. The community members were able to interpret photomaps, transfer their spatial knowledge to sketch and scale maps and use widely-available geo-information technology, such as hand-held GPS devices. PGIS tools helped the locals to document their knowledge of the history of their land. The maps created could be of significant importance in the identification of underlying rights in customary land. In this way, locals can be involved in the process to identify and document land rights. The locals demonstrated their ability to carry out the PGIS approach independently. They chose participants

and trainees, decided on when to undertake the p-mapping, and facilitated the entire mapping processes. The ability to use PGIS tools with little professional support clearly indicates that local communities can use such tools to carry out day-to-day tenure documentation activities, and are thus in a position to administer their own land with little support. This method could act as a paradigm for creating PGIS strategies for uncovering IK, so as to identify underlying rights in customary lands and enhance local capacity for LA.

Based on the results of the case studies described in this and the two preceding chapters, the next chapter discusses the strategies required to adapt LA to local institutional frameworks of customary tenure, and to meet the LA requirements defined in Chapter 4.

9 Strategies for designing land administration systems for peri-urban areas

9.1 Introduction

The aim of this study is to contribute to improving tenure security in peri-urban customary areas. In Chapter 4, six requirements for designing effective and sustainable LASs for peri-urban customary areas were identified and analysed. These were namely: adaptability, flexibility, upgradeability, affordability, legitimacy and good land governance. A framework was developed to analyse these requirements in peri-urban customary areas in Ghana, focusing on three key issues (described in Chapters 6, 7 and 8). In Chapter 6, the discussion focused on the dynamics of tenure and dynamics in customary institutional frameworks for land delivery. In Chapter 7, customary tenure institutions (CTIs) were assessed from a good land governance perspective. In Chapter 8, the potential of PGIS to enhance IK and local capacity for LA was addressed. Comparing the three issues investigated across the three customary areas, it is clear that the cases show some similarities and differences, and thus with regard to the potential of CTIs to meet LAS requirements. In this chapter, we look at the similarities and differences identified, and how these can be related to the development of strategies for designing alternative LASs for peri-urban customary areas. The main objective of this chapter is to show how LASs based on the institutional framework of customary tenure offer an alternative approach to achieving the LAS requirements identified in Section 4.2.

First, Section 9.2 conceptualises how one might design an LAS that is adapted to the institutional framework of customary tenure. The conceptual framework draws on the lessons learnt in the field study (Chapters 6, 7 and 8), formalisation strategies, trends in international land policy and the reforms discussed in Chapter 2. In Section 9.3, the conceptual framework for implementing the LAS is presented. The framework focuses on three aspects: organisational structure (Section 9.3.1); tenure models (Section 9.3.2); and institutional arrangements (Section 9.3.3). These strategies discuss the key areas that need to be improved and the options available to implement them. The chapter looks at potential challenges to the implementation of such an LAS in Section 9.4, and some concluding remarks are offered in Section 9.5.

9.2 Conceptualising land administration systems for peri-urban customary areas

A number of conclusions can be drawn from the analysis of the field study. In addition, a number of more general observations can be made, based on the comparative analysis of the three elements investigated. In this section, we

reflect on the conclusions drawn from the three field studies, so as to analyse the feasibility of adapting LASs to the tenure systems and institutional frameworks of customary land delivery.

First, the analysis of how customary tenure systems in peri-urban Ghana have responded to the changing needs of peri-urban dwellers shows that a number of transformations have led to new forms of tenure and the individualisation of land rights. These new forms of tenure can only be supported by innovative institutional arrangements. The study indicates that customary tenure systems have their own mechanisms for adapting to change (Section 6.3). For example, innovations introduced in customary land delivery processes, such as the writing of land transactions and the establishments of new land committees, are responses to new challenges (Section 6.3.2). As previously noted, flexibility and fluidity are inherent characteristics of customary tenure systems (Bruce, 1988; Berry, 1993; Juul and Lund, 2002; Deininger, 2003), which allow the institutions to adapt to change. The flexibility of customary tenure systems will inevitably allow for the use of innovative procedures to adapt LASs to local conditions. It is therefore important to allow customary tenure systems to evolve naturally to suit prevailing conditions, without any interference.

Second, the study's findings indicate that the structures on which CTIs are built – feedback sessions, regular and *ad hoc* meetings – promote participation, equity, and accessibility, which promotes transparency and accountability in decision-making processes. These structures and the broad legitimacy enjoyed by institutions among community members mean that the institutions potentially meet good governance objectives in LA. Furthermore, the study indicates that CTIs are legitimate and credible institutions for administering land in customary areas. Legitimacy and credibility in customary tenure systems is based on institutions that have played long historical and social roles. These institutions also offer low-cost and effective conflict resolution mechanisms (Section 7.4). In addition, the legitimacy of the CTIs and the role played by these institutions in LA are also recognised by the constitution and other legal provisions in Ghana (Sections 3.2). Nevertheless, the study reveals bad governance in customary land delivery in areas related to transparency, equity, accountability and efficiency (Section 7.3). It is therefore important that mechanisms for improving land governance should be aimed at these dimensions, in order to improve the ability of CTIs to govern land justly. Measures that promote 'popular participation' in the selection of land committee members, reporting of stewardship, financial accountability and community participation in decision-making would be desirable (see Section 7.4).

Third, this study confirms claims in the literature that current skills and human resources in customary areas are not adequate for the provision of effective data collection and maintenance (Section 7.2.5). Only Gbawe-Kwa-

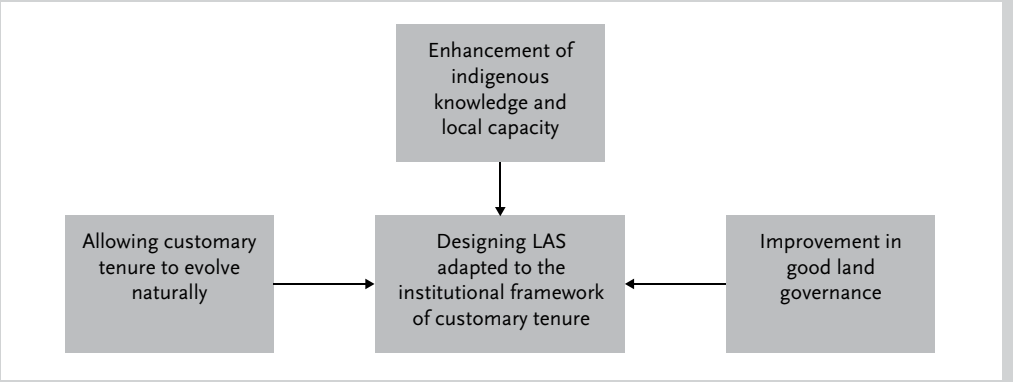
tei has a few members of staff who can collect ground rents and manage land information. These communities also have inadequate financial resources with which to hire professional services. The present system, in which the CTIs rely on goodwill professional services, seems inadequate (Sections 5.3, Section 7.2.1, 7.2.5). Enhancing the capacity of local communities will be essential, and is an important precondition for adapting LASs to customary institutional frameworks. There is a need to provide simple and user-friendly tools that will improve the ability of local institutions to collect, record, maintain and disseminate information on tenure.

In Chapter 8, we saw that a PGIS is a potential LA tool, in its capacity as a pro-poor land tool to elicit IK and enhance local capacity for LA, as shown by the p-mapping exercises (Section 8.4.3). The data obtained from IK could be used for many purposes and to develop a knowledge base for LA in customary areas (see Section 8.4.4). Although IK becomes weaker over time (also reported in Minang and McCall, 2006) and can therefore be incomplete, it can be used as a starting point and to complement scientific, technical and other knowledge. The outcomes of the case study also confirm that the PGIS approach can add value to IK. The ability to use PGIS tools with little professional support clearly indicates that local communities can use them to carry out day-to-day LA activities. The use of PGIS tools to empower local communities is both innovative and pro-poor, and could therefore form an important part of the study of building local capacity for LA in developing countries. Furthermore, it may not be sufficient to rely on the capacities of local institutions, and it will be essential to have partners to assist local communities with land management. National (statutory) institutions have to provide strategic planning, guidelines and professional services in order to improve efficiency and effectiveness in land delivery (see Section 9.3.1).

Reflecting on the field study, it is clear that providing security of tenure and an effective framework for administering tenure relations do not require sophisticated rules, processes and institutions (see Section 4.3.2 and Section 5.6). Adapting LASs to the institutional framework of customary tenure is more pragmatic than building new institutions and regulations to govern established structures (Deininger, 2003). Adapting LASs to customary frameworks could bring them naturally in line with the evolution of tenure forms. In adapting LASs to customary institutional frameworks, it would be possible to use simple, flexible and low-cost tools that provide for interactive participation by community members in decision-making processes. In this way, LASs could satisfy the adaptability, flexibility, upgradeability, legitimacy, pro-poor and good governance requirements defined in Section 4.2. Nevertheless, LASs adapted to the customary institutional frameworks can only be implemented if the three enabling conditions presented in Figure 9.1 are satisfied.

In Section 9.3, I present an alternative strategy for implementing the LAS requirements identified in Section 4.2.

Figure 9.1 Conceptual framework for designing land administration systems adapted to the institutional framework of customary tenure



9.3 Framework for implementing land administration systems in customary areas

As explained in Chapters 1 and 2, the special characteristics of customary tenure systems mean that conventional LAS tools cannot be used to deal with tenure security problems in peri-urban areas. The adaptation of LASs to local institutional frameworks would seem to be a workable option for LA in peri-urban areas. Based on the results of the field studies in the three customary areas (Chapters 6, 7 and 8), and the lessons drawn from the formalisation concepts and strategies outlined in Chapter 2, an innovative LAS model that seeks to create a framework for such an approach is presented in Figure 9.2. The LAS model outlines the organisational, technical and administrative considerations that are needed to adapt a LAS to local conditions.

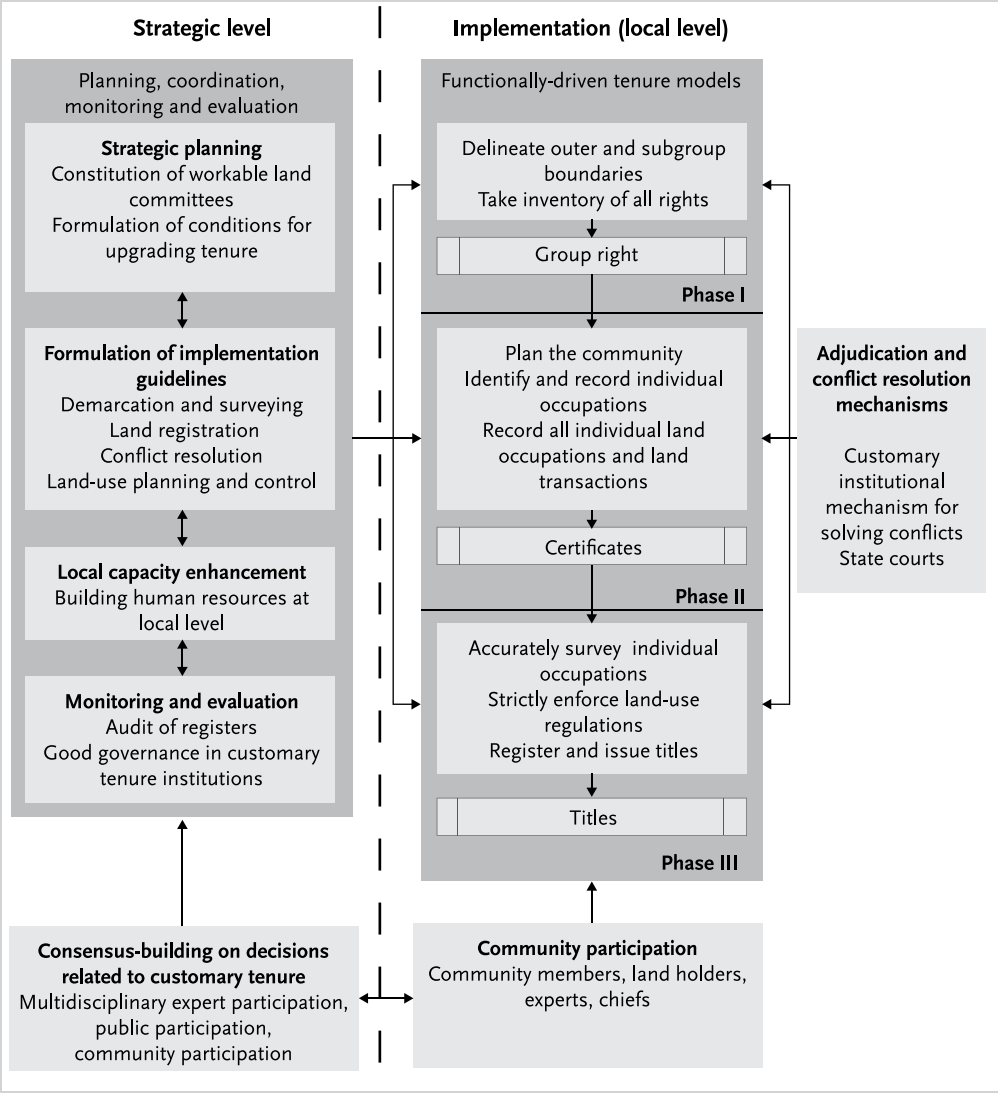
9.3.1 Organisational framework

The existence of functional institutional synergy is a necessary condition for implementing LA activities. While institutions directly involved in LAS implementation need to fulfil specialised responsibilities, more importantly, there should also be facilitating institutions to ensure that LA activities are carried out based on laid down guidelines and standards. The facilitating institutions are required to monitor, evaluate, coordinate, negotiate and manage these activities. Accordingly, the organisational framework for implementing LA activities has been organised at two levels: those of strategy and implementation.

The strategic level

The successful implementation of LAS objectives requires planning at the strategic level. At the strategic level, LSAs and the district/municipal authorities (see Section 3.5.3), together with customary tenure institutions, develop the framework for implementing LA activities, including strategic planning, the formulation of implementation guidelines for LA operational activities, local capacity enhancement, and monitoring and evaluation (see Fig-

Figure 9.2 Conceptual framework for implementing land administration requirements



Adapted from Christensen (2005)

ure 9.2). Strategic planning should emphasise medium- and long-term development needs for implementing LA activities in customary areas, including the establishment of workable land committees and the formulation of conditions for upgrading tenure. Implementation guidelines should emphasise standards for demarcation and surveying, land registration, conflict resolution, and land-use planning and control. These standards should allow local communities to use various pro-poor tools to collect and maintain data. Strategies for enhancing local capacity should address mechanisms for building human resources and the capacity of CTIs. Local capacity enhancement strategies should also include investigating which procedures and tools might

help customary institutions to undertake LA activities. Strategies for monitoring and evaluating LA activities should focus on good governance in CTIs, and also ensure that up-to-date and reliable land records are kept.

The successful planning, monitoring and evaluation of LA activities in customary areas is heavily reliant on the understanding and co-operation of all stakeholders. Therefore, strategies must be based on consensus, and decisions on their content should involve input from multi-disciplinary expert groups and the public. These forms of participation are necessary for reaching consensus, which in turn prepares the ground for future cooperation by administrative departments in planning the needs of local communities. Local community participation at the strategic level should also be considered. As the case studies indicate, there is both the capacity and desire within communities to participate in planning and land management (see Sections 6.3.2 and 8.2.5). All decision-making at the strategic level should be open to local communities. Involving community members in the decision-making process may give them sense of ownership, help them to accept the process, and secure a better understanding of the process (Dorner, 1972; Deininger, 2003; Hessel et al., 2009).

The implementation level

At the local level, communities carry out key LA activities that are based on the strategy described above, with assistance from LSAs. These activities, which include demarcation, surveying, tenure inventory, recording land transactions, and conflict resolution, are built into the institutional framework of customary tenure and implemented at the local level (see Section 9.3.3). Lessons from Uganda and Botswana indicate that such systems are likely to be hampered by limited human resource capacity, which can overstretch local institutions (Nkwae and Dumba, 2009), especially at village level. Technical assistance from LSAs is needed to breach the resource gap. A useful model is offered by the innovative arrangements for customary land delivery in Japekrom, where some of the members of land committees have been selected from unit committees (Section 5.3.1). Adopting such a structure could help communities to deal with shortages of personnel at the village level and ensure that both local communities and the local government authorities are aware of the activities of customary institutions.

9.3.2 Tenure models

As outlined in Section 4.2.3, LASs that are designed for peri-urban areas should be able to protect a broad range of interests in customary land (UN-HABITAT, 2004;2008; Meinzen-Dick and Mwangi, 2009), and should be adaptable to the dynamics of tenure. Based on the lessons drawn from the literature analysis and the field studies (Chapter 6), three types of tenure have

been proposed to satisfy these conditions: rural and agricultural; peri-urban; and urban areas. The proposed tenure types have been organised according to three phases, and can be upgraded from one type to another. The proposed tenure models are similar to the flexible land tenure system used in Namibia, where two forms of upgradeable tenure are available in informal areas, in addition to freehold tenure (Section 2.3.5). The basic difference is that in the Namibian case, formal institutions manage the implementation of the flexible tenure system. In the proposed tenure models, however, the entire system is built on the framework of customary land delivery and implemented by CTIs. The content of the rights and the strategy required to secure the tenure types are elaborated below.

Phase I tenure

This tenure type is applicable in areas where customary tenure systems are stable, particularly in rural, agricultural or less-developed areas, where there has been little or no change in tenure practice. Here, the security of group ownership is paramount. It is possible to secure group rights, because at this level, customary areas have clearly defined memberships and effective mechanisms for internal management and enforcement (Deininger, 2003). In Ghana, for example, strategies adopted at this level should focus on the identification, delineation and mapping of the boundaries of stool, skin and clan/family lands (see Section 7.3.2). At the same time, an inventory should be made of all existing locally-recognised rights, including sub-allodial rights, usufructuary rights and other secondary rights pertaining to the group. It might also be important to make an inventory of all the laws regulating tenure practices in each customary area. This information is needed to provide a rational base for planning customary areas and for further upgrading tenure to the subsequent phases.

Phase II tenure

Phase II tenure is applicable in peri-urban areas where there is economic pressure on land. The aim of Phase II tenure is to secure individuals' short-term and long-term interests in land, including: all kinds of usufructuary rights, rights acquired by strangers or settlers, and all other forms of customary land transactions. At this level, care should be taken to avoid modifying tenure relations. Tenure relations should be recorded as they exist, as recognised by customary practices in the area. A certificate should be provided as evidence of an individual's right to use land.

Rights secured in this phase should be transferable through customary mortgages, leases, sub-leases, inheritance (including matrimonial transfers), renting and any other form of transaction permitted by customary law. These transfer rights should be subject to the restrictions on the customary law, particularly those that prevent the complete alienation of customary land. It

may be important to give attention to the location of parcels in relation to proposed infrastructure, services and undertake environmental evaluations. For example, when land is allocated for permanent structures like buildings, land-use planning controls should be enforced, if and when necessary. Such controls may not be needed for temporal structures. These conditions are also attached to 'starter titles' in Namibia's flexible tenure system (Christensen, 2005).

Phase III tenure

Phase III tenure is applicable in urbanised areas where there is a high level of demand for individual rights. At this stage, the aim should be to secure individual rights and issue titles. As discussed in Section 4.2.3, the point of upgrading tenure is not to make some rights more secured than others; instead, at this stage, it is assumed that the tenure system has evolved to the extent that the bundle of rights in the customary land has been naturally weakened. In this case, upgrading rights would not have a negative impact on other rights in the bundle, and would not affect the social structure of customary areas.

During this phase, the individual rights acquired and recorded in Phase II can be upgraded to titles. Titles can also be directly issued to new allocations. However, LA processes leading to the issuance of titles should provide clarity on the rights in a cost-effective way (see Section 4.2.4). At this stage, all of the benefits of ownership could be allowed. However, in order to protect group rights and to secure allodial ownership, the issuance of freehold ownership should be avoided. A distinction should also be made between the highest rights that can be attained and registered by indigenes and settlers. For example, in order to secure allodial ownership on the part of customary groups and to ensure that future generations can also access their ancestral land, it is important that proprietary rights for settlers are recorded as leasehold (see Section 2.3.5). The leasehold concept is supported by the Constitution of Ghana (1992), which prevents the creation of freehold titles in customary land (see Section 3.5.2 and Section 6.2.2). In Phase III, which is close to the end of the formalisation processes, restrictions on sub-divisions and land-use planning should be enforced when it is realistic to do so.

9.3.3 Institutional arrangements

A successful implementation of LA activities is based on well-defined institutional arrangements. Based on the case study findings and lessons from literature, in the following paragraphs, I describe a number of administrative and technical procedures that should be followed to allow communities to realise the objective of securing rights at each phase of the tenure models, as described above.

Inventory of land rights, rights holders and customary laws

Efficient LASs for customary areas require relevant information systems that support the identification, recording and securing of individual and group rights in land. The tenure inventory undertaken during Phase I has two objectives: first, since customary laws in most communities are not recorded, it is imperative that inventories of these laws are made. One of the major problems identified in this study is that changes in tenure rules are leading to greater individualisation (see Section 6.2.1). The reason for making an inventory of customary laws is not to undermine the fluidity of the laws, but to make them more accessible to community members and outsiders. The more that customary law is accessible to land users, the less it may be subject to manipulation. Accessible customary law may also improve transparency in customary land delivery. Experts could assist customary areas with recording and codifying all the customary laws regulating access to land. Participatory Rural Appraisal (PRA) tools, such as interviews, storytelling, focal group discussions (Rambaldi, Kyem et al., 2006) and the p-mapping approach used in this study (see Section 5.4.3) could be used to extract tenure information from stakeholders in customary areas. Second, it is important to record information about right-holders in, so as to identify the legitimate members of customary areas. This repository of right-holders and customary laws can provide an important source of information for decision-making and for solving land-related conflicts.

Land allocations

In Chapter 6 and in the literature (Ubink, 2008a; Toulmin, 2009), it has been observed that growing demand for residential land has resulted in chaotic land allocation processes. Some chiefs and family heads have taken unilateral decisions to lease farmlands cultivated by indigenous farmers to strangers/settlers, while some farmers lease their farmland privately (see Section 6.2.3). Such actions often result in conflicting claims, haphazard land development, forced evictions, and tension between indigenous members and their leaders (see Chapters 6 and 7). Considering that customary land is owned by subgroups/families, but is managed by chiefs and family heads, this raises the question of who should be involved in allocating residential land.

The process for allocating land should follow the two clearly-defined procedures that apply to accessing land in all three customary areas: allocation of farmland and allocation residential land (Section 7.2.5). In the former, and for agricultural areas (Phase I), heads of household can continue performing their function of allocating farmlands and solving tenure problems within the subgroup. However, in Phase II and Phase III, the allocation of residential land should be handled by established land committees. For example, the innovative institutional structures in Japekrom and Gbawe, in which land committees are responsible for allocating land (Section 5.3), could be extended to

other areas. However, it is crucial to ensure that the various groups are represented in the land committees, and that community members can select members of the land committees (Section 7.2.1). More importantly, land allocation procedures must be clear and simple, and should follow due process, as defined by the customary laws of the area. The simple and well-designed application forms that are used in the three customary areas studies (Section 6.3.2) offer a good example; using such measures prevents chiefs from manipulating land allocation processes, and also improves transparency and equity in land allocation processes.

In many peri-urban customary areas, people live in fear of being evicted from the lands they occupy because these lands are located on waterways, in reserve lands or in other public spaces. In order to prevent such occurrence and haphazard development, the allocation of residential land in Phase II and Phase III should follow a well-designed and realistic layout plan.

Demarcation, surveying and mapping

Well-defined boundaries are necessary for securing land rights (Deininger, 2003). Procedures for identifying and mapping land therefore form a crucial part of LA processes. Considering the differences between the tenure models (see Section 9.3.2), no single approach can be prescribed for demarcating, surveying and mapping. In addition to conventional methods, such as GPS, Theodolites, and photogrammetric methods (aerial photos), image-based methods, such as high-resolution satellite imagery (HRSI), can be used for surveying and mapping. These techniques have their advantages and disadvantages, and the objective of the exercise and the cost (but not necessarily the need for strict accuracy) should be taken into account when selecting a method. As suggested in Sections 4.2.1 and 8.4.4, it is difficult to adhere to strict standards when surveying and mapping in peri-urban customary areas. The notion that that parcels to be formally recorded or registered can only be surveyed using fixed boundaries should not be applied in this context. Furthermore, since the overall objective of designing the LASs in customary areas relates to issues of cost and local capacity, flexible tools that require less technical expertise and that can empower locals are particularly desirable. Although I have not given detailed technical requirements for demarcating, surveying and mapping boundaries and land rights for each phase of the tenure model, I make a number of suggests in the following paragraphs.

It is crucial to have effective methods for demarcating, surveying and mapping the outer boundaries of the stools, skins and families in Phase I. This is because, like in many other African countries, land conflicts among customary groups in Ghana have always been related to the uncertainty of boundaries and conflicting claims to territorial lands. These boundary conflicts have long histories and are rooted in heritage and culture (Aryeetey, Ayee et al., 2007). It is therefore important to map the outer boundaries of stools, skins

and families well. Systematic demarcation and the clear definition of groups' external boundaries could prevent encroachment (Deininger, 2003; IIED, 2006), and has the potential to end protracted boundary disputes. For the demarcation of the boundaries of stools, skins and families, non-technical mapping tools such as PRA and participatory sketch-mapping could be used. The former will uncover the historical evidences behind these boundaries before marking them. The p-mapping approach outlined in Section 8.2 could be used to pre-mark the agreed-upon boundaries. After the boundaries have been identified and demarcated, experts can survey these boundaries using technical tools.

For Phase II tenure, strict adherence to technical requirements for surveying individuals' occupation of and rights to land should be avoided. Flexible technical standards for cadastral surveys are required, to allow various surveying techniques and data types to be used to describe boundaries (see Section 4.2.1). Individuals' land occupation and rights can be mapped using handheld GPSs or sketch maps, or can be identified using satellite imagery, orthophotos or similar technology. For Phase III tenure, the survey method adopted should improve the quality of the represented boundary. However, to reduce costs, a general boundary concept is appropriate for surveying and mapping individual rights (see Section 4.2.3).

Recording and registering land rights and transactions

Different procedures are adopted for the recording of land rights in the three tenure types. In Phase I, where land relations are mostly based on kinship or a combination of kinship and territoriality, for stools, skins and families, it is logical to record allodial ownership in the name of the group. Recording or registering land in the name of the group could secure the latter against outside encroachment (Deininger, 2003; Fitzpatrick, 2005). Informal or formal procedures may be needed for recording or registering allodial ownership. For example, a combination of adjudication processes and traditional mechanisms for identifying and solving boundary disputes will be needed before ownership can finally be recorded in a legal register. These steps are necessary to prevent the recurrence of conflicting claims relating to the boundaries of the groups.

In Phase II tenure, existing individual land rights and new land transactions should be recorded in local land registers. CTIs should be responsible for the recording and issuing of certificates that give proof of these rights. Although the provision of titles for individual rights to land has been criticised for promoting the breakdown of social and inter-family relations (Cotula, 2007), this study clearly indicates that provision of certificates as evidence of allocation and access to land rights is necessary in peri-urban areas (see Section 6.3.2). It may not only be necessary to record individuals' when there is considerable tenure insecurity within the group (Fitzpatrick, 2005), but also when oth-

er customary transactions which are legitimate in customary tenure systems are made. However, it is important to analyse processes leading to the issuance of these certificates on the basis of their appropriateness for local conditions, because evidence suggests that the registration of individual rights can lead to crystallisation of submerged conflicts, exclude subsidiary right-holders, and lead to manipulation by opportunistic group members and elites (Fitzpatrick, 2005; Benjaminsen et al., 2009).

Evidence from this study clearly indicates that providing security of tenure does not necessarily require the issuance of formal land titles and use of sophisticated tools (Section 6.3.2). In many circumstances, the use of simple and well-defined procedures to record land rights within a group can make a significant difference (Deininger, 2003). It may not be necessary to record land information in complex and sophisticated registers during Phase II. For instance, land tenure information can be recorded in logbooks and spread sheets that link allocated parcels to the particulars of right-holders. Many of the case study communities have adopted simple land information recording systems (Section 7.2.5). The allocation note, which has become widespread in customary areas in Ghana (see Section 6.3.2 and 7.2.3), can function as a certificate in Phase II, provided that the processes leading to the issuing of allocation notes reduces uncertainty surrounding land rights (which seems to be the case in many customary areas).

The recording of land rights in Phase III should focus on two objectives: (1) the upgrading of the certificate issued to protect individual rights in Phase II; and (2) the issuing of new titles to land. With regard to the former, the procedures for recording these rights should aim at improving the process to ensure clarity in the rights secured in Phase II. Whether new transactions are being recorded or registered, or rights are being upgraded, there should be no deliberate simplification of land rights. All existing rights, including all forms of customary transaction, should be recorded as they exist, so as to avoid creating primary right-holders and weaker groups of unrecorded secondary right-holders (Benjaminsen et al., 2009). Nevertheless, the kinds of rights that can be recorded at this stage of the tenure model should be determined by customary and national law.

In Phase III, the procedures for recording land rights and issuing titles should be simple and run in parallel to existing land registration systems. CTIs should receive various forms of assistance in carrying out their task of recording rights and resolving conflicts. Land rights and transactions can be recorded using simple forms for documentation and the making of contractual agreements. Using simple procedures for recording land transactions may help locals with a minimum level of legal technical knowledge to undertake such activities. This is important, because experience from Botswana indicates that the Certificate of Rights (COR) failed to reach its objectives due to a shortage of technical expertise to carry out the certification activi-

ties (Durand-Lasserve, 2006). Such arrangements would seem feasible, as the attempts by local communities in Niger, Lithuania and Ethiopia to carry out simple forms of registration, with some assistance, yielded positive results (Deininger, 2003; IIED, 2006; Deininger et al., 2008; Toulmin, 2009).

Maintenance and auditing of land records and registers

Maintaining comprehensive, up-to-date and reliable land records is a central requirement for LASs. In peri-urban customary areas, maintaining up-to-date land records will depend on the location of the land register in question and on cooperation from local community members and land committees. Since it is proposed that LA activities should be implemented at the community or village level, it would be ideal to maintain land records at the community level. This could encourage the recording of changes relating to rights, boundaries and transfers. However, the need to maintain effective land records could put communities with inadequate human and financial resources under considerable strain.

Looking at the different types of customary institutional structure in Ghana, two types of land register can be proposed. For family lands, one central land record/register could be maintained at the seat of the head of the family, where most land transactions are approved and recorded. In a similar way, for stools and skins that exist as paramount areas, it would be ideal to maintain one central register at the seat of the paramount chief, where most land transactions are recorded (see Section 5.3). However, for stools and skins that exist as confederations that are constituted by a hierarchy of paramount areas, in addition to the main land register maintained in each paramount area, a second register containing copies of these main land registers should be kept at the seat of the confederation. The inventory of land rights, rightholders and information about the lineage groups recorded during Phase I, and the daily land transactions recorded during Phases II and III, should be recorded and maintained in the central register. It may also be necessary to check and edit these records, to ensure that changes reported by local communities are recorded appropriately. This should be decided at the strategic level (see Section 9.3.1).

Adjudication and resolution of land-related conflicts

The successful implementation of LASs at the local level will be dependent on having effective institutions and processes for solving land-related conflicts. Several land conflict resolution mechanisms are available, and the choice of a particular mechanism will be based on several factors. First, since land conflict resolution relates to ascertaining ownership and rights, the mechanism should be linked to institutions that are knowledgeable about the tenure system and have the social and legal legitimacy to implement their decisions. When institutions lack knowledge and legitimacy, this has consequences for

the effectiveness of conflict resolution. Second, the process should be understandable, transparent, accessible and inexpensive. When the institutions in charge of solving conflicts are inaccessible, land users pay a high price to achieve justice (FAO, 2007).

As discussed in Section 3.5.3, the state law courts in Ghana have proved to be inefficient when dealing with land conflicts due to of lack of reliable information, some of which is difficult to obtain (Kasanga and Kotey, 2001). Even when information is available, court decisions have little effect on land disputes beyond the specific case involved (Ubink and Quan, 2008). Meanwhile, some land-related conflicts that had proved impossible to resolve in the state courts have been resolved using customary conflict resolution mechanisms. For example, in 1999, the Asantehene (King of the Asante Nation) of Ghana authorised all land disputes in the Kumasi Traditional council area to be withdrawn from the regular courts and put before traditional institutions. This order was obeyed, and within a month, several protracted land disputes were settled (Kasanga and Kotey, 2001).

Given these factors and the increasing occurrence of land-related conflict in customary areas, ADR mechanisms would seem to offer an appropriate solution for peri-urban customary areas. ADR mechanisms rely on mediation and arbitration (Herrera and Da Passano, 2006), which are inherent to customary conflict resolution. Customary conflict resolution processes are based on consensus-building, where discussions are open, information is shared and clarity sought. The field study also indicates that many people still rely on or prefer to use customary conflict resolution, because it is faster, less expensive, and effective (see Section 7.2.5). These factors, in addition to their broad legitimacy, give CTIs an advantageous position in adjudication and resolving land conflicts. In particular, when customary land delivery is managed by committees, such institutions can be advantageous for landowners in that they can provide a contact point for adjudication and justice delivery. Nevertheless, providing mechanisms for recording the proceedings and results of customary arbitration processes can improve land conflict resolution in these areas.

Of course, customary conflict resolution should not be the only way forward when solving conflicts in peri-urban areas. The state courts can be used to support customary conflict resolution, particularly in situations where land users fear or lose trust in indigenous institutions.

9.4 Challenges of adaptating land administration to the institutional frameworks of customary tenure

The implementation of the LAS models proposed above may encounter several challenges. This section highlights some critical factors that need to be considered in order to ensure the successful implementation of the proposed LAS models.

Chieftaincy and land-related conflicts

Although there are many different types of land-related conflicts in customary areas (Aryeetey, Ayee et al., 2007), those that have the potential to frustrate the successful implementation of the proposed LAS models are conflicts that relate to conflicting claims to territorial land and boundaries. Such conflicts often arise as a result of 'ownership and sovereignty over a particular group of people' (Aryeetey, Ayee et al., 2007: p. 36). The history of land boundary disputes in Ghana is one of long delays and backlogs in courts (Kasanga and Kotey, 2001). There are protracted chieftaincy disputes, most of which occur as a result of competing claims over the legitimacy of elected chiefs. These unresolved conflicts have the potential to undermine the objective of adapting LASs to the institutional framework of customary land delivery.

The effective resolution of chieftaincy and territorial conflicts that are rooted in the social-cultural and historical development of tenure institutions will require the use of innovative and unconventional tools. As discussed in Section 9.3.3, the ADR system could be useful in this respect. The use of the p-mapping approach discussed in Section 8.2.1 could also help to resolve conflicts. In the p-mapping approach, stakeholders in the customary areas can be brought together to identify traditional boundaries and solve disputes accordingly.

Abuse by customary authorities

As observed in this study (see Section 7.3) and in the literature (Amanor, 2008; Ubink, 2008a), in some peri-urban communities, chiefs have assumed *de facto* ownership of communal land, and have become less transparent and accountable in their handling of land transactions. Empowering chiefs and traditional authorities to administer customary land runs the risk of allowing powerful chiefs and elders to abuse the system. Furthermore, some traditional rulers might use their enhanced knowledge to evict farmers and other vulnerable groups who had obtained land through customary arrangements. Integrating principles of good land governance into the LA framework in these areas could reduce this risk of abuse. The measures that have been outlined in Sections 7.4 and 9.2 can improve good land governance, and particularly levels of equity, transparency and accountability.

Community perceptions

Throughout this study, participation by community members in LA activities has been cited as a critical success factor. It must be noted that the implementation of the proposed LAS strategy will not be feasible if local communities do not have a sense of ownership and are not willing to cooperate. The strategy may lack feasibility if the local communities feel that they are not ready to adapt to the new changes. The greatest challenge will be to build the confidence of the vulnerable groups in customary areas, such as indigenous farmers and women, who might have lost trust in CTIs to provide equitable land delivery services. Customary areas such as Gbawe-Kwatei family, which have engaged in good customary tenure practices, can be used as a point of departure to encourage locals who have lost interest in indigenous institutions.

Devolution of land administration activities to customary authorities

The implementation of LASs that are adapted to the institutional framework of customary tenure requires the transfer of many LA activities and functions to CTIs. The critical question is whether public land sector institutions will be willing to hand over LA activities to CTIs. Ubink (2008a: p. 42) asserts that LSAs tend to hinder the functioning of local land management institutions, usually with the 'conviction that the state has a legitimate role to protect its citizens from mismanagement and bad governance in customary systems' – these are, after all, the reasons why LSAs were established. This perception on the part of LSAs attends to result in a 'power play' between formal and customary tenure institutions. For the successful implementation of a LAS based on the institutional framework of customary tenure, LSAs should not view CTIs as competitors, but rather as partners who perform some aspects of LA activities. The LSAs should co-operate with and assist the CTIs.

Managing customary and statutory laws

As elaborated in Section 3.5, Ghana has a comprehensive legal framework consisting several statutory laws and institutions that regulate the administration of customary land. Some of these statutory laws conflict with each other and with customary laws and practices. One of the critical challenges, with regard to the implementation of the proposed LAS models, is how to implement the models in the existing legal framework. In particular, we need to look carefully at the issue of the extent to which statutory and customary laws should be used.

While it is acknowledged that not every aspect of customary law can be applied in the proposed tenure model, some of the statutory laws also need to be revised to allow for the efficient implementation of the proposed models. For example, as discussed in Sections 3.3 and 3.5.2, statutory laws require the allocation of stool and skin land to be preceded by the granting of con-

currence by the LC. One of the main reasons for granting concurrence is to ensure that customary areas are developed in accordance with an area's development plans. This arrangement has been violated in many customary areas. In the proposed organisational arrangement, in which LSAs collaborate with and assist customary areas in planning and executing LA activities, there may not be a need to grant concurrence prior to land allocations.

Lack of human and financial capacity within customary institutions

In this study, it has become evident that while some customary areas (Gbawe family land) clearly have the potential to manage their lands, Japekrom and Tamale and several customary areas lack the necessary human and financial resources to effectively manage the land. Major bottlenecks could occur because CTIs do not have the capacity to carry out technical functions such as land surveying, registration and land-use planning or the financial capacity to employ land professionals to executive these tasks, particularly in Phase III. It would thus be necessary to adopt measures to build the capacity of local institutions. This study has shown that the use of PGISs can enhance local capacity for land documentation (Chapter 8).

Variable customary practices and information systems development

There are as many customary laws as the number of tribes, and complex tenure arrangements and institutions exist across Ghana. Given this diversity of customs, rules and institutions, the challenge is how to design common rules and standards to regulate LASs uniformly across all customary areas. The rules for administering land in each of these areas must be designed to suit local situations. Furthermore, access to land information is highly relevant for effective decision-making (Elwood, 2006; UN-HABITAT, 2007).

In the proposed system, information is kept at the local level, where most operational activities take place. For effective decision-making and administration by central government, these localised systems need to be integrated for strategic planning and policy purposes. Similarly, different data types with varying standards, captured using different techniques, have to be integrated. From an information systems perspective, trying to integrate all of the local systems and maintaining them in a single information system will be complex, time-consuming and prone to consistency and completeness errors (De Vries, 2004). The Social Tenure Domain Model (STDM) is an initiative by UN-HABITAT, together with GLTN, ITC and FIG, which supports all forms of land rights, social tenure relations, and overlapping claims to land (UN-HABITAT, 2004; Augustinus et al., 2006; Van Oosterom et al., 2006; Lemmen et al., 2009). The STDM is designed to be implemented as a single user system, or implemented as a distributed set of (geo-)information systems (Lemmen et al., 2007). Although it has not yet been fully tested, the ability of the STDM to link different kinds of social information to spatial data, and to operate in

a distributed information system environment, make it a promising tool for dealing with these technical challenges.

9.5 Concluding remarks

The purpose of this chapter was to provide strategies for designing LASs that are adaptable to tenure dynamics and local institutional frameworks. These strategies have been analysed in detail, focusing on organisational structures, tenure models and institutional arrangements. These models and arrangements offer various ways to secure a continuum of rights, undertake surveying and mapping, demarcate boundaries and resolve conflicts.

It has been argued that adapting LAS to an institutional framework for customary land delivery is feasible, and constitutes a pragmatic approach to securing tenure in customary areas. CTIs are built on structures that can meet good governance objectives. The flexibility in customary tenure systems has allowed CTIs to introduce several innovations in response to changing needs. The case studies illustrate that local communities have the ability to adapt flexible and innovative tools, which empower them to carry out LA activities. This potential on the part of local communities, and the legitimacy enjoyed by CTIs mean that they can meet the requirements for administering land in peri-urban areas. Nevertheless, it has also been shown that good governance, IK and local community capacity are necessary to ensure the successful design and implementation of LASs that are based on the institutional framework of customary tenure (Figure 9.1).

The chapter also conceptualised a framework for implementing LA based on customary institutional frameworks. The conceptual model is a hybrid system, built on strategies based on LAS concepts and the framework of customary land delivery. On the one hand, the underlying logic of the procedures for demarcating, mapping and recording land rights is clearly based on conventional LA principles. These activities are carried out using the customary tenure institutional framework. On the other hand, customary oral transactions and indigenous practices are replaced with written transactions, without necessarily changing tenure structures. The conceptual models are based on customary land delivery processes, with technical and strategic support from the LSAs. The framework covers tenure types, administrative processes involved and the new institutions required to implement the model. Three tenure types, which secure group rights in Phase I and individual rights in Phases II and III, were proposed. The chapter also suggested a number of technical solutions that might be required to achieve the LA objective. With a view to local capacity in customary areas, the technical options suggested emphasise simple, flexible and innovative tools. The use of these innovative tools is essential

to be able to draw on local capacity and IK in the LA process. Throughout the chapter, community members' participation in LA activities has been highlighted as essential for the effective implementation of the strategies. Finally, the chapter has made a number of recommendations to highlight the major challenges affecting the implementation of LASs that are adapted to the institutional framework of customary tenure.

10 Conclusion

10.1 Introduction

In the introduction to this thesis, the major issues affecting the securing of rights and effective administration of land in peri-urban customary areas, and the move towards adapting LA to local conditions, were discussed. The debate on securing tenure in customary areas has undergone a paradigm shift from formalisation strategies based on replacement or market-led models, to the integration of informal and customary rights in LASs. As discussed in Chapter 2, this trend can be found in international policies and many LAS initiatives across Sub-Saharan Africa. Following this trend, the decentralisation of LA functions and the general adaptation of LA to local institutions have provoked significant interest on the part of scholars of anthropology and LA. This study contributes to research in this field.

In this study, the analysis of existing theory on formalisation strategies, the development of the theoretical framework, and the field studies all addressed the research question: 'how can LASs in peri-urban areas be adapted to the tenure and institutional framework of customary tenure systems?' By focusing on this general research question, this study aimed to contribute to knowledge on LA reform, and in particular, to add to knowledge relating to the design of alternative LASs for customary areas. By analysing cases in three peri-urban customary areas – namely, Japekrom, Tamale and Gbawe – this study has helped to fill the existing knowledge gaps.

The main research question was broken down into a number of sub-questions. In this concluding chapter, I provide a summary of the findings with regard to the research objectives, the challenges and the questions formulated in Chapter 1. The chapter opens with an outline of the answers to the research questions. I then offer a general conclusion, which is based on the answers to the research questions. Next, the chapter discusses how the findings of this study contribute to literature. Finally, suggestions for future research are presented, based on a discussion of the limitations of the study.

10.2 Conclusions

10.2.1 Formalisation and land administration

Question 1: What lessons can be learnt from the analysis of the formalisation theories, and to what extent can these be applied to the design of LASs in peri-urban areas?

This question was answered in Chapter 2. The formalisation of land rights in customary areas in Sub-Saharan Africa is a subject that dates back to the modernisation of agriculture, but it remains relevant today. A number of lessons were drawn from the discussion of the literature in Chapter 2. The move

towards formalising customary land has been driven by dissatisfaction with CTIs in the management of land. Second, the literature on the formalisation of rights in customary land is centred on two arguments: economic and social. The economic arguments are generally embedded in neo-classical economic theory (Hardin, 1968), and emphasise the need for improved agricultural productivity, the promotion of the property market and the security of property rights. These arguments can be found in replacement theories, De Soto's model and the multiple tenure theory. Social arguments are based on the assumption that property markets fail to secure land for the large majority of people (Cotula, 2005), and create social problems in customary areas. These particular arguments lie behind adaptation theories.

In general, the debate on formalising customary land tends to narrow down to:

- whether tenure security should be provided with property titles or alternative, more unconventional approaches;
- whether de facto tenure should be integrated into the formal system through land ownership based on the replacement of property rights (market-based models) or approaches that emphasise social and economic integration and the security of the commons; and
- whether LA should be based on state-led or locally-based institutions.

Whether one pursues land reform on the basis of economic or social objectives, the approach should be tailored to the economic, social, environmental and political setting in question. The nature of customary tenure system may require formalisation strategies that shift the focus away from conventional methods based on replacement, the market objectives and state institutions, towards the use of innovative approaches that can be adapted to local conditions.

Questions 2: What is the nature of the existing legal framework for administering land in Ghana, and to what extent does the framework support the administration of customary land at the local level?

This question was answered in Chapter 3. Ghana has a comprehensive land policy (Deininger, 2003) and a broad regulatory framework governing customary land and related sectors. The legal framework recognises customary laws and institutions in the administration of land. Several laws and institutions restrict the power of customary institutions and control their activities. Some of these restrictions include concurrence of land transactions, revenue collection and disbursements. The comprehensiveness of the legal framework for administering land has resulted in bureaucracy and delays, overlapping institutional responsibilities, uncertainty of tenure security, conflicting statutory regulations and laws, and injustices in the state acquisition of customary land.

Both the colonial and post-colonial policy frameworks for administering land have followed the trend towards replacement and market-based models, rather than adaptation to existing customary practices. State land management mechanisms have been the main instrument for pursuing the process of formalising land rights. Efforts to reform land tenure and administration have introduced property rights models, which promote the individualisation of rights in customary land. Although the new LA policy direction supports the decentralisation of LA to the local level, there seems to be a lack of commitment to this goal. The main policy direction is still towards extending land title registration nationwide.

10.2.2 Requirements and framework for designing LA for peri-urban areas

Question 3: What are the requirements for the design of LASs in peri-urban customary areas?

This question was answered in Chapter 4. Peri-urban customary areas have distinct characteristics. Formalising rights and designing LASs in order to meet all of the diverse needs of the people and to create a suitable institutional framework that can effectively administer the local land rights associated with it is complex undertaking. Alternative and innovative LASs are thus needed in order to respond to this particular challenge. Based upon the literature review discussed in Chapters 2 and 3, six key requirements were drawn up as crucial for designing effective LASs for peri-urban areas. These include:

- Adaptability: institutional, technical and organisational arrangements for administering land have to be able to adapt to socio-economic pressure, tenure changes and the local institutional framework of customary land delivery.
- Flexibility: flexible technical, institutional and legal arrangements are needed to allow different laws, institutional arrangements and technical standards to be used to secure procedures for administering land that can be adapted to the different types of rights that exist in customary land.
- Upgradeability: securing rights in customary land should be done in gradual manner. Tenure should be upgraded over time. Upgradeability requires measures that secure temporary or partial rights in customary land, and may be upgraded to full titles at a later time.
- Affordability and pro-poor objectives: procedures of administering land and securing rights should be cheap, comprehensible and free of technical and legal implications so that they can be affordable for all groups of persons.
- Institutional legitimacy and credibility: institutions in charge of administering land should not only have the legal power, but must have local and social legitimacy to implement all decisions relating to land.

- Good land governance: land governance must emphasise active participation by community members in decision-making on the use of their land, in order to enhance equity, transparency, accountability and efficiency in the land delivery process (see further below).

Question 4: What are the requirements for assessing good land governance in customary tenure institutions?

In Chapter 4, the framework for assessing good governance in CTIs was developed, based on the key issues and problems associated with customary land management in peri-urban areas and the literature on governance in general and on LA in particular, as discussed in Chapter 2. Acknowledging that other qualities may also be important, a list of five governance dimensions were identified that are considered essential for any complete assessment of land governance in CTIs. These include:

- Participation: Participation is addressed in terms of representation and membership composition in the decision-making process. The assessment of participation should emphasise: the extent to which community members are represented; involvement of community members in the selection of community leaders and in decision-making processes; and the level of collaboration and coordination with statutory land agencies and other professional land institutions.
- Equity: Equity requires measures that ensure non-discriminatory access to land, information and justice delivery. Equity is addressed in terms of: equitable access to land for all community members, male and female; non-discriminatory access to land information and dispute resolution; equal tenure security for indigenes and settlers; and measures that guarantee intergenerational equity.
- Transparency: Transparency should be addressed in terms of: the accessibility of institutions and land information to community members and the general public; the openness of decision-making processes to community members; and the clarity of customary laws on land delivery to community members.
- Accountability: Accountability addresses the extent to which customary tenure institutions report on their stewardship to community members: the extent to which they report on what they have been entrusted to do, respond to questions, explain actions and provide evidence of their performance. Adequate financial accountability in customary institutions is also important.
- Efficiency and effectiveness: Efficiency and effectiveness are related to all the other dimensions and thus play a special role in the assessment of governance. Efficiency and effectiveness in customary land administration should be addressed in terms of: the clarity of the land allocation process;

the adequacy of human resource capacity for land administration; governance; the extent to which customary laws are implemented in the land delivery process; and the adequacy of available mechanisms for providing certainty and security of land rights.

10.2.3 Dynamics of customary tenure systems

Question 5: Which aspects of Ghana's customary tenure are dynamic and how do the customary tenure institutional arrangements adapt to these dynamics?

This question was answered in Chapter 6. From the field study of three peri-urban areas in Ghana, it appears that customary tenure arrangements in peri-urban Ghana remain quite strong. However, they are undoubtedly subject to demographic and economic pressures, which are forcing changes in land tenure relations. Two aspects of land tenure dynamics were distinguished. First, in tenurial arrangements, dynamism relates to changing allodial ownership, usufructuary rights; changing social and intra-family relations; changing tenure rules; and changing modes of transferring interest in land, land value and land-use practices. State ownership and common-law freehold have emerged from allodial ownership. The general trend in tenure relations observed in the study is towards privitisation of customary land rights. The trend also shows that the security of usufructuary rights and other secondary rights are under threat, as these rights are being replaced with leasehold arrangements. The changing tenure relations often result in overlapping and multiple rights consisting of several interlocking individual and collective rights. These overlapping rights lead to struggles for land, forced evictions, land contestations, haphazard developments, land speculation and informal land markets.

Second, the dynamics of the institutional framework of customary land delivery indicate that the political authority of CTIs is being eroded. Via legislation, the state has instituted a number of measures that obviate or restrict the activities of CTIs in the administration and management of their land. On the other hand, however, the dynamics of institutional arrangements reveal several innovations in customary land management. The creation of land committees, new processes for allocating, recording and disseminating land information, and the use of allocation notes are all innovations that have been introduced by the CTIs in response to the changing needs of community members, and as a way of reasserting their territorial control over land. Institutional dynamics further allow the introduction of new chieftaincy systems, where people from outside the royal family are conferred as chiefs with the intention of tapping their knowledge, skills and resources for the good of the community.

10.2.4 Customary tenure institutions and land governance

Question 6: To what extent do the customary tenure institutions in peri-urban Ghana meet good governance objectives in LA?

The results of the three cases are described in Chapter 7. This thesis has presented an overview of the individual variables investigated under each governance dimension for the cases and the main conclusion for each governance dimension. The results show variations in land governance across the study areas. In general, it can be concluded that land governance in Tamale is weak, whereas it is satisfactory in Japekrom and Gbawe, with Gbawe displaying elements of good land governance. The evidence from the cases, though limited, also points to a number of general conclusions relating to the assessment of land governance in CTIs. Participation and equity appear to be good, transparency appears to be satisfactory, but accountability, efficiency and effectiveness appear to be weak.

As already suggested in Chapter 7, although CTIs in peri-urban areas raise some important land governance concerns, they are built on structures that promote participation, equity, transparency and accountability, and thus potentially meet good governance objectives in LA. The consultations, deliberations and negotiations, feedback sessions, and the weekly, regular, annual and ad hoc meetings all help to make the institutions accountable to community members and also improve transparency in decision-making processes. Nevertheless, transparency diminishes when the structures that make institutions accountable break down. Therefore, measures that are intended to improve transparency, accountability, and efficiency and effectiveness can help CTIs to manage land justly. Promoting elections of land committee members and the interactive participation of community members in all aspects of the decision-making process will reduce exclusion and increase transparency and accountability. The study indicates that some CTIs lack the knowledge, skills, and technical and financial resources to accommodate current demand in these areas. Therefore, proactive capacity building measures are needed to improve efficiency and effectiveness in the land delivery process.

10.2.5 Indigenous knowledge (IK) and local capacity for land administration

Question 7: To what extent can the PGIS approach enhance IK and local capacity for LA?

This question was answered in Chapter 8. The relevant study was conducted in two peri-urban areas in Tamale skin lands. The study found that PGIS and

p-mapping processes enhance IK and local capacity for LA. Three positive aspects of the tools were outlined: the creation of a repository of knowledge to uncover underlying rights, participation and empowerment. Locals proved to be knowledgeable about the changes occurring in the land tenure systems in their communities. This knowledge is a source of data on which communities with limited human and financial resources capacities can draw to meet land information needs for land tenure administration. The PGIS approach was found to add value to IK in ways that could not have been achieved using conventional tools. In itself, PGIS is a capacity-building and empowering tool. It builds local capacity by improving dialogue, and enabling locals to develop skills in geo-information technology. The community members were able to interpret photomaps, transfer their spatial knowledge onto sketch and scale maps and to use hand-held GPS devices. PGIS tools helped the locals to register and visualise their knowledge of ownership, use rights and land use, and the maps created can play an important role in LA. The PGIS method developed offers a model for creating strategies for uncovering IK, identifying underlying rights in customary land and improving LA in developing countries. The study has shown that a PGIS is a reliable and effective vehicle for supporting and strengthening community participation in LA. Being able to use PGIS with little professional support also empowers local community members' participation in decision-making on land use and administration. Adaptation to local cultures will always be necessary.

10.2.6 Strategies for designing land administration systems for customary areas

Question 8: To what extent do customary tenure institutions in Ghana meet the LAS requirements for peri-urban areas?

This question was answered in Chapter 9. The literature review in Chapters 2 and 3 and the field study suggest that new and innovative arrangements for administering land are needed to handle the complexities of tenure effectively, and secure collective and individual rights in customary land. Such LA arrangements should be adaptable to the changing needs of people, tenure and local situations; offer flexible legal, technical and institutional arrangements; be capable of ensuring tenure upgradeability; should be affordable and have pro-poor objectives; built on legal and social legitimate institutions; and meet good land governance objectives in LA.

In the three cases, focusing on the LAS requirements defined in Chapter 4, it appears that CTIs potentially meet the requirements for administering land in peri-urban areas. In Chapters 6 and 7, the findings pointed to tenure insecurity in the form of forced evictions, a lack of transparency, a lack of accountability and inefficient measures to ensure tenure security. However, it

was evident that CTIs have realised the need to improve tenure security for community members. The writing of customary transactions, the use of allocation notes for land allocations and the establishment of land committees with clearly-defined structures are innovations that support this argument. These innovations have been facilitated by the dynamics of customary tenure systems, which allow for the creation of innovative institutional arrangements with an enhanced range of skills and institutions to support new forms of tenure. Although the capacity of local communities to administer land seems to be inadequate, the study indicates that when tools to enhance IK are made available, local capacity can be improved. This was shown by the results of the p-mapping exercise, described in Chapter 8. Further, the CTIs have simple and low-cost mechanisms for accessing land and resolving conflicts. These systems make land delivery affordable to everybody. More importantly, the structures on which customary tenure systems are built and the broad legal and social legitimacy they enjoy make these institutions potentially able to meet LAS requirements if they receive the right kind of support.

Question 9: What strategies are needed to design and effectively implement LASs in customary areas?

The literature reviewed in Chapter 2 suggests that designing effective LASs for customary areas implies making trade-offs between different goals: providing individual titles for economic development versus protecting social integration and the security of the commons. These two objectives are crucial and have been considered at length in the design of LAS strategies.

The framework for adapting LASs to institutional arrangements for customary tenure is structured around a number of organisational, technical and administrative procedures that are needed in order to adapt LASs to local conditions and to secure three tenure types (see conceptual framework in Figure 9.2). The conceptual models comprise a hybrid system that draws on principles of LA and customary land delivery processes. The underlying logic of the procedures for demarcating, mapping and recording land rights is drawn from the LASs, while implementation is based on customary tenure institutional arrangements. The framework of the proposed LAS consists of two levels: those of strategy and implementation. At the strategic level, LSAs and local councils act as facilitating institutions that monitor, evaluate, coordinate, negotiate and manage the development of LA activities. These strategic planning activities are based on consensus-building that involves all stakeholders in customary land. At the implementation level, three forms of tenure are proposed. The three-phase tenure system allows group and individual rights to be secured at different stages. Phase I tenure is applicable to areas where customary tenure systems are in a stable condition, and focuses on securing group ownership and producing an inventory of tenure information.

Phase II tenure is applicable to peri-urban areas, and aims to secure all individual occupations and customary land transactions and issue certificates showing these rights. Phase III tenure, which comes at the end of the tenure formalisation process and is applicable in urban areas, aims to provide titles to individual rights.

At the implementation level, CTIs are assisted in carrying out LA functions and activities, including land tenure inventory, land allocation, surveying and mapping land registration and recording, and dispute resolution. Various alternative institutional arrangements are available for implementing LA strategies. These alternative strategies place emphasise the use of flexible, unconventional and pro-poor tools that can help customary areas to carry out LA activities.

Question 10: What are the challenges for adapting LASs to the institutional framework of customary tenure?

The process of adapting LASs to the institutional framework of customary tenure systems may encounter several challenges, which were outlined in Section 9.4. They include:

- Chieftaincy conflicts and unresolved tribal boundary conflicts: conflicts that relate to the ownership and sovereignty of a particular group, or conflicts over the legitimacy of the leader of the group, can be solved using innovative tools like PGIS.
- Abuse of power by the customary authorities: customary authorities can capitalise on their power to undermine the members of communities by dispossessing farmers, the urban poor and other vulnerable groups. Improving good land governance, especially with methods that enhance transparency, accountability, efficiency and effectiveness, will help.
- Community perception: local communities need to be encouraged to put their confidence in CTIs to take up the new LA activities.
- Devolution of LAS activities to CTIs: power struggles may arise between LSAs and CTIs, as LSAs may not be willing to transfer LA activities to CTIs. LSAs need to recognise CTIs as partners in the administration of land.
- Managing customary laws and the statutory laws: some statutory laws that conflict with the objectives of the proposed model may need to be modified.
- Lack of human and financial resourced in customary institutions: programmes aimed at building capacity are needed.
- Integrating diverse tenure forms and all locally-based systems into a single information system: from an information systems perspective, this can be a complex undertaking. The use of STDM might help with this technical problem.

10.2.7 Overall conclusions

The main research question is:

'How can land administration systems in peri-urban areas be adapted to the tenure and institutional framework of customary tenure systems?'

The overall conclusion of this study is that customary tenure institutions have their own mechanisms to adapt to societal change, and a desirable solution would therefore be to adapt LA to the institutional framework of customary tenure. In view of the fact that customary tenure systems have evolved over time in response to specific conditions, the framework of customary land delivery can be adopted for LA, as long as CTIs receive sufficient support to undertake LA functions.

CTIs are built on structures that promote transparent, equitable and accountable land delivery. Moreover, throughout this study, we saw that CTIs have demonstrated their willingness and potential to administer land efficiently. The innovations that have been introduced in the land delivery process indicate that CTIs are willing to face the challenge of securing tenure. These factors and the ability of local communities to use PGIS tools to document land tenure information demonstrate that indigenous institutions have the potential to administer their land with little need for professional support. This conclusion is supported by several examples from the literature, which indicate that when local communities have received support, they have successfully carried out land registration activities (Deininger et al., 2008; Toulmin, 2009). Land administrators can take advantage of the several innovations that have been introduced in customary land delivery to deliver low-cost and flexible LA services in peri-urban areas. However, for LA to be successful in customary areas, there is a need for mechanisms that can be institutionalised to improve land governance and local capacity. Non-conventional and flexible technical tools, such as PGIS, offer local communities opportunities to record tenure information and to participate fully in decision-making regarding land use.

10.3 Contribution to the literature on land administration reform

Over past decades, the need for an alternative formalisation strategy to address tenure security problems in customary areas has been acknowledged in land reform activities and debates. It is generally recognised that flexible tenure is needed to secure a continuum of rights in customary areas, and that adapting LAS to the local level is a desirable way of implementing this

objective. However, less attention has been given to the investigation of dynamics of tenure, good land governance and indigenous knowledge, as important issues that can contribute solutions to these problems. In this study, an attempt has been made to address these issues by incorporating concepts from formalisation theory, good governance and PGIS to develop conceptual models for adapting LASs to the institutional framework of customary tenure. While the conceptual models developed for peri-urban Ghana cannot be exported wholesale to other countries, lessons can be learnt from them. Throughout the thesis, the literature on other African countries and, occasionally, on other continents, has been studied, so as to analyse the theories and add to the body of empirical knowledge. Many countries, especially within Sub-Saharan Africa, are confronted with similar problems relating to customary tenure dynamics: land contestations and conflicts, weak governance in customary land delivery, and the lack of appropriate LASs to deal with peri-urban problems. The findings, conclusions and recommendations drawn from this study therefore have relevance beyond the three study areas and Ghana.

The study covers theory and practice in order to develop a flexible and low-cost form of LA that is rooted in local community participation and institutions, to secure a broad range of interests in land. The research presented in this thesis has drawn on existing studies and debates on LA reform. General theories and insights from these studies and debates have been applied to gain a better understanding of LA reform in customary areas. By doing so, more knowledge has been gained on land tenure reform, formalisation theories, customary tenure systems, land governance, IK and on LA reform in general. As I explain in the following paragraphs, a number of conclusions from this study may be of particular relevance to the literature on LA.

The study provides new insights into formalisation strategies for customary tenure in peri-urban areas. Based on the analysis of the case findings, the study concludes that securing tenure in peri-urban customary areas may not require sophisticated rules, processes and tools. CTIs have their own ways of dealing with the dynamics of tenure and can therefore be adapted for LA, provided they are supported in the right way. When simple tools are provided to enhance land governance, improve IK and local capacity, LASs can successfully be adapted to the institutional framework of customary tenure.

Since the declaration of the Millennium Development Goals, governance has not only occupied a central place in the development discourse, but has also been considered a crucial element of development strategy (Zimmermann, 2006; Burns and Dalrymple, 2008). The framework for assessing good governance in LASs mainly focuses on civil society, formal institutions and legislation and, to a lesser degree, the extent to which LASs recognise customary laws. This study's findings stress the need to look beyond formal institutions in the assessment of good governance in LA, particularly if LA is

to be decentralised to the local level. Thus, the principles of good governance need to be extended to all levels of land governance, including CTIs. Assessing governance in CTIs presents an opportunity for a holistic diagnosis of and improvements to LA, which would not be possible if the assessments were limited to formal institutions and the legislation that underpins them.

In recent decades, the use of IK to solve a multitude of problems in developing countries has attracted increasing attention, and has had a remarkable impact on international research into natural resource management and planning (McCall, 2003; McCall and Minang, 2005; Rambaldi, Kyem et al., 2006). The potential of IK for LA has received less attention, however. In LA, securing tenure – particularly in customary areas – involves recording historical, social and cultural information, and therefore IK has to be part of the process. The study indicates that local communities have a rich body of knowledge about tenure systems, making IK vital for LA. IK should be recognised as an important information source to complement scientific decision-making processes in LA.

10.4 Future research

This study has analysed the dynamics of tenure and developed strategies that seek to adapt LASs to the institutional framework of customary tenure. The models developed are based on a flexible and intuitive methodology that is suited to dynamic environments, such as peri-urban areas. Nevertheless, as is the case with all research, this study has its limitations. These limitations raise a number of empirical and theoretical questions that require further investigation, and three recommendations for future research are highlighted below.

First, the proposed strategies for designing and implementing LASs requirements are based on case studies of three peri-urban customary areas in Ghana. As in all case study research, the study is biased towards the cases studied, and it may not be representative of all customary areas. Customary practices are not homogenous in Ghana. Although the three study areas represent the country's main tenure groups and are representative of institutional structures, possible capacity constraints, tenurial arrangements, and customary practices relating to land differ across the country. Therefore, further investigations in other customary areas in Ghana would offer new data and provide an opportunity to strengthen the findings of this study.

Second, in the proposed LAS strategy, the integration of land-use planning and enforcement, registration and surveying into customary tenure practices requires the integration of customary and statutory laws. The land rights to record and secure outlined in the tenure models are based on local cus-

tom. Land-use planning, mapping and registration are based on statutory laws. Operating in a pluralistic legal environment has always been a challenge in LA (Mulolwa, 2002; Larbi, 2006; Joireman, 2008). The question remains as to the extent to which statutory law should be integrated into the proposed model. Even for customary laws, a decision has to be made as to whether these laws should be codified and simplified. This is a complex issue, because the codification of customary law has the tendency to restrict its flexibility, whereas those laws that are not codified become susceptible to manipulation. Therefore, it would be advisable to undertake further research to improve the conceptual model regarding to the extent to which customary rules or statutory laws are used.

Third, peri-urban Tamale provided the main source of data for the analysis of the potential of IK for LA (Chapter 8). As explained in Section 5.6, although it was not possible to conduct p-mapping exercises in Gbawe and Japekrom, the multiple use of case evidence provided enough grounds for deriving our conclusion on the analysis of how PGIS tools can enhance local community capacity for LA. Further investigation to cover other customary areas would strengthen the conclusion drawn from this study. Furthermore, the PGIS processes adopted in this study were limited to the identification of trends in tenure and the empowerment of the communities studied, but not the delineation of external boundaries. Further investigations to exploit the potential of the PGIS for delineating customary boundaries and resolving boundary conflicts that have deep historical roots would provide an opportunity to strengthen the potential of the PGIS for LA.

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Appendix A Interviewees

Table A.1 Land sector agencies

No.	Organisation	Position
LSA 01	Lands Commission – Sunyani	Assistant Lands Officer
LSA 02	Lands Commission – Tamale	Regional Lands Officer Assistant Lands Officer
LSA 03	Lands Commission – Accra	Assistant Lands Officer
LSA 04	Office of the Administrator of Stool Lands – Tamale	Senior Stool Lands Inspector
LSA 05	Office of the Administrator of Stool Lands – Accra	Assistant Stool Lands Officer Stool Lands Officer
LSA 06	Survey Department – Tamale	Regional surveyor
LSA 07	Survey Department – Sunyani Survey Department – Accra	Regional surveyor Assistant regional surveyor
LSA 08	Town and Country Planning – Tamale	Metropolitan Director
LSA 09	Town and Country Planning – Accra	
LSA 10	Land Valuation Board – Accra	Regional valuer
LSA 11	Land Title Registry – Accra	Assistant registrar
LSA 12	Land Administration Project	Monitoring and evaluation spokesperson
LSA 13	Frimpong & Associates (Private licensed surveyor)	Director

Table A.2 Customary tenure institutions

No.	Organisation	Position
Japekrom customary area		
CT 01	Chieftaincy Institution	Abusuapanin Gyaasehene Twafohere Akobeahene Benkumhene Adontenhene Queen-mother
CT 02	Land and Natural Resource Committee	Chairman Secretary
CT 03	Unit Committee	Chairman
Tamale customary area		
CT 04	Chieftaincy Institutions	Botton-Naa, Vittin Youth Leader, Vittin Bottin-Naa, Jisonayilli Yipelsi-Naa, Vittin
CT 05	Land Allocation Committee	Secretary, Jisonayilli Chairman, Vittin
CT 06	Unit Committee	Assemblyman, Vittin
Gbawe-Kwatei family land		
CT 07	Customary Tenure Institutions	Family head Chief linguist
CT 08	Land Allocation Committee	Gbawe-Kwatei family's private licensed surveyor Member of Site Allocation Committee
CT 09	Customary Land Secretariat	Administrator PRO

Table A.3 Sample sizes for interviews

		Sample size	
Interview category		**Tenure diagnosis**	**Good governance assessment**
Household surveys	Indigene	235	250
	Settlers	165	200
In-depth interviews			
Customary tenure institutions	Chiefs and elders	13	5
	Land Allocation Committees	6	3
	Customary Land Secretariat	1	1
	Unit committees	2	2
Land sector agencies and private professional institutions	Lands Commission	4	3
	Survey Department	3	3
	Office of the Administrator of Stool Lands (OASL)	3	3
	Land Title Registry	1	-
	Land Valuation Board	1	-
	Town and Country Planning Department	1	3
	Land Administration Project Unit (LAPU)	1	-
	Private professional institutions	2	2

Appendix B Questionnaires

B.1 Dynamics of tenure

Interviews (Customary tenure and statutory institutions)

1. Who owns land in this customary area?
a. Is there any subgroup ownership in the customary area?
b. Who makes up these subgroups?
c. What rights/interest do these subgroups have in the use of land in this area?
d. Do the state and other individuals own land in this customary area?

2. What rights of use to land do indigenes and settlers have in their land?
a. Are there any restrictions on such rights?
b. For how long can indigenes hold their rights?
c. For how long do you give land to settlers for building and for other development?
d. To what extent has the right to use land for indigenes and settlers changed over the past 20 years?

3. What arrangements exist for indigenes to acquire land?
a. Is the arrangement the same for strangers/settlers?
b. Have these rules changed?
c. Under what circumstances can indigenes and settlers lose these rights?
d. To what extent have the rules governing land acquisition changed?

4. What are the modes of transferring interest in land?
a. Are there any conditions/restrictions for such transfers?
b. Are land users (indigenes and settlers) obliged to seek the permission of the traditional authorities before making land transfers?
c. Have there been any changes in the mode of transferring land?

5. Describe the values indigenes attach to customary land?
a. Have there been any changes in the ways indigenes value their land?
b. What are the major land uses in the customary area?
c. How much has this land-use pattern changed over time?

6. What customary institutional arrangements exist for:
a. Allocating land for farming and residential purposes?
b. Managing and solving land-related conflicts?
c. Recording and tracing lands that have been allocated?
d. Which aspects of these institutional arrangements have changed over the past 20 years?

7. Do you have any role in the formal (modern) land management systems?
a. Do the statutory arrangements restrict/conflict with the customary tenure arrangements?

8. Extent of change in aspects of customary tenure?
a. To what extent have the following aspects of customary tenure and land management practice in this area changed?
- Land ownership
- Use rights
- Mode of transferring interest in land
- Land use pattern
- Customary laws
b. In your opinion, what are the underlying causes of these changes, if any?
c. To what extent do the changes in tenure affect the communal and social sustainability of the customary area?

Household survey (indigenes and settlers)

1. Community status:
- Indigene
- Settler

2. How long have you stayed in this community? .....

3. How did you acquire your land?
- gift
- inheritance from parents
- tenancy
- leasehold
- others

4. What do you use your land for?
- residential
- farming
- commercial
- industrial
- others.....

5. How long did it take you to acquire the land? .....
Has the land acquisition process changed? Yes No

6. What rights do you hold in your land?
- use rights under communal ownership Yes No

- ownership? Yes No

7. How long are you allowed to hold this interest in land?
i. Is there any restriction on the size of the land you own? Yes No

ii. Is there any restriction on your acquired interest?.....

8. Do you have the right to transfer your interest in land through any of these mechanisms?

- sale	Yes	No
- inheritance (to own offspring)	Yes	No
gift	Yes	No
- tenancy	Yes	No
- customary mortgage	Yes	No
- land-pledging	Yes	No

9. Is your land subjected to any of the following regulations?

- planning	Yes	No	Don't know
- land use	Yes	No	Don't know
- subdivisions	Yes	No	Don't know
- building	Yes	No	Don't know

10. Have you or any of your close relations been evicted from your land?
Yes No
i. Under what circumstances did you or your relation evicted?
- compulsory acquisition by state
- re-allocation to other people
- re-zoning
- forfeiture

ii. For which purpose were you using the land? .....
iii. Can you estimate the quantity of land you lost? .....
iv. Were you compensated? Yes No
v. If yes, how were you compensated?

11. Is the security on your acquired interest in land changed? Yes No

12. Do you have any means of protecting your acquired interest in land?

13. In your opinion, do you agree that the tenure rules governing the use of land in this customary area are changing?
- Strongly agree
- Agree
- Disagree

- Strongly disagree

14. Which aspects of the customary tenure rules have changed significantly?
- Access to land
- Transfer of land rights
- Land-use practices
- Dispute resolution

15. How do you value customary land today?
- Spiritual or religious
- Political
- Social or communal
- Economic

16. Does the allocation note offer you a proof of title and enough tenure security?
- Yes
- No
- Don't know

17. Which of the following are the major factors underlying tenure changes in this area?
- Population growth
- Increasing demand for land
- Proximity to an urban setting (urbanisation)
- Colonisation and statutory intervention
- Religion (Christianity and Islam)
- Flexibility of customary law
- Proliferation of educated chiefs

18. What has changed in customary land administration over the last 10-20 years?
……
……
……

B.2: Good land governance assessment

Interviews (Customary tenure and statutory institutions)

1. What constitutes the various arms of indigenous land management and governance?

i. How are the members on the members of the various arms of the land governance appointed or elected?
ii. How are the following groups represented in the land governance structure?
    - Subgroups
    - Men
    - Women
iii. What is the level of collaboration with the following institutions?
    - District Assemblies
    - Survey Department
    - Land Valuation
    - Lands Commission
    - Town and Country Planning
    - Land Title Registry
    - Office of Admministrator of Stool Lands

2. Are commuity members are involved in the following:
- Appointment and selection of community leaders
- Decisionmaking on the use of community resources
- Allocation of land
- Dispute resolution

3. What measures are in place to allow community members contribute to the decision-making processes?

4. What measure are in place to ensure:
- Community members contribute to the decision-making processes?
- Equal access to land to all community members, men and women alike?
- Equal security of tenure for indigenes and settlers?
- Gurantee future generations equal access to their ancestral land?

5. How do you record or keep track of land information?
- What kind of land information is kept or stored?
- How do community members access this information and which information is accessible to them?
- Do you you publish land information?
- Is this information accessible to everybody?
- Is decision-making processs open to community members?
- What measures have you put in place to make customary laws on land delivery clear to community members?

6. Which types of land conflcict is predominant in this area?
- How do you solve such conflcits?

- How many people are involved in the dispute resolution?
- What is their educational background?
- What kind of special training have they received?
- What are the guiding principles of dispute resolutions at the local levels?
- How long does it take to resolve conflict (on average)?
- What measures are in place to ensure that parties to the conflict are given equal treatment?
- Can parties to land conflict appeal on the outcome of the resolution?

7. Can a community member to loose his/her lands for a particular reason?
- What happens to members of the family whose land is given away for residential use?
- How do you compensate community members who loose their land?

8. Do indigenes and settlers pay for their acquired land?
- Do you issue receipt on all land transactions
- Do you have records or accounts of all payments related to the land transaction?
- How often do you make information of land trasactions available to community members?
- How often do you report on your stewardship to community members?

Household survey (indigenes and settlers)

1. Community status
- Indigene
- Settler

2. Gender of respondent
- Male
- Female

3. Occupation: .....

4. How long have you lived in the community? .....

5. To what extent are community members involved in the selection of community leaders for the following positions?
- Chiefs/Family Heads Significant involved (S) Partially involved (P) Not involved (N)
- Council of Elders
- Land Committees

- Local Council Members

6. To what extent are community members involved in decision-making on the following?
- Use of community resources Significant involved (S) Partially involved (P) Not involved (N)
- Land allocation
- Dispute resolution

7. Do you agree or disagree with the following statements:
- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

a. All community members have equal access to land?
b. Women and men have equal access to land?
c. All community members and the general public have equal access to land information?
d. All land users given the same opportunity to present and defend their claims during dispute resolution?
e. CTIs provide equal tenure security for both indigenes and settlers?

8. What is your impression of the accessibility of land information from CTIs?
- Very good
- Satisfactory
- Bad
- Very bad

9. Is decision-making on the use of land open to all community members?
- Yes
- No

10. Are you familiar with the customary laws regulating land management in this area and are they clear to you?
- Yes
- No
- Somehow

11. How often do chiefs and steering committees report on their stewardship to community members?
- Quarterly or less
- Twice yearly
- Once yearly

- Less than once per year
- Not at all

12. Did you pay for the land?
- Yes
- No
- Somehow

If 'yes', were you given receipt or any form of evidence of the payment you made?
- Yes
- No

If 'yes', did the receipt reflect the amount you spent on the transaction?
- Yes
- No

13. Do you agree or disagree that all forms of revenue received from customary transactions should be accounted for?
- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

14. How often do the customary authorities present financial statements on dividends that accrue from land allocations to community members?
- Quarterly or less
- Twice yearly
- Once yearly
- Less than once per year
- Not at all

15. How long did it take you to complete the land acquisition process?
Less than 1 month
- 1-3 months
- 3-6 months
- 6-12 months
- More than 12 months
- Don't know

16. How satisfied are you with the current customary land acquisition process?
- Generally satisfied
- Somewhat satisfied

- Dissatisfied

17. How would you describe the effectiveness of the customary land dispute resolution mechanism?
- Very effective
- Effective
- Somewhat effective
- Ineffective

18. Which mechanism do you prefer to use for land dispute resolution: customary or state courts?
- Customary mechanism
- State courts

19. How will you rate the extent to which customary laws are implemented in the land delivery process?
- Very good
- Good
- Satisfactory
- Bad
- Very Bad

20. Have lost any land when it was converted from agricultural to residential use?
- Yes
- No

If Yes, did you receive adequate compensation?
- Yes
- No

Table B.1 Participants in the p-mapping workshop

No.	Organisation	Position
W 01	Land Administration Project	Head of planning unit
W 02	Office of Administrator of Stool Lands – Accra	Senior Stool Lands Officer
W 03	Office of Administrator of Stool Lands – Accra	Assistant Stool Lands Officer
W 04	Lands Commission – Accra	Lands Officer
W 05	Lands Commission – Accra	Assistant Lands Officer
W 06	Survey Department – Accra	Senior staff surveyor
W 07	Survey Department – Accra	Head of Photogrammetry
W 08	Accra Metropolitan Assembly	ULMIS project manager
W 09	Geo-Tech Systems Ltd (private survey firm) – Accra	Director
W 10	Geo-Tech Systems Ltd (private survey firm) – Accra	Land surveyor
W 11	Geo-Tech Systems Ltd (private survey firm) – Accra	GIS manager
W 12	Afritopo Services (private survey firm) – Accra	Managing Director
W 13	Frimpong & Associates (private licensed surveyor)	Director/Licensed surveyor

B.3 Participatory GIS

Community forum

1. Are the sketch maps representative of the changes in the tenure system you have observed in the community over the last ten years?
2. For which purposes could the sketch maps be used in the community?
3. What has the community learnt from the p-mapping exercise?
4. In what way could the p-mapping exercise benefit the community?
5. What difficulties did you encounter during the p-mapping exercise?
6. Can the community replicate the p-mapping exercise with little or no professional support?

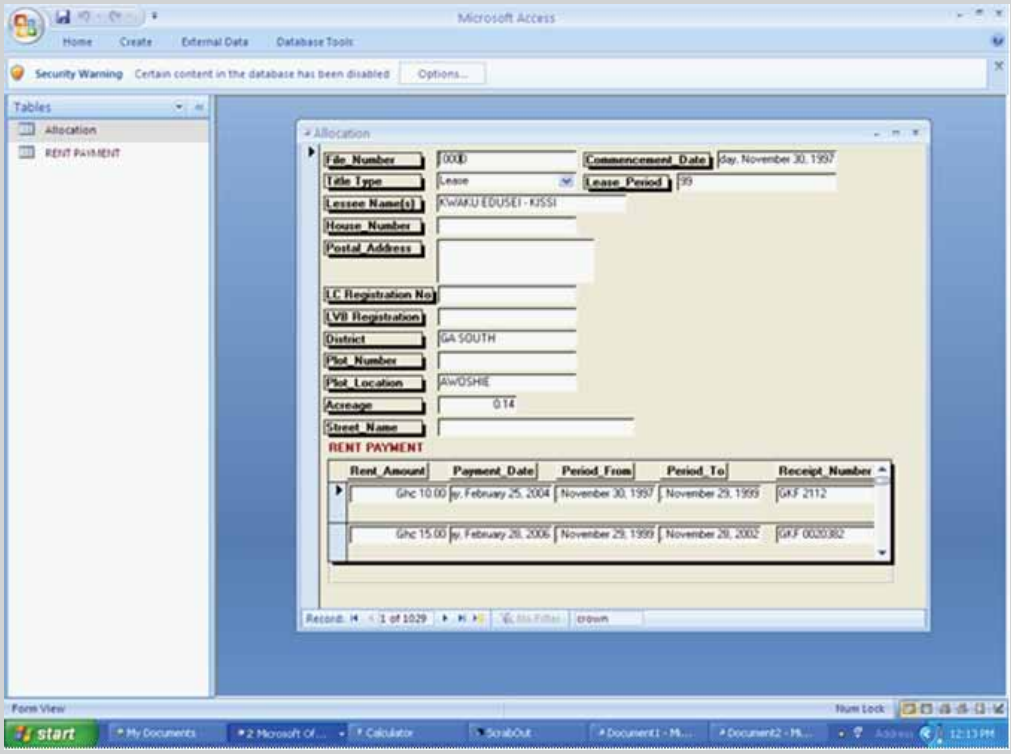
Validation workshop

1. Do the output maps from the p-mapping exercise meet the standards you require in your work?
2. In what ways can the sketch maps be used in land administration?
3. What are the strengths/weaknesses of the PGIS tool used?
4. Can the PGIS tool compromise the effectiveness of the output?
5. Can the PGIS tool be reliable?
6. Which aspects of the p-mapping process can be improved?
7. Can the tool be adapted for land administration processes in Ghana?
8. Can the PGIS approach help local communities to collect and manage land information?
9. How will the PGIS tool help improve land administration in Ghana?

Appendix C

Accessing land through the institutional framework of customary tenure

Figure C.1 Interface of a computerised recording system in Gbawe customary area



C-2 Application forms for accessing land for residential and commercial purposes

MPUASU-JAPEKROM TRADITIONAL COUNCIL
LAND AND NATURAL RESOURCES COMMITTEE

APPLICATION FORM

A: Personal Details

Name: …….

Maiden Name:……

Home Town:……..

Citizenship:…… ……..

Place of Residence:……

Occupation:……...

Next of Kin:……

Permanent Address……

……..

PASSPORT PHOTOGRAPH

B: Information on Land

Location of Land:……..

Quantity/Size of Land:……

Practical use of Land:……

Have you applied for any land in the Traditional Area? Yes/No

If Yes, where?.....

I declare that the information supplied by me on this form is complete, true and correct in detail. I acknowledge that the committee may vary or reverse any decision made on the basis of incorrect or incomplete information supplied by me.

Signature of Applicant: …… Witness:……..

Name: …… Name:……..

Date :…… …… Date:……

OFFICIAL USE ONLY

Is the applicant qualified for this acquisition? Yes/No

Area allocated:…… …… Fee paid:……..

Lease Period:……

Signature of Authorizing Officer:……..

Name of Authorizing Officer:…….. Date issued:……..

This form must be returned to the Secretary, Land and Natural Resources Committee, Mpuasu-Japekrom Traditional Council, P. O. Box 1, Japekrom, Brong-Ahafo, Ghana

GBAWE KWATEI FAMILY

CUSTOMARY LAND SECRETARIAT
P. O. Box 2, Malam, Accra

From RBF: GKF/CLS ……..

LAND APPLICATION/DOCUMENT APPLICATION

Particulars:

(1) Applicant's Full Name……..
(Surname First)
(2) Postal Address ……..
(3) Residential Address ……..
(4) Nationality ……
(5) District ……..
(6) Home Town ……..
(7) Age …… Occupation ……..
(8) Purpose for which land is required
(A) Residential (B) School (C) Clinic (D) Church (E) Commercial
(9) Number of Plots required ……

(10) I hereby undertake that within …..... years of the execution of the lease, I shall commence the erection upon the demised land of the building or buildings for the purpose above indicated and shall complete same within ……..years of commencement. The building or buildings shall be constructed in a substantial workmanlike manner with the best materials of their several kinds and shall be, in every respect, in conformity within the building plans previously approved by or on behalf of the Town and Country Planning Department. The building or buildings shall also be enclosed in a wall or fence the plan of which shall have approved by the Town and Country Planning Department.

It is agreed and understood by me that if I shall fail to develop the demised land in the manner undertaken above, the Family has the fullest right to re-enter the land and determine the lease.

(11) I …… declare that the above particulars given are correct complete.

…… …….
Signature/Thumbprint of Applicant Date

FOR OFFICIAL USE ONLY

Knocking fee ₵……..
Customary fee per plot ₵……..
Total amount payable ₵……
Mode of payment ₵……..
(Fully Installment)

…….. ……. ……
Head of Family Date

Signature of Committee Members

1. …… 4. …….
2. …… 5. …….
3. …….. 6. …….

Summary

Since pre-colonial times, a number of attempts have been made to formalise customary tenure systems. In general, the drive towards formalising customary tenure has been a feature of studies that are critical of indigenous tenure institutions in land management. Several reasons have been given for formalisation, particularly by those who see customary tenure systems as a recipe for underdevelopment and a major cause of rural poverty in customary areas. In many Sub-Saharan countries, a number of interventions – in the form of state-controlled institutions and mechanisms – based on these formalisation strategies have been adopted to administer customary land. Nevertheless, their effectiveness as regulatory institutions or as laws to deal with customary tenure has yet to be realised. Land administration systems in many Sub-Saharan countries have been saddled with land conflicts, land grabbing, evictions, tenure insecurity, informal land transactions, haphazard and unregulated land development, and so forth.

During recent decades, a new paradigm for approaching the formalisation of rights and the administration of land in customary areas has emerged in policy and research. This new approach emphasises the need to give legal recognition to customary rights and to decentralise land administration functions from national state-led agencies to local and community-based institutions. The rationale is that the relationship between people and their land in customary tenure is grounded in the socio-economic importance of land, and that in order to achieve equitable land management in the context of poverty reduction, formalisation should be gradual and tailored to local conditions. This study contributes to this new policy and research direction.

The central issue investigated in this study is how land administration systems in peri-urban areas can be adapted to the tenure forms and institutional frameworks of customary tenure systems. A systematic approach based on case study methodology, was applied to develop a strategy for designing and implementing LASs that can be adapted to the institutional framework of customary tenure. The research was based on an analysis of the literature and case studies. The former entailed an extensive literature analysis of the theory of customary tenure systems, concepts of land administration and good governance, and theories and debates on formalisation. The literature analysis also looked at how the legal framework for administering land in Ghana has adapted to formalisation strategies in the administration of customary land rights. These theoretical insights were used to generate land administration system requirements for peri-urban areas. These requirements include adaptability, flexibility, upgradeability, affordability and pro-poor objectives, credibility and legitimacy, and good land governance. The requirements were appraised in a case study, conducted in three peri-urban customary areas in Ghana: Japekrom, Tamale and Gbawe.

The case study analysis of the customary tenure systems focused on three issues: the dynamics of tenure, the level of land governance and indigenous

knowledge for local capacity enhancement. In the case study, a diverse set of qualitative and quantitative analysis tools were used, based on a multiple case-study research design. In-depth interviews and focus group discussions were used for the qualitative research. In the quantitative research, semi-structured interviews based on open-ended questionnaires were used to obtain information about interviewees' perceptions and experiences with customary land delivery processes. The interviewees were selected from among all of the stakeholders in customary land delivery, including indigenes, settlers, chiefs, family heads, and land committees. Representatives from land sector agencies in Ghana were also interviewed.

The analysis of the land policy documents, constitutional provisions, laws and the institutional framework for administering land indicates that Ghana has a comprehensive legal framework that recognises customary land tenure systems. Although a number of colonial and post-colonial policies have been developed to secure rights and make customary authorities more accountable to communities, land administration continues to be confronted by several problems relating to conflicting laws and overlapping regulatory institutions, which make tenure insecure in customary areas. Furthermore, the legislative interventions lack a clear pro-poor vision. In particular, the technocratic approaches adopted in the various land administration processes result in high transaction costs and are not concerned with protecting the land rights of vulnerable groups. The current land policy direction that has led to the establishment of customary land secretariats seems to support land administration at the local level. Yet, clear policy statements are lacking on whether these institutions should be public, private or quasi-public.

The first field study analysed how Ghana's customary tenure systems are adapting to the effects of urbanisation, demographic change, socio-economic pressure, and statutory interventions. The results from the three peri-urban customary areas indicate that the needs of peri-urban dwellers are dynamic, as are their tenure systems. Although there are important differences between the tenure systems and the level of change across the three study areas, especially between northern and southern Ghana, some common changes were observed in ownership, land-use rights, modes of transferring interest in land, and land-use practices. There is a strong trend towards the individualisation and commercialisation of customary land rights. This has affected intra-family and social relations in these areas. The security of usufructuary rights has been significantly reduced. Nevertheless, institutional dynamics have enabled customary tenure institutions to introduce innovations in the land delivery process, in response to these changes. These innovations can help in the search for alternative arrangements to secure rights in peri-urban areas, where new forms of tenure relation need to be supported by proactive measures that call for an enhanced range of institutions and skills.

The second field study aimed to assess the extent to which customary tenure institutions meet good governance objectives in land administration. The assessment was based on indicators built on five governance dimensions that are considered crucial to any thorough assessment of good governance in customary tenure systems. These dimensions are: participation, equity, transparency, accountability, and efficiency and effectiveness. The five dimensions were used to analyse and interpret the interactions between customary tenure institutions and land-users in the three peri-urban areas studied. While the study shows local variations in land governance across the study areas, more importantly, drawing on the case evidence, one can identify a number of limited general observations. Comparing the five governance dimensions, one can conclude that participation and equity in customary land delivery appear to be good, transparency appears to be satisfactory, but accountability and efficiency and effectiveness appear to be weak. Comparing land governance across the three customary areas, it can generally be concluded that Tamale is weak, whereas land governance in Japekrom and Gbawe appears satisfactory, with Gbawe displaying elements of good governance. Nevertheless, it can be concluded that customary tenure institutions can potentially meet good governance objectives in land administration, if and when they are strengthened and supported in the right way.

In the third field study, the potential of participatory GIS (PGIS) to enhance indigenous knowledge and local capacity for land administration was investigated. An appraisal of PGIS in two peri-urban communities in Tamale customary area shows that the locals are knowledgeable about the changes that have occurred in their land tenure systems. The scale maps produced during the participatory mapping exercises were also found to be reasonably useful for land administration purposes. The maps clearly show the hierarchy of complex rights and interests associated with the ownership, control and use of customary land. These have evolved over time and had previously only been recorded in local collective memory. The maps can play an important role in the identification of underlying rights in customary land. The PGIS tools appeared to be readily accessible, understandable and usable – essential features, given the education and skill levels in peri-urban communities. The PGIS and the p-mapping processes also contributed – positively, although not comprehensively – to the empowerment of the community, by improving dialogue and the acquisition of skills. The locals demonstrated their ability to carry out the PGIS approach independently. The ability to use PGIS tools with little professional support clearly indicates that local communities can use such tools to carry out day-to-day tenure documentation activities, and are thus in a position to administer their own land with little support. On the whole, the PGIS proved to be a useful tool for uncovering such indigenous knowledge and creating empowerment.

Reflecting on the study, it is clear that although there are differences in

the findings from the three case study areas, sophisticated rules, processes and institutions are not needed to provide security of tenure and an effective framework for administering tenure relations in customary areas. The adaptation paradigm can therefore be witnessed in peri-urban Ghana. Customary institutions are to some extent already coping with the dynamics of change, and if supported, could take the lead in an adapted, phased land administration strategy.

The framework for an adapted, phased land administration strategy is conceptualised at two main levels: those of strategy and implementation. At the strategic level, land sector agencies, local government authorities and other professional institutions develop proactive policies to coordinate, monitor, evaluate and regulate the implementation of land administration activities at the local level. At the level of implementation, land administration activities are executed by customary tenure institutions. Three tenure models are proposed that can be secured at different phases of tenure evolution. The tenure models emphasise the security of group tenure in Phase I, which is applicable in rural areas where customary tenure is stable. Phase II tenure aims at the issuing of certificates to individuals, and is applicable in peri-urban areas where there is economic pressure on land. Phase III tenure aims to provide titles for individual rights in land. The institutional arrangements required to implement the proposed land administration strategies at the local level emphasise the role played by innovative land tenure tools that can secure these different types of tenure at an affordable cost.

Samenvatting

Aanpassing van grond-registratie-systemen aan traditionele kaders van bezit van grond

De casus peri-urbaan Ghana

Anthony Arko-Adjei

Al vóór de koloniale tijd zijn er pogingen gedaan om traditionele inheemse systemen met betrekking tot rechten op grond te formaliseren. Veel studies zijn kritisch over dergelijke systemen van grondgebruik en hun bijbehorende instituties. Velen zien in traditionele systemen met betrekking tot rechten op grond een oorzaak van onderontwikkeling en armoede. In verschillende Sub-Saharalanden zijn door overheidsinstellingen interventies gedaan om traditionele systemen aangaande rechten op grond onder controle te krijgen. Maar de effectiviteit van regulerende instellingen en bijbehorende wetgeving is niet erg groot geweest. Grondregistratiesystemen in deze landen hebben thans te maken met conflicten over grondeigendom, ongeoorloofde inbezitneming, ontruimingen, rechtsonzekerheid, informele transacties, ongereguleerde ontwikkelingen en meer.

In beleid en onderzoek zijn de laatste decennia nieuwe paradigma's ontstaan ten aanzien van het formaliseren van traditionele rechten op grond. Daarin wordt de noodzaak onderkend om deze rechten te erkennen, alsmede om de registratie van grond te decentraliseren tot op het niveau van lokale gemeenschappen. De reden daarvoor is dat de relatie tussen mens en grond in de traditionele systemen gebaseerd is op de sociaal-economische betekenis van grond. Formalisering dient geleidelijk uitgevoerd te worden om te komen tot een rechtvaardig beheer en tot armoedebestrijding die is toegespitst op de lokale omstandigheden. Dit onderzoek wil een bijdrage leveren aan deze nieuwe richting in beleid en onderzoek.

Het centrale thema in dit onderzoek is hoe grondregistratiesystemen in peri-urbane gebieden kunnen worden aangepast aan de daar gebruikelijke traditionele vormen van bezit van grond en aan de bijbehorende traditionele instituties. Er is gekozen voor een systematische benadering met gebruikmaking van casestudies om een ontwerp- en implementatiestrategie voor een dergelijk grondregistratiesysteem te maken. Er is allereerst een uitgebreide literatuurstudie gedaan naar theorieën omtrent traditionele grondrechtsystemen, concepten van grondregistratie en goed bestuur (governance), alsook naar theorieën en discussies rond formalisering van traditionele rechten.

Ook is gekeken naar de wijze waarop het juridisch kader voor grondregistratie in Ghana al is toegerust voor strategieën van formalisering van traditionele rechten met betrekking tot grond. Met de theoretische inzichten

hieruit konden de vereisten voor een peri-urbaan grondregistratiesysteem worden geformuleerd, te weten aanpasbaarheid, flexibiliteit, verbeterbaarheid, toegankelijkheid voor armen, geloofwaardigheid, legitimiteit en aspecten van goed bestuur. De vereisten zijn getest in casestudies in drie verschillen peri-urbane gebieden in Ghana: Japekrom, Tamale en Gbawe.

In de casestudies is gericht gekeken naar drie aspecten: de dynamiek van het systeem van bezit van grond, de mate van goed bestuur met betrekking tot grond en de beschikbare kennis om de lokale capaciteit te vergroten. Een set van kwalitatieve en kwantitatieve analysemethoden is ontwikkeld voor een onderzoeksontwerp van multiple case studies.

Het kwalitatieve onderzoek bestond uit diepte-interviews en focusgroepdiscussies. Voor het kwantitatieve onderzoek zijn semi-gestructureerde interviews met open vragen gebruikt om gegevens omtrent percepties en ervaringen met de procedures van overdracht van traditionele rechten met betrekking tot grond te verkrijgen. Voor de interviews zijn personen geselecteerd uit alle geledingen, betrokken bij het verkrijgen van traditionele rechten met betrekking tot grond, zowel oorspronkelijke bewoners, nieuw gevestigden, lokale leiders, leiders van families en landcomités. Ook zijn vertegenwoordigers van organisaties uit de grondsector in Ghana geïnterviewd.

Uit de analyse van beleidsdocumenten, grondwettelijke bepalingen, wetten en het institutionele kader blijkt dat Ghana een alomvattend juridisch kader hanteert dat traditionele rechten met betrekking tot grond erkent.

De grondregistratie heeft echter nog steeds te maken met problemen die ontstaan uit conflicterende wetgeving en overlappende bevoegdheden van organisaties. Daardoor ontstaat rechtsonzekerheid in gebieden met een systeem van traditionele rechten met betrekking tot grond. Dit alles ondanks het feit dat al in de koloniale periode en daarna beleid gevoerd is waarbij traditionele autoriteiten meer verantwoording dienden te geven aan lokale gemeenschappen. Vooral de technocratische benadering die in verschillende grondregistratieprocessen wordt gevolgd leidt tot hoge transactiekosten die geen rekening houden met het beschermen van de rechten van zwakkere groepen in de maatschappij.

Het huidige grondbeleid heeft geleid tot de instelling van traditionele secretariaten en lijkt daarmee bij te dragen aan een betere grondregistratie op lokaal niveau. Of deze instellingen publiek, semi-publiek of wellicht privaat dienen te zijn, is echter nog niet gedefinieerd.

Het eerste veldonderzoek in Ghana was gericht op de aanpassing van de traditionele systemen met betrekking tot het bezit van grond aan verschijnselen als urbanisatie, demografische veranderingen, sociaaleconomische druk en wetgevende interventies. In de drie peri-urbane onderzoeksgebieden bleek dat de noden van de bewoners dynamisch zijn, evenals hun systemen met betrekking tot rechten op grond. Hoewel er grote verschillen zijn tussen de onderzochte gebieden en de mate van verandering daar (vooral tussen die in

het noorden en het zuiden), konden ook gelijksoortige veranderingen worden gevonden in eigendom, gebruiksrechten, de wijze van overdracht van grond, en andere rechten en in methoden van grondgebruik.

Er is een sterke tendens in de richting van individualisering en commercialisering van traditionele rechten. Dit heeft een effect op relaties binnen de familie en op het sociale verkeer in deze gebieden. De zekerheid van rechten van gebruik en bewoning is sterk gedaald. Maar onder druk van deze verandering hebben traditionele instellingen zich dynamisch kunnen aanpassen door middel van nieuwe procedures bij het verlenen van rechten.

Deze vernieuwingen kunnen bijdragen aan het formuleren van alternatieve wijzen om rechten met betrekking tot grond in peri-urbane gebieden te verbeteren. Nieuwe rechtsvormen dienen ondersteund te worden met proactieve maatregelen vanuit een versterkt institutioneel en vakmatig kader.

Het tweede veldwerk was gericht op het vaststellen van de mate waarin traditionele rechten en instituties voldoen aan de criteria van goed bestuur. Daartoe werden criteria voor vijf dimensies van goed bestuur opgesteld. Deze zijn: participatie, gelijkheid, transparantie, verantwoording, efficiëntie en effectiviteit. In de drie peri-urbane gebieden is gekeken naar deze dimensies om de interacties tussen traditionele instellingen en gebruikers te interpreteren en te analyseren. Hoewel er variatie bestaat tussen de gebieden kon een aantal meer algemeen geldende aspecten worden vastgesteld. Participatie en het gelijkheidsbeginsel toegepast in traditionele grondtoewijzingsprocessen blijken in orde; de mate van transparantie is acceptabel maar de mate van verantwoording, efficiency en effectiviteit is zwak. Een vergelijking van de gebieden onderling toont aan dat de mate van goed bestuur ten aanzien van grond zwak is in Tamale en redelijk in Japekrom en Gbawe. De laatste regio vertoont elementen van goed bestuur.

Traditionele instituties met betrekking tot rechten op grond vertonen karakteristieken die het mogelijk maken om met de juiste ondersteuning te kunnen voldoen aan alle criteria van goed bestuur.

Gedurende het derde veldwerk is onderzocht hoe met behulp van participatory GIS (PGIS) plaatselijke kennis en capaciteit voor grondregistratie kan worden verbeterd. Uit de beoordeling van het gebruik van PGIS in twee gemeenschappen in Tamale blijkt dat de plaatselijke bevolking goed op de hoogte is van de veranderingen die zich in hun grondrechtensysteem hebben voorgedaan. Ook voor reguliere grondregistratie bleken de kaarten die gemaakt zijn met participatieve karteringsmethoden goed bruikbaar. De kaarten geven een duidelijk beeld van de hiërarchie binnen de complexe rechten en belangen geassocieerd met eigendom, controle en gebruik van traditioneel land. De rechten zijn in de loop der tijd gewijzigd en werden uitsluitend in het collectief geheugen vastgelegd. De kaarten kunnen een grote rol spelen bij de identificatie van de onderliggende rechten in gebieden met traditionele grondrechten.

De PGIS-gereedschappen bleken toegankelijk, bruikbaar en begrijpelijk te zijn in de peri-urbane gebieden, wat van groot belang is gegeven het opleidingsniveau en de vaardigheden binnen de gemeenschappen. Het werken met PGIS en participatieve kartering had ook een positief effect op de versterking van de gemeenschap dankzij een verbeterde dialoog en het verwerven van vaardigheden. De plaatselijke bevolking toonde zich in staat om zelfstandig de PGIS-benadering te kunnen uitvoeren. Met een kleine professionele ondersteuning kunnen plaatselijke gemeenschappen met behulp van PGIS-gereedschappen de dagelijkse gronddocumentatieprocessen uitvoeren en daarmee hun eigen grond administreren. PGIS bleek een goed middel om lokale kennis boven water te krijgen en daarmee de gemeenschap te versterken.

Ondanks verschillen in de onderzoeksgebieden is het duidelijk dat, als het geheel wordt beoordeeld, rechtszekerheid rond rechten aangaande grond kan worden verschaft in gebieden met traditionele rechten op grond zonder nieuwe ingewikkelde regels, processen en instellingen te creëren.

Het aanpassingsparadigma kan in peri-urbane gebieden in Ghana al worden waargenomen. Traditionele instellingen kunnen de dynamiek van de veranderingen reeds in zekere mate hanteren en zouden met enige ondersteuning de weg kunnen wijzen in het bepalen van een aangepaste en gefaseerde grondregistratiestrategie. Het kader voor een dergelijke strategie en zijn implementatie is op conceptueel niveau uitgewerkt.

Grondsectororganisaties, lokaal bestuur en professionele organisaties dienen proactief beleid te ontwikkelen om de invoering van grondregistratie op lokaal niveau te kunnen coördineren, reguleren, monitoren en evalueren.

Grondregistratieprocedures dienen geïmplementeerd te worden door traditionele instituties. Drie modellen van rechten met rechtszekerheid kunnen worden geformuleerd voor de verschillende fasen van ontwikkeling van rechten met betrekking tot grond. In de eerste fase, die van rurale gebieden met stabiele traditionele rechten wordt de rechtszekerheid van de groep benadrukt. Het model voor de tweede fase, dat van peri-urbane gebieden met economische druk op het land, verschaft certificaten aan individuen. In de derde fase worden titels voor individuele rechten afgegeven. Nieuwe instrumenten om zekerheid te verschaffen tegen redelijke kosten zullen een grote rol spelen bij het implementeren van grondregistratiestrategieën binnen het traditionele institutionele kader.

Curriculum vitae

Anthony Arko-Adjei was born on the 21st of July 1970 at Japekrom, in the Brong-Ahafo Region of Ghana. He obtained his BSc degree in Geodetic Engineering in 1997 from the University of Science and Technology, Kumasi, Ghana. He worked as a Teaching Assistant in the Department of Geodetic Engineering Department of the same university from 1997 to 1999. He obtained his MSc degree in Geo-information Management for Cadastral Applications in 2001 from the International Institute of Geo-information Science and Earth Observation (ITC), Enschede, the Netherlands. His MSc thesis focused on progressive approach to the registration of customary land.

He was appointed a Lecturer in the Geomatic Engineering Department of the Kwame Nkrumah University of Science and Technology (KNUST) in 2002, a position he holds to date. In addition to teaching, research and thesis supervision (BSc and MSc), he has been involved in several departmental research and consultancies concerning the establishment of and training in boundary surveying, engineering surveying, land administration and application of geographic information systems in various fields. On land administration the focus of his research, consultancy services and publications is focused on customary tenure, geo-information management and land surveying. Besides the scientific and academic works, he is involved in management where he represented the Department on several committees and platforms. He was actively involved in the establishment and management of the GISNATUREM programme, a collaborative MSc programme between ITC and KNUST. Between 2004 and 2006 he was the Monitoring and Evaluation focal person representing the Geomatic Engineering department on the Land Administration Project. He was the Local Coordinator of the ITC's short course on 'Geo-information for land administration in Africa: trends and innovation' which was organised in KNUST, Kumasi, Ghana.

In 2006 he obtained a sandwich PhD position at the Department of Urban and Regional Planning and Geo-information Management (PGM) of ITC. Besides his research, while in ITC, he was involved in teaching, and also as a resource person for two refresher courses that were organised by the Land Administration and Informed Governance research team (Namibia and Tanzania). He is a member of the Ghana Institution of Surveyors (GhIS). He has over twelve years experience as a private consultant in land surveying, land administration and GIS, providing several consultancies and training assignments to Ministries, firms and communities both in Ghana and abroad.

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The information in this book will be essential for academic work in land administration in developing countries. It will prove a useful reference for policy makers and practitioners in the land administration field.

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