KEEPING INFORMATION ON LAND UP-TO-DATE: A STUDY OF THE ENCOUNTERS BETWEEN THE LAND REGISTER AND SOCIO-CULTURAL PRACTICES OF INHERITANCE IN GHANA

Abubakari Zaid

KEEPING INFORMATION ON LAND UP-TO-DATE: A STUDY OF THE ENCOUNTERS BETWEEN THE LAND REGISTER AND SOCIO-CULTURAL PRACTICES OF INHERITANCE IN GHANA

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Chapter 1: General introduction

1.1 Background to the study

The art of governing intrinsically requires knowledge of the governed and of territory. There is the notion that governing is knowledge and power targeted at society (Enroth, 2014). As espoused earlier by Scott (1998), the modern state embarks on a schematic structuration of society as a way of simplifying and making it more legible. As part of the quest to know, states have often used different forms of recording (registration); be they the registration of birth and death, biometric registration of persons, immigration or land registration (Szreter & Breckenridge, 2012). Thus, the ceaseless quest for knowledge of territory and of people by the modern state underscores the need for currency of information. In relation to land registration, the quest to keep the land register up-to-date is a concern to the state as it provides useful information for decision making and economic development (Williamson et al., 2010). Updating the land register is an iterative process that incrementally brings the land register at pace with ongoing real property transactions (Zevenbergen, 2004) and this process starts right from the moment a land register is being compiled (UNECE, 1996). At the moment when land is registered, its records are opened to changes through subsequent transactions (Deininger et al., 2010). Zevenbergen (2002) presents the updating of land information in the dynamic model of land registration in two forms; during full transfer (entailing textual changes) and during property formation (entailing changes in both text and cadastral plans).

A land register loses functionality when the land information it contains is outdated (Henssen, 2010). An outdated land register widens the contradictions between registered land rights and land rights in reality (Deininger et al., 2010). These contradictions, on the one hand, creates difficulties in realizing certain aims of the state such as taxation, and on the other hand increases litigations and conflicts over access to land. Also, within the property market, it becomes cumbersome and costly to transfer or acquire property as information on ownership and comparable property values are difficult to establish in formal records (Lee & Sasaki, 2018). Especially for strangers, who have little knowledge of local property markets, this often leads to fraud, litigation and general stagnation of property market development. Moreover, the lack of up-to-date land information results in poor planning and decision making as it is difficult and unrealistic to plan and make forecasts based on outdated information. More importantly, in post-conflict and natural disaster recovery processes, available up-to-date land information becomes a key ingredient in helping the processes of resettlement and nation building (Todorovski et al., 2016).

Although the updating of the land register is generally considered to be vital for both the state and landholders, it remains a challenge for many developing

countries. In seeking to unravel the challenges of updating, land administration scholars have generally established a cause-effect relationship between land information updating and the reporting of land transactions. In other words, land information is kept up-to-date when land transactions are promptly reported for recording and vice versa. However, scholars differ in their views on the exact factors that influence the reporting and non-reporting of land transactions. For example, Binns and Peter (1995) and Van der Molen (2002) mention procedural complexities as a key challenge to the reporting of changes in land information. Other scholars mention factors, such as transaction time, transaction cost and number of registration offices (Biraro et al., 2015; Chimhamhiwa et al., 2009; Enemark et al., 2014; Cotula, Toulmin and Quan, 2006; Zevenbergen et al., 2012). The factors highlighted by scholars relate purely to the *modus operandi* and setup of the land registration systems. Despite differences in the inhibiting factors mentioned in various studies, what they have in common is that they all relate to administrative inefficiencies as a main problem, and that this problem is technically ameliorable. Such a scholarly position implies the primacy of formal administration and is informed implicitly by a Weberian ideal of bureaucracy. Little consideration is given to the fact that the formal administration is embedded in a broader social context, to which it is not immune. The formal system influences, but is also influenced by the social context.

The close linkage between formal system and broader social context manifests in various ways. For instance, land administration in states with weak capacity involves both state and non-state (customary) actors. In such hybrid administrative scenes, the state's machinery of administration is not the only agency to administer land, but one of many constellations of actors, which hold varying degrees of agency. In many contexts of customary tenure in Sub-Saharan Africa (SSA), actual ownership and control of land reside in customary authorities while the state performs an oversight regulatory function over land (Lund, 2013). Given this relationship, the state's regulatory prerogative does not function to eliminate the non-state actors, but they often assert complementary and sometimes contradictory controls over land. Since customary authorities and customary tenure predates the modern state in many SSA countries, their influences on the modern state's administrative machinery cannot be discounted.

Such influences are exerted and can be empirically observed at the level of mundane practices, for example in the ways real property is transferred and handled between generations through inheritance. Inheritance practices are a dominant form of land transfer, which often follow the norms of plural sources of law (customary, statutory and religious). As such, inheritance practices make for a fruitful case to study the interrelations between formal land administration system and broader social context. A number of studies in

different geographic settings; Ghana (Abubakari et al., 2016), Malawi (Takane, 2008), the Mountains of Nepal (Thapa & Niroula, 2008), Kenya (Platteau, 1996) and St. Lucia (Barnes & Griffith-Charles, 2007) point to inheritance as a major source of land ownership. Inheritance is one of the major causes of changes in land holding status which supposed to trigger the need to update the land register (Gen, 2011). Essentially, the socio- cultural context, within which land rights are produced and reproduced through inheritance, constitutes an important consideration. This study explicitly seeks to incorporate this consideration across various stages of the research. The aim is to understand the drivers of land information updating beyond the formal administrative arena. Ghana exhibits this diversity in inheritance practices and land tenure and as such, constitutes an ideal case for this type of investigation.

1.2 Land tenure and land registration in Africa

Land tenure is the legally or customary defined relationship that exists among people, as individuals or as a group in relation to land and land resources (FAO, 2002). The rules of tenure define property rights and associated constraints with respect to access, use, control and transfer. Such rules may be enforceable in the formal courts of law or through customary institutions (Arko-Adjei, 2011). Interests in land are often intertwined and considered as a *"bundle"* that contains a set of rights which may be; overriding, overlapping, competing or complimentary. Land rights may be held in private by individuals or groups of individuals or a legal entity, communally by a community, by the state on behalf of citizens; or land may be openly accessible to everyone living in a specific geographic region. Such differences in land tenure regimes manifest within but notably across the global north and south. Whereas the global north is dominated by individualized land tenure regimes, that of the global south especially, Africa, is dominated by communal land tenure regimes which exhibit a great complexity by virtue of the interwoven layers of communal rights and diversity in customary practices (Home, 2013).

Despite the marked differences in land tenure regimes across the global north and south, the systems of land rights recording are similar. This has evolved during the colonial period when European countries implemented western styled land registration systems in Africa which in themselves didn't reflect the existing African land tenure but have largely remain in many African countries even after independence (Zevenbergen et al., 2012b). While the rationales of the recording systems are driven mainly by economic growth theories based on individual property, that of the African land tenure structure sought to provide collective benefits at both the levels of community and family. This mismatch has been criticized over the decades on the basis of exclusion of vulnerable groups like women who hold secondary rights to land (Bugri, 2008).

Within Africa, the administration of land aligns with the authority exercised by traditional leaders in the form of chiefs, family heads and earth priests (Lund, 2013). The establishment of land registration offices by the colonial administration sought to separate land administration functions from its ownership (the traditional authority) and to give the colonial administration some level of control to regulate and administer land in a way similar to the European context (Home, 2013). Still in many African countries today, traditional authorities have a relatively stronger control over land ownership and in some instances play a considerable role in land registration as in the case of Ghana (Arko-Adjei, 2011). What we then observe in collaborative land registration practices is the relative influence of traditional authorities and associated norms on the administrative processes of land registration which contradicts the idea of ideal bureaucracy as espoused by Weber (Chowdhury, 1984). This shows that the boundary between the bureaucracy and its external socio-cultural context is not clearly defined. Therefore, the internal and external environments of land registration are intricately related and more so in Africa, where the 'membrane' between them is very permeable relative to Western contexts (de Herdt & Olivier de Sardan, 2015). Accordingly, attempts at enhancing land registration in African ought to look beyond the bureaucratic setting and incorporate a good understanding of the socio-cultural context. Over the years, scholars have paid a lot of attention to the inner workings of land registration organisations in order to increase their efficiency and productivity, but without much consideration of how the external socio-cultural context also plays a role in it (Biraro et al., 2015; Chimhamhiwa et al., 2009; Enemark et al., 2014; Cotula, Toulmin and Quan, 2006; Zevenbergen et al., 2012). An example of the relationships between the socio-cultural and organisational contexts is the transfer of property between generations through inheritance, which is regulated by multiple sources of law and also constitute a major source of land ownership.

1.3 Conceptualizing inheritance along the lines of gender, geography and pluralism

Inheritance marks a crucial moment that enables the transfer of property between generations with associated limits of exclusivity and inclusivity often dictated by the socio-cultural milieu. Property inheritance is a sensitive subject, the relevance of which is underscored by its role in supporting livelihoods especially in agrarian and rural communities, where land is the most important factor of production and livelihood benchmark. In such communities, the decisions that surround land inheritance are of utmost importance to individual and family survival. In his study of farm succession in Ireland Kennedy (1991) supports this opinion and compares it with non-agrarian societies, where land inheritance is seen as a source of wealth creation.

As to what inheritance is, there exist differential opinions in lieu of its constitution and temporality of occurrence. The debate that surrounds the momentary transmission of inheritance - the particular epoch of time when inheritance is deemed to have occurred creates two schools of thought; those who see inheritance as an occurrence *post mortem* and those who see it as an occurrence both *inter vivos* and *post mortem*. Those in favour of the earlier thought include; Kingwill (2013) who sees inheritance as a direct transfer of land to a nominated heir or set of heirs upon death; Takane (2008) who defines inheritance as the transfer of land from a landowner to another person(s) after the demise of the latter; and Mbatha (2002) who describes inheritance as an opportunity cost arguing that rights exercised by heirs over family property go with the responsibility of looking after the deceased family. Scholars of the second school of thought give a more holistic perspective of inheritance, taking it to be not merely a singular occurrence, but a matter of wider scope, which includes the generality of property devolution that takes place over the life cycle (Kumar and Quisumbing, 2012). In support of this later opinion, Kennedy (1991) described inheritance as the autonomous transfer of property taking the form of a pure or non-reciprocal gift relationship which is governed by long term familial considerations yielding onto the heir both benefits and responsibilities. In a study in Sweden, Klevmarken (2004) found that almost all recipients in gift relations were *necessary heirs* which is congruent with the idea that gift and inheritance can be seen to be synonymous and treated as the same type of intergenerational transfer. Takane (2008), however, challenged the proponents of the second school of thought by delineating *inter vivos* transfers as gifts not inheritance. The practices of inheritance vary across different geographic contexts as they are based on localized norms.

1.3.1 Inheritance systems across different geographic contexts

Generally, inheritance systems and practices are supported by evolved property rights and legal framework (Kumar and Quisumbing, 2012). Powers (1993) (p. 21) in his socio-historical approach to inheritance defined inheritance systems as "*the combination of laws, customs, land tenure rights and settlement restrictions that regulate the division of land at a succession"*. The subject matter of transfer during inheritance is the right over property. Thus, these rights may be established by law or evolved in custom/tradition through time and vary between societies. Within Britain and its colonies (New England, Middle and Southern colonies-present day America) in the Eighteenth century, generational transfers included partible and impartible inheritance systems (Lee and Morton, 1984). Impartible inheritance consists predominantly of Primogeniture (succession by only the eldest son) and somewhat Ultimogeniture (succession by only the youngest son). Primogeniture prevailed throughout the nineteenth century especially in

England to the extent that it constituted the default under common law in cases of intestacy (Deere and Doss, 2006). However, it never gained recognition and acceptance in the colonial New World of Britain as it did in England. The American colonies abolished it soon after independence (Shammas, Salmon, and Dahlin, 1987). Debating over the detrimental consequences of primogeniture in intra-family relations and kinship values such as the thrive of enmity, family injustice and rivalry, (Jamoussi, 2011) argued it was meant to strengthen the continuity of patrimony, which formed the basis of the English political system in the early centuries and also to anchor military power after the Norman conquest. Following these detrimental effects of primogeniture, it declined drastically giving way to more liberal and equitable forms of inheritance like testamentary freedom (sometimes limited to protect necessary heirs) and partible inheritance in which children receive equal shares of inheritance (Freese et al., 1999). In the Caribbean, for example, generational transfers are based on partible inheritance giving all heirs equal shares of inheritance irrespective of gender or birth order (Dujon, 1997; Griffith-Charles et al., 2014). However, it is worth noting, that, partible inheritance is not without consequences. The equal division of land by heirs sometimes results in parcels too small for any meaningful economic operations (Demetriou, 2014; Platteau, 1996) and this is considered problematic in many jurisdictions. In respect of this, the United Nations through AGENDA 21 (1992) encouraged the implementation of policies that influence land tenure and property rights in a positive way yet setting minimum limits to the size of land holding as a way of checking fragmentation.

For most parts of Africa, there are two main types of inheritance systems namely; patrilineal and matrilineal inheritance (La Ferrara, 2007; Takane, 2008). These systems are derived from how people orient themselves to kin membership. In patrilineal inheritance, succession and kin membership is traced through the father's line. Thus, children inherit from their father after his death. In matrilineal systems, succession and kin membership is traced through the mother's line and children inherit either from their mothers or their maternal uncles (Deere and Doss, 2006; Cooper, 2008). In matrilineal communities, children are deemed to belong to their mother's lineage and the property of a deceased male member is inherited by his sister's children who are deemed to be members of the lineage (not by the children of the deceased male who are deemed to belong to a different lineage). These systems have subsisted over time demonstrating considerable resilience but yielding gradually to social dynamism. In Ghana, some communities are drifting to other forms of inheritance completely different from their earlier practices as noted by Anaafo (2015) in his study of land rights changes in the Nkoranza Municipality of Ghana. Anaafo observed that matrilineal inheritance is gradually being altered into new forms that closely align with patrilineal inheritance.

1.3.2 Inheritance and gender perspectives

Gender equity is one of the most discussed topics on decision tables at national, regional and global levels. Inheritance systems attract the attention of human rights activists especially from the feminist perspective. Many traditional inheritance systems have been criticized and condemned by social scientists and international human rights activists and organizations to be gender biased; fashioned to favour male domination to the exclusion or marginalization of females. It is the position of many writers (Cooper, 2012; Deere and Doss, 2006; Goody, 1969; Kumar and Quisumbing, 2012; Lee and Morton, 1984) that women suffer more inequity in inheritance especially when the subject matter is land. This however vary from one place to the other. Digging the roots of the underlying causes of this disparity, (Goody, 1969) attributed it to the type of inheritance systems practiced. Goody argued in favour of partible inheritance systems with the view that it secures female access to land. Within the African context, Takane (2008) maintained that matrilineal inheritance systems give females increased access to land as devolution is along the matriline compared to patrilineal practices where women are mostly excluded from accessing land. Goody (1969) in his comparative study of Africa and Eurasia drew a conclusion to *dowry* as the underlying difference in property devolution between Africa and Eurasia and that the absence of the dowry system in Africa is what accounts for the limited female access to land. He strengthened his argument by contrasting the dowry system with the African bride price system, which does not enhance women's access to land. In the matrilineal inheritance practices of Malawi, husbands have rights of use over their wives lands in the village of the wife with no rights of disposition attached thereto. Therefore, upon the demise or divorce of the wife they lose such use rights but their children still exercise ownership rights as they are part of the matrilineage. Meanwhile in the patrilineal practices, a wife stays with her husbands in his village and upon the demise of the husband, the widow continues to farm on the land (i.e. if bride price was paid to the wife's kin), else the widow goes back to her village with her children (Takane, 2008). In the event that the widow stays on the land she only acts as a custodian with guaranteed use rights awaiting the maturity of the actual heirs (her sons) and she has no rights of disposition. Similarly in Burundi, the position of women is weak in accessing land during inheritance (Beaupré, 2015). Women are often dispossessed of their matrimonial farmlands upon the demise of their husbands (van Leeuwen, 2010). In recent decades, there have been considerable attempts to improve the rights of females in inheritance in parts of Africa through legal reforms (Deere and Doss, 2006).

Different types of inheritance practices and related dynamics can be linked to different forms of law, which serve as regulatory framework. The plurality of inheritance laws and regulations creates legal pluralism, the understanding of

which allow us to recognize and at the same time explain the diversity in inheritance practices.

1.3.3 A legal pluralist perspective on inheritance practices in Africa

Human behaviour and social interactions are shaped by rules. These rules operate at different levels; namely, those at the level of the state and those at the level of social institutions in the form of family, community, neighbourhood or workplace. In a more simplistic way, Galanter (1981) categorized the former as official legal system and the latter as indigenous law. Beyond official laws and customary laws there may also exist religious laws; each with striking differences (Allott, 1984). Aside the official legal system, which is mostly fashioned to enhance uniformity, other forms of laws may be as diverse as existing ethnic groups and religious groups. The official legal system often displace other normative forms of law reducing them to subordinate status (Galanter, 1981; Santos, 2006). In some jurisdictions indigenous law is given considerable prominence and is used in conjunction with the official legal system. Also, in countries which are founded on religion, religious laws attain primacy and may function as the official legal system. Therefore, in complete theocracies religious law and official legal system are inseparable (Tamanaha, 2008). It is worth noting that indigenous laws in some countries are more pronounced than all other forms of law. An example is the kingdom of Eswatini (formerly Swaziland) in southern Africa (Hinz, 2009). The coexistence of these legal systems creates a situation of legal pluralism. Prill-Brett (1994), drew three scenarios under which legal pluralism may be created; (a) when a people practicing indigenous law are brought under a foreign dominant law during colonization, (b) when the practitioners of indigenous law migrate to an area of state jurisdiction and still maintain their cultural identities and (c) when a new indigenous law emerges from a state jurisdiction. The first scenario is what happened in most parts of Africa and has been described by Merry (1988) as classic legal pluralism. In modelling the interactions between different sources of law in Africa Hinz (2009) indicated that many African countries fall under the model called *regulated (weak or strong) dualism* in which indigenous law is given some level of recognition by state law.

Like other aspects of social life, inheritance practices are regulated by state law, customary law, religious laws or other forms of semi-autonomous social fields (Moore, 1973). The complexity that shrouds the issues of inheritance has its roots in diverse set of laws. In the customary areas of Africa and Asia, customary laws, religious laws and state laws overlap and succession may even vary across religious and ethnic groups. Powers (1993) described inheritance law as the formula that specifies who qualifies to inherit and how much they inherit. Powers (1993) (p. 21) distinguished this from inheritance systems

("*the combination of laws, customs, land tenure rights and settlement restrictions that regulate the division of land at a succession"*). Thus, inheritance in practice may differ greatly from formal legal regimes due to variations in inheritance laws (Deere and Doss, 2006) creating a situation of legal pluralism, where people tune themselves to a variety of concurrent laws in a manner that they find congenial (Dupret, 2007) which are sometimes in conflict or in concordance and may also be stratified in levels of subordination and dependency (Moore, 1973).

In Ghana, existing sources of law include the statutory law, common law, customary law and religious law (Schmid, 2001). The different sources of law interrelate and are given recognition in different circumstances. All four sources of law regulate inheritance practices differently in Ghana.

1.4 The research problem

Studies argue that land registration can increase tenure security, facilitate property market operations, enhance credit access, and support land revenue generation and planning (Besley, 1995; De Soto, 2000; Feder and Nishio, 1998; Feder and Noronha, 1987; Platteau, 1996). The realization of these benefits however, requires that the information contained in land registers is current and regularly updated (Binns and Peter, 1995). Ideally, such information needs to reflect the different types of relationships between people and land, that is information about who *(subject)* is related *(rights)* to what *(object)* at any point in time.

Maintaining up-to-date land information requires the prompt reporting and recording of changes in land holding status (Binns and Peter, 1995; Biraro et al., 2015). However, the reporting of changes in land holding status is hindered by some factors. So far, efforts to identify these factors tend to focus on problematic internal administrative features of land registration, such as the lack of efficiency, complex bureaucratic procedures, high transaction cost and long transaction times (Binns and Peter, 1995; Williamson, 1996; Zevenbergen, 2002; Deininger et al., 2010; Biraro et al., 2015). In comparison, relatively little attention is paid to how the broader socio-cultural context, within which the bureaucratic arena is set, influences the updating of the land register.

The norms of the broader socio-cultural context manifest in practices like inheritance, which is a major source of land ownership and which also requires updating of the land register when it takes place. Nonetheless, studies suggest that inheritance practices exhibit a reverse effect on land tenure registration due to non-registration of inheritance transfers (Platteau, 1996; Barnes and Griffith-Charles, 2007; Tagoe et al., 2012). In some cases, registered

properties devolve through subsequent generations without formal records of transfer rendering the hitherto up-to-date land information outdated in the long-run (Barnes and Griffith-Charles, 2007). Unlike previous studies, this study explores and identifies the reasons that underlie the non-registration of inherited property across both the administrative and socio-cultural contexts for the case of Ghana, where inheritance is the major source of land ownership and is also regulated by plural sources of law. The research problem is represented in the conceptual diagram below.

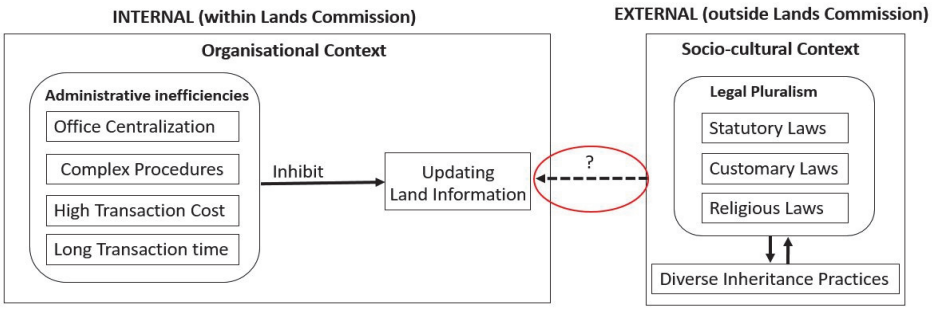

Figure 1:Conceptual Framework

1.5 Research Objectives and Research Question

Main research objective

The aim of this study is to understand how inheritance practices and the plurality of their legal underpinnings influence the process of updating land information in the African context for the case of Ghana. The following sub-objectives serve as building blocks towards addressing the main research aim.

Sub-Objective

1. To understand the rules of land tenure in the study areas and the extent to which they align with formal land registration in practice.

2. To understand the diversity in inheritance practices and how they are influenced by different laws in the study areas.

3. To analyse the extent to which the non-registration of inherited property derives from both bureaucratic and socio-cultural practices

Main research question

How do inheritance practices and the plurality of their legal underpinnings influence the process of updating land information in Ghana?

1.6 Research Methodology

1.6.1 The research design

The initial very empirical question, which is asked in this research is: how do inheritance practices and the plurality of their legal underpinnings influence the process of updating land information in Ghana? This question is both descriptive and explanatory as it seeks to first find out how inheritance takes place, and then build an understanding of why different choices are made regarding the sharing, eligibility and registration of inherited property. Given that our inquiry is an empirical one that investigates a contemporary phenomenon within a real life context (Yin, 2009), we use a case study methodology to investigate the complex social relations embedded in the inheritance of land and subsequent registration. We use multiple-case study design where each case has multiple embedded units of analysis. The multiple case study approach gives an integral picture of the phenomenon at a higher level beyond the idiosyncratic limited value of the individual cases. It enabled us to understand the non-registration of inherited property in a more detailed manner aiming to avoid oversimplification of intra-contextual differences within different settings of the selected case study regions. For example, the dynamics of people-land relationship vary from urban through peri-urban to rural areas. By including cases from both rural and urban areas, the study takes into account the variations in people-land relationships from urban through peri-urban to rural areas. By including patrilineal as well as matrilineal areas, the study accounts for two main established patterns of differentiation in inheritance practices, within which underlying norms and their relationship to land registration were identified.

1.6.2 Case Selection according to systems of inheritance

This study covers the major systems of inheritance in order to get a better understanding of how the non-registration of inherited property derives and manifests itself in different socio-cultural contexts in Ghana. Kasanga and Kotey (2001) estimated that about 80% of Ghana's land is owned and controlled by customary tenure institutions. Also, per Article 276 (1)[1] of the 1992 Republican Constitution of Ghana, all customary lands are vested in the appropriate customary institutions in accordance with customary law and usage. Further, studies indicate that inheritance is one of the dominant forms of land acquisition in Ghana (Abubakari et al., 2016; Aha and Ayitey, 2017). Though customary tenure is practiced in many countries, the above-mentioned characteristics make Ghana a unique example of the interplay between legal pluralism[2] and land relations. The study categorizes the different variations of inheritance practices into major groups. Although there are variations between

[1] All stool lands in Ghana shall vest in the appropriate stool on behalf of, and in trust for the subjects of the stool in accordance with customary law and usage.
[2] Includes, state law, customary law and religious law

communities and ethnicities in terms of their inheritance practices, there is enough commonality among some practices to enable a categorization of Ghana's inheritance systems into patrilineal and matrilineal (La Ferrara, 2007). A study by Kutsoati and Morck (2012) reveals that patrilineal systems of inheritance are practiced in the Upper West, Upper East, Northern, Volta and Greater Accra regions while matrilineal systems are practiced in the Ashanti, Western, Eastern, Central and Brong Ahafo regions.

Two regions were then selected for this study, one from the matrilineal areas and the other from the patrilineal areas. From the patrilineal regions the Upper East was selected, because of its land tenure structure (family land ownership, controlled by the earth priests) and its high population density (a possible indicator for high land value and frequency of land transfers). From the matrilineal regions, the Ashanti region was selected, because it is dominated by the Akan tribe who are well known in Ghana for their strong cultural heritage (especially in the matters of inheritance and other cultural practices). The region is also known for its strong customary land institutions (most notably, the Asantehene's Customary land Secretariat). Within each of the selected regions, two communities were selected – one with characteristics of rural land use and the other with characteristics of urban land use. By virtue of differences in land use, land values and incidence of land disputes, rural and urban settings exhibit variations in inheritance norms and also respond differently to matters of land registration. The criterion for selecting the communities is their accessibility to the Lands Commission offices. This was done to offset the effect of distance on people's willingness to register property, which allows analytical emphasis to be put on the influence of inheritance practices. The distribution of inheritance systems and selected cases are shown in Figure 2.

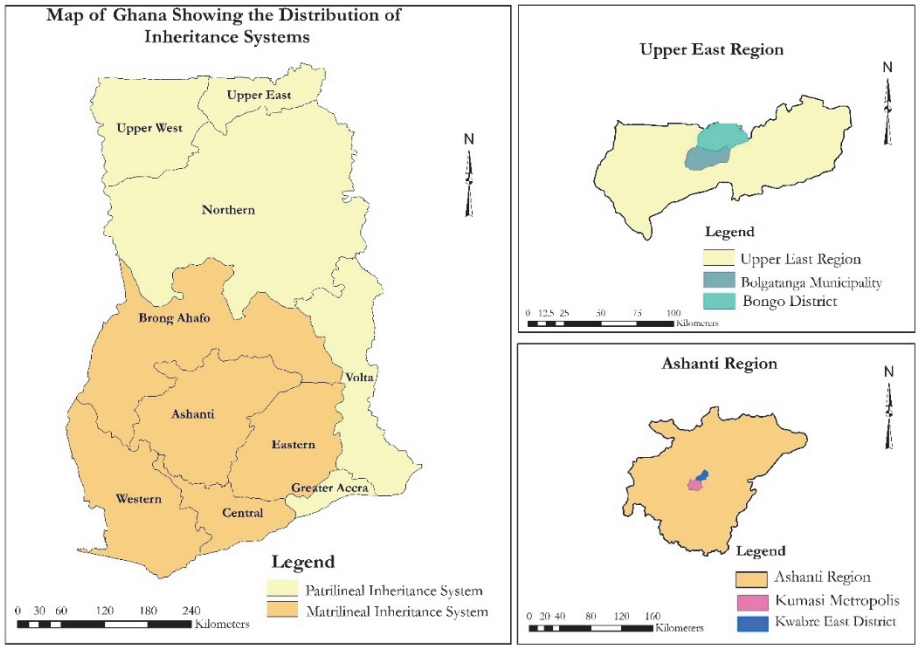

Figure 2: Map of study areas

1.6.3 Qualitative fieldwork

One major characteristic of case study research is that it makes use of multiple sources of evidence or means of data collection to obtain the best results. This combination of methods is called methodological triangulation (Bekhet and Zauszniewski, 2012). This study used different methods of data collection depending on the nature of the data required and source of data. Data for this study was collected from primary and secondary sources. Primary data was collected from successors of inherited property, earth priests, chiefs, officials of the Customary Land Secretariats and the Lands Commission about the types of existing land rights, inheritance practices and associated inheritance laws as well as processes of land registration. Secondary data was collected from existing literature on inheritance, statutes and case laws. Primary data was collected through interviews, focus group discussions and observations at two different times, April to August in 2017 and June to August in 2018.

- ***Focus Group Discussions:***

Focus group discussions were organized in the four study areas to get a general understanding of how matrilineal and patrilineal inheritance norms play a role at the community level and what other norms and rationales might play a role. They were conducted in the major towns and surrounding villages to observe differences from within each case (matrilineal/patrilineal). Each focus group discussion consisted of eight to ten participants including some family heads,

earth priests, community elders and successors of inherited property (both male and female). In all, 13 focus group discussions were organized, 4 in the major towns and 9 in the surrounding villages. The focus group discussions were also used to cross check individual opinions shared in interviews as well as observation that were made in the study environment.

- ***Interviews:***

The study used interviews to retrieve information from successors of inherited property on issues that relate to individual experiences such as reasons for the registration or non-registration of inherited property, individual accounts of how the sharing of inheritance took place, the rights, responsibilities and restrictions attached to inherited property, perceived level of tenure security people have about inherited property and its registration, the choice of inheritance laws and other problems they encountered during inheritance transfer. Also, staff of the Lands Commission and Customary Land Secretariats were interviewed to obtain information on the processes of registering inherited property and how they engage with successors of inherited property formally and informally. In total 31 in-depth interviews were conducted and 72 semi-structured interviews.

- ***Observations:***

While at the premises of the Lands Commission and the Customary Land Secretariats, I observed how applications were made for registration, the type of people who often submit applications at the front desk, how the agents interact with landholders and also with the officials of the Lands Commission. The timing of the observations varied, sometimes 1 to 2 hours and the days for observation were not also very structured but anytime I visited the Lands Commission or Customary Land Secretariats I made observations as the situation permit.

1.7 Thesis outline

This thesis consists of six chapters. **Chapter one** introduces the background of the research, states the research problem, provides the research objectives and relevant concepts that support the remaining chapters of the research.

Chapter two explores the land tenure situation and the processes of registering land rights. The chapter provides insights on the actors and steps involved in registration across different phases of registration in the study areas. The chapter highlights in how far registered land rights fall short of both the land laws and existing land rights and why.

Chapter three delves in to the legal underpinnings and practices of inheritance as observed in the study areas. How the different laws of

inheritance manifest in practice and how they interact and shape one another. In this chapter, the study shows how different types of land rights emerge from inheritance and how they lend themselves for registrations.

Chapter four looks at the registration of the emergent rights that lend themselves for registration and then highlights how the registration of inherited property is influence by a tripartite normative interaction across the social, practical and bureaucratic arenas. Further, the chapter highlights strategic movements that successor of inherited property engage especially for the urban context.

Chapter five presents a synthesis of the research by using the empirical findings from Ghana to evaluate the major implicit assumptions that characterize land registration thought, conceptualization and implementation. The chapter concludes with a set of questions to guide a critical re-engagement with the assumptions as a means to support successful land rights registration.

Chapter Six gives reflections and contributions of the research. This chapter also highlights some limitations of the study and thus suggests directions for future research.

Chapter 2: Alignment between existing land rights, laws and practices of registration*[3]

* This chapter is based on published paper: Abubakari, Z., Richter, C., Zevenbergen, J. A. (2018). Exploring the "implementation gap" in land registration: How it happens that Ghana's official registry contains mainly leaseholds. *Land Use Policy*, 78, 539–554 https://doi.org/10.1016/j.landusepol.2018.07.011

2.1 Introduction

Since the 1980's, the World Bank and some economists have pushed strongly for land titling in support of building secure land rights (Feder and Noronha, 1987; Feder et al., 1988). In line with these propositions, international donor agencies have facilitated the implementation of land registration programs in many developing countries. These programs, often start from the development of appropriate legal frameworks as basis for land registration (McAuslan, 1998). However, the development of new legal frameworks through land law reform has its own drawbacks as it sometimes contradicts the de facto customary laws and practices.

Recent increasing concerns on landholder vulnerability and food insecurity call for the need to recognize the diversity of land rights in land registration processes. In discussions about land rights diversity, the ongoing land tenure discourse in Africa is characterized by the binary distinction between customary law and statutory law (Lund & Benjaminsen, 2002). The World Bank (1989) in a seminal report cautioned that nationally legislated land rights are likely to conflict with prevailing customary rights; and Bruce and Migot-Adholla (1994) advocate for a shift from a land law replacement paradigm to an adaptation paradigm that provides a supportive legal and administrative environment for the evolution of customary law. What these views have in common is the suggestion that there is a mismatch between customary law, on one hand, and statutory law, on the other. Many other researchers (Platteau, 1996; McAuslan, 1998; Blocher, 2006; Cotula et al., 2006; Kingwill, 2014; Moyo et al., 2015) share this view and point to the mismatch as the major cause of non-recognition and non-registration of customary land rights. In turn, this position implicitly proposes a causality chain, where differences in legal systems lead to non-recognition and non-registration of land rights.

Although this position is plausible, it is as of yet inconclusive in two ways. First, making it an assumption bears the risk of overlooking possible alignments between customary land rights and statutory land rights in some contexts of tenure. Secondly, it does not take into account the context specific effects of implementation processes on inclusive land rights recognition. As Deininger (2003) observed, the legal recognition of diverse land rights in Africa is only a first step, which then needs to be followed up with building of implementers' capacity and the establishment of clear principles, procedures, and rules to make land law work in practice. One example is the land reform in Niger between 1980 and 1990, which led to the introduction of the Rural Code for the registration of customary land rights. Although the Rural Code recognized the pluralist nature of land rights, it could not be translated into practice, because the necessary steps for implementation were not put in place (Benjaminsen et al., 2009). The problem of implementation is significant

across the African continent as shown in the comparative study of (Alden-Wily, 2002 cited in Deininger, 2003), which demonstrates the existence of implementation gaps specifically in land registration for 20 countries across Africa. As shown in table 1, diverse land rights may well be recognized within the legal framework of a country, but this does not ensure registration of such rights in practice.

Table 1:Existence of implementation gaps in land registration in selected African countries

Country	**Recognition of customary tenure**	**Customary rights registrable interests**	**Commons registrable by group**	**Implementation**
Burkina Faso	Permissive	No	No	n.a
Côte d'Ivoire	Partial	Yes	No	n.a
Eritrea	No	No	No	None
Ethiopia	No	No	Yes	None
Ghana	Yes	Yes	Yes	None
Kenya	Permissive	No	No	n.a
Lesotho	Yes	Yes	Yes	None
Malawi	Yes	No	Yes	None
Mali	Yes	Yes	No	n.a
Mozambique	Yes	Yes	Yes	Underway
Namibia	Yes	Yes	No	None
Niger	Yes	Yes	No	n.a
Rwanda	No	No	No	None
South Africa	Yes	Yes	Yes	None
Swaziland	Yes	Yes	Yes	None
Tanzania	Yes	Yes	Yes	None
Uganda	Yes	Yes	Yes	Minor
Zambia	Yes	No	No	Underway
Zanzibar[a]	No	No	Indirectly only	Pilots
Zimbabwe	Yes	Yes	Yes	None

n.a- Not applicable
a.- Archipelago of Tanzania
Source: (Alden-Wiley, 2002 cited in Deininger, 2003)

Research therefore indicates that inclusive recognition of land rights in actuality requires more than merely adjusting legal frameworks to new global discourses and aims. It is at least equally important to gain an understanding of the process of implementation embedded in the dynamic of state administration and other governance actors.

Such research is all the more important because, in recent years, policies and legal frameworks to recognize diverse land rights are being implemented

alongside new surveying technologies and techniques. In order to assess their potential and actual usage in land governance, we need to gain more in-depth understanding of historically evolved processes of land rights registration across different contexts; and how these affect the implementation of policies and legal frameworks developed at larger scale.

This chapter aims to contribute to such research through a more nuanced understanding of this "implementation gap" in the process of land registration in Ghana. Ghana is especially relevant because, customary institutions own about 80% of the land (Kasanga & Kotey, 2001). Having gained independence from Great Britain early in 1957, Ghana also has a relatively long history of post-colonial law-making; and its constitution acknowledges customary law as one of the sources of national law. Nonetheless, a growing body of literature (Ehwi and Asante, 2016; Maha-Atma, 2014; Ubink, 2008; Ubink and Amanor, 2008) points to a gap in the implementation of land registration laws in Ghana, particularly, on the registration of the usufructuary rights[4] (a dominant type of land right and the main focus of this chapter). Currently, the processes of land rights registration mainly result in leasehold titles neglecting other registrable land rights. It is still unclear, what accounts for this and how this evolved. While we know from the land registration literature (Biraro et al., 2015; Chimhamhiwa et al., 2009; Enemark et al., 2014; Cotula, Toulmin, and Quan, 2006; Zevenbergen et al., 2012) that cost constrains the willingness to register land in general, it is likely that in Ghana's land registration process other less quickly apparent, but nevertheless influential forces are at play as evidenced by research in other policy domains in West Africa that seeks to explain the "problem of the gap" (Olivier de Sardan, 2015). The aim of our study is therefore descriptive and explanatory in nature focusing on both: description of the process of registration as well as the search for reasons within these processes that explain the neglect of land rights other than leasehold in official registration in Ghana.

Of course, the so-called implementation gap is not unique to the land governance domain. The disconnection between legal stipulations and actual practice is a common characteristic of implementation processes more generally (Bergen & While, 2005; Fischer et al., 2007; Grindle, 1980; Lipsky, 1980; Nadgrodkiewicz et al., 2012; Van Meter & Van Horn, 1975). Our study therefore, draws on insights from research on policy and law implementation more generally as a framework to analyse the processes of land registration in Ghana. The study focuses on two regions of Ghana, because of their distinct land governance structures: the Upper East region, where land ownership

[4] Also known as the customary freehold which is held by subjects of a traditional authority or members of a family forming the broader category of land rights (Kwame, 2013).

decentralises from earth priests[5] and chiefs to clans, and families; and the Ashanti region, where land ownership is centralised around the chieftaincy structure with the Asantehene as the King.

The chapter is structured as follows. In the following section, we draw on research and theory in the domain of law and policy implementation to review the concept of implementation gap and to identify factors that influence the implementation processes in order to sketch out a theoretical prism for our study. In section 2.3, we describe Ghana's land tenure systems, land rights and the administrative scene. In section 2.4, we describe the methods used for data collection and data analysis in this research. Subsequently, the results are presented in section 2.5 and discussed against the analytical framework in section 2.6. The chapter concludes in section 2.7 with recommendations for future research and practical intervention to improve the current land registration processes.

2.2 The implementation of laws: gaps and explanations

2.2.1 The concept of "implementation gap"

The disconnection between policy and legal stipulations on one hand, and actual practice, on the other, has been described in diverse ways and using different terminologies by policy analysts and researchers (Bergen & While, 2005; Fischer et al., 2007; Grindle, 1980; Lipsky, 1980; Nadgrodkiewicz et al., 2012; Van Meter & Van Horn, 1975). Bergen & While (2005) describe it as an implementation deficit, arguing that the relationship between policy and practice is rarely direct, linear or clear. Bergen point to implementation as a "deficit" with the conception that the outcomes of implementation offer less than provided by law. Van Meter and Van Horn (1975) in their implementation theory define the implementation gap as the gap between policy and performance, thus, explaining it as "an imperfect correspondence between adopted policies and services actually delivered". Lipsky (1980) zooms into the practices of implementation at a fine-grained level, focusing on the work of street-level bureaucrats. He describes the concept as the gap between "realities of practice and service ideals". Service ideals are the desired outcomes of implementation expected by law-makers and/or the public, which may be communicated by the import of law or not and which may also actually be realized or not, specifically by the day-to-day work of street-level bureaucracy charged with implementation tasks. Policies are therefore never

[5] The earth priests also known Tendaamba (singular–Tendaana) are the descendants of the pioneer settlers and they are the ultimate authorities regarding land in their respective villages and towns in Ghana (Kasanga, 1995).

translated into practice in a direct, straightforward fashion, but experience various adaptations and changes during the process of implementation, which in turn affect both the outcomes of a policy in practice and also change the ideals and values embedded in the original formulation of policies (Chowdhury, 1984; von Holdt, 2010). This basic dynamic is also at play in the case of law implementation.

Many factors play into the practical realization of law, which range from the content of the law itself to the actions of the final implementers (Nadgrodkiewicz et al., 2012). The implementation of law is a process of governance that comprises many governance actors at different levels, who perform various tasks to translate the law into practice (Clement & Amezaga, 2009). Implementation of law can therefore be conceptualized as a continuum, positioned between the central authority of decision making and the local autonomy of the street-level bureaucrat. Such conception of implementation of law as governance rather than routine administrative processes is key for understanding the dynamics of implementation (Grindle, 1980; Fischer et al., 2007).

The circumstances and reasons that give rise to differences between enacted laws and the reality that prevails when they are implemented are many and vary between different contexts. They are underpinned by economic, political, socio-cultural and administrative factors (Nadgrodkiewicz et al., 2012). Studies on law and policy implementation processes highlight different factors that account for implementation gaps. These factors have been sorted into three groups and termed as "domains of translation" for this study, namely; legal simplification versus real complexities, administrative adaptations of the law, and administrative capacity.

2.2.2 Legal simplifications versus real complexities

Law-making authorities always face a basic dilemma of ensuring uniformity in legal codes against the existing complexity of reality (Allott, 1984; Kingwill, 2013). Writing laws therefore always requires trade-offs between simplification and specificity to achieve some level of balance between laws and the reality, which they seek to describe and regulate.

From a historical perspective, it can be argued that this is especially the case for written statutory law. For the state to see, regulate and manage its territories and population, central law-making authorities need to simplify and abstract the locally specific norms, practices and knowledge that characterize diverse landscapes. As such, law-making can be seen as a form of legibility making (Scott, 1998), where situation specific complexities and flexibility of societal relations are simplified into formulaic state bureaucratic machinery to

allow for large-scale administration of the state's territories and society in general. But the practical implementation of such simplified legal and procedural codes always requires unpacking in order to adjust the uniform codes back to the very diversity, from which they were derived in order to meet specific needs in reality (Mark & Stavros, 2002). Thus, when the law overly simplifies the reality subsequent implementation becomes problematic. Hence, the process of abstraction is always a balancing act between the need to simplify, on one hand, and gaining enough specificity in definition, vocabulary and classifications of the written law to provide for clarity on the other hand.

On the one hand, law needs to provide sufficient clarity and specificity in meaning in order to be translated into practice (Deininger, 2005). Clarity of expression and unambiguity of meaning in the language contained in legal provisions are key for a successful translation of law into practice (Van Meter & Van Horn, 1975). Where the provisions of the law are overly complex, conflicting or ambiguous, there is too much room for different interpretations and conceptions of the law, which in turn open multiple pathways for the implementation of the same law (Clement & Amezaga, 2009). Aside written laws, where administration and implementation are based on ambiguous unwritten rules, it can equally be very difficult as shown by Berry (2001) in her study of property rights in the Asante kingdom. She illustrates how ambiguity in the Asante custom promoted by competing interest groups constrained the British colonial administration from adjudicating and administering the Asante state according to Asante custom. Derived meanings of the law at the local implementing levels may thus be in consonance or in dissonance with the meanings intended by the central law-making authorities. This is one of the junctures, where implementation gaps arise, mainly because, the local implementing actors operationalize the law according to their understanding of it if the law is not sufficiently precise. On the other hand, despite the need for clarity in legal expressions, some level of ambiguity is advocated by (Matland, 1995; Clement and Amezaga, 2009) who argue that a permissible level of ambiguity allows for flexibility during implementation and that clarity in the goals of law may have dysfunctional effects which can elicit goal conflict between central authorities and local implementing actors.
In sum, one set of factors explaining implementation gaps relates to the clarity of law and the processes of translating simplified legal codes to real complexities and vice-versa. Besides the court rooms, a lot of this translation takes place within the workings of public administration.

2.2.3 Administrative adaptations of the law

Within administration, several factors influence how law becomes translated into practice. One set of factors relates to the disposition of individuals. A second set relates to the mechanisms by which individuals negotiate

administrative structures, and a third, relates to the interactions between administration and other governance actors in the implementation processes. First, the disposition of frontline implementers towards the objectives of the law can be acceptance, neutrality or rejection and will affect how the law is implemented (Bergen & While, 2005; Lipsky, 1980; Van Meter & Van Horn, 1975). In an ideal type of bureaucracy as proposed by Weber, the performance of bureaucratic functions by staff under a legal authority is devoid of personal, irrational and emotional elements (Weber, 1947). However, in reality, such elements are often infused into the performance of functions and tasks within a bureaucratic workplace. Thus, the general intent of law may be conveyed in clear expressions, but if the outcomes of the law contradict deeply cherished values of the implementers, they may passively disobey the laws by implementing the law in ways that balance with their perception of what the law ought to be (Van Meter & Van Horn, 1975). Also, when local implementers see laws as illegitimate they may defy compliance by not strictly enforcing them or treating them as symbolic laws[6] (Nadgrodkiewicz et al., 2012). Thus, a high level of acceptance and legitimacy of law on the part of its implementors enhances the potential for successful implementation.

Second, how different forms of negotiations between organizational structure and street-level bureaucrats play out also explains implementation gaps. Lipsky (1980) argues that the limitations of work structure and the development and evolution of coping mechanisms within organizations greatly affect implementation outcomes. Bureaucracies work according to established administrative structures and routines that reflect the characteristics of both formal legal guidelines and evolved informal organizational constraints (Feldman & Pentland, 2003). How well these administrative structures are designed in terms of the complexity of routines, level of discretion at the disposal of staff and the embedded reporting systems influence how easy or difficult it is to negotiate the implementation of law and policy. From the Weberian construct of ideal type and rational bureaucracy, bureaucratic structures ought to eliminate malfeasances. This is often achieved by instituting rigorous checks and balances which takes away the flexibility needed for the successful execution of routines and thus leads to unnecessary rigidity. Such rigidity impedes the performance of policy or implementation of law (Lipsky, 1980; Pritchett et al., 2013). Thus, in negotiating these nearly static bureaucratic structures, frontline implementers develop ways to cope with their duties. This highlights the dilemmas faced by frontline implementers in trying to observe the constraints of bureaucratic structures, meet the requirements of the law, and also, meet the complex needs of service recipients (Pritchett et al., 2013). The emergence of these coping mechanisms marks the point at which practical implementation begins to depart from the

[6] Unenforced laws

stipulations of the law (Fischer et al., 2007). Despite the seeming negative correlation, some coping mechanisms may reflect acceptable compromises between the needs of the frontline implementers and the objectives of the law.

Third, and moving beyond the formal administrative boundaries, the interplay of various actor interests involved in a given legal domain also affects the extent to which the implementation of a law may be successful. When the effect of laws exhibit tendencies that seek to change evolved relationships between implementing actors in administration and other governance actors, the latter may resort to bureaucratic politics through lobbying and bargaining in order to maintain the status quo of those relationships, where one actor or an alliance of actors may coerce other actors to their will (Matland, 1995). For example, in land administration, the power dynamics between traditional authorities and their subjects/members is often complex because of struggles over land control (Hyden, 2006). When these power dynamics become intense, the focus of implementing actors is diverted from the implementation of the law towards the achievement of group interests (Nsamba-Gayiiya, 1999; Tony and Oswald, 2009). In some instances, this leads to stagnation and retrogression in implementation processes.

2.2.4 Administrative capacity

Beyond the clarity of legal provisions and disposition of frontline implementers, resources are required for the successful implementation of law (Fischer et al., 2007). Resources in terms of personnel to perform different functions in the implementation process, technical expertise to ensure proper implementation, office space and office materials to accommodate the administrative processes and remunerations to motivate personnel (Van Meter & Van Horn, 1975; Montjoy and O'Toole, 1979). Resource limitation may affect implementation of law in at least three ways: the law may never be implemented; or the progress of implementation may be slackened or the implementation may be done in ways that vary considerably from the law (Pritchett et al., 2013). Although laws are often implemented using existing bureaucratic structures, they sometimes also require the establishment of new ones when existing bureaucratic structures do not provide sufficient avenues for fit-for-purpose execution; and this increases the resource requirements. When there is weak state capacity, meeting the resource needs for the implementation of law can become even more complicated as there is a fusion of formal and informal institutions (Pritchett et al., 2013). Informal institutions sometimes work to complement voids in formal institutions that are propelled by the weak state capacity (Lund & Benjaminsen, 2002). A weak state capacity sometimes manifests in wide spread corruption by virtue of which implementers misappropriate allocated resources for private gains at the cost of effective implementation processes (Nadgrodkiewicz et al., 2012). Thus, the lack or

inadequacy of the needed resources within the administration can hamper the practical realization of law significantly (Tony & Oswald, 2009).

The review of factors influencing the process of law implementation and how each set of factors helps to explain gaps in implementation are summarized in table 2. We refer to each set of factors as "translation domains" in column one and in the following text, because each set of factors represents a type of translation between law and practice.

Table 2:Summary of factors that help explain law implementation gaps

Domains of translation (between law and practice)	**Factors influencing implementation**	**Explanatory value for implementation gap**
Legal simplifications versus real complexities	Ambiguity in the law	Unclarity in the meaning of law leads to diversity in interpretation and actualization of law during implementation.
	Over-specification in the law	Over specification in legal terms hampers adjustment of legal codes to the specific needs and situations of reality necessary for implementation.
Administrative adaptations of the law	Disposition of implementers to the objectives of the law	Implementers may intentionally not fully execute a law if the execution stands in contrast to their own deeply cherished values.
	Coping mechanisms of implementers within organizational structure	Administrative staff develop new ways of negotiating the complications of bureaucratic structures which indirectly hampers exact realization of law into practice.
	Bureaucratic politics and lobbying	Law becomes realized diversely and in unanticipated ways when it elicits negotiations between different interest groups within administration and between administration and other governance actors.
Administrative Capacity	Human resources	When resources, specifically needed for the implementation of law (especially new laws) are lacking or inadequate, the law cannot be fully implemented.
	Technical expertise	
	Financial resources	

2.3 Ghana's land tenure systems, land rights, and administrative scene

Ghana's land tenure is hybrid in nature and comprises both customary and statutory tenures (Arko-Adjei, 2011). Relatively, the customary tenure system is dominant and controls majority of land in Ghana (Kasanga & Kotey, 2001).

Control and administration of customary land is exercised by traditional authorities such as chiefs, earth priests and family heads (Abubakari et al., 2016). They act as fiduciaries and hold the land in trust for their community's members or subjects (Kuusaana & Gerber, 2015). Under the customary tenure system, land is often held communally by traditional institutions such as communities, tribes, clans and families. Land under the customary tenure system is managed and controlled by traditional authorities such as chiefs, earth priests and family heads who act as fiduciaries in trust for the corporate groups as stipulated by Article 267(1) of the 1992 Constitution of Ghana.

The statutory tenure system governs lands that are acquired and controlled by the government through statutory procedures (Arko-Adjei, 2011). Lands under the statutory tenure are managed by the Lands Commission (LC) as mandated by Article 258 of the 1992 Constitution. The LC has its historical roots in British colonial administration. It has since gone through different stages of development. The current LC takes its roots from the Lands Commission Act, 2008 (Act 767), which establishes the LC with a core mandate to undertake surveying and mapping, land valuation, land registration and the management of state land and vested lands.

Ghana's customary tenure has a continuum of land rights which derive from one another ranging from allodial rights, usufructuary rights and customary tenancies (Arko-Adjei, 2011). The allodial right is the highest right on land in customary law (Kasanga & Kotey, 2001). Woodman (1966) describes the allodial right as the ultimate right that is held by a traditional authority on behalf of a community or family. The members of the community or family are eligible to a potentially perpetual right known as the usufructuary right. The usufructuary right as it pertains in the Ghanaian context does not exactly translate to the Roman concept of *usufructus* which imply the use of land and fruits, instead, it confers more rights of ownership beyond the use of land and fruits (Woodman, 1966). In this study we focus on the usufructuary right because, it is widely held by most Ghanaians under customary law. As noted by Woodman (1966), nearly every Ghanaian by birth belongs to either a family or community that has allodial rights over land from which they may derive usufructuary rights. This makes the usufructuary right relatively important. Additionally, most farmers in the rural areas of Ghana operate on usufructuary holdings which makes it all the more important to be registrable as this can

secure rural livelihoods and food security (Ubink & Amanor, 2008). Thus, the neglect or non-recognition and non-registration of the usufructuary right in the land registration process comes with serious repercussions such as landlessness, poverty and food insecurity.

The usufructuary right is created when a member of a family or a community by his human industry clears a vacant virgin communal land within the jurisdiction of the corporate group to which he belongs (Woodman, 1966; Arko-Adjei, 2011). The usufructuary right requires that the holder performs certain customs ascribed to it by the customs of the corporate group that holds the land. This makes it a conditional but not absolute right. Thus, the rights of the usufruct afford him a beneficiary occupation of the land with opportunities of succession and transfer in whole or part with the acknowledgment but without the consent of the allodial right holder (Ubink, 2008). The usufructuary right can only be terminated through abandonment, forfeiture or failure in succession (Ubink, 2008). However, as population increases and vacant land diminishes, the creation of usufructuary rights through discovery has increasingly become difficult and impractical in most instances. The most probable avenue to acquire usufructuary rights in recent times is through inheritance (Abubakari et al., 2016). Woodman (1966) further noted that, the usufruct can grant terminable rights such as customary tenancies and leases to members and strangers alike. These customary tenancies include, share cropping arrangements (*abunu and abusa)*[7] and short-term arrangements like licenses and land rent.

Over the past decades, managing the two streams of tenure, namely statutory and customary, have been problematic. Whereas the management of the statutory tenure was confined to specific public land sector agencies, that of the customary tenure was done disparately by different customary institutions in different ways. Notable among these customary institutions were the Asantehene Land Secretariat in Kumasi, the Akyem Abuakwa Land Secretariat in Kyebi and the Gbawe Kwatei Family Land Secretariat in Accra (Biitir et al., 2017). Thus, to facilitate collaborations between the customary institutions and public land sector agencies and also to strengthen customary land management, the Ministry of Lands and Natural Resources in 2003 under the Ghana Land Administration Project (LAP) facilitated the establishment of new Customary Land Secretariats (CLSs) prior to the passing of the 2008 Lands Commission Act. The mandate of the CLSs include keeping up-to-date records of land transactions, linking land owners to public land sector agencies, settlement of land disputes and management of revenue on land transactions.

[7] Local customary constructs that are used by farmers. "Abunu" means to share the proceeds of the farm in two and "Abusa" means to share the proceeds of the farm in three.

Both the LC and CLSs are active across Ghana. Therefore, the official administration is itself hybrid in nature, because it involves the collaboration between LC and the Customary Land Secretariats (CLSs).

Within this administrative scene, however, the relative importance of CLSs vis-à-vis the LC as administrative agents in the process of land rights registration differs depending on whether customary land governance is more or less centralised.

2.4 Methodology

Within Ghana's customary tenure, two land governance structures are characteristic, centralised and decentralised land governance structures. Therefore, this study was conducted in two regions of Ghana where these land governance structures are evident. In the extreme north of Ghana, the Upper East region, land ownership decentralises from earth priests and chiefs to clans and families. Historically in the Upper East region, customary offices are in turn divided between chiefs and earth priests; the former exercises territorial control over land while the latter oversees land allocations, sanctifies its use and endorses land transactions (Lund, 2013). During the colonial era, the northern territories were a protectorate and the northern lands still remained vested in the government after independence until 1979 when the constitution mandated that such lands be restored to their original owners. It was at that point that chiefs and earth priests begun to contest over the proprietary rights of land (Lund, 2008, 2014). Currently, in some areas like Bongo township, the chiefs have proprietary rights over land but for a major part of the region, the earth priests have proprietary rights over land following court rulings (Lund, 2014). In the Ashanti region land ownership is centralised around the chieftaincy structure (see Fig.3). In the Ashanti region, the CLS for the Kumasi metropolitan area is referred to as the Asantehene Land Secretariat (ALS), and plays a relatively stronger role in land tenure administration than the CLSs in the decentralised structure of the Upper East region.

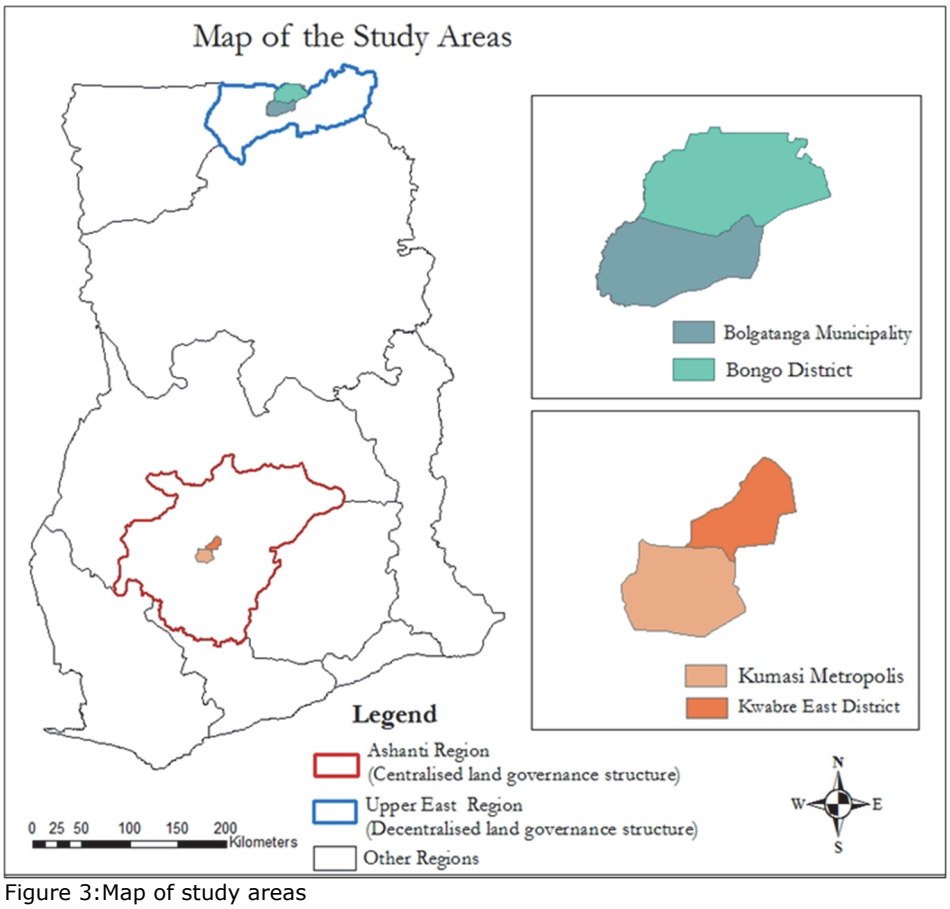

Figure 3:Map of study areas

2.4.1 Data sources and fieldwork

For the study, we combined primary and secondary data. For secondary data, we used legal documents[8], operational manuals of the LC and CLSs, allocation papers for the grant of customary land and registered deed documents. The contents of these laws were analysed with respect to their provisions on the scope of land rights. For this purpose, landholders and traditional authorities were interviewed in the Kumasi metropolis and Kwabre East district in the Ashanti region and Bolgatanga municipality and Bongo district in the Upper East region in order to compare existing customary land rights with those stipulated in existing statutory law. From this category of respondents, in total, 33 respondents were interviewed in Bongo, 18 in Bolgatanga municipality, 21 in Kwabre East and 8 in Kumasi metropolis.

[8] These included the 1992 Constitution, the Land Title Registration Law, PNDL 152, Deed Registry Act, Act 122 and Ghana Law reports

Further, we collected primary data through semi-structured interviews with key actors in the land registration process from statutory administrative and customary administrative sides, namely; the LC and the CLSs. Respondents included three (3) officials from each of the two regional LC offices, five (5) officials of CLSs in Bolgatanga and Bongo of the Upper East region and Kumasi in the Ashanti region. These respondents were asked questions about the types of existing land rights, the processes involved in their work, their specific roles in the overall land registration process and their viewpoints on the registration of usufructuary rights from both the perspective of the law and practice. Additionally, the legal officer at the LC head office and one private legal professional were interviewed regarding the interpretations of the land registration laws and key constitutional provisions that affect land registration. For this category, 13 people were interviewed in total across different actor groups in the land registration process.

In addition to the interviews, unstructured observations were made at the offices of the LC and CLSs in order to gain complementary insights into how the staff go about their daily work and how they interact with the public during their work. One day was allocated for observations at each of the LC and CLSs offices.

The operational manuals of the LC, which outline the procedures of the registration process, were analysed in search of clauses and statements that stipulate registrable land rights and the terminologies that are used to describe land rights. This enabled us to understand how the vocabulary used in them subtly shifts focus to certain land rights at the neglect of others. Also, the contents of the allocation papers of the CLSs, which mark the entry point for acquiring customary land, were analysed to determine the types of rights that are granted by grantors as well as the terminologies used to refer to such grants in these documents.

2.4.2 Data analysis

For the comparison between statutory and customary land rights we categorized the customary land rights into four categories based on the categories identified in literature that predates statutory laws (Ollennu, 1962; Woodman, 1966). Then we compared these to statutory laws in order to identify how far the latter aligns with the diversity of existing land rights. This first step in the analysis essentially resulted in asking the main question of this study, namely, how the gap in implementation can be explained.

In a second step, we used the theoretical prism based on literature from law and policy implementation to integrate data sources (interviews, legal documents, manuals and templates) through a content analysis (Hsieh &

Shannon, 2005), whereby the responses and the contents of the documents were categorized thematically according to the factors derived from literature described in section 2.2. In our selection of the literature we already took the specific administrative scene in Ghana into account (e.g. the hybrid nature of administration manifest in LC and CLSs) in order to develop a framework conducive to the analysis of the empirical reality under study. Formally, the registration for land is mandated to the LC in collaboration with CLSs; and applicable to the whole country according to a process outline in the procedures of the LC. However, in practice, informal and formal actors roles mingle. Therefore we needed to include the steps that lead to the formal stage of registration, where the LC comes officially into play as per its mandate.

In a third step we conducted a more fine-tuned analysis of the second translation domain (administrative adaptations) in order to describe and understand the registration process as it takes place in both its formal and informal nature. Here, we used in tandem two strategies proposed by Langley (1999) for the analysis of process data. Through the strategy of "temporal bracketing" in combination with "visual mapping" we categorized the registration processes into two phases: the process outside of the LC and the process inside of the LC following the order of steps as a landholder would experience them. While the first phase of registration differs by region, the second phase is designed for and applies to the whole of Ghana. This third step of the analysis was essential in that it allowed for an important meso-scale pattern to emerge, namely regional differences in the "problem of the gap" deriving from historically evolved land governance structures, which become visible in what we call the first phase of registration. This step allowed us then to discuss our study's case in resonance (Lund, 2014) with studies and theory of "hybrid governance" (Reyntjens, 2015) in the African context.

2.5 Implementation of land registration laws in Ghana

This section describes the process of land registration in Ghana according to the framework developed in section 2.2 of the chapter based on the literature. First, we compare existing customary land rights in the study areas with the main categories stipulated in statutory law; and illustrate the balancing act between legal simplification and complexity at the level of both law making and interpretation in the context of Ghana's land administration. Next, we describe the process of registration in two phases with emphasis on how the actors involved translate the laws into practice. Third, we describe differences in the capacities of the main administrative actors: LC and CLS.

2.5.1 Legal simplification versus real complexities: Ghana's efforts to align different types of law

Although the two study regions differ in land governance structure as described in section 2.4, the land rights practiced in each are similar. Land rights in the study areas are both communal and individual in nature and range from permanent status of holding to temporary holdings. Customary law as practiced in the study areas fairly aligns with the categories of land rights as contained in the land registration law, namely; the allodial rights, usufructuary rights (customary freehold), leasehold rights[9] and customary tenancies[10]. Hence, there is approximate alignment between land registration law and land rights as summarized in table 3.

Table 3: Alignment between statutory land rights and customary land rights

Type of land right	Description of land right	
	Statutory	Existing customary land rights (as identified in the study areas) that could be accommodated by statutory law
Allodial rights	A right held under customary law where the holder is not under a restriction on the rights of user or obligations in consequence of that holding other than restriction or an obligation imposed by the law of the Republic generally [section 19(1a) of the Land Title Registration Act, 1986]	Community held land rights
Usufructuary rights	A right held by a person subject only to the restrictions or obligations imposed on a subject of a Stool or a member of a family who has taken	Family or individual holdings without temporal limits and transferable through inheritance

[9] The leasehold title which is widely practiced in the study areas is alien to the Ghanaian customary tenure customary system but has developed in time through the commercialisation of land rights as shown in the case of *Amatei v. Hammond and Another* [1981] GLR 300-311 where the High Court held that by virtue of increasing scarcity of communal land and technological advancement, the rules that apply to the acquisition of a usufructuary right do not apply to commercial mechanized farmers, instead, they are required to obtain leaseholds from the appropriate stools.

[10] These include share cropping in the Ashanti region and land rent in the Upper East region.

	possession of land of which the Stool or family is the allodial owner without consideration or on payment of a nominal consideration in the exercise of a right under customary law to the free use of that land [section 19(1b) of the Land Title Registration Act, 1986]	
Leasehold	A right held under a lease for a term of years of which more than two years are unexpired [section 19(1d) of the Land Title Registration Act, 1986]	Individual use rights with temporal limit
Customary tenancies and licenses	A right held in land by virtue of a right under contractual or share cropping or any other customary tenancy arrangement [section 19(1e) of the Land Title Registration Act, 1986]	Temporary land access and use rights for specific groups of people arranged according to locally specific norms

However, a closer investigation of the content of the laws reveals a struggle at the level of statutory law-making to find a balance between sufficient flexibility, on one hand, and enough specificity, on the other. Ghana has a dual land registration system, deed registration on the one hand and title registration on the other. The deed registration which is operational in eight out of ten regions of Ghana is enabled by the Land Registry Act 1962 (Act 122), the first post-colonial legislation on land registration. The Land Registry Act provides generally for the registration of instruments[11]. As such the Land Registry Act does not specify the types of registrable land rights, rather, it subsumes all land rights under term 'instrument'. This over-simplification makes the Act too vague for the registration of specific land rights in practice. In response to this, more specificity in law was sought; and the Land Title Registration Law (PNDCL 152) was then enacted in 1986 in order to address the deficiencies of the Land Registry Act. Section 19(1) of the Land Title Registration Law categorises and defines the different types of registrable land

[11] Section 3 of the Land registry Act, Act 122, provides for the registration of any instrument that duly describes the location and boundaries of the land the instrument relates. According to the interpretation (section 36) of the Land registry Act, Act 122, an instrument includes a writing affecting land situate in the Republic of Ghana, and a judge's certificate and a memorandum of deposit of title deeds

rights to include: the allodial title, the customary freehold (usufructuary right), leaseholds and customary tenancies. Despite this, ambiguity in law continued as a problem. Both the Land Registry Act and the Land Title Registration Law predate the current Constitution (1992) of Ghana. Although the Land Title Registration Law sought to specify the types of registrable land rights, its provision on the registration of the customary freehold seems to conflict with article 267(5) of the 1992 Constitution, which states that "subject to the provisions of this Constitution, no interest in, or right over, any stool land in Ghana shall be created which vests in any person or body of persons a freehold interest howsoever described". Therefore, while the Land Title Registration Law sought to remedy legal over-simplification and introduce more specificity in types of land rights, it also produced new ambiguity that now arises from conflicts between statutory laws, which were written at different points in time. It is therefore the interplay between ambiguity of one statutory law in combination with the attempts to further specify and resulting contradictions, which now provide space of various interpretations of the law by courts as well as by other implementing actors. For instance, regarding the grant of freehold rights, the supreme court in the case of *Republic v Regional Lands Officer, Ho; Ex Parte Kludze* [1997-98] I GLR 1028, decided that the prohibition on freehold grants by article 267(5) of the 1992 Constitution does not affect freehold grants in family land holdings. The court maintained that the article applies to only stool land. However, the extent to which the article applies to usufructs who are entitled to beneficial interest from the stool still remain unclear as there are no clear judicial precedents to that effect.

Actors outside of the courts also have space to interpret the laws differently[12] in their attempts to translate them into practice. For instance, the LC, CLSs and legal practitioners take different stances on the interpretations and possible meanings of article 267(5). From within the LC, officials of the Upper East regional office interpret article 267(5) not to affect the registration of usufructuary interest while those of the Ashanti regional office and the Asantehene Land Secretariat (ALS)[13] interpret the article 267(5) to bar the registration of usufructuary rights. Interviews with legal professionals from within and outside the LC as well as the opinions of legal scholars expressed in textbooks revealed similar differences in the interpretation of article 267(5). Those of the prohibitive perspective like (da Rocha and Lodoh, 1999; Josiah-Aryeh, 2015) interpret the constitutional provision in solo and strictly according to its phraseology while those of the optimist perspective like (Kwame, 2013)

[12] This is fully discussed under section 2.5.2

[13] The ALS is a customary land secretariat that predates the Ghana Land Administration Project (LAP) which is branded with the Ashanti king's designation

tend to interpret it in conjunction with other provisions of the same Constitution such as articles 11(2)[14] and 267(1)[15].

In sum, the reasons for the non-registration of the usufructuary rights do not derive in the first instance from a difference between statutory versus customary land rights. Statutory law provides for various land rights that exist under customary tenure regimes as in the Land Title Registration Act; and even where it does not, as in the Land Registry Act, the concept of "instruments" here provides flexibility to adjust to the complexities of tenure rights in the country. While ambiguity within and contradictions between statutory laws provide space for various interpretations, the ways these take place must be sought in the practices of the actors involved in the registration process. We turn to this in the next section.

2.5.2 Administrative adaptation of the law

Having described how the legal framework of Ghana provides in principle for the recognition of a variety of land rights, it is important to examine the administrative structures that translate the law into practice in order to understand the reasons for the implementation gaps, namely, why usufructuary rights are not registered. As a result of the historical setting and developments briefly sketched out in section 2.3 of the chapter, land administration in Ghana is carried out by both the LC and the CLSs; where the former constitutes the public land sector and the latter represent customary institutions. Currently, the CLSs recording does not grant legal title to land, instead, it provides the foreground for the legal title to be processed at the LC, for example through the preparation of allocation notes and deed documents. While the recording of the CLSs may provide a de facto legitimacy and some security for the holders of land rights, it does not – like registration with the LC – provide legal rights. In addition, formal administrative tasks and processes are influenced by informal practices. The latter involve both LC and CLS staff when they act in informal capacity as agents and facilitators in the land registration process, for instance for personal gains[16] as well as actors outside of LC and CLSs, including, for example, estate agents and influential individuals, who liaise between the LC, CLS and other customary governing actors, such as family heads and chiefs.

[14] The common law of Ghana shall comprise the rules of law generally known as the common law, the rules generally known as the doctrines of equity and the rules of customary law including those determined by the Superior Court of Judicature.
[15] All stool lands in Ghana shall vest in the appropriate stool on behalf of, and in trust for the subjects of the stool in accordance with customary law and usage
[16] Interview of LC officials in the Upper East and Ashanti regions between April and July, 2017

While the registration process begins officially at the Client Service Access Unit (CSAU) of the LC, where applicants present deed documents for registration, in practice the registration process involves the accumulation of various documents to be presented at the CSAU; and this accumulation takes place through a complex network of informal relations and actions[17] behind the scene of the public agency mandated with land rights registration. Therefore, we differentiate the registration processes into two phases; first, the process outside of the LC and secondly, the process inside of the LC. The first phase describes processes that take place before the LC's formal involvement and differs between the two regions included in the study. The second phase is the same for both regions as it is designed to apply for the whole of Ghana through the LC's mandate to register land rights to provide statutory legal tenure.

Phase 1: actors and processes before official registration with the LC

The processes in the first phase of registration under the two regions are shown in Figures 4 and 5 for the Upper East and Ashanti regions respectively. The figures are constructed based on interviews of CLSs and ALS officials respectively. In the following sections, we describe the role played by LC and CLS as well as informal actors and roles for each region.

[17] The details of this will be discussed in the proceeding section on land registration processes

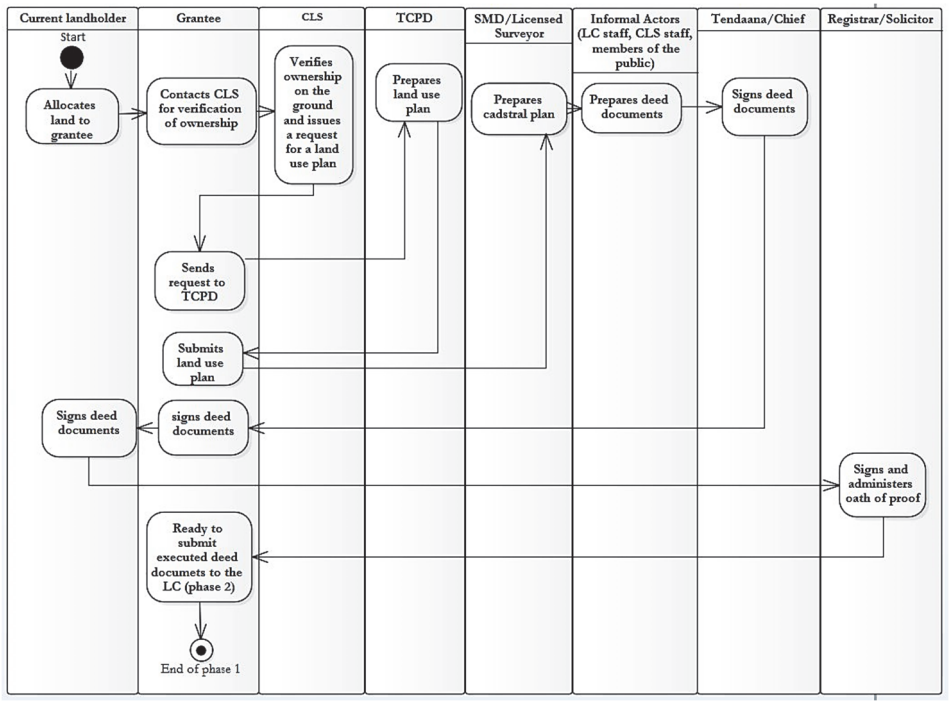

Figure 4: First phase of the land registration process in the Upper East region (decentralised land governance structure)

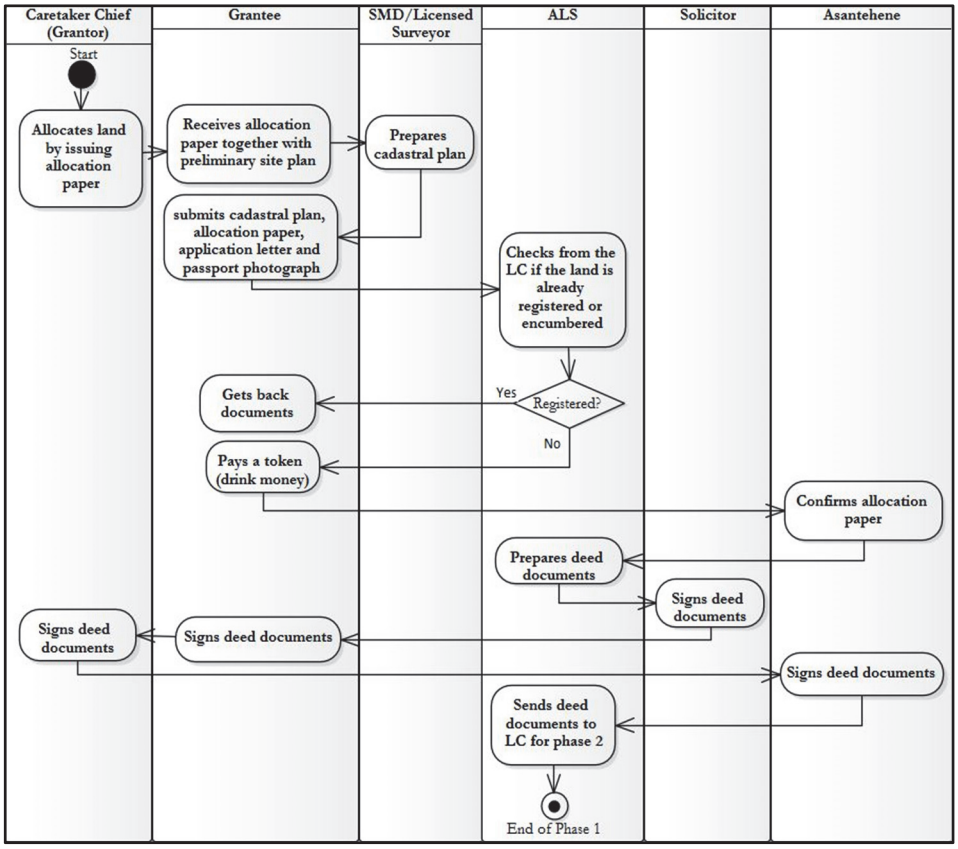

Figure 5:First phase of the land registration process in the Ashanti region (centralised land governance structure)

In the Upper East region, customary land is held by families and individuals under the custodianship of the earth priests or chiefs (in a few places like Bongo township), who act as allodial owners of the land. A fresh grant of land or secondary transfers, that were not registered before, begin as a private treaty between the current landholder (family or customary usufruct) and the grantee. The grantee then contacts the CLS. The CLS together with the grantee visits the parcel and confirms the ownership status of the grantor. The CLS issues to the grantee a document which he sends to the Town and Country Planning Department (TCPD)[18] for the preparation of a land use plan extract. With the prepared land use plan extract, the grantee then invites a surveyor from the Survey and Mapping Division (SMD) of LC or a licensed surveyor to prepare a cadastral plan for the allocated parcel of land. After the preparation of the cadastral plan, a deed document is prepared. In the Upper East region, the role of preparing deed documents is open, thus, anyone can prepare it.

[18] Now called Land Use Planning Authority (LUSPA)

While the staff of the CLS also prepare deed documents, grantees generally rely on the staff of the LC to prepare deed documents but this is informal, because, it is not an official role of the LC. There are a number of reasons that explain the informal involvement of the staff of the LC. First, because grantees cannot differentiate between the official and unofficial roles of the staff of the LC, it is assumed by many that the preparation of deed documents is part of the LC staff's official role. This assumption endows the staff of the LC with legitimacy in the eyes of the public. The LC staff's legitimacy is further enhanced by a clause on the allocation paper[19], which reads that "……The grantee is further advised to seek advice from the LC Secretariat on the agreement[20]". Secondly, the services of the staff of the LC is seen to be cheaper than that of legal professionals. The LC staff, CLS staff, estate agents and other members of the public who participate informally in preparing deed documents often rely on existing lease documents as templates. After preparing a deed document, it is sent to a solicitor only for his stamp/seal for a minimal fee[21]. Solicitors are often not much concerned about the content of these documents, perhaps because they are familiar with the templates or because of the minimal fees, they simply stamp them without thoroughly vetting them[22]. The deed documents are then signed by the earth priest or the chief as "allodial holder", the family or usufruct as "farm owner" and the grantee as a "lessee".

The land registration process of phase 1 in the Ashanti region differs compared to the Upper East region, because the land governance structure is more centralised in the Ashanti region with the CLS (ALS in Kumasi) playing a more dominant role. In this region, the allocation of land is initiated by a caretaker chief who issues an allocation paper to the grantee. The allocation paper is then confirmed by a paramount chief who oversees the lower chief, or by the Asantehene for areas that do not have paramount chiefs but caretaker chiefs only. The allocation papers of chiefs in the Kumasi traditional area of the Ashanti region are confirmed by the Asantehene through the ALS. After confirmation, the ALS proceeds with the preparation of the deed documents. During the deed preparation, all grants from caretaker chiefs are translated into leasehold rights following the understanding that the Constitution has prohibited the grant of freehold rights. Thus, the registration of usufructuary rights is seen as a way of creating freehold rights. The deeds documents are

[19] A written evidence of transaction between a grantor and a grantee. It bares the information of the grant like the name of the grantee(s), the type of rights granted, the date of grant, plot number, location etc.

[20] Agreement refers to the deed document

[21] If the solicitor is to prepare the whole deed document the fees are much more expensive but subject to negotiation

[22] Interview with officials at the Upper East regional LC, April, 2017

then sent to the LC for the second phase of registration. In an interview, a senior official of the ALS said,

> "…..The usufructuary interest is more of an equitable interest than a legal interest. From the Constitution, it is not allowed for anybody to have freehold from a stool land or skin land, so the freehold is vested in the stools and skins. Therefore the usufructuary right is only equitable not legal, that is why it cannot be registered. Documenting the usufructuary rights translates it into freehold which the Constitution bars". (Interview: June, 2017)

The usufructuary right is regarded by traditional authorities as a temporary agricultural holding that diminishes to leasehold rights when the land use is changed[23]. This is reflected in the following statement of an officer of the ALS:

> "…. As long as the usufruct continues to use the land for agricultural purpose within an area not yet covered with a planning scheme. This can go on until the usufruct decides to build, or till the time when the area is covered by a planning scheme or until such a time that a commercial agriculturalist takes over the area for large-scale farming. In the third case, usufructs are usually relocated or given some monetary compensation." (Interview: June, 2017)

In the view of the ALS then, the registration of usufructuary rights, would – if legally registered with the LC as such - provide its holders with individual rights of perpetual holding and some unilateral rights of transfer without the consent of the stool; and as such potentially circumvent the governing power over land rights allocations by the chiefs.

Taking into consideration the broader land governance structure of both regions and the processes leading up to the involvement of the LC in registration, we see that in the Ashanti region the LC's role, also in their informal capacities to prepare land documents, is relatively lower than in the Upper East region. In the Upper East region, the CLS is relatively less involved in the preparation of documents for official registration; and here LC staff acts in formal as well as informal role alongside legal practitioners outside of both LC and CLS in the preparation of documents necessary for official registration. As a result of these practices, the land rights capacities of transacting parties are often misrepresented[24] in deed documents in the Upper East. Despite such

[23] Interview with a senior official of the ALS, June, 2017

[24] Interview with a senior Lands Officer in the Upper East regional LC, April, 2017

misrepresentations, when the documents go on to the second phase of registration, they become legally binding registered deeds.

In the Ashanti region, the ALS truncates the variety in land rights to leasehold at the point of deed preparation for the reasons cited above. Thus, what rights become registered through the LC is influenced not only by LC internal procedures and practices, but to a larger extent by the processes taking place before the point of official registration at the CSAU.

Phase 2: Process of official registration with the LC

The next phase of the registration process begins when the grantee presents the executed deed documents at the CSAU of the LC. From here, the formal procedure of the LC prescribes that after the submission of these documents, the front desk officer checks the documents for completeness and then the applicant is given a bill for his/her service. The documents are then moved internally between the divisions of the LC for the performance of their functions. At different points in time, the applicant is invited to settle bills that are associated with the different divisions until the registration process is completed. The processes in the second phase of registration are shown in Fig. 6, which is constructed based on both official documents and interviews of LC officials.

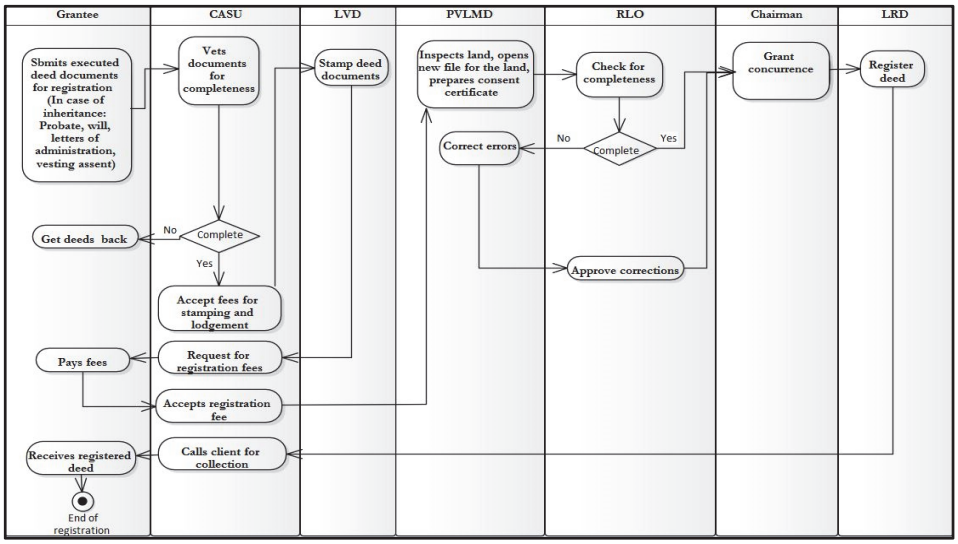

Figure 6:Land registration processes at the LC in the Upper East and Ashanti regions of Ghana

Source: (constructed from the steps stated in the operational manual of the LC and the responses from officials of the LC)

CSAU – Client Service and Access Unit
RLO -- Regional Lands Officer
PVLMD – Public and Vested Land Management Division
LRD – Land Registration Division
LVD – Land Valuation Division

The overview of the second phase of the registration processes depicted in figure 6 is implemented based on the operational manuals of the LC. These manuals apply uniformly across Ghana and provide detailed guiding procedures for rendering different services to the public.

Regardless of the numerous complexities involved in the first phase of registration as described earlier, there is also within the LC at least one constant factor that limits registration of diverse land rights, namely the operational manual of the LC. The manual does not provide explicit procedures for the registration of other land rights besides leaseholds.

The perspectives regarding this issue again vary by region. Officials of the Upper East regional LC acknowledge the lack of procedures for the registration of some land rights, particularly the usufructuary rights. They argue, however, that applicants do not present to the LC deed documents that convey usufructuary rights, instead, they present only that of leaseholds. Officials of the Upper East indicated that their encounter with such conveyances would lead to the development of new procedures that will incorporate them. At the Ashanti regional LC, the interviewed officials shared the opinion that article 267(5) of the 1992 Constitution prohibits the registration of such rights. According to them, the LC therefore does not need to have any such procedures for registering rights other than leasehold. They also supported their opinion by referring to the de facto situation that the chiefs do not grant usufructuary rights either.

In sum, the activities involved in registration, which manifest during the first phase carry over into how the shortcomings of LC's internal procedures – in this case illustrated based on the operational manual – are addressed or not by LC staff in the two regions. In other words, the administrative capacity of the public authority mandated to provide statutory land rights registration is in part influenced by the "input" from external actors and processes.

2.5.3 Administrative capacity of the LC and CLS

The operational manuals developed by LC are a key ingredient in LC's administrative capacity to implement laws, because as routine documents they contain the procedures, which serve as step-by-step guidelines for the execution of different tasks. However, with respect to the registration of land rights, the LC has not made procedures to reflect the diversity of land rights as stipulated in the land registration laws. The procedures tend to focus mainly on leasehold rights to the neglect of other land rights. This becomes apparent through a closer analysis of the procedures contained in the operational manual

for land registration. Section 2(18) of the 2008 operational manual[25], spells out the procedures for processing stool or skin land grants. The procedures described therein repeatedly use the words "lease" and "lessee" to represent "grant" and "grantee" respectively. This gives the impression that leases are the only registrable rights. Also, section 2(20) of the manual, which spells out the conditions for concurrence, sets upper limits[26] for the term of a land grant for both Ghanaians and non-Ghanaians without making allowance for grants that subsist beyond the upper limits set. Section 2(23) provides that the procedures for processing stool land should be applied for the registration of family and private lands. This section thus treats stool land and family land in the same way, which contradicts the definition of "stool land[27]" as given in the 1992 Constitution and also in case law in the case of Republic v Regional Lands Officer, Ho; Ex Parte Kludze [1997-98] I GLR 1028. In this case the court held that article 267(5) of the Constitution applies to stool land but not to family land. Therefore, there are no explicit procedures in the operational manual of the LC for the registration of other land rights besides leaseholds (see Table 4).

Table 4:Registrable land rights according to the procedures in the operational manuals of the LC

Land rights	Availability of land registration procedures
Allodial Title	No
Usufructuary	No
Leasehold	Yes
Customary tenancies	No

In terms of human resources, expertise and infrastructure the LC offices are similar in both regions. For both regions, the LC offices are located on purpose-built government office blocks within the main administrative districts where most government offices are located.

For the CLSs, the administrative capacity in terms of human resources, expertise and infrastructure differs in the two regions. The Asantehene Land Secretariat (ALS) in the Ashanti region has a workforce of 18, which includes

[25] The operational manual currently in use

[26] For Ghanaians, 99 years for residential use, 50 years for commercial/industrial/cultural/agricultural use and 25 years for Liquified Petroleum Gas stations. For non-Ghanaians, 50 years for residential use, 50 years for commercial/industrial/cultural/agricultural use and 25 years for Liquified Petroleum Gas stations

[27] According to Article 295(1) of the 1992 Constitution of Ghana, "stool land" includes any land or interest in, or right over, any land controlled by a stool or skin, the head of a particular community or the captain of a company, for the benefit of the subjects of that Stool or the members of that community or company.

14 permanent staff and 4 contract staff, many of whom have undergraduate and graduate certificates in the field of land administration, public administration and law[28]. The office of the ALS is purpose-built and provides enough working space for the 18 staff and clients. As described for phase 1 of the registration process, the deeds prepared here are purposefully of leasehold type only.

In comparison, the Upper East CLSs have a relatively low administrative capacity. The Bolgatanga and Bongo CLSs have no permanent offices and have only two officers each. These officers do not have requisite training in land administration, but were brought into the position through their relationship to the traditional authority. Currently, the allocation papers used in the Bolgatanga and Bongo CLSs only reflect leasehold rights. A section of the allocation paper reads "…. this grant is given subject to the grantee entering into formal lease agreement with the lessor within six (6) months from this grant on terms mutually agreed upon". This is the same allocation paper that is used for all land grants including usufructuary rights. In addition, the CLSs in the Upper East region have not centralised the preparation of documents, in so far as they prepare them, but rely on deed templates prepared by a legal professional. An examination of these templates also revealed only leasehold rights. According to the officials, the CLS is yet to make a deed template for usufructuary rights[29].

Looking at the administrative capacity of the LC and the CLSs, two patterns emerge. First, the LC procedural manuals as well as CLSs allocation paper templates do not accommodate for the recording of the diversity in land rights as stipulated by statutory law. Second, there are differences in the capacity between CLSs by region. Considering the number and educational qualifications of personnel as well as infrastructure of the CLSs, the Ashanti region has a higher administrative capacity than the Upper East. And the latter relies more on external support of estate agents and LC's staff in the preparation of documents.

[28] Interview with staff, July, 2017

[29] Interview with a Bolgatanga CLS official, May, 2017

Table 5:Alignment between the empirical and theoretical factors influencing implementation

Domains of translation (between law and practice)	**Factors influencing implementation**	**Factors explaining implementation gap in the context of Ghana**
Legal simplifications versus real complexities	Ambiguity of the law	Article 267(5) of the 1992 Constitution is ambiguous as to what is meant by the term "freehold" and how that reflects on usufructs who by custom derive beneficial interest from the stool/skin. The article also contradicts section 19(1) of the Land Title registration law. Similarly, the Land Registry Act vaguely describes the different types of land right as "instruments."
	Over-specification of law	Not present, but the main types of land rights are listed in the Land Title registration law, 1986.
Administrative adaptations of the law	Disposition of implementers to the objectives of the law	Although the Land Registry Act somewhat allows some flexibility to register diverse land rights and the Land Title registration law further specifies a variety of registrable land rights, the disposition of both customary (ALS) and statutory (LC) implementing actors in the Ashanti region strongly suggest a contention that individuals should not have land rights that subsist in perpetuity such as the usufructuary rights.
	Coping mechanisms of implementers within the organizational structure	Administrative structure and work are greatly influenced by the hybrid nature (working of public agency and customary institutions in tandem) and other governance actors outside of administration, especially in the first phase of the registration.
	Bureaucratic politics and lobbying	The influence of stakeholder politics on administrative processes varies by region. In the Upper East, it is relatively lower with LC playing a stronger role in registration – both informally (in phase 1) and formally (in phase 2). Stakeholder politics are stronger in the Ashanti region, wherewith their origin lie in the struggle for power over land between chiefs and subjects.
Administrative Capacity	Human resources	The LC has relatively a higher administrative capacity in terms of human resources, technical expertise and financial resources compared to the CLSs since it is a national agency, however, the misalignment between its operational manuals and existing land rights somewhat suggests low technical expertise. Nonetheless, the need for the LC to realign its operational manuals to accommodate the diversity of existing land rights is influenced by the rationales of the first phase. Among the CLSs, the ALS of the Ashanti region has a higher administrative capacity than the CLSs in the Upper East region in terms of both human resource and infrastructure. The low capacity of the CLSs in the Upper East region reflects in their reliance on deed templates.
	Technical expertise	
	Financial resources	

2.6 Discussion

Various studies (Platteau, 1996; McAuslan, 1998; Blocher, 2006; Cotula et al., 2006; Deininger, 2005) on the formalization of customary land rights point to the disparities between land rights derived from customary law and that of statutory law as the reason for the non-registration of customary land rights. However, in Ghana we find a good alignment between existing, customary land rights and those contained in land registration law. Despite this, land rights being registered are mainly leaseholds. The reasons for this "implementation gap" are distributed across the domains of law-making itself, implementation during the registration processes in a hybrid land administration, and reflected in the uneven capacities of land administration actors in Ghana. We discuss these reasons in more detail in the following sections.

2.6.1 Legal simplifications versus real complexities

Studies on land reforms (Nsamba-Gayiiya, 1999; Deininger, 2005; Clement and Amezaga, 2009) emphasise that ambiguity in legal terminology hampers implementation as it leads to multiple interpretations by implementing agents. In general, our study aligns with these views. For example, article 267(5) of the 1992 constitution deploys the specific term of 'freehold,' but fails to clarify what constitutes 'freehold' and how such relatively specific wording then would apply to specific rights "found in reality," e.g. usufructuary rights. However, in the first instance, vagueness in terminology does not necessarily have to be problematic in terms of inclusion of various land rights during law implementation. For example, the ambiguous term "instruments" in the Land Registry Act, 1962 constitutes a sort of over-simplification of complex reality (Scott, 1998) within one law, which as such could provide space to implementers to adjust depending on local specificities; and avoid an erosion of some land rights through enforcement of simplified legal categories. According to our analysis further ambiguity in law was, paradoxically, created by attempts to increase specificity in definitions in order to ensure inclusion of a greater diversity in land rights being registered. This process of improving statutory law introduced new legal sources and as such evoked contradictions between laws written at different points in time without one source of statutory law gaining dominance over the other. Taken together, legal stipulations and the process of adjusting them sets the stage for diverse interpretation and implementation. It is, in other words, not necessarily only the impossibility of reflecting all of the complexities of social norms in statutory law or ambiguity in terminology in itself, which explains implementation problems. Rather the process of law-making through time, also when it seeks to improve fits between lived, social norms and written, formal rules, produces uncertainties and contradictions, which provide for various interpretations during implementation.

2.6.2 Administrative adaptations of the law

Some literature on policy implementation suggests an asymmetric relationship between decision making authority, on one hand, and the local implementing actors, on the other (Fischer et al., 2007; Lipsky, 1980; Van Meter & Van Horn, 1975) in order to explain implementation gaps. However, this gap between decision structure and implementation structure does not fully explain the limited implementation of land rights laws or the lack of explicit legal recognition of customary land rights in our study. The two phases of registration, which we describe, suggest a different institutional setting to explain implementation. While the second phase of registration by the LC is applicable across the country, corresponding with the LC's statutory mandate to administer land, variations in implementation of laws can be explained through a closer look at the processes and actors involved in the first phase. The first phase of registration is not strictly regulated by law, but it sets the foundation for the second phase of registration, which is regulated by law. This has indirectly shifted the real mandate of registration to the actors in the first phase as the LC tends to rely on their output for the final registration. For example, deed documents which eventually become legal documents after registration are initiated at the first phase sometimes by informal actors based on predetermined deed templates. As such, the process of registration consists of translations that take place between social reality and laws through the institutions embedded in a hybrid governance context (Reyntjens, 2015).

First, this hybridity refers to the fusion of the LC and the CLSs as land administration actors; where the former constitutes the public land sector and the latter represent customary institutions. A second form of hybridity refers to the arena of informal institutions that includes the staff of the LC and CLSs themselves when they act in their informal capacity as agents and facilitators in the land registration process, for instance for personal gains[30]. The administrative domain of LC and CLS is further "hybridised" through the influence on the land registration process of actors outside of LC and CLSs. These external informal actors include, for example, estate agents and influential individuals, who liaise between the LC, CLS and other customary governing actors, such as family heads, earth priests and chiefs (Lund, 2014).

This scenario is not unique to Ghana and in the case of Africa finds its explanations in the historical trajectory of post-colonial state formation. Hyden (2006, p.65), for instance, explains that the "trajectory of the state in Africa has been from being autonomous (during the colonial time) to becoming increasingly embedded in society." Therefore, administration in Africa is not

[30] Interview of LC officials in the Upper East and Ashanti regions between April and July, 2017

independent of communal needs and pressures, public officials do not separate neatly between public and private as suggested by a Weberian ideal type bureaucracy, and the patterns according to which official norms are implemented or – conversely adjusted – follow social as well as practical norms and practices (Hyden, 2006; Olivier de Sardan, 2015; de Herdt, 2015). For the case of South Africa, for example, von Holdt's (2010) analysis of the developmental post-apartheid modern South African State shows how the informal meanings and practices embedded in South African nationalism fused into the bureaucratic rationales of the state, retard the realization of the goals ascribed to Weber's ideal type bureaucracy. In other words, what we face in Ghana and other African countries, are not administrative adaptations of laws and policy, but also an administration, which adapts according to historically evolved social norms and governance structures. In this respect, our study shows regional variations between more centralised and less centralised land governance structures deriving from the colonial and post-colonial history of Ghana. These governance structures now create different relative positions, which various governing actors hold vis-à-vis each other. This in turn influences the registration process. In the Ashanti region land governance is relatively centralised in the offices and practices of the ALS, whereas in the Upper East the role of the CLS is relatively weaker and LC's role relatively stronger. The translations of what are assumed and envisioned to be a nationally applicable statutory law(s) for land rights registration become regionally patterned depending on the nature of the institutional setting, although the outcomes – registration of leasehold only – is the same for both regions. Under these conditions, "administrative capacity" appears as much as a cause as an effect of uneven implementation processes.

2.6.3 Administrative capacity

According to Pritchett et al. (2013) weak administrative capacity in many African countries creates gaps in implementation in African countries. While this is surely the case in Ghana as well, our study provides insights into regional variations in what constitutes administration and hence "its" capacity. On one hand, the CLSs, one of the main actors in Ghana's land administration, show regional variation in capacity with that of the Upper East being relatively lower than in the Ashanti region. This also means that the actor with the legal mandate to implement land rights registration, namely the LC, has a stronger capacity in relative terms in the Upper East, namely vis-à-vis the CLSs. In the Ashanti region, via the ALS, the power of chiefs in the conduct of the processes of implementation is relatively high. This region's land governance may be better described through what (Hyden, 2006) refers to as the "big man rule" in African politics than the Upper East. The relatively strong authority of the chiefs over land in this region becomes manifest, for instance, in their views expressed about the non-registration of usufructuary rights. The registration

of usufructuary rights, would – if registered as such - provide its individual holders with rights of perpetual holding and some unilateral rights of transfer without the consent of the stool (Ubink and Amanor, 2008). As such registration of usufructuary rights would constitute a threat to the authority of chiefs over land allocation and thus could create struggles between the chiefs and their respective subjects. In the Ashanti region, the centralisation of deed document preparation can therefore be interpreted as a way of retaining control over land rights allocations, because in so doing chiefs are able to effectively determine who gets what rights (subjects and non-subjects alike). With this arrangement, there is hardly any opportunity for usufructs to translate their usufructuary rights into a deed let alone registering it. Thus, considering the important role played by the ALS in the implementation process, the administrative capacity in the Ashanti region is high, albeit not resting with the actor mandated to register land rights (the LC).

In the Upper East, on the other hand, the influence of the LC on the registration process is relatively higher compared to the CLSs. In so far as it is possible to delineate the LC as main administration in the Upper East, it lacks capacity to carry out its formal role according to official norms. The language and terminologies used in routine documents and operational manuals also within the LC have influence on the types of land right that can be registered. In the LC operational manual, the words "lease", "lessor" and "lessee" are used consistently to depict "grant of land", "grantor" and "grantee" respectively. This distortion in vocabulary has strengthened the perception of implementers as though a lease is the only land right that can be registered. The use of such vocabulary defeats the diversity captured in land registration laws, thus, denying usufructs the opportunity of registering their rights. However, there is little need to change the manuals, because what is delivered to the LC are leasehold deeds only as a result of the practices of deed preparation in phase one. The first phase of registration, before LC's manuals come into play, shows that in the Upper East it is arguably even more difficult to speak of administration as a uniform entity that carries a specific measurable capacity. This is because the staff of the LC in the Upper East function in both their mandated formal role as well as in a more informal capacity during the first phase of registration particularly in the preparation of deed documents. The tendency that public servants may act according to different sets of norms besides official and procedural ones has been shown to be pronounce across West Africa (Olivier de Sardan, 2015) and for organizations in general (Chowdhury, 1984; Powell and DiMaggio, 1991). Also much of the work of phase one is distributed among actors outside of both LC and CLSs. The gap in the formal preparation of deed documents in the Upper East region is therefore filled by informal actors from within and outside the state's regulatory framework (Lund & Benjaminsen, 2002) and the state's relative absence allows for non-state actors to formulate and enforce norms (Reyntjens, 2015). The

development of good routine documents, that reflect the stipulations of law, and which may be developed on the basis of "administrative expertise" (Nadgrodkiewicz et al., 2012) may exist in LC and CLS, but there seems to be little perceived need to create new documents given the influence and rationales of phase one of the registration. While both the operational manuals of the LC and routine documents of the CLSs allow for much less diversity in land rights to be registered than provided by law, this lack in administrative capacity may therefore be interpreted more as a reflection of the overall logic of land governance in both regions than as a capacity gap that, if filled, would make for better implementation.

2.7 Conclusion

The registration of leaseholds only – as reflected in the preferences of the ALS as well as implicitly in the practices of actors in the Upper East region – may be interpreted as a sort of compromise solution in so far as it allows for land rights registration to take place across the country without shaking up the existing institutional setting and embedded power differentials. This is because any measure of permanence in the registered title – usufruct or allodial – would, in practice, mean a clear shift in power towards either the individual (a usufruct, for example) or towards a potentially new group of individuals (allodial owners, for example). By implication, the truncation of the usufructuary rights to leasehold rights takes away the perpetual landholding rights of usufructs making them vulnerable to landlessness as many cannot afford the market value of land as well as the associated costs of lease renewals when they expire. At the flipside of the coin, this development will empower traditional authorities with more control over land. Such a transformation will in effect shift the role of traditional authorities from a fiduciary one towards one that is more proprietary in nature. As such the processes leading to the registration of only leasehold show, "how the state's rule-making power [is] constantly […] negotiated with high-powered economic interests" (de Herdt, 2015 p. 111).

Technocratic measures to improve implementation processes of land registration law may help to diversify the official registration of more diverse land rights if regional differences in the process are taken into account. For instance, in the Upper East region, where the problem of land rights recognition is mainly characterised by administrative lacks, improvements in the processes of implementation may be sufficient to fix the problem of land rights recognition. In contrast, where the non-recognition of diverse land rights is propagated by evolved power dynamics and stakeholder politics within the land governance structure as in the Ashanti region, improvement in the processes of implementation may have relatively limited outcomes in achieving land rights recognition and may require a realignment of the current customary

institutional framework within which the power dynamics are woven to meetup with the stipulations of the land registration law.

It is, however, unlikely that solutions to strengthen the recognition of diverse tenure rights can be found and/or applied in the design of any cross-country legal or institutional framework. Technocratic approaches that seek to enforce better implementation of existing laws and/or foster inclusion of the registration of diverse land rights, need to take into consideration the practices and norms of implementing actors. Again, such technocratic interventions need to be tailored and streamlined in a fashion that allows for a more systematic recognition and registration of land rights, for example; recognising a continuum of land rights.

Such engagement requires focus on the processes rather than – through a static lens – only on the components of administration (official law, mandated public agents, and respective capacities), and needs to go beyond the binary analysis of customary vs. statutory norms. Both research and practice in land rights recognition and registration, like other development projects, can benefit from a deepened "understanding of the administrative dynamics shaping the capability for (and quality of) implementation of these policies" (Pritchett et al 2013, p.3). In this chapter, we showed that while the outcomes of land registration are relatively even across Ghana, the dynamics of registration in practice vary across regions and cross the boundaries between customary/statutory or bottom-up/top-down dichotomy. In conclusion, approaches to change processes of land registration towards a more inclusive land rights regime – whichever way this may be defined – need to recognize and take into consideration the historical contingencies of different regions in Ghana and the resulting nationally uneven normative geography.

Chapter 3: Plural inheritance laws, practices and emergent types of property *[31]

[*] This chapter is based on a published paper: Abubakari, Z., Richter, C., Zevenbergen, J. A. (2019). Plural inheritance laws, practices and emergent types of property: Implications for updating the land register. *Sustainability* 11(21). https://doi.org/10.3390/su11216087

3.1 Introduction

Inheritance is multifaceted and exhibits complexities of diverse origins from customary, statutory and religious sources (Rose, 2006); and it is one of the major sources of land ownership(Abubakari et al., 2016; Asiama et al., 2017). Across the globe including Africa, the different forms of law that regulate inheritance have been criticized over decades by scholars and development agencies for gender biases, landlessness, fragmentation and informality(Barnes & Griffith-Charles, 2007; Cooper, 2008; Demetriou et al., 2013; Kameri-mbote, 2002; UN-Habitat, 2012). Although it is an area that has been widely researched and a focus for political debate, it still requires further research especially in relation to land registration. Established and well-maintained land rights registers and cadastres can provide an important basis for long-term, sustainable planning and development (Williamson et al., 2010) (p. 34). Essential to this is, however, that the official information base remains up-to-date and as such reflects various forms of rights and property transfer, including inheritance.

In reality however, it is reported that inheritance transfers are seldom reported for official recording (Barnes & Griffith-Charles, 2007; Gabriel, 2018; Johnson Gaither & Zarnoch, 2017; R. Kingwill, 2014). The non-reporting of inheritance transfers cuts across both the global north and south for different reasons. In the global north, non-reporting of inheritance transfers stems from the burden of inheritance taxes and the attempts to evade them (Kalin, 2005). In this context, the inheritance of property is regarded as a transfer of wealth (R. Kingwill, 2017; Szydlik, 2004). In the global south including Africa, non-reporting of inheritance transfers also derives from socio-cultural practices of land transfer (Barnes & Griffith-Charles, 2007; R. Kingwill, 2014; Tagoe et al., 2012) where land inheritance is a function of multiple socio-cultural, political and economic confrontations. In this context property systems are often rooted in a range of familial social units that function in varying degrees of relationships (Deere & Doss, 2006; Takane, 2008). Whereas the non-reporting of inheritance transfers in the global north appears straightforward and may be addressed through technical and administrative fixes, the attempts to increase reporting of inherited land in the global south require political and economic transformations, because inheritance is regulated through a complex blend of plural legal systems (Prill-Brett, 1994; Rose, 2006; Moore, 1973).

Accordingly, recording land rights that derive from inheritance in the global south is not straightforward as the logics of local inheritance practices differ from the logics of the state's recording systems. While the transfer of land by inheritance in local communities is regarded as a transfer of the physical land with its associated cultural appurtenances and spiritual beliefs, official processes of registration reduce land inheritance to a mere instance of transfer

of a physical parcel. Thus, the development and sustainability of cadastres as a state-making endeavour is positioned at the confluence of society (within which land rights are produced) and the state's bureaucratic apparatus (within which land rights are translated). Thus, to document land rights in a sustainable manner, understanding of the underlying productive social processes of land rights transfer and holding is important since they directly and indirectly influence the processes of registration and the overall maintenance of official registries.

In the literature on land registration and land development, inheritance is topical, and two schools of thought are dominant. The first school draws connections between inheritance and the apparent effects it has on land development, land markets and land registration. While some commentators of this school argue that inheritance practices are counterproductive to land information updating and land markets (Barnes & Griffith-Charles, 2007), others highlight the physical effects of inheritance such as land fragmentation (Asiama et al., 2017; Demetriou et al., 2013; Niroula & Thapa, 2005; Thapa & Niroula, 2008). The second school of thought highlights the connections between inheritance practices and the plural laws that regulate them (Evans, 2016; R. Kingwill, 2011; Peters, 2019; Rose, 2006). However, neither of the two schools demonstrates how these effects are actually produced by diverse inheritance laws as they manifest in practice. This is crucial to understand for the development of policy and land registration approaches that are fit-for-purpose. More specifically, there is a need to know the types of effect that different inheritance laws produce and what such effects imply for land registration in given contexts.

In this study, we investigate how inheritance laws are applied in practice and how such practices influence the updating of the land register. To achieve this, we zoom into the practices of inheritance to find out the particular aspects that have direct and indirect implications for Ghana's current land registration practices.

The chapter is structured as follows. In the next section, we draw on research and theory in the domain of legal pluralism to understand how inheritance practices are situated within Africa's legal plurality. In section 3.3, we describe the geographic context and methods. In section 3.4, we describe the three main practices of inheritance in Ghana highlighting their spiritual and cultural meanings and identify the types of property that emerge from the inheritance practices. In section 3.5, we discuss the implications of inheritance practices for Ghana's current land registration and draw more general conclusions in section 3.6.

3.2 Plurality of inheritance laws

Inheritance is influenced by multiple laws deriving from both statutory and non-statutory sources. These laws define the manner of transfer, heir eligibility, associated rights, responsibilities and restrictions (Powers, 1993). However, the plurality in the laws of inheritance reflects on the relative strengths of the state (Prill-Brett, 1994; Reyntjens, 2015). Where there is a strong state capacity, inheritance is often regulated by state law, as in the case of some western European countries. However, when state capacity is relatively weaker, different sets of laws regulate inheritance concurrently, affording people the opportunity to orient themselves to preferred laws or a combination thereof (Moore, 1973; Prill-Brett, 1994; Rose, 2006). These concurrent laws often apply in contradictory ways, thereby leaving much interpretative and negotiating space in the outcomes of inheritance (Cooper, 2008).

In most parts of the global south, including Africa, existing political landscapes are often characterized by weak state capacity and reflect combinations of different forms of hybrid governance (Reyntjens, 2015). In Africa, this plurality of laws derives historically from the interaction between African customs and those of the colonial administration (Moore, 1973). Although with significant heterogeneity, pre-colonial Africa had its rules and norms commonly termed as customary or indigenous laws by the colonial and subsequent independent governments (Allott, 1984) which regulated human behaviour and social interactions including inheritance at different levels of social organizations; the family, clan, community and kingdom. With the advent of colonialism, additional legal systems were introduced by the colonial administration which they considered superior to native rules and norms (which they considered primitive) (Fullerton, 2001). Religious and spiritual belief systems, which existed in Africa long before colonization; and before the introduction of monotheistic religions through colonization (Kirkham, 2013), still play an important role in the lives of many people. The work of Evans (2015) on plural inheritance orders in Senegal demonstrates tensions that emerge from the contradictory terrains of law (the statutory family Code), custom and religion (in West Africa, especially Islam) and how such tensions reflect on the overall governance of inheritance and state capacity. Evans shows that different inheritance laws have points of convergence and divergence but how and where each is applied depends more or less on location (rural vs urban), ethnic group or religion. Similarly, Sodiq (1996) explains the ambivalence of the Yoruba Muslims of Nigeria in the choice of inheritance laws. He noted that Yoruba Muslims tend to opt for whatever benefits them from Islamic law, Yoruba customary law or statutory law respectively.

In sum, the plural configuration of law in Africa which orders society, including inheritance, derives from three sources which in themselves are heterogenous: (a) the indigenous African customs termed as customary law (b) statutory laws which evolved from the colonial heritage of western legal systems into Africa and (c) the incursion of world religions into Africa through trade and colonialism (Ndulo, 2011). Across Africa and other parts of the world, these three sets of laws run in parallel and co-exist at di*ff*erent scales of superiority and subordination (Hinz, 2009).

3.3 Materials and Methods

3.3.1 Study Sites

This study is conducted in two regions of Ghana that exhibit classic examples of matrilineal and patrilineal inheritance systems, namely Ashanti and Upper East regions respectively. At the same time, these regions fall under different land governance structures. The Ashanti region has a centralized land governance whereby chiefs hold land in trust and on behalf of their subjects (community members). They exercise political authority and ownership control over land. The Upper East region is decentralized and land control devolves from earth priests to clans, and families. Historically, chiefs in the Upper East region have had political authority over land while the earth priest performs spiritual (religious) functions over land in terms of allocations, use and transfers (Lund, 2013). Within each region we selected one urban and one rural district in order to observe the changing forms of inheritance laws as they manifest in different practices. In the Upper East region, we selected Bolgatanga (Urban) and Bongo (rural). In the Ashanti region we selected Kumasi (urban) and Kwabre East (rural). The study areas are shown in Figure 7.

3.3.2 Data sources

We use both primary and secondary data in this research. The primary data was collected through focus group discussions, semi-structured and in-depth interviews between May 2017 and August 2018. The focus group discussions consisted of 8 to 10 participants including family heads, earth priests, community elders and successors of inherited property (both male and female). We asked participants questions on the general practices of inheritance. Specifically, these questions relate to the processes of inheritance transfers, the people who are qualified to receive inheritance and the responsibilities associated with inheriting property (both spiritual and economic). Through this, we gathered information on the general rules on inheritance both according to the customs and the actual practices as they take place in the communities. In total, 13 focus group discussions were organized; 9 in villages found within the two rural districts and 4 in the urban districts. We also conducted semi-structured interviews in order to solicit information from individual heirs on the processes they followed during

inheritance, what they actually inherited and why they follow a particular ordering(s). They were conducted in all the 13 communities which gave us insights at the individual level and enabled us to crosscheck some of the responses from the focus group discussions especially in relation to the real practices. In total, 72 were conducted; 46 from rural areas and 26 from the urban areas. In addition to the semi-structured interviews, we conducted in-depth interviews with heirs and prospective heirs in order to draw detail insights from their individual accounts of how inheritance actually took place or was planned to take place. Through the interviews we gained insights into the differences in sharing property and associated constraints in terms of property holding. To understand the influence of religion on inheritance regulation we asked respondents about their religious affiliations and how that affected their practices of inheritance. In addition, and to get a more rudimentary understanding on the religious regulation of inheritance, we interviewed clerics from the predominant religious faiths namely; Islam, Christianity and African Traditional religion. For the in-depth interviews, 12 were conducted across the urban and rural areas. Interview respondents were identified first through the help of Assemblymen[32] and then followed by snowball sampling.

The study also draws on secondary data including the Intestate Succession Law, 1985 (PNDC Law 111) and the Ascertainment of Customary Law Series (2009 to 2011) compiled by National House of Chiefs and Law Reform Commission, Ghana.

3.3.3 Data Analyses

For the analysis across data sources, we describe the practices of inheritance and the associated socio-cultural meanings based on the narratives gathered from the focus group discussions and interviews. We then used conventional content analysis to synthesize (Hsieh & Shannon, 2005) the responses from interviews and focus group discussions to identify and sort the emerging types of property. In a next step, we discuss how the chronology of events leading to the sharing of property in themselves cast a time lag on the prompt reporting of land transfers for formal recording. Then, we evaluate how the emerging types of property align with the types of property rights that are practically registrable at the Lands Commission. Finally, we look at the logics on inherited property from the part of successors and that of the state's recording system to see how such logics relate and influence the registration processes.

[32] Local people who represent their localities at the district/municipal/metropolitan Assembly. They are well known in their localities and have a lot of local information.

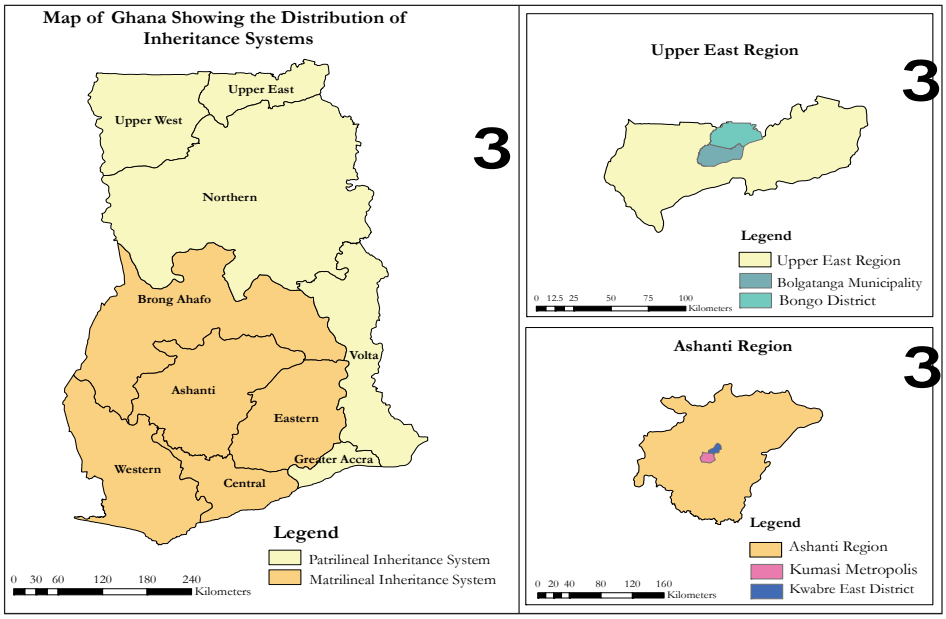

Figure 7:Map of study areas

3.4 Results

In this section, we first describe how each ordering is applied in practice including the spiritual and cultural beliefs that are associated with them. Second, we identify the types of property that the different practices lead to. This focus is segmented along matrilineal and patrilineal practices as reflected in the customs of the study areas.

3.4.1 Plurality in Ghana's inheritance laws

Inheritance in the study areas and Ghana as a whole is regulated by statutory, customary and religious laws. Whereas the statutory laws are supposed to apply nationally, that of the customary and religious laws apply differently across communities and religious groups respectively. The statutory regulations on inheritance in Ghana are the Wills Act of 1971 (Act 360) and the Intestate Succession Law of 1985 (PNDCL 111) for testamentary and intestate disposition respectively. Customary laws on inheritance in the study areas take two forms, namely patrilineal and matrilineal inheritance. Religious laws on inheritance vary by the faith of religious groups and their written or oral doctrines. Religious laws are not confined to particular communities but cut across communities. In the following sections we describe how these three sets of laws are carried out in practice.

3.4.1.1 Customary inheritance practices

Customary practices of inheritance differ across the study areas. While the patrilineal inheritance system is practiced in the Upper East region (Bolgatanga and Bongo), matrilineal system of inheritance is practiced in the Ashanti region (Kumasi and Kwabre East).

- ***Patrilineal inheritance practices***

In the Upper East region, the general practice is that property devolves from father to son or brothers in the absence of sons. Upon the death of a father and performance of funeral rites. According to the interviewed successors, it takes about a year or two to organize the funeral rites. After the funeral, land is shared among the sons either equally or according to seniority. However, depending on the disposition of the deceased's patrilineage, especially when most of the successors are minors, the eldest successor holds and manages the property in trust for the other successors. In an interview, a successor holding property on behalf of the others says:

> "….In this region, some people like to divide property..… But for us, we are not like that, the senior holds the property on behalf of the family. My grandfather built the house and gave it to my father, then to my senior brother and to me now. Everything in the house belongs to everybody, we have a cordial relationship among ourselves, we don't fight over property.…" (Interview in Bolgatanga: May, 2018)

Females are deemed non-members of the patrilineage during property inheritance. So, they are given only use rights during inheritance. For example, in rural Bongo, where farmland is often the subject matter of inheritance, an unmarried adult daughter can farm on her late father's land or stay in his house until she gets married. Even when there are no male successors, one of the daughters is required to stay at home to deliver a male child without marriage. Such a child is then considered as the successor. In both Bolgatanga municipality and rural Bongo district, when a daughter gets married, she is deemed to be part of her husband's lineage. By this custom, daughters are excluded from all paternal property upon marriage. Similarly, widows also have only use rights in the property of the late husband without rights of appropriation and disposition, because they are members of a different lineage and would be considered a threat to the ability of the husband's lineage to protect their lineal land. Widows can build and farm on the land, but they can neither sell nor transfer it. Thus, the ownership rights of females to property are always embedded in a male connection; either son or husband.

Inheritance in the Upper East Region also takes place beyond the conjugal family and patrilineage. At the clan and community levels, heads of clans and earth priests in Bolgatanga and Bongo exercise fiduciary rights over sacred

lands. These are undeveloped lands, which are used for farming by clan heads for burial and spiritual purposes (for example shrines). Heads of clans and earth priests of communities inherit this type of lands from their predecessors for a lifetime and it is a taboo for them to engage in any form of self-appropriation with respect to these lands.

At both the micro level of individual successors and the macro level of clans and communities, land inheritance carries certain meanings among the Frafra people who are the dominant tribe in Bolgatanga and Bongo. The transfer of land by inheritance marks distinct purposes of livelihood, spirituality and immortalization. In rural Bongo, land is the most important factor of production as it provides the basis for farming and livelihood. But even then, the productive capacity of land in farming is linked to the grace of the gods, to whom sacrifices are made at the beginning of the farming season for bumper harvest and to whom thanks is given after harvest[33]. Thus, the transfer of land denotes the reception of spiritual responsibility. Within the patrilineage, members make figures of their ancestors, hence, to inherit the land is to inherit the responsibility of pacifying the ancestors. Inheriting certain types of land requires the performance of spiritual actions[34], as for the land in front of the family house, which is considered the site of ancestral roots (called "Dabozuo"). The connection between land and spirituality at the clan and community levels is reflected in the title of the overall custodian of land, the "earth priest", who is in charge of the gods, manages shrines, sacred groves and also sanctifies land allocation and transfers. Moreover, the fact that land inheritance in Bongo and Bolgatanga takes place patrilineally between fathers and son(s) or brothers means that inheritance processes define lineage membership and genealogy. Therefore, land inheritance does not only constitute a transfer of physical land for livelihood, it also marks the transfer of cultural heritage and spiritual identity. In this sense, inheritance creates and maintains one's identity and genealogy through one's connection to land through time.

This connection between property and genealogy is also present for developed property. Developed property, such as houses in Bongo and Bolgatanga, are occupied or rented out (mostly in Bolgatanga) by successors. Either way, successors refer to the property in the name of the ancestor who built it. This is regarded as giving honour to the ancestor, and by so doing they immortalize his name. Regarding this, a respondent in Bolgatanga said:

> "...When discussing matters of this house, we refer to my grandfather (the one who built it) a lot. We appreciate what he has done for us. Attaching his name to the property is an honour, and for me, if there is a chance to even build a statue of him in

[33] Interview with earth priest in Bolgatanga, May, 2018

[34] Interview with family head in Bolgatanga, May, 2018

> front of the house, I will like to do that…..” (interview in Bolgatanga: 2018)

Additionally, in urban Bolgatanga, the economic exploitation of property positions property inheritance as a transfer of economic power between father and son(s).

- ***Matrilineal inheritance practices***

In the Ashanti region, property devolves matrilineally through female lines. Females and their children are considered to be permanent members of the lineage with respect to property. The children of male lineage members are considered non-members. Thus, property devolves from maternal uncles to nephews and from mothers to daughters. The property of a man devolves to his sister’s children while his children inherit from their maternal uncle. The sharing of the deceased’s estate takes place after the funeral rites on the 40th day after death. Under matrilineal inheritance systems, a distinction is always made between self-acquired property and lineage property. Self-acquired property can be given as a gift or through a will (written or oral) by the holder. But if he dies intestate, it becomes lineage property; and the lineage head decides on which of the nephews will succeed. For maternal property, the custom allows male children only a life time use right without any rights of appropriation and disposition.

Like Bolgatanga and Bongo, property inheritance in Kumasi and Kwabre East define lineage membership and genealogy. An important aspect of matrilineal inheritance is that the intestate estate of a deceased lineage member is considered as lineage property. The head of the lineage then appoints a successor to manage the estate on behalf of the lineage. In Kwabre East, such lineage property if farmland, is farmed by the appointed successor with the responsibility to take care of the deceased’s conjugal family and lineage members in general. In this context, succession of lineage property denotes leadership and control. By virtue of the elevated position of lineage property succession, nephews of a deceased male lineage member struggle among themselves and also lobby with lineage elders for appointment as successor. In Kumasi metropolis like Bolgatanga, successors of inherited property derive economic benefits such as renting of houses. Additionally, the immortalization of deceased’s name was found to exist in both Kumasi and Kwabre East for the same reasons of giving honour to the deceased as found in Bolgatanga and Bongo. Although the Akans have beliefs in the spirits of the earth called “Asase Yaa”, the dimension of spirituality in land inheritance was found to be less influential in Kumasi and Kwabre East in comparison to Bolgatanga and Bongo.

In sum, inheritance in the context of the study areas denotes more than a mere transfer of land/property from one person to another or from one group

to another. It also, defines lineage membership, genealogy and identity through time. The example of the naming convention above is especially illustrative, where the property in question remains named after the original ancestor as it passes from generation to generation of subsequent names. In this way the transfer of land and developed property through inheritance establishes a diverse array of relations between people and space across the spectrum of economic, social and spiritual dimensions in time. These relations coexist at varying levels of dominance and subordination according to situations and contexts.

3.4.1.2 Religious inheritance practices

Three religions are practiced in the study area in varying forms. These are Christianity, Islam and Traditional African religion. The Traditional African religion has local origins and predates Christianity and Islam, which have foreign origins. Thus, the practices of the Traditional African religion evolved over time and are rooted in almost every endeavour of the lives of people including inheritance and are often regarded as the custom. For example, in the Upper East region, families have figures of their ancestors (called "Bagre") which they serve, while the earth priest functions as a traditional spiritual leader in pacifying the gods and pouring libation during land transfer, dispute settlement and farming. The practices of the polytheistic Traditional African religions are closely tied into everyday lives in West Africa. They originate in pre-colonial spiritual believes that formed in close association with the needs of West African settlers, especially the fertility of land and women (Iliffe, 2007). The most important higher powers in traditional religion are ancestors and natural spirits, especially associated with the forest and earth (Iliffe, 2007) indicating the traditionally close association between land and spirituality. As Christianity and Islam are becoming more dominant, the practices of Traditional African religion are increasingly referred to as customary practices. The meeting of monotheistic world religions and indigenous spiritual believe systems has been characterized by a relatively eclectic and pragmatic mingling between believe systems and associated norms and practices (Iliffe, 2007). For example, Muslim respondents in Bongo follow the customary practices of inheritance although they do not ascribe to the beliefs of the Traditional African religion. Thus, the customary practices of inheritance described in the previous section also reflect the practices of Traditional African religion.

Of the monotheistic beliefs, Christianity does not have strict religious codes that direct the distribution of inheritance. Interviews with some Christian heirs in Bolgatanga and Bongo revealed that they observe the customary practices of inheritance as there are no binding Christian directives to that effect. In the case of Kumasi and Kwabre East, Christians give priority to a mix of the Intestate Succession Law and customary law for the same reason as found in

Bolgatanga and Bongo. To gain more understanding in this regard, we interviewed a Christian cleric in Bolgatanga, who said that:

> "….there are no exact rules on how to share inheritance. As a religious body, we only complain when we see that there is injustice in the sharing of inheritance. But mostly, people don't consult us on issues of inheritance, they only invite us for the funeral and burial of the deceased" (Interview in Bolgatanga: June, 2017).

Islam however has a coded law pertaining to inheritance that is generally known by Muslims especially in urban areas. We found that Muslims in urban and rural areas do not evenly implement the Islamic inheritance rules. For example, in Bongo, Muslims follow the customary practices of inheritance without recourse to the Islamic law. Conversely, in Bolgatanga, we found that Muslims gave priority to Islamic practices of inheritance. In the case of Kumasi and Kwabre East, Muslims across rural and urban areas gave priority to Islamic inheritance law.

According to Islamic inheritance, a male successor takes twice the share of a female. It provides for the surviving spouse, parents and siblings[35] in varying shares depending on the availability of other beneficiaries. Islamic inheritance prescribes that the estate of a deceased can only be shared after the settlement of his/her debts[36]. Islamic practices require that the debts and promised gifts[37] of the deceased be settled follow by the performance of the funeral rites before the remaining property is shared. Whereas the burial is done soon after death, the funeral rites take place from the following day but the debt might be settled sooner or later depending on the family and the amount of debt. We found that the practical implementation of Islamic inheritance takes forms that fit the local context and situations instead of the prescribed form. For example, in a particular case in Bolgatanga, due to limited space within an inherited house, the proportion of shares between male and females could not be maintained. Unmarried female and young male successors were made to share a space with their mothers so as to provide

[35] Allah instructs you concerning your children: for the male, what is equal to the share of two females. But if there are [only] daughters, two or more, for them is two thirds of one's estate. And if there is only one, for her is half. And for one's parents, to each one of them is a sixth of his estate if he left children. But if he had no children and the parents [alone] inherit from him, then for his mother is one third. And if he had brothers [or sisters], for his mother is a sixth, after any bequest he [may have] made or debt. Your parents or your children - you know not which of them are nearest to you in benefit.(Qur'an 4:11)

[36] Interview with a Muslim cleric in Bolgatanga, (2017)

[37] Bequests can take up to one-third of the estate (Sodiq, 1996)

space for the elderly males who had their conjugal families in the house[38]. Also, we found in the case of both Kumasi and Bolgatanga that, even when the deceased leaves behind many houses, successors are not given full houses, instead, they are given different spaces (rooms) in different houses. The rationale for this is to keep them together to enhance the unity among the deceased's children.

In sum, the different practices of inheritance among other things have different timings for the sequence of events leading to the sharing of inherited property (see Table 6). In both patrilineal and matrilineal areas, it is required that property be shared only after the performance of the deceased's funeral. As shown in the Akan matrilineal communities, property is shared on the 40th day after death. In the Frafra patrilineal communities, sharing of property takes place after the funeral which takes about one or two years on average but could take longer. Islamic inheritance requires the performance of the funeral, settlement of the deceased's debt and/or bequests before sharing of property and this may happen immediately or take longer to settle. The Intestate succession law is silent on the timing of sharing and the prerequisites before sharing. The timing and prerequisites affect how soon changes in landholding status can be reported. These are summarized on Table 6.

Table 6:Time effect of inheritance practices on the reporting of changes in landholding status

Practice	**Prerequisites**	**Time lapse**
Patrilineal	• Funeral rites	1 to 2 years
Matrilineal	• Funeral rites • 40 days ultimatum for sharing property	40 days
Islamic	• Performance of funeral • Settlement of debt • Fulfilment of bequest made by the deceased. Such bequests can take up to one-third of the estate	Unspecified
Intestate Succession Law	N/A	Unspecified

In a simplified model, the practices of inheritance described above apply to people in layers where the statutory is supposed to apply to people nationwide, the customary in specific communities and tribes and the religious according to membership in given religious faith. However, in most cases, more than one set of practices apply to an individual or even groups. These different multi-layer constellations allow room for choice making by heirs which creates

[38] Interview with a Muslim respondent in Bolgatanga (2017)

interactions between different inheritance practices by which they shape one another and also compete for patronage. We discuss these interactions in the following section.

3.4.1.3 The mingling of statutory with customary and religious practices

Prior to the passing of the current statutes, inheritance was regulated by marriage laws namely, the Marriage Ordinance of 1884 (CAP 127) and the Marriage of Mohammedans Ordinance 1907 (CAP 129). These laws were applicable to cases where the marriage was registered. Where the marriage was not registered, the customary laws took precedence. Due to the poor mechanisms of distributing property in the earlier laws and customary law, the Will's Act of 1971 (Act 360) and the Intestate Succession Law, 1985 (PNDCL 111) were enacted to regulate testamentary and intestate succession respectively. However, during interviews and focus group discussions in the study areas, we found that written wills do not play any significant role in inheritance, rendering the Will's Act relatively unimportant in practice. The Intestate Succession Law on the other hand has a prescribed scheme of property sharing and is applicable to most cases of inheritance in the study areas. Nonetheless, it is not implemented to the letter but mostly adapted in ways that fit local exigencies. The law constantly interacts with pre-existing customary and religious practices in varying degrees across rural and urban contexts. It has little influence on Islamic and patrilineal inheritance practices compared to the matrilineal practices. This is because the law implies the transmission of property from deceased parents to their direct children and surviving spouses which aligns more closely with the practices of patrilineality and Islam. In Kumasi and Kwabre East, the law implies a change in social structure of the matrilineage, because in these areas applying the law in practice means that property has to move from parents to children and spouse instead of nephews. Through the activities of non-governmental organisations (NGOs) and gender rights activists on the mass media, conjugal families in matrilineal communities are increasingly becoming aware of the opportunities presented by the Intestate Succession Law as opposed to the disadvantages posed by the matrilineal practices. Such awareness strengthens the rights of the conjugal family of the deceased and at the same time weakens the hitherto claim making powers of the matrilineage, which now take the form of negotiation and lobbying. In an interview, a successor praises the changes made by the Intestate Succession Law when she says:

> "…The matrilineage has a share of inheritance, but if the deceased was married, they can't just go and take everything like they used to do, and leave the children and the widow like that, no. Now

> they give some (inherited property) to the widow and especially the children. The matrilineage gets a small portion."
> (Interview in Kumasi: August, 2018)

Although people do not follow the Intestate Succession Law very strictly to the letter, the overall effect of it has guided the behaviour of the lineage members and nephews from overpowering the conjugal family of the deceased. The conjugal family on the other hand explores ways to allocate a reasonable proportion to the matrilineage for fear of spiritual attacks and physical abuse. Thus, the application of the law is highly contextual, and illustrates the shifting powers and tensions between the conjugal family of the deceased and his/her matrilineage. A widow in the Kumasi metropolis says:

> "…You can follow the law and keep a large share of the property but you may not live to enjoy it peacefully. If the matrilineage is not happy with you, they can attack you spiritually and you and the children may die" (Interview in Kumasi: June, 2017)

In sum, the different set of laws in themselves and how they manifest in practice have variations in terms of their interactions across the study areas. In the Upper East region, customary practices of inheritance dominate in rural areas but compete with Islamic inheritance practices among Muslims of the Frafra ethnic group in urban areas, sometimes leading to a mixture of the two. Statutory practices of inheritance do not play any important role in both rural and urban areas in the Upper East. Thus, the only "space" for competition and interaction among inheritance practices in the Upper East is the urban context where Islamic and customary practices interact and compete. Across rural and urban areas in the Ashanti region, the three inheritance practices interact and compete, but the nature of the competition is highly idiosyncratic and depends more on a combination of an individual's religious affiliation and ethnic belonging. For example, customary practices of inheritance compete with both Islamic and statutory inheritance practices especially for Muslims who also belong to the Akan ethnic group. In this case all three practices apply to them. For non-Muslims, only customary and statutory practices compete and apply to them during inheritance. Unlike the Upper East region, the pronounced intermingling and competition between statutory and customary inheritance practices in the Ashanti region illustrates the tensions that emerge from the changes in social structure sought by statutory inheritance practices. The customary and statutory practices of inheritance sought to empower different groups of beneficiaries (i.e. heirs/conjugal family vs. the matrilineage) which provides room for forum shopping by successors but also fuels tensions between the two social units.

The different practices of inheritance described above result in various types of property. In the following section, we have sorted these into four types of property.

3.4.2 Emerging types of property across different inheritance practices

The three inheritance practices and their combinations outlined in section 3.4.1 produce various types of property namely, joint property (within the conjugal and extended family), individual property and secondary property (see Table 7 below). In the following section, we analyse the different types of property that emerge.

Table 7:Emerging types of property from different inheritance practices

Emerging types of Property	**Inheritance practices**	**Nature of holding**
Joint property of the extended family	Matrilineal practices	Communal
Joint property of the conjugal family	Statutory, customary practices (Patrilineal and matrilineal) and Islamic practices	Communal
Individual property (exclusive)	Statutory, customary practices (Patrilineal and matrilineal)	Individual
Secondary property	Customary practices (Patrilineal and matrilineal)	Communal

3.4.2.1 Joint property of the extended family

As shown in the matrilineal practices of Kumasi and Kwabre East, the intestate estate of a deceased devolves partly to his conjugal family and partly to the matrilineage. The part that devolves to the matrilineage whether developed or undeveloped land becomes a group property, jointly owned by all lineage members but is managed by an appointed successor. This means that any member of the lineage is capable of benefitting from such a property. For example, they can live in it if it is a residential property without fixed shares and claims. Upon the death of a member, his/her rights devolve to the surviving members. The appointed successor oversees the allocation of space within the property, undertakes maintenance and also manages the returns if the property is income generating. This type of property can be likened to a joint tenancy because there is a right of survivorship, but in this case, the tenancy is not created by a legal instrument and also a member cannot dispose any part of the property.

3.4.2.2 Joint property of the conjugal family

In Kumasi and Kwabre East, the mix of statutory and matrilineal practices result in a situation where the conjugal family of the deceased and the matrilineage devise suitable ways of sharing the intestate property of the deceased. By virtue of the statutory backing, the matrilineage often allows the conjugal family to retain the house where they once lived with the deceased. The conjugal family holds such a property jointly as tenants in common according to the statutory inheritance practice. Also, under patrilineal practices, joint property is created when the eldest successor holds the inherited land on behalf of the other successors who are minors. Similarly, from Islamic inheritance practices in both Ashanti and Upper East regions, the allocation of space (rooms) to children (successors) across different buildings belonging to the deceased creates joint property among the conjugal family of the deceased. They can deal privately with their respective spaces. This type of property can be likened to tenancy in common since there is no right of survivorship following the death of a member especially for the statutory and Islamic inheritance practices.

3.4.2.3 Individual property

Individual property rights are mostly created through patrilineal inheritance practices. For example, the distribution of a late father's land among male successors in Bongo results in individual shares which are held and used as individual property. This type of property allows holders to exercise unilateral rights of disposition and use. Matrilineal inheritance scarcely produces individual property, because by custom the intestate property of the deceased belongs to the matrilineage. Even when matrilineal practices are mixed with the Intestate Succession Law, it results in group ownership by the conjugal family if the deceased left behind one house. However, when the deceased leaves behind many houses, the mix of the Intestate Succession Law and matrilineal practices might also create individual property.

3.4.2.4 Secondary property

Under matrilineal inheritance, males have only use rights in the intestate estate of a deceased mother compared to their sisters who have ownership rights in the property. Similarly, females under patrilineal inheritance practices have secondary rights over the intestate estate of the father. Another category of secondary rights is headship property (land) held by earth priests and family heads in Bolgatanga and Bongo. By custom, they have the right to use such property for only a life time and in delineated ways only.

In sum, the different inheritance practices create a variety of property which define the scope of holders, use and disposition. Whereas patrilineal inheritance practices tend to create more of individual property, matrilineal and Islamic inheritance practices create more of group property and statutory practices create both individual and group property depending on the number of houses (property) the deceased left behind. From the perspective of land rights documentation, each type of property has different implications for registration. In the following section, we discuss these implications.

3.5 Implications of inheritance practices for current land registration

Our analysis reveals three sets of influences that inheritance practices have on land rights reporting and recording in the context of Ghana namely; (1) the timing of reporting transfers, (2) the production of complex forms of property and (3) conflicting logics between existing property holding notions and land registration.

Firstly, the timely reporting of property transfers is essential to keep the land register reflective of reality (Zevenbergen, 2002). Earlier in 1995, Binns & Dale (1995) already highlight this connection and argued that the success or failure of the land registration system depends on how prompt property transactions are reported for recording. Further, Binns & Dale (1995) argued that in countries where the customs of inheritance absolutely prescribe succession to landed property, property will frequently change hands without any form of formal documentation. Both arguments put forth by Binns and Dale, hold to greater extents in the context of Ghana's land registration and inheritance landscape. Inheritance laws in Ghana exhibit certain characteristics that influence when the reporting of inheritance transfers could take place. For example, the time it takes to perform funeral rites and other prerequisites such as the payment of the deceased's debts dictate when property can possibly be registered (shown earlier on Table 6).

Secondly, inheritance practices produce complex forms of property which call for more flexibility in the way property is recognized and registered. As shown in Table 7, the emerging types of property are categorised into communal and individual property rights. Of the two categories, only individual property rights are practically registered by the Ghana Lands Commission as leaseholds in the study areas (Abubakari et al., 2018). Other types of property that are communal in nature (such as the joint property within the extended family and the conjugal family and secondary property) fall outside the domain of practically registrable rights within the Ghana Lands Commission (see Table 3 below). Since the Intestate Succession Law does not apply to joint property held by the matrilineage, such property hardly reverts to individual property in

which case it could get registered (Kutsoati & Morck, 2012). Property of the matrilineage has a host of unspecified transitory beneficiaries which further complicates the specificity that is required for recording into the land register. As a result, such property accumulates over time, and is transferred from one generation to the other without any formal record of transfer (Kutsoati & Morck, 2012; Tagoe et al., 2012). The only time when a property of the matrilineage is recorded in the land register is when the original holder already registers it before death. Even then, no updating takes place after the inheritance transfer which renders the hitherto updated record out of date. However, it is important to mention that, the increasing competition over land and the creeping marketization of property may in effect break down this type of common property in the longer run (Quisumbing et al., 2001). Although the emergent types of property that are communal in nature tend to provide a safety-net for lineage members (Owiredu, 1959), they do not fit into the formal systems of registration (see Table 8). This explains in part why less property is registered in Sub-Saharan Africa where inheritance is the most common source of property acquisition. The relationships between the produced types of property and the current land registration system are summarized in Table 8.

Table 8:Interactions between different types of property and the current system of land registration

Emerging types of Property	**Inheritance practices**	**Nature of holding**	**Interaction with current land registration system**
Joint property of the extended family	Matrilineal practices	Communal	No success[39]
Joint property the conjugal family	Statutory, customary practices (Patrilineal and matrilineal) and Islamic practices	Communal	No success
Individual property (exclusive)[40]	Statutory, customary practices (Patrilineal and matrilineal)	Individual	Success
Secondary property	Customary practices (Patrilineal and matrilineal)	Communal	No success

[39] No success here means that such property rights cannot be registered in the current land registration system because the current practices of registration only result in leaseholds which are individual property.
[40] Held by members of the conjugal family

Thirdly, some of the notions that inherently surround the transfer of property by inheritance do not match the logics of property registration. As demonstrated for the study areas, inheritance has spiritual connotations[41] and is at the same time a process of honouring the dead (immortalization). For example, in the case of the latter, inherited property if registered, would remain in the name of the original ancestor in the land register as it passes from generation to generation of subsequent names. In such a situation, the registration itself is perceived as a mere definition of the boundaries of the property but not as benefiting whoever is named as the titleholder to the exclusion of other recognized lineal members (Peters, 2019). Kingwill (2011) in her study of family lands in South Africa highlights how families intuitively prefer for an ancestor's name on the land title as a strategy to prevent living family members from having too much power on property. Although these strategies may work to support certain social logics, their effects on land information are the reverse of what the processes of updating the land register sought to achieve. They keep the land register out of date as it ceases to reflect the reality of property holdings and this weakens its capacity to support land markets (Barnes & Griffith-Charles, 2007; Zevenbergen, 2002). In the processes of land registration, property mostly remains while the names of subsequent holders change upon every instance of transfer. This is the process through which the land register is kept up-to-date as shown in the dynamic model of land registration (Zevenbergen, 2002) (p. 108).

3.6 Conclusion

The need to keep the land register up-to-date is triggered by land transfers which take place in different forms including sales, inheritance, gifts, mortgages and compulsory acquisition. Up-to-date land information can support land market activities and also enables landholders to claim their rights legally against other people and even against government for compensation during compulsory acquisition. In contexts with active land markets the need to update the land register is often triggered by sale transactions and inheritance in contexts with relatively dormant markets (Zevenbergen, 2002). The global south is characterized by relatively less active land markets where inheritance is the most common means of land acquisition and is also governed by plural laws.

In the context of Ghana, different laws influence inheritance practices and also interact with one another to produce different types of property and property relations. These interactions take different forms and exhibit regional

[41] This aligns with the work of (Haller, 2019) who shows how spirituality is woven into land tenure

variations across Ghana and highlight the relative importance that statutory and religious laws have come to play in contexts where customary laws pre-existed and directed the choices made by individuals and groups of people in the structuring of social units and livelihoods. The types of property that are produced through inheritance practices are diverse and also evolve depending on how inheritance laws interact and also how people resort to different blends of practices. As Rose (2006) observed in her study of inheritance in Southern and Eastern Africa, inheritance practices may be based less on specific laws than on people's judgement of what is right. Since inheritance laws do not map to people only on one-to-one basis but could also be many-to-one (where more than two laws apply to a particular person/people), possibilities of having blends are high. Hence, there is no fixed typology of types of property or no uniform set of inheritance laws across Ghana, instead, there exist different blends of property and modified forms of laws in practice. This makes both need and possibility to register inherited property in many cases low. If we do make an attempt at simplifying the interplays of laws to the main types of property that they produce we see that they imply different timings for possible registration and that some types of property like individual property lend themselves to registration more while others do not. The connections between plural inheritance practices and the land register are not only found in Ghana's context of property inheritance, but are generally characteristic of Africa, where inherited colonial legal systems are thrust upon ongoing social arrangements in which there are complexes of binding obligations already in existence (Moore, 1973). In many regions, including outside of Africa with weak state capacity, non-state laws and hybrid forms of governance are relatively durable (Reyntjens, 2015).

The biggest challenge for full-fledged, uniform registration remains therefore; either to make a move from communal to individual rights registration or to incorporate sufficient flexibility into the current recording systems for the registration of communal rights as much as current technology can support. On the one hand, the push for individual property will call for the necessity of at least partially transforming the value of land and buildings from a means to structure social relationships through time into a physical asset, the value of which would mostly be expressed in monetary terms and which can be mobilized across existing social units by means of a recording system. That is to say, for the diversity of customary land rights to be assimilated into an administrative grid, it necessarily entails some form of transformation into a convenient shorthand (Scott, 1998) (p. 24). In other words, it would require for land to take on a different meaning than it currently has in many parts of the country, although not exclusively. It is likely that this process takes place first and foremost in urban and peri-urban areas, where the ties between social

unit structure and land/buildings is already broken through migration, where new inheritance practices and related types of property emerge due to a mixing of people from different social groups in combination with a stronger statutory legal influence and influence of actors from outside of domestic markets; and where therefore financial markets around individual property begin to dominate. On the other hand, the development of sustainable recording systems as formal schemes of legibility making would be untenable if they do not incorporate some elements of the very complexity (diversity) they intend to simplify or dismiss (Scott, 1998) (p. 7). In the domain of land administration, land relations are modelled in the form of *subject – rights, restrictions, responsibilities (RRR) – object* (Dimo Todorovski & Potel, 2019; Whittal, 2014; Zevenbergen, 2002) and keeping the land register useful in time and space requires the updating of these relationships in the land register (Zevenbergen, 2002) (p. 18). What if the reality to be captured in a land register does not present itself in the model: *subject – rights, restrictions, responsibilities – object;* but multiple subjects with different rights, restrictions and responsibilities connected to an object? This calls for flexibility in the manner in which land rights are recorded which could enable at least the partial capture of communal land rights including inheritance which are more pronounced in rural areas which cover much of Ghana's land area and Africa more generally. In these areas, the ties between social structure and property are still strong, and the interpretation of property goes beyond the physical asset, requiring some form of recording that will at least partially capture these complexities than is currently the situation at present. For example, in relation to the immortalization of the ancestor's name, property rights could be recorded in layers; the name of the broader landholding social unit (name of ancestor, extended or conjugal family), the name of the current trustee(s) (the family member holding the property in trust for the others[42]) and the RRR at each level. Such a layered recording format has the potentials of keeping a balance between cultural values whilst at the same time meeting the administrative need to record. Similarly, in regards to the sharing of rooms for successors in different houses belonging to the deceased, emerging technologies such as 3D cadastres could be deployed to capture such interwoven property rights (Ho et al., 2013). However, despite the potentials of 3D cadastres, the technology and capacity to support it are not readily available in most developing countries.

In conclusion, the variations of needs for registration across urban, peri-urban and rural areas require flexibility in the way land rights are recorded. Attempts at developing uniform nation-wide recording systems should be fit-for-purpose

[42] This could be a countless host of family members whose names could practically not be captured

by providing nation-wide frameworks that allow room for contextual variations that meet local needs. In these areas future research on the development of land registries and cadastres might therefore want to focus specifically on the role played by various state actors vis-à-vis private societal and international actors from bottom-up instead of the traditional top-down approach.

Chapter 4: Understanding the drivers of land information updating from the bureaucratic, socio-cultural and practical perspectives*[43]

* This chapter is based on a published paper: Abubakari, Z., Richter, C., Zevenbergen, J. A. (2019). Making space legible across three normative frames: The (non-)registration of inherited land in Ghana. *Geoforum* Vol 108. https://doi.org/10.1016/j.geoforum.2019.11.002

4.1 Introduction

The development of land registries and cadastres continues to be one of the most important and at the same time one of the most difficult tasks for governments around the world. These efforts count to some of the largest and most long-term projects in making society and territory legible and thus governable (Scott, 1998). In the processes of land tenure documentation and registration, the spatial epistemologies of modern state bureaucracy meet the spatial epistemologies of indigenous systems of administration. As such, cadastral development is also a process of state-making through the codification and homogenization of the multiplicity of people-space relationships that characterize many geographic regions, including Africa (Lund, 2016).

In Africa, land is often regarded as a corporate entity, held by unilineal descent groups and symbolized by group identifiers like tribal and family names (R. Kingwill, 2014). Land tenure is expressed in a continuum of diverse blends of group to individual rights, accessed on the basis of group membership and social status, and used through complex systems of multiple rights (Fogelman & Bassett, 2017; Cotula, 2007). Land is viewed as an embodiment of identity that connects the past, present and future members of society (Elias, 1956). Therefore, in the African land context, it is impractical for the state to deal with land in isolation without encountering the tensions of existing non-state tenure relations and rationales. Land rights registration – both in its cartographic techniques and institutional dimensions - is one of the processes, where state and non-state tenure regimes shape each other and jointly coproduce agency.

Despite the intrinsically geopolitical nature of cadastral development, efforts to understand the drivers of registration/non-registration have been rather technocratic in nature. For example, in seeking explanations for the lack of official land rights registration, researchers tend to focus on shortcomings in the bureaucratic processes based on expectations that are implicitly informed by a Weberian ideal bureaucracy (Weber, 1947) such as the lack of efficiency, overly complex procedures, too high transaction costs and long transaction times (Biraro et al., 2015; Chimhamhiwa et al., 2009; Enemark et al., 2014). Such arguments run the risk of single-sidedness since land rights are produced and reproduced outcomes of social processes that involve different practices and norms, and that cut across the boundary between formal administrative and social worlds. To understand how legibility making of space and society take place in contexts of legal plurality, uneven geographies of the state's legitimacy and relatively weak implementation of statutory laws and policies that characterize many African countries, we argue that it is important to study the actual practices of land rights registration and the underlying norms.

Although recent developments in both research and practice of land registration such as the continuum of land rights have made important steps in this direction, few studies have applied these insights to the study of land registration practices in Africa (Plessis et al., 2016; Whittal, 2014; Hornby et al., 2017) and even less, on how the internal bureaucratic processes of land registration interact with external socio-cultural norms, and how these jointly influence the registration and non-registration of land. Our study is positioned at this intersection asking the research question: how does land rights registration as a form of legibility making take place in practice in the Ghanaian land governance context? Specifically, we ask what norms guide landholders, on one hand, and administrative actors on the other hand; and how are these potentially differing normative frames negotiated? To answer these questions, we zoom into the specific case of registering inherited land and associated rights, because inheritance is a major source of land ownership and holding in Africa, including Ghana (Gray & Kevane, 2001; Abubakari et al., 2016). Inheritance of land has also received increasing attention by practitioners and scholars, who look at the matter from an administrative perspective and are concerned about the lack of registration of inherited land leading to out-of-date official land records (Médard & Golaz, 2018; Tagoe et al., 2012; Barnes & Griffith-Charles, 2007; Zevenbergen, 2002).

The chapter is structured as follows. In section 4.2, we discuss the concept of legibility making by Scott (1998) and explain how and why we use Olivier de Sardan's (2015) framework of three norms: official, social, and practical as analytical lens for our study of legibility making. In the section 4.3 on methodology, we start with a brief description of the geographical context, and then describe the sources of data, methods of data collection and analysis. The following sections describe registration/non-registration in practice with reference to Olivier de Sardan's framework of norms. In the conclusion, we discuss the relevance of our study to research and practice.

4.2 The conceptual lens: legibility making in the context of plural norms

As hinted in the introduction, we conceptualize land rights registration broadly as a form of legibility making with reference to Scott's (1998) work; and use Olivier de Sardan's tripartite normative framework to analyse the practices of legibility making in the case of registering inherited land and associated rights in Ghana. In the following two sub-sections, we elaborate this further and explain the choice for the analytical lens.

4.2.1 Legibility making along fuzzy state/society boundaries

To achieve the goals of the modern state, states deploy numerous strategies and schemes to structure society in ways that allow for easy administration.

Scott (1998) refers to this schematic structuration as legibility making, the process that provides the state with a synoptic view of its people, territory and resources at a glance. Legibility making takes different forms and became an indispensable tool of modern statecraft. Through this, the state develops schemes that simplify and assimilate the complex realities of society into an administrative grid (Scott, 1998). With substantial knowledge over space, people and resources, the state becomes more empowered as it is able to use such knowledge in diverse ways that serve its interests, such as taxation and planning, but also less legitimate purposes like racial profiling (Scott, 1998; Kalir & Schendel, 2017). Therefore, legibility making does not only empower the state, it also brings responsibility and accountability upon the state in dealing with what it has come to know through the legibility making process (Kalir & Schendel, 2017).

The practices of legibility making are characterized and constitutive of varying state-society encounters. Scott's empirical work (1998) on state schemes that were meant to improve human conditions, but ultimately failed, evokes the image of a relatively strong state-society dichotomy, where the state assumes the role of the surveyor and scheme implementor while society is being documented and mapped and stands more at the receiving end. However, Ferguson & Gupta (2002) argue, for instance, that the "vertical encompassment" of the state is more an imaginary than an empirical actuality. Building on Scott's work, other scholars blur the state/society distinction and highlight the overlapping roles of both state and societal actors in practices of mapping and recording of territories. For example, legibility making at the micro level of the community through local activities may feed into the broader legibility making of the state. Timmer (2010) discusses how local people in East Kalimantan mimic the paraphernalia of the Indonesian state's legal apparatus to reformulate tenurial arrangements among natives and settlers. Although this mimicry produces knowledge that make tenure more legible, it was entirely a non-state endeavour. At a macro level of spatial encompassment, where the state interacts with the international community (Kalir & Schendel, 2017), non-state bodies such as the World Bank also engage in legibility making at the crossroads of state and society (Li, 2005). Thus, although legibility making can involve an actual state superiority over society (Scott, 1998) or a perceived superiority of the state by local people (Timmer, 2010), it is important to also recognize it as a space of negotiation where a complex array of interactions ensue between the multi-level functionaries of the state on one hand, and the realities of society on the other (Kalir & Schendel, 2017). An example of such a complex dynamic is illustrated in the practices of slum listing by officials and slum dwellers in Indian cities as city authorities and central government pursue an agenda of slum redevelopment (Richter, 2014). Indian authorities tend to make slums more legible for redevelopment through slum listing with the aim of producing official

knowledge of the ground realities. However, the practices of mapping slums were less based on a set of official criteria and more so on urban political dynamics and specific negotiations between politicians, micro level government functionaries and slum dwellers. In this sense, legibility making is a practice of mapping and official recording of space through a sort of coproduction between various state and societal actors.

While cadastral development and land rights registration more specifically may be conceived of as a form of legibility making at the scale of the nation-state, understanding the practices underpinning this large-scale and long-term endeavour therefore requires us to explore more closely the meeting grounds between state and society and the interactions that take place "in-between." At the same time, we cannot assume the endeavour to be driven mostly based on bureaucratic rationales or statutory norms alone. Instead, we need to take into account the different actors involved, who cannot be easily sorted into "state" or "society" categories, as well as the legally plural context that characterizes many regions of the global south. To do this, we analyse the legibility making practices according to different norms that influence the registration of inherited land and associated rights.

4.2.2 Analytical lens: Normative influences on legibility making

To analyse how the processes of legibility making in Ghana's land registration take place at the intersection of multiple normative frames, we adopt Olivier de Sardan's (2015) tripartite normative framework. Building on a large body of empirical studies across various public service domains in Africa, Olivier de Sardan draws on insights from neo-institutional economics and advances the idea of practical norms, which he situates between the norms of society and the norms of the bureaucracy as opposed to the sharp formal/informal dichotomy.

He conceptualizes norms into three categories namely, 1) the explicit formal rules of the bureaucratic arena as *official norms*, 2) the body of rules that evolve traditionally outside bureaucracies as *social norms* and 3) the de facto practices that fall outside formal regulations and cultural rules as *practical norms*. Official norms include *legal norms, professional norms* and *bureaucratic norms.* They express the rights, responsibilities and restrictions that are explicitly recognised by public and professional institutions (Olivier de Sardan, 2015). In other words, official norms provide the standards and rules that determine which actions are permissible, mandatory or prohibited (Mangla, 2015). Official norms can be likened to what neo-institutional economists call formal institutions or the "rules of the game" (North, 1990). Official norms are offshoots of Weber's concept of an ideal bureaucracy (de Herdt & Olivier de Sardan, 2015). Social norms are standards and rules that regulate the private

spheres within society outside of the bureaucratic arena (Olivier de Sardan, 2015). They include group expectations that are usually unwritten, but are created, communicated and enforced outside officially sanctioned channels (Helmke & Levitsky, 2004). Social norms are part of a community's heritage and are often called the old ethos, the hand of the past, or the carriers of history (Pejovich, 1999).

The boundaries between social and bureaucratic norms are not always clear, and may be likened to a 'semi-permeable membrane' (Goffman, 1961). While some norms originate from within the official arena, others originate from outside (for example, social norms), but find their way into the official arena through channels that connect the outside to the inside of the bureaucracy. One of these channels is the bureaucrat, who works in the state's administration. Bureaucrats are not only subject to the official norms of the bureaucracy; they also observe the norms of the social groups to which they belong. Thus, some behaviours of bureaucrats may reflect values of their social group at the expense of official norms and may lead to the partial or total violation of the latter (Van Meter & Van Horn, 1975). The second channel is one that is mediated by resource control. With the second channel, interactions take place at the point where a bureaucracy begins to exercise regulatory control over a resource that has embedded socio-cultural relations. By virtue of differences in the underlying rationales between the bureaucratic and the social spheres, their relationships are hardly complementary, but mostly competing (for legitimacy) (Dowling & Pfeffer, 1975).

Breaking with the formal/informal dichotomy, Olivier de Sardan introduces a third type of norms., practical norms. Practical norms are the various de facto, tacit or latent norms that underlie the practices of actors, which diverge from both official and social norms (Olivier de Sardan, 2015). They constitute an implicit background reference that modulates real practices. Galaty (2010) notes that, practical norms introduce strategies that make bureaucracies more approachable and that practical norms take place through the exploration and identification of personalized channels such as friendships and acquaintances. Practical norms do have a kinship with Scott's notion of practical knowledge or "metis", a form of knowledge that helps negotiate between the complex dynamics of society, on one hand, and the state's formalized schemes and procedures of recording and acting. In the literature on bureaucracy and policy implementation, regular and routine divergences from official norms and coping mechanisms are also reminiscent of Olivier de Sardan's practical norms (Lipsky, 1980). In such a way, practical norms interact with official and social norms in different ways, for example, officials may engage in practices that sought to negotiate bureaucratic challenges but which are neither sanctioned by official or social norms (Lund & Benjaminsen, 2002).

Olivier de Sardan's tripartite conceptualization of norms debunks the primacy of the "formal", and enables us to situate and analyse the happenings between the social and official norms as practical norms, which is difficult to do with the relatively sharp formal/informal dichotomous lens of the neo-institutional economists (Pejovich, 1999; North, 1990). In sum, it is important to recognize that the interaction of the norms in the bureaucracy generates confrontations and compromises between different norms and that the services that are subsequently produced derive from these confrontations and compromises (Olivier de Sardan, 2014). Likewise, the response of users to these services in terms of their overall decision to call upon bureaucratic services is jointly generated by the interaction of these norms (see fig. 8). In the following parts of the chapter, we assess the influence and interactions of these norms in the practices of registering inherited property in Ghana. To set the scene for such analysis the next section gives an overview of the empirical context followed by methodological details of the study.

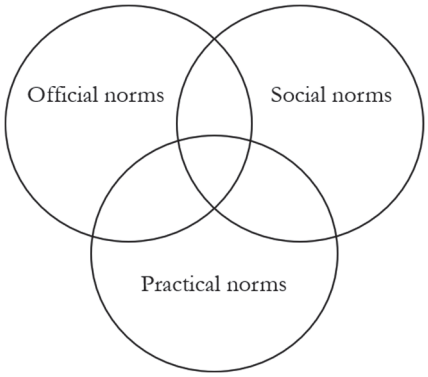

Figure 8:Interaction of norms
Source: Olivier de Sardan (2015)

4.3 Methodology

4.3.1 Geographic context and study areas

Ghana's customary tenure is characterized by two land governance structures namely; centralised and decentralised land governance structures (Abubakari et al., 2018). This is a generalized picture, of course, of the complexities of land governance in Ghana, but it serves as entry point for the selection of study areas here, because it is based on previous work on the implementation gap of land registration law in Ghana. Under the centralised land governance structure, land control is embedded in a chieftaincy hierarchy. Chiefs hold land in trust and on behalf of their subjects (community members). They exercise both political and ownership control over land. However, under the decentralised land governance structures, land control decentralises from earth priests to clans, and families. Unlike centralised land governance structures,

chiefs in communities with decentralised land governance structures exercise political control over land while the earth priests oversee land allocations, sanctify its use and endorse land transactions (Lund, 2013). Accordingly, emerging land inheritance norms and land registration are uneven as they are influenced by these land governance structures and as well as by urban/rural differences.

Another point of departure for the selection of study areas are plural legal sources that regulate inheritance practices in Ghana, albeit unevenly and to varying degrees. At the national statutory level, inheritance is regulated by the Wills Act of 1971 (Act 360) and the Intestate Succession Law (PNDC Law 111) for cases of inheritance with or without a written will respectively. These statutory laws are meant to apply uniformly across the country. In addition to the statutes, there are customary and religious regulations that differ across communities and tribes as well as religious faiths respectively (La Ferrara, 2007; Kutsoati & Morck, 2012). Customary inheritance in Ghana is patterned into patrilineal and matrilineal practices (Kutsoati & Morck, 2012; Kuusaana et al., 2013). Under patrilineal inheritance, property devolves through the lines of males (say from father to son or to brothers) and for matrilineal inheritance, property devolves only through the lines of females (Kuusaana et al., 2013). Unlike the customary regulations, religious regulations spread across communities without defined boundaries. Because the inheritance regulations are in different layers (state, community and individual's choice of religion), more than one inheritance regulation often applies to individuals and the context of inheritance determines how a particular type(s) of regulation influences practices. In essence, the plural regulations of inheritance are stratified at different levels of subordination in terms of where they apply (whether in a community or courtroom), and also overlapping in terms of who they apply to (Gedzi, 2014).

To take account of the above general patterns of differentiation, our study is situated in two regions of Ghana, namely the Upper East region (decentralised land governance), which is predominantly patrilineal and the Ashanti region (centralised land governance), which is typically matrilineal. Since inheritance practices are influenced by urban/rural differences, we selected an urban and a rural area in each region. In the Upper East region, we collected data from Bolgatanga municipality (urban) and Bongo district (rural) and in the Ashanti region, Kumasi Metropolis (urban) and Kwabre East municipal (rural).

To understand legibility making practices in the case of registering inherited land, it was necessary at an empirical level to explore a) the technical and administrative processes and circumstances that surround the registration of inherited property, both official and tacit, and b) how inheritance systems play

out in different socio-cultural landscapes across rural and urban binaries. The study areas are shown in Figure 9.

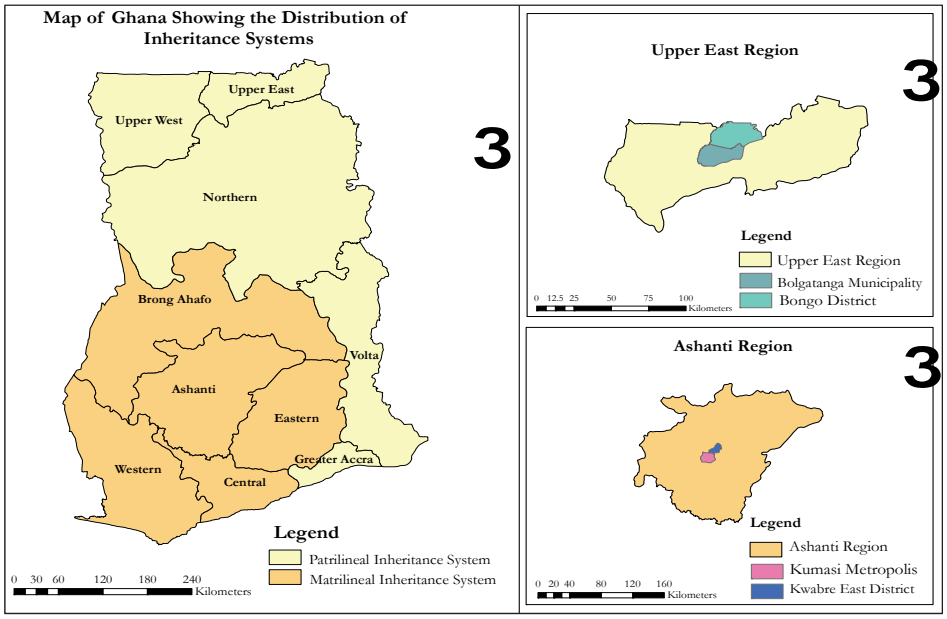

Figure 9: Map of study areas

4.3.2 Data collection and analysis

In this study, we used primary data collected at two different times, April to August in 2017 and June to August in 2018. In 2017, focus group discussions (FGDs) were conducted in the four study areas to get a general understanding of how matrilineal and patrilineal inheritance norms play a role at the community level and what other norms and rationales might play a role. Four FGDs were conducted in the main towns across the four study areas, two in the Upper East region (Bolgatanga and Bongo) and two in the Ashanti region (Kumasi and Mamponteng). In addition, nine FGDs were organized in smaller communities surrounding the main ones. The smaller communities are, Sambolgo, Bogorogo, Vea, Yorogo and Namoo in the Upper East region and Bosore, Antua, Adesina and Adwumakase in the Ashanti region. The FGDs consisted of eight to ten participants including some family heads, earth priests, community elders and successors of inherited property (both male and female).

In 2018, we collected more primary data through in-depth interviews from institutions involved in land registration and individuals who have inherited

different types of property[44]. The processes of land registration cut across the Lands Commission (LC) and Customary Land Secretariats (CLSs). There is one regional Lands Commission in each region of Ghana, but the Customary Land Secretariats operate at the district level or according to customary institutions. First, we conducted in-depth interviews with two officials of the LC and two officials of the CLSs across the two regions in order to understand the official norms of registration – the officially sanctioned processes involved in the registration of inherited property (both testate and intestate). But it is important to acknowledge that, the actual land registration processes in practice transcend the official norms and thus include actors from within and outside the official arena of registration. Therefore, we also interviewed two land agents and two LC officials, the latter enabling registration in an unofficial capacity. Unstructured observations were made of the actual processes at the Client Service and Access Unit (CSAU) of the LC, where applicants are supposed to submit and receive documents as well as make related enquiries. Additionally, we interviewed one legal professional about the legal requirements in registering inherited property such as letters of administration, vesting assents and probates, that are associated with the process of registration. For this category of respondents, we interviewed 11 in total.

Secondly, to understand the social norms of inheritance as experienced by individuals, we interviewed people who have inherited different types of property namely; individual property with proprietary rights[45], individual property with only use rights, joint/communal property and inherited sacred lands managed by earth priests and chiefs. In this second category, we interviewed 12 respondents in total.

The first author's three years of work at the LC in Ghana provide for substantial contextual knowledge, which aided in data collection and interpretation. For the analysis we used conventional content analysis (Hsieh & Shannon, 2005), during which we first segmented field notes and transcripts according to Olivier de Sardan's (2015) three norms. This resulted in a relatively coarse categorization, e.g. of matrilineal and patrilineal norms under "social norms" and information about official procedures for registration under "official norms." However, during this process of sorting, nuances became apparent; and we proceeded with a more fine-tuned recategorization based on the variations that exist within the sphere of social norms according to urban and rural differences, on one hand, and the variations in official norms, on the other. These variations are analytically speaking, the places where we identified practical norms as emerging; and to capture their characteristics we

[44] Property here refers to both developed land (such as houses and buildings) and undeveloped land (such as bare lands and farmlands)
[45] Exclusive rights of property ownership

labelled them as "strategic registration" and "registration-on-demand." The third part of section 4, reflects a third element of this more fine-tuned analysis, where we identify specifically the space at the CSAU as a place where state/society encounter one another in practice and where practical norms dominate the scene of registration. The structure of the following section of the chapter, where we present the results from analysis, reflects the interpretive steps.

4.4 Practices of registering inherited property at the intersection of three normative frames

This section consists of three parts. In the first, we take the perspective of landholders to discuss different factors that play into people's decisions to register inherited property within the context of existing land inheritance norms, especially in urban areas, changing social norms - where the decision to register inherited property depends on where the holder finds legitimacy (family or state). We refer to the practical norm that emerges from this perspective as "strategic registration". In the second part we take the perspective of the administrative actors, who are involved in the registration of land to identify how and where official norms play a role in these processes. We look at how the procedures of registering inherited property evolved practically through time, as cases of inheritance registration come up at the Lands Commission. We describe the evolution of these procedures as "registration-on-demand" as a sort of practical norm stretching across the practices of legibility making from the perspective of administration. The third part brings together the two perspectives and describes how "strategic registration" and "registration-on-demand" take place at the micro-scale spaces of encounters between citizen and state.

4.4.1 Variations in social norms across rural/urban areas and "strategic registration" as practical norm

Looking at registration choices from the point of view of land holders, three main factors within the social arena and across both rural and urban contexts explain, whether inherited land becomes registered or not. These include (1) property devolution dynamics - the manner of property sharing (2) family disposition - the shared values of the deceased's family with respect to how they want to hold the heritage and (3) availability of 'halfway-documents'[46] – previous registered deed documents, written wills and probates provide some

[46] A 'halfway-document' is defined as 'any paper or digital record prepared and agreed upon between parties, relating to a specific people-to-land relationship, that indicates some form of holding interest, but may not be legally binding in a conventional land administration system (Hendriks et al., 2019).

sort of evidence of ownership which makes successors less enthused to register inherited property. However, the social norms of inheritance in both patrilineal (Upper East, decentralized) and matrilineal (Ashanti, centralized) contexts manifest differently across rural and urban areas for a number of reasons and the role of official norms also varies according to rural/urban contexts. These differences offer insights into the emergence of practical norms characterized by strategic choice making on part of landholders.

In Bongo and Kwabre East (rural areas), we found that both farmland and developed property (mostly family houses) form part of inheritance. In these rural areas, the focus of successors is more on the farmland because; (1) farming is the main source of livelihood (2) the family houses are mostly old mud houses and (3) it is relatively easy to build new mud houses or make extensions to the original family house. With these alternatives, there is little contestation among successors regarding the family house. To legitimize and secure property holdings in these rural areas, successors of inherited property rely on the existing body of shared local knowledge and social networks within the community, which are enforced through local authorities such as chiefs, family heads and earth priests. These local networks provide some sort of tenure security to holders of inherited property which makes them see little need for formal registration. Aside the tenure security afforded by existing local structures and networks, some rights related to land and buildings fall outside the scope of the current land registration system. For example, some categories of inheritance holdings such as the use rights of female successors (in Bongo), use rights of male successors (in Kwabre East) and trusteeship rights of traditional authorities are non-proprietary[47] and cannot be translated into the current registration system which records only proprietary rights in the form of leaseholds. As such, official norms play a minor or no role in these areas with respect to governing inheritance; and attempts or decisions to register on part of the landholders are few.

The dynamics of property sharing among successors in urban areas manifested as more complex in our study compared to the rural areas of Bongo and Kwabre East. There are two main elements to this complexity. First, even when the urban area is dominated by particular tribes, the awareness and patronage of the official norms of the state is relatively higher. An example of this is how the enactment of the Intestate Succession Law (PNDCL 111) transforms the landscape of matrilineal inheritance in the Kumasi metropolis of the Ashanti region. Although the law is not implemented to the letter in practice, it has succeeded in limiting the hitherto overriding powers of the extended family. The effect of the law is felt more in urban areas especially in matrilineal communities as it sought to change the social structure of matrilineal

[47] Land rights that do not provide ownership but mainly use rights

inheritance (from parents to children instead of parents to nephews). The spirit of the law is paternal in nature which aligns with the social norms of patrilineality. The law allocates up to 75 percent of intestate estate to the conjugal family of the deceased, allowing up to 25 percent for customary disposition. We also found that religious norms on inheritance such as Islamic inheritance rules were more pronounced in the urban areas; and like the PNDCL 111, Islamic inheritance aligns more with patrilineality. Second, urban property is mostly developed property, and by virtue of the relatively higher property values in urban areas, tensions among successors are higher. Therefore, successors explore opportunities of registration to delineate property from the extended family network especially when their share of property is a whole house. The dynamics of property sharing become more complicated when a developed property is held by multiple successors. The indivisibility of developed property leads to complex schemes of sharing space among successors. In both Bolgatanga[48] municipality and Kumasi[49] metropolis, we found that successors share developed property in complex ways drawing on a mix of normative frames; official and social, including religious norms. This interplay of norms is carried out at the micro-scale of individual buildings in urban areas. For example, a successor might inherit a room from each side of a compound house, or from each floor of a multi-story building, or a room(s) from different properties belonging to the deceased.

These complex micro-schemes of sharing space among successors are difficult or impossible to represent in the current land registration system. In particular instances when the inherited property is already registered by the deceased, successors consider it as enough de jure security and they see little need to report such changes to the LC. But successors may also deem registration necessary if shared knowledge of neighbours is perceived to be insufficient to secure tenure in urban contexts (as compared to rural). In these instances, successors explore different connections to official norms to legitimize their property holdings such as previous registered deeds, written wills and probates.

In both urban and rural contexts, prevailing social norms meet official norms in different manners; and the factors that influence the possibility or the choice to register inheritance depends, on one hand, on the kinds of inheritance and associated land use rights that are afforded by official norms. On the other hand, it depends on the legitimacy of rights and related securities afforded through social norms. These securities do not only pertain to an individual's rights to property, specific land uses, or a building, but also to securities afforded by being a member of a social group. Insisting on one's individual

[48] The capital of the Upper East region

[49] The capital of the Ashanti region

right to inheritance, which may be legitimized by resorting to registration according to official norms and sanctioned by statutory administration, may at the same time mean a loss of security that arises from membership in a given social group (for example, the lineage's network). In addition, especially in urban areas, social norms are diverse and interlink with factors of urbanization, such as increasing land values and higher diversity and fragmentation of the population, different land uses and even building materials.

Choices to register land or built property are therefore influenced by environmental conditions, including surrounding land values and state of development, property characteristics (developed property, farmland, etc.), but also a counter-weighting between different sources of legitimacy in terms of how each source would provide for land and property tenure security and whether lineage or state backing are called upon. This latter is in turn dependent on the relative strength of social vis-à-vis official norms in a given context. Through "strategic registration", landholders therefore choose to register inherited property or not, provided they have the financial means to pay for the registration process (see following sections). As such "strategic registration" can be viewed as a form of practical norms guiding the practices of registration from the point of view of the landholders.

But practical norms also arise within the official arena. We describe this in the following sections.

4.4.2 Variations and gaps in official norms and "registration-on-demand" as practical norm

At the national statutory level, land registration is regulated by the Land Registry Act, 1962 (Act 122) in most parts of Ghana except for Greater Accra region and selected areas of the Ashanti region, where the Land Title Registration Act, 1986 (PNDCL 152) applies. The agency with the official mandate to carry out land administration related tasks, including land rights registration, is the Lands Commission (LC). By "officially mandated" we mean here that the LC is endowed with the mandate through statutory law. However, two main characteristics of Ghana's land governance scene lead to highly differentiated implementation of legal statutes as well as the relative role played by the LC in matters of registration (see also Abubakari et al, 2018). First, the Customary Land Secretariats also play an important administrative function, albeit based on policy directive only and not sanctioned through statutory law. In practice, the process of registration in Ghana encompasses a wide range of other actors, including traditional authorities (chiefs, earth priests and family heads) and private land agents. Second, a lot of land, including inherited land, is not yet officially registered with the LC. The practices for so called first registration of inherited property versus subsequent

registration differ in terms of actors and procedures involved. Registering inherited property for the first time involves two phases cutting across the LC and CLS as main administrative actors, whereas procedures to carry out registration through the LC for the second phase do exist. Subsequent registration (updating) of already registered property involves only one phase, for which no official procedure exists, and which cuts across the LC, the courts and legal professionals (see table 9). Here we already see that the sphere of "official norms" is rather diverse and the actor constellations involved in registration are of a hybrid nature in terms of their (non) administrative functions and mandates. In the following sections, we describe this hybrid sphere in more detail for both first and subsequent registrations with emphasis on the nature of official norms in each.

Table 9:Illustration of the interplay of factors on official registration: type of registration, region and phases involved (for more details regarding the phase distinction see Abubakari et al, 2018)

Type of registration	Phase 1	Phase 2
First registration	Vary according to centralised and decentralised land governance structures	Based on the official procedure of the LC
Subsequent registration	N/A	Driven by the LC without explicit official procedure

4.4.2.1 Variations in official norms: the two-phased process of first registration

The first phase of registering inherited property differs by land governance structure. Under the decentralized land governance structure of the Upper East region, where land is predominantly held by families under the custodianship of earth priests, successors of unregistered property have to prepare an affidavit to formally declare the root of property ownership, since the LC has no prior information of the property. After the declaration of root of ownership, a deed document is prepared either by the CLSs, legal professionals, informally by officials of the LC or land agents. Under the centralized land governance structure of the Ashanti region however, customary land is entirely held and controlled by chiefs according to a traditional hierarchy that ranges from caretaker chiefs through paramount chiefs to the Asantehene (the overall king). By virtue of the central role of chiefs, the land allocation papers they issue, serve as a legal root of ownership. Thus, a successor of unregistered property needs to request for new allocation papers from the grantor (chief) to reflect his status as the new holder.

With the new allocation paper, a deed document is prepared by the Asantehene Land Secretariat (ALS)[50]. This marks the end of the first phase. During this first phase of the registration of land rights, including inheritance, we therefore encounter a multiplicity of administrative and non-administrative actors, who converge into a sphere of what we might call "proxy official norms" that derive from the interlinkages between statutory law, policy (e.g. the CLS) and historically evolved land governance structures and dynamics.

It is in the second phase of the first registration, where we encounter a small space within the process of registration influenced by "purely official norms," that is norms guiding the practices of the agency officially mandated with land administration, the LC. For the second phase of registration the LC uses the same procedures written in its operational manual for nation-wide application irrespective of the type of transaction; whether inheritance transfer or sale. In this second phase applicants submit executed deeds at the Client Service and Access Unit of the LC which are then sent to the four divisions of the LC for registration. Observations made at the offices of the LC reveal that the internal processes are not linear but a series of back and forth movements between divisions with some overlapping roles (see Abubakari et al. (2018) for details). Also, deed documents need to be signed by heads of the divisions who are at the same time always busy with other administrative duties such as meetings. In combination, these activities reflect on the time, complexity and cost of registration.

4.4.2.2 A gap in the LC's official norms: the process of subsequent registration

For updating inheritance transfers on already registered property, the exact requirements are not stated in the LC's operational manual. Therefore, the entire process of subsequent registration evolved practically in a quite discretionary manner.

For updating to take place in the LC offices of the study areas, legal documents such as probates, letters of administration and vesting assents are often required. Whereas probates and letters of administration are provided by the court, vesting assents are prepared by legal professionals.

[50] The ALS is a Customary Land Secretariat that predates the institutional reforms that created the country-wide CLSs in 2003 under the Ghana Land Administration Project (LAP). For areas with paramount chiefs like the Offinso and the Juaben, deed documents are prepared at the CLSs of the paramount chiefs.

The preparation of these documents lie outside the official mandate of the LC and their associated fees are high compared to the official fees of the LC[51]. This is because, the court and legal professionals charge their fees as a percentage of the total value of the estate[52] while the LC charges a fairly fixed fee for registering inherited property. In an interview, a male successor in the Upper East region said:

> There are challenges in the registration. The registration process was not fast-tracked the way I expected it to be, and the expected expenditure on it too was more than I expected (Interview: June, 2018).

As a result, successors who wish to, but cannot afford the fees of the court, do not register their inherited property at all.

The processes described above, demonstrate the multi-faceted nature of the administrative arena and also the incremental way of dealing with discrepancies and gaps in official norms, e.g. procedures. The latter, strictly speaking, come into play only in the case of first registrations, during the second phase. In dealing with its own gaps in reference to official norms and the multiplicity of administrative actors involved in registration, "registration-on-demand" is emerging within the official arena as a practical norm in response to requests for the registration of inherited property by successors. Such "registration-on-demand" is therefore influenced by both social and official norms, but it is also highly situation specific. To illustrate this, we zoom into the micro-spaces of interactions between state and citizens in the next section.

4.4.3 Citizen/state encounters in registration: the micro-spaces of practical norms

If successors pursue registration, they come into contact with a complex "proxy-official" scene, that we described in a simplified manner above, characterized by variations in official norms and the discretionary practices within administration that fill in gaps in the official norms of the LC. It is at these micro-scale encounters, where the spaces of practical norms that serve bridging functions between social and official norms, between citizen and state, become manifest.

[51] According to an official of the LC, the registration fees for a vesting assent at the LC is about GH¢ 200.00 while that of a lease is about GH¢ 600.00. This means that it is cheaper within the LC to update a previously registered inherited property than to register one that has not been registered previously. However, the cost of obtaining the prerequisite documents make the overall cost of updating a previously registered one higher than registering a fresh one.

[52] Interview of LC official (June, 2018)

For applicants to go through the challenges of registration, a connection with internal operatives (i.e. LC staff and land agents) is imperative. Successors often engage LC officials or land agents privately to facilitate the registration process. Here then, LC officials and land agents act in informal manners. This switching between formal/informal roles may itself be conceptualized as a practical norm. The relationship between applicants and facilitators is built on trust, goodwill and personal relationships. For the facilitators within the LC, their affiliation affords them additional legitimacy as applicants are unable to differentiate between the official and unofficial roles of the staff of the LC, and this allows room for officials to engage more actively across the social/official boundary. These interactions have created a literal physical space, namely in front of the CSAUs. In these places LC officials and land agents interact with applicants in a sort of "informal market". Envisioned originally as a one-stop shop to link citizens and their state's administration through a smooth application process or in the conceptual language used in this chapter: to connect the social and official normative arenas, the space in front of the CSAU has expanded into a place coordinated largely by these practical norms of mingling administrative/non-administrative capacities. Embedded in and at the same time driven by these practices is a semi-formal fee economy. Although the interactions in these spaces facilitate the movement of successors from the non-registration (social norms) to registration (official norms), the services offered here are not free. Applicants have to pay facilitation fees directly through negotiation, but more often indirectly through official fee adjustments and grafts. How the official fees are adjusted is indicated in the following interview quote by a successor of inherited property:

> "…..I don't know if it's only me they have taken care of, but they would have taken care of a lot of people. When they know that you are from the United States or rich, if something is GH¢ 20.00 they will make it double or triple. So even if the registration will cost GH¢ 200.00 they will make GH¢ 2000.00." (Interview: August, 2018)

The quote illustrates that fee estimates take into account people's backgrounds and possible income range. While this is by no means necessarily fair and can substantially increase the cost, and often makes registration unaffordable to prospective registrants, it illustrates how practical norms evolve from as well as inform the registration process at the scale of encounters between successors and administrators at a micro-scale of personal interactions.

4.5 Reflection and conclusion

Land tenure mapping is an intrinsically geopolitical endeavour. The official recognition of land rights through capture in cadastral databases and land registries is an important function of the state. It is one of the administrative techniques that render a society and territory more legible and thus governable (Scott, 1998). Such interventions of the state inevitably result in the transformation of existing non-state land tenure regimes, which are based on diverse relations between people and space. As such, the state's cadastral interventions imply a shift in land control, which elicits confrontations and compromises between state and society (Cotula, 2007; Lund, 2016). Legibility making through land registration intrinsically brings into confrontation two aspects of land that are often conflictual and hardly complementary – *how it is owned, used and transferred* (de facto) on the one hand, and *how it is officially recognized and administered* (de jure) on the other hand. Accordingly, the recording of land rights provokes different forms of negotiation between the social and official arenas especially in the global south, including Africa, where non-state tenure regimes are prominent. In this context, land inheritance is embedded in social processes that go beyond the mere transfer of land and use but constitutes an essential ingredient to the coherence and evolution of family lineages as basic social units (Abubakari et al., 2019b). This is a spatial epistemology where land is not an object separate from groups or individuals, but constitutive of the relationship. From the perspective of administration (the official arena) land is regarded as something that can and should be documented in its physical dimensions upon transfer.

Against this background, our study asked, how does legibility making take place in practice, and according to which or whose norms? Our results demonstrate that practical norms emerge as a sort of bridge between the social sphere, itself highly differential, and the official sphere. Practical norms fulfil various functions in this way, for instance substituting for gaps in official procedures and negotiating an administrative sphere that is itself diverse due to historical contingencies, such as the role of the traditional governing actors (for example, the Asantehene Land Secretariat in the Ashanti region), and due to relatively recent efforts to formalize customary institutions through the CLS network. They also guide the choices or necessities of people, especially in urban and urbanizing areas. Landholders, specifically successors, may search for legitimacy and security for property holdings, especially in urban contexts of higher property values and developed land (Spichiger & Stacey, 2014), where social norms are more multi-faceted and in more frequent contact with official normative contexts. Depending on the outcomes of sharing within the social arena, successors explore different strategies in search of legitimacy and security. They draw on both family networks (social norms) and the formal registration system (official norms). The reaction of successors after sharing is

one that is dynamic, practical and situational. The motive of these reactions is to either enhance existing legitimacy (within family) or create new ones (with formal registration). Demand for registration of inherited property therefore depends on and varies with the strategic choices being made on part of the landholders within their respective social context and the affordability of such choices. We have summarized these insights in figure 10.

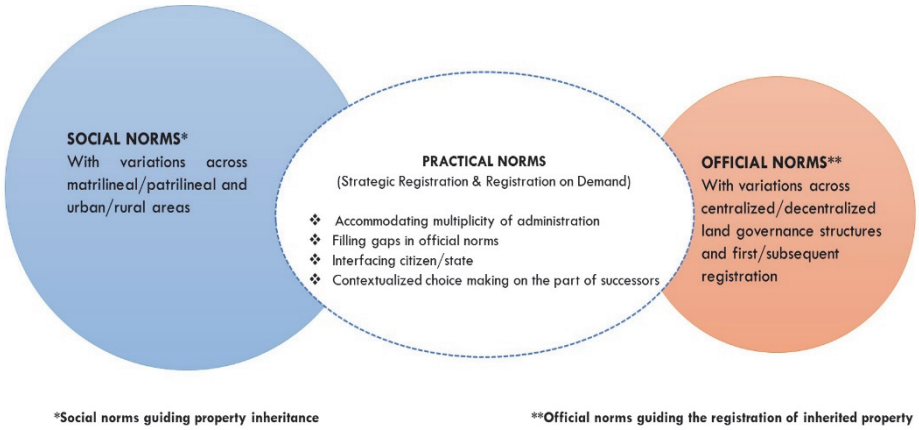

Figure 10:The interaction of norms in Ghana's legibility making through registration. Source: Adopted and modified from Olivier de Sardan (2015)

The priority for this chapter was to shift the lens onto the specific processes of land rights registration and to identify relatively broad patterns at the cost of discussing the details of customary forms of land holdings, for instance. In this chapter, the interest is to specifically shed some light onto the practices of legibility making in a context like Ghana, where administration and society are closely interwoven, and where the initiative to make the territory legible does not necessarily come from the side of the state, but where societal actors also exhibit varying interest in registration. This is important, because a fair amount of research in the domain of land administration has focused on how to improve the state's or administrative processes of land registration as the locus to effect positive change. For example, studies on land information updating across the global south too often point to administrative inefficiencies such as procedural complexities (Van der Molen, 2002), long transaction times and high transaction cost (Biraro et al., 2015; Chimhamhiwa et al., 2009; Enemark et al., 2014).

While our findings within the administrative processes of Ghana's LC resonate with this mainstream literature, we found additional complexities such as the lack of explicit procedures for the registration of inherited property. The procedures are not explicit in the operational manuals of the LC, but have evolved through practice (practical norms) and are considerably plastic as they allow room for discretion and therefore change over time. Their evolution is

not only driven by internal administrative shortcomings, but also shaped in response to landholders varying needs and requests to register inherited property; which is why we refer to these practical norms as "registration-on-demand" – a reactionary response to a societal need, akin to Scott's (1998) notion of "metis" as a form of practical knowledge. In this sense, the state's legibility making processes draw from the practical improvisation through discretionary procedures which on the one hand work to promote the primary function of the LC – to record land rights, but also add to the existing complexity of the LC's processes as highlighted in earlier studies on land administration (Zevenbergen, 2002).

Departing from the mainstream land administrative literature, our study explores legibility making beyond the official arena, delving into the social arena which provides the foreground for the official arena in terms of land rights production. The eventual decision to either register inherited property or not, is the combined effect of social, official and practical normative arenas that elicits a dynamic process of legitimization which property holders explore. The positions they take depend on the nature of property claims (competing or complimentary), the manner of property sharing and holding, and the existence of 'halfway-documents'. Therefore, there is not one set of obstacles to registration, which would call for one set of solutions. Instead, we need to appreciate the diverse nature of the factors that play roles in land registration in order to provide "fit-for-purpose land administration"(UN-Habitat, 2008; Enemark et al., 2014; Zevenbergen et al., 2013).

What then does this quest for fit-for-purpose solutions need to consider at a more fundamental level going beyond the question of what needs to be documented how and by whom? The norms that are described in this chapter are not stable sets of rules – implicit or explicit – that govern practices in a predetermined manner. They also emerge from practices and accordingly change through time. As such, land registration itself opens spaces for the reshaping of both social and official norms, as well as for the emergence of practical norms. Cadastral development – in its manifold forms across different geographic contexts – therefore is more than the attempt to "represent (updated) ground realities" in an official database or map, but is itself part of the long-term practice of making and sometimes un-making the state, of governance actors negotiating their legitimacy and roles vis-à-vis one another, sometimes peaceful and sometimes conflictual. Recognizing this shifts both the notion of existing customary land tenures as well as the techno-managerial solutions proposed for land administration into a different light: the nature of customary land tenures itself changes through the practice of registration, and techno-managerial solutions are not merely neutral tools of management to achieve a given task, but are themselves actors imbued with political agency and carriers of (new) norms in the governance of land.

Chapter 5: Evaluating major assumptions in land registration: Insights from Ghana's context of land tenure and registration[*53]

[53*] This chapter is based on a published paper: Abubakari, Z., Richter, C., Zevenbergen, J. A. (2021). Evaluating major assumptions in land registration: Insights from Ghana's context of land tenure registration. *Land* Vol. 9, Issue 9, 281.

5.1 Introduction and approach

Land registration is underpinned by some fundamental assumptions, which are implicit but tend to drive implementation practices and approaches. How these underlying assumptions manifest themselves in practice changes across time as approaches and rationales to land registration evolve. Since the early 1980s, efforts for land registration have witnessed an increase across the globe. The World Bank and other development agencies as well as local governments have made interventions on legal and administrative reforms that seek to improve land rights recording (Deininger, 2005). This has been encouraged on the one hand, by positive outcomes of land registration observed in the global north, and on the other hand, economic theory that highlights a causal relationship between land registration and asset capitalization. The economic theory suggests that similar outcomes of registration as observed in the global north could be achieved in the global south (De Soto, 2000a). Although not without critique, De Soto's argument renewed the push for the formalization of land rights in many countries at the beginning of the 21st century. In response to these calls, many countries with emerging land registers have increased the tempo of land rights recording since the early 2000s.

In spite of the manifest desire and attempts to document land rights, coverage of and access to formal systems of registration have remained very low. It is argued that majority of land holders still do not have access to land registration systems, mostly in the global south (Enemark et al., 2014). Explanations relate to how the earlier attempts of land registration in the global south were conceived and implemented. These so called conventional systems (Bennett et al., 2013; Tuladhar, 2003; van Asperen, 2014) were merely a transplant of the western systems of land registration (UN-Habitat, 2019) underpinned by technological solutionism and mostly implemented in a top-down fashion. The focus on land tenure reform through technocratic and legal solutions, rather than finding ways to represent tenure in its socio-cultural complexity, for example, has been one of the landmark commitments of the World Bank and other international donor agencies as part of the contemporary neoliberal development agenda in Africa (Collins & Mitchell, 2018). However, given the limited impact of this approach in terms of cost, flexibility and speed, the agenda on land registration for the developing world, including Africa, has shifted considerably in favour of approaches that are more flexible, representative and context driven. The new approaches come under the banners of pro-poor land recordation since 2007 and fit-for-purpose land administration (FFP-LA) since 2014 (Enemark et al., 2014; Enemark et al., 2016; UN-Habitat, 2007; Zevenbergen et al., 2013). The term "pro-poor land recordation" refers to initiatives of land rights recording that seek to address the needs of the poor, because it has been recognized that poor and marginalized groups have been neglected or negatively impacted by land rights

documentation efforts in the past (Lengoiboni et al., 2019; UN-Habitat, 2007). FFP-LA refers to land rights recording approaches that are flexible and focused on serving the purpose of a land administration system rather than focusing on the deployment of top-end technical standards (Enemark et al., 2014). FFP-LA also advocates the recording of diverse land rights, including those held by the poor and marginalized such as secondary rights (Enemark et al., 2016). Thus, the scope of FFP-LA implicitly reflects the essence of pro-poor land recordation since it seeks to address among other things the needs of the poor and marginalized.

In terms of implementation, of both conventional and FFP-LA approaches of land registration are interlaced and play in different and common ways towards the delivery of land registration services. Both approaches are often combined as most of the existing cadastres are built on conventional approaches (Enemark et al., 2016). Therefore, the operationalization of FFP-LA approaches takes two forms. On the one hand, they serve as substantive approaches in contexts where fresh land registers are compiled like in the case of the Rwandan land register (Enemark et al., 2016). On the other hand, they serve as complementary approaches when they are integrated into existing conventional approaches to enhance coverage and to catalyse the rate of recording.

Although FFP-LA explicitly seeks to remedy the problems and sometimes negative effects of earlier conventional systems of recordation, these newer approaches seem to run into a set of problems and challenges (Lengoiboni et al., 2018; 2019) that are not unlike those of conventional systems. Uptake and scaling remain difficult; documentation processes become biased through stakeholder politics and lack of interest on part of land holders; financing and data protection pose further challenges.

These observations led us to wonder, if the reasons for the difficulties to register land lie, at least partially, outside of the realm of differences in technology or procedures and even outside of the debate regarding top-down state-driven versus bottom-up citizen-led approaches. Instead, this study aims to explore whether there are assumptions at work at a more fundamental level that cut across and hence mess with approaches regardless of technological and institutional details and differences. Drawing on existing literature on land registration in conjunction with empirical research on land transfers and registration in Ghana over the past four years, we identify and discuss three such generic assumptions underlying conventional land registration systems. They also have implications for newer fit-for-purpose (FFP) approaches, albeit in different form. Although the assumptions are simple enough, we argue that a renewed reflection and a critical re-engagement with them increases the

chances for success in land rights registration across a variety of approaches from conventional to FFP.

The chapter is structured as follows. Section 5.2 describes the three assumptions in land registration and how they manifest in conventional land registration approaches, in how far there are reasons to doubt the general applicability of the assumptions and what they imply for newer FFP approaches. In a second step, in section 5.3, we play the assumptions against the empirical details based on a four-year research in Ghana's land registration context. This allows us to fine-tune the assumptions based on empirical realities; and to make this explicit we add small, simple qualifications to each assumption that may serve as sort of "prompts" to make the implementation team and promoters aware of and to explore possible context-specific deviations from oft-held assumptions. In a final step, in section 5.4, we highlight the main implications of our study for FFP-LA. To explicate the implications more clearly, we provide a number of questions that may allow other researchers and stakeholders in registration projects to re-engage with some of the fundamental assumptions in land rights registration in a constructive manner.

5.2 Major assumptions in land registration

Assumptions are implicit premises for thought and action, that may be unconscious, or at least unnoticed, and that people can consciously attend to (Delin et al., 1994). In other words, they are unstated reasons that a person actually used consciously (or subconsciously) as a basis of argument or action (Ennis, 1982). Assumptions therefore exhibit subtlety of a mental orientation that directs or induces action consciously but often unconsciously. Assumptions evoke the impression of incomplete information based upon which we fill in the blanks with our own interpretation using fore related knowledge and experiences.

With respect to land registration, we discuss here three general assumptions that underlie conventional land registration approaches and also show what such assumptions imply for the emerging FFP approaches. These assumptions include; (1) land rights registration is desirable (2) all land rights are registrable, and (3) access to a registration system is an administrative event. We first explain each of these assumptions as they manifest in conventional land registration approaches. Second, we discuss arguments that shed doubt on the general validity of each assumption, and thirdly, we briefly discuss what it might imply for FFP-LA approaches.

Assumption 1: Land rights registration is desirable

Many scholarly arguments have been advanced on the potential benefits of land registration for both state and citizen including tenure security, credit

access, investments and economic development (Antwi-Agyei, Dougill, & Stringer, 2015; De Soto, 2000a; Feder & Nishio, 1999; Rockson et al., 2013). For example, in the capitalist economies of the global north, De Soto (2000) has argued that land registration has strengthened wealth creation through a seamless integration of real property and the financial and juridical systems, which in combination unlocks the capital value of property. These arguments characterize and underpin conventional land registration thought, and at a very fundamental level, imply an assumption of general desirability of land registration. The assumption of a general desirability underlies many conventional top-down approaches pursued by donor agencies and national governments through state agencies involved in land registration. As a result, the desirability of registration for a particular locality is often predetermined by either the donor and/or the government (Toulmin, 2009).

However, given the variations in the rules of land tenure and associated political structures across communities in most parts of the global south including Africa, uniform top-down strategies hardly meet local needs. Contextual differences are important, and account for variations in the desirability and outcomes of land registration. Key context-dependent variables, which influence the desirability of registration include: differences in terms of groups of society, the relative effectiveness of systems without registration, and at what point in time registration is supposed to or takes place. These variables change as needs for registration at the individual and community levels change through time as a community develops (Szreter & Breckenridge, 2012). Hanstad (1998) outlines five conditions that make land registration desirable in an area: (a) where land tenure insecurity restrains development (b) where there is early development of a land market (c) where there is high incidence of land disputes (d) where a need to establish a credit base emerges locally and (e) Where a redistributive land reform is contemplated. These conditions give an indication of the moment in time when a land registration intervention may be desirable. However, many land registration programs on customary land in Africa have failed because they did not take into proper consideration the local conditions necessary to make them effective (Barry & Danso, 2014). For instance, contrary to the optimistic arguments that suggest a general desirability of land registration, counter arguments have been made regarding how land registration in certain contexts engenders marginalization and landlessness of the poor and vulnerable in society (Atwood, 1990). Atwood (1990) argued that land registration could engender marginalization and landlessness when individuals appropriate for themselves exclusive ownership rights on lands that were previously accessible to community members as communal lands. Even some commentators, who argue strongly for the universal desirability of land registration, acknowledge the existence of tenure security among indigenous people in the absence of registration (Feder & Nishio, 1999). It is therefore important to recognize that

the effectiveness of land registration systems like other information systems increase when people see the need to interact with them and use them as basis for transactions and defense of tenure security (Barry & Kingwill, 2020; Davis, 1989).

For bottom-up FFP approaches of land registration, which tend to emphasize local relevance, it is important to reflect on the question of desirability not only in relation to potential benefits but also in relation to the readiness of general local conditions. Given the pronounced role of non-state actors in FFP approaches and the need for contextualization, it is crucial to allow the needs for registration to naturally emerge locally to some reasonable extent before a registration intervention. When this happens, landholders are more willing to undertake registration on account of personal awareness which helps to keep the register up-to-date. Assuming a general desirability for registration potentially leaves a gap between the local reality of landholders on the one hand, and administrative expectations on the other. The incorporation of the notion of "sensitisation" in FFP approaches signals the existence of such gaps(Hendriks et al., 2019; UN-Habitat, 2019; Zevenbergen et al., 2012b). The notion of "sensitisation" implicitly suggest that land registration is generally speaking desirable, and here, care has to be taken to weigh the potential pros and cons of such endeavours on a case by case basis. Although the FFP implementation guideline is elaborate and comprehensive, it is somewhat silent on these critical success factors necessary to drive and maintain land rights recording at the community level such as political, economic and socio-cultural contingencies (Barry, 2018).

In sum, the desirability of land registration for a given socio-political space is evolutionary and needs to be assessed to ascertain that epochal moment when the prevailing circumstances are ripe for registration, that is the moment when registration makes sense socially and economically. Migot-Adholla et al., (1991) made a similar argument that the timing of the deployment of land registration among other things determines the economic viability of land registration.

Assumption 2: All land rights are registrable

One of the purposes of land registration is to provide an inventory of land rights in terms of both ownership and occupation (Simpson, 1976). Such endeavours of recording signal the pursuit for full knowledge of territory which lies at the heart of the modern state's legibility making processes (Scott, 1998). The very concept of the modern state presupposes a vastly simplified and uniform property regime that is legible and hence governable from the centre (Scott, 1998). Accordingly, the desire for full cadastral coverage is seen as an end goal for many countries especially those with emerging cadastres. More importantly in recent times, full cadastral coverage even serves a bigger function as a

global benchmark for the exploration of business opportunities. For example, the World Bank in its flagship Doing Business Report (2019) designates cadastral coverage as one of the five dimensions for measuring the quality of land administration index. To attain full cadastral coverage, some form of law is needed as reference and basis for the identification and recognition of land rights as noted by McAuslan (1998) in his study of the role of law in land rights documentation. McAuslan indicates that attempts at facilitating the formalization of land rights in Africa by donor agencies often begin with the development of appropriate legal framework. A similar argument is made by FAO (2017) in the Governance of Tenure Technical Guide 9 as well as FIG in its publication 60 on FFP-LA. These arguments therefore suggest the assumption that all land rights can be defined clearly in law and accordingly registered, for example, through adjudication. Such thoughts align closely to the context of a strong state, and reflect the western conception of property and ownership as relatively definitive.

In plural cultural and legal contexts however, the perfect representation of all land rights would inevitably imply the incorporation of other sources of law into statutes since land rights are constructed based on different sources of law. Such an endeavour can be both extraordinarily difficult to draft and practically difficult to implement due to the overly dynamic nature of some land relations (Knight, 2010). As observed by Kingwill (2011), social property regimes display characteristics that are not easily quantifiable since property relations hinge on localized kinship and community networks that defy western conceptualization of ownership. Knight (2010) therefore cautions that codification should allow a space for custom to freely evolve in a way that addresses the changing land-related needs of community members.

As FFP approaches seek to address the shortfalls of conventional approaches, they advocate for inclusivity of diverse rights both in law and in practices of recording. Here the focus is not so much on primary rights only, but it is about recording the totality of socio-spatial relations, whether primary or secondary and regardless of formality. As argued by UN-Habitat (2019), the existence of a recorded primary right should not alter the ability to record an existing secondary right that is acknowledged by the community. This new conceptualization of land rights opens more opportunity for the acknowledgement and recognition of diverse land rights especially in contexts of pluralism and underscores the need for contextualization. Thus, what might be considered FFP depends on the needs of a particular context. However, the FIG Publication 60 on FFP-LA (2014) calls for the enshrinement of the FFP approach in law in the following wording; *a country's legal and institutional framework must be revised to apply the elements of the fit-for-purpose approach. This means that the fit-for-purpose approach must be enshrined in law*. While changes in legal and institutional framework might allow for more

flexibility in the manner in which land rights are recorded, attempts to enshrine the FFP approach in law may be somewhat self-defeating. This is because the FFP approach is not one coherent set of strategies that apply uniformly across a jurisdiction (say a country) as law is usually applied. It is important to recognize that strict codification might strip FFP approaches of the flexibility required to record the ever-changing non-statutory land rights which are held by majority of landholders in Africa. Moreover, the fact that customary law (including land relations) evolves and is not static, means codification would imply a foreclosure of further evolution which in itself defeats any FFP agenda.

In sum, while a certain degree of codification is required to give direction, a strict form of it might entail a transformative effect that might engender exclusion. Additionally, the processes of legal change are daunting, and may take very long to achieve (McAuslan, 1998). Therefore, a balance is required to determine in how far codification will still keep the FFP rationale relevant.

Assumption 3: Access to the registration system is an administrative event

As a process of legibility making, cadastral development is largely a state dominated endeavour that is used to achieve many aims of the state. The state assumes the role of an implementor and uses its administrative machinery to map and simplify its territory into administrative grids (Scott, 1998). While the endeavour of land registration manifests differently across strong and weak states, it is essentially regarded as an encounter between citizen and state (Szreter & Breckenridge, 2012), the success of which is influenced by the behaviour of both actors. From the point of view of most conventional land administration we could think of these two macro actors (Callon & Latour, 1981) in abstract terms as "the surveyor" and "the surveyed". "The surveyed" responds differently depending on the nature of the activities of the "surveyor" in terms of time, cost and complexity. Observing such a cause-effect relationship between "the surveyor" and "the surveyed", both scholars and implementing agencies have focused on how to make land registration organizations more efficient through the proper configuration of their internal working protocols (Biraro et al., 2015; Chimhamhiwa et al., 2009; Enemark et al., 2014; Cotula, Toulmin and Quan, 2006; Zevenbergen et al., 2013). The internal processes of land registration organizations are viewed as the focus for necessary changes to facilitate both access and productivity of land registration services. Thus, conventional systems of land registration assume that causality runs from administrative efficiency to accessibility of land registration services. A very tangible reflection of such an assumption are online portals that grant access to state held information and services, but also offline portals, such as one-stop-shops for citizen service delivery.

However, it is vital to recognize that access to registration is not entirely a technical question which administrative ease would resolve. More importantly, access to land rights and subsequent registration also derives from and is underpinned by socio-political struggles and strategies for example across gender and between hierarchies of actors within land governance structures (e.g. chiefs vs subjects). In this sense, the ability of a landholder to undertake land registration, say, at a one-stop-shop is only the "tip of the iceberg", and represents a myriad of exchanges and interactions between varied actors in the governance scene. For example, many studies have found that females in many contexts of tenure are denied or given weaker land rights based on customs, social constructs and local politics (Abubakari, et., 2019a; Bugri, 2008; Szydlik, 2004; Feder & Nishio, 1999). Such studies explicate the position that access is partly determined by socio-cultural practices of land holding aside administrative ease.

Although FFP approaches seek to enhance accessibility by bringing registration to the doorstep of landholders in ways that are mostly labelled as "bottom-up" or "participatory" (Lengoiboni et al., 2019), not much can be achieved if the social processes that produce land rights are in themselves exclusionary. This draws attention to the fact that access in a broader sense goes beyond proximity and participation. The idea of grassroot participation hinges on the assumption that land holders at the grassroot have limited access to formal registration which holds to a greater extent but not entirely (UN-Habitat, 2012). Therefore, there is a need to consider critically the dynamics of land access when thinking of grassroot participation in land registration.

In sum, the ability of a land holder to get his/her rights registered hinges on access to the right itself within the social group, and subsequent access to the system of registration, and the latter depends on the former (Peters, 2009). Furthermore, as land holding practices evolve, land rights allocation to different categories of people might be an instigated response to the effects of registration observed over the years. For fear of creating proprietary rights and exclusion, certain categories of land holders may not be allowed to register land which they are permitted to use in practice (Hall et al., 2011). Conventional approaches of land registration over the decades have produced individual exclusive rights as outcomes (Juul & Lund, 2002) and these thoughts remain with land holders even when they encounter FFP approaches which might have different outcomes like the recording of collective rights. Fears of land rights conversion in the event of registration (i.e. secondary to primary) need to be allayed. This might require that the sensitization programs in FFP approaches go beyond emphasizing the need to register, and make explicit the fact that secondary rights can be acknowledged and recorded as such along with subsisting primary rights without transforming the former to the latter (UN-Habitat, 2019)

5.3 An evaluation of the general assumptions for inherited property registration in Ghana

In this section, we evaluate each of the assumptions outlined in section 2. We do this through a meta-interpretation of our research conducted in Ghana between 2016 and 2019 on land transfer and registration, particularly, the practices of holding, transferring and registering inherited property (chapters 2, 3 and 4). By interpreting our findings through the lens of the three assumptions, we explain in the following how the outlined assumptions relate to the Ghanaian context in order to illustrate both convergences and divergences.

5.3.1 Land rights registration is [sometimes] desirable [to some, while not to others]

As shown in the literature and land registration interventions across the globe, registration is generally regarded as a desirable endeavor for all (De Soto, 2000b; Deininger & Feder, 2009; Feder & Nishio, 1999). In our study in Ghana however, we observed a variation in the desirability of land registration across urban and rural areas and across different types of landholdings (chapter 4). For rural areas, the need to register land hardly arises, neither from the point of view of tenure security, nor from points of view of economic benefits. Through local structures of authority which are sometimes shrouded in spirituality (e.g. the institution of earth priests in Bongo), landholders can ascertain ownership and settle land disputes locally without the need to call upon the state through registration or court (chapter 3). Additionally, given the relatively higher indigenous population composition of rural areas, dwellers are able to use existing social networks and shared local spatial knowledge to identify and testify ownership and use of land for one another. Such intervening socio-cultural structures alleviate the need for registration. This scenario demonstrates the land registration usage theory (Barry & Roux, 2013) and shows how alternative strategies are used to secure land rights and thus highlights the ineffectiveness of existing recording systems in these rural areas as background reference (Barry & Kingwill, 2020; Barry & Roux, 2013). Moreover, the interrelationships between different land rights that coexisted more or less peacefully under customary norms come into dispute when they encounter registration. For example, the registration of individual primary rights for males in patrilineal communities of the Upper East region excludes females who have secondary rights on the land of a deceased male. Thus, while the actual benefit of registration in the eyes of landholders in these areas may be very little if any, it tends to heighten sensitivity in land claims among landholders within families (chapter 4). This transforms the hitherto complementary relationship between holders of primary and secondary rights into one of competition and hostility, which can have dire consequences for the

livelihood of secondary right holders. Therefore, in the eyes of these rural communities, registration is less desirable and benefits less perceivable. However, as time goes on and these rural communities develop, the needs for registration are likely to increase as population and economic activities increase. This expectation is based on observations in urban areas.

For urban areas (Kumasi and Bolgatanga), the needs for registration are generally high due to high property values and likelihoods of adverse claim of property from within and outside one's family. Although such high stakes suggest the general desirability for registration in urban areas, the desirability of registration at the micro scale of individual successors of inherited property still hinges on the counter-weighting of legitimacies from within the family (non-registration) or with the state through registration (chapter 4). These processes of legitimization are avenues that successors explore to secure tenure depending on the happenings within the patri/matrilineage after the sharing of inherited property. They engage in strategic choice making to figure out whether or not to register. In this way, successors do not see registration inherently as desirable. Rather, it is seen as a situational and reactionary response that is called upon relative to intra- and inter-family dealings. For instance, in Bolgatanga and Kumasi, when heirs inherit different rooms across different buildings or different sections of the same building, they see little need for registration as the collective ownership serves as a form of tenure security against external claims. However, the desirability for registration among successors increases when they inherit a whole property (chapter 4). In this sense, registration helps them to delineate the property from the family circles.

What we then see across both rural and urban areas is that landholders, including successors of inherited property are constantly searching for tenure security from sources that best serve their interest at given points in time. They strategically negotiate between the family/community and the state with the former being the default consideration and the latter serving more as an alternative when the former fails. Whether, when and for whom registration is desirable is therefore highly context dependent.

5.3.2 [Many] land rights are registrable [but not all, unless we accept a loss in meaning]

The assumption that all land rights are registrable is closely tied to the notion that land rights can be perfectly represented in law as basis for registration or that law can give definition to existing land rights. The situation in Ghana reflects this assumption. Prevailing land registration laws in Ghana provide some level of diversity in the recognition of land rights. The Land Registry Act deals with deed registration and covers most parts of the country while the

Land Title Registration Act deals with title registration so far only in certain areas. Given the diversity in customary land rights in Ghana, the laws implicitly and explicitly recognize and allow the registration of diverse land rights. For example, the Land Registry Act provides room for the registration of documents covering land rights. The law, however, does not specify the types of land rights by name, but refers to such documents covering land rights collectively as *instrument*s (chapter 2). Such a generalization creates ambiguity, but at the same time opens room for interpretative flexibility during implementation. This can be regarded as an implicit recognition of diverse land rights. In a more explicit way, the Land Title Registration Act, which sought to improve deed registration specifies the types of registrable land rights in section 19(1), ranging from allodial rights (highest inalienable corporate right) to customary tenancies and also made provisions for overriding interests in section 46.

Whereas these laws embrace diversity, there are still some rights that are not captured such as communal and secondary rights, which are highly dynamic in nature (chapter 3). For example, the rights of females in the patrilineal practices of the Upper East region are of a special character. Neither are they fixed in time span, nor flexible in terms of use and disposition, but are subject to conditionalities such as the time of marriage, whether or not an unmarried daughter would stay at the natal home and give birth to children outside marriage, and whether a widow would stay or remarry within the matrimonial home or elsewhere. Similarly, rights over property held by family heads (in the Upper East region) and customary successors - nephews (in the Ashanti region) are fiduciary rights that cannot be appropriated in anyway by the individual holder but are subject to broader family discretion and cultural orientation. Some other rights are associated with spiritual connotations as for the spiritual sites (sacred groves and the paths of the gods) held by the earth priest which are in themselves fuzzy in extent and vary across time. These rights do not relate to specific geometric parcels of land, but are subject to the movement of the gods. Their nature is characterized by changes in a manner that cannot be captured at certain nodes or instances across linear time. As such they contradict the notion of rights as stable at a given point in time. Therefore, their fluidity makes them unregistrable in the sense that recording them would inevitably change their nature or discard them altogether despite their relevance in the community as source of spirituality and identity (chapter 3). In sum, the codifying of such types of land rights cannot be achieved without altering the social functions and meaning that they hold in a given context.

5.3.3 Access to the registration system [can be] an administrative event between surveyor/surveyed, [but it is often a process of connecting multiple actors and practices]

In Ghana, the Lands Commission represents the statutory side of land governance. Within the Lands Commission, so called CSAUs (Client Service Access Units) have been established in order to provide an interface for interaction with landholders. However, the supposed official activity (event) that is envisaged to take place at this interface turned into a series of encounters between Lands Commission officials (in their informal role) and landholders which in itself determines ease of access to land registration services for landholders apart from official procedures (chapter 4). Aside activities at the Lands Commission, evolved land governance structures (centralized and decentralized) also influence accessibility to land registration.

Within each land governance structure, different sets of actors play varying roles. These actors include traditional authorities, Customary Land Secretariats (CLSs), individual landholders and groups as well as estate agents and legal professionals. Here we already see that the scene of administration in itself is hybrid stretching across the state's bureaucratic space and that of the customary (chapter 2). This dichotomy, however, is still much too simplistic. The cross-cutting of statutory/customary and centralized/decentralized binaries are further differentiated by the workings of different sets of norms: the official and social respectively. This debunks the assumption of a monolithic state (that surveys its territory). Rather, the "surveyor" here is a constellation of state and non-state actors, who coproduce agency in land registration. The emerging processes and practices of registration are also different and patterned by region (centralized in Ashanti region and decentralized in the Upper East region). Under the centralized land governance structure, the role of the CLSs is relatively stronger since they exclusively prepare deed documents for onward submission to the Lands Commission. However, under the decentralized land governance structure, there is an undefined constellation of actors, who engage in the preparation of deed documents namely, the CLSs, estate agents, legal professionals and Lands Commission officials (informally) (chapter 2). These variations at the initial stages of registration explain, how access to land registration services is gained, restricted or denied outside of the Lands Commission's bureaucratic space. For example, in the Ashanti region, the exclusive role of preparing deed documents by the CLS has been used as a tool by the traditional authorities to grant selective access to registration. They do this by reducing registrable deeds to only purposely allocated leaseholds, neglecting all other rights that are greater or lesser than a leasehold, which naturally accrue through one's membership to the corporate land-owning group such as usufructuary rights. The potentially

perpetual rights of usufructs are either truncated to leaseholds or denied altogether, because they are seen to constitute a threat to the land control of traditional authorities. To legitimize these tactics, traditional authorities interpret article 267 (5) of the 1992 Constitution of Ghana to imply the prohibition of freehold interests and other potentially perpetual rights such as the usufructuary rights. Therefore, the CLSs role of preparing deed documents for customary land now feeds into a political strategy that seeks to foment land control in the traditional authority helping them to strategically shift and redraw the boundaries of inclusion and exclusion. In the Upper East region however, while there is no concerted effort to engender selective access to registration, the reliance on existing deed templates and low capacity of CLS officials has similarly resulted in the registration of leaseholds, truncating usufructuary rights and neglecting lesser rights. In this sense, access to registration in itself is more of a negotiated process. The unevenness of outcomes of such "access-ing" is shaped and can be explained by both administrative inefficiencies (in the Upper East region) and political strategies (in Ashanti region). Rather than a straightforward exchange at a one-stop-shop between the "surveyor" and the "surveyed", gaining access to land registration services and the eventual registration consists of dynamically changing relationships between multiple governance actors. To them, access is not merely an event, but consists of a process of negotiations within governance structures that serve varied interests and capacities.

5.4 Implications and key questions for the implementation of FFP-LA

In this section, we draw insights from sections 2 and 3 to discuss the main variables that can inform a reflection and debate of the outlined general assumptions as FFP-LA together with conventional approaches move forward. While the highlighted assumptions in land registration continue to serve as positive push factors and justifications to enhance proactive thinking and action, they have the tendency to alleviate the need to zoom into empirical realities, and this can make them problematic to the success of implementing land rights registration practices and technologies. When an assumption is discussed in the light of given empirical situation, it can be modified or finetuned to closely reflect reality (Eigi, 2013). Applying Eigi's argument to the context of land registration, we discuss some general assumptions in the light of specific contexts for intersubjective acceptability. Scrutinizing each assumption against the realities of a given empirical situation or implementation scenario in the field can be a tool to not only avoid problems in the long-run due to (partially) faulty assumptions, but it can help fine-tune the process of implementing conventional as well as FFP approaches or a combination thereof.

To engage in the scrutiny, we provide here a number of questions that may allow researchers and stakeholders in land registration projects to re-engage with some of the fundamental assumptions in land rights registration in a constructive manner. The three sets of questions discussed below are meant to serve as entry points into the empirical scene from the point of view of each of the three assumptions that we have discussed in this chapter.

First, for desirability, we suggest asking the questions*, what are the socio-political reasons to register/not register for different groups; and how do they change through time?*

Often, the desirability of land registration is discussed in more generic ways unshaped by different perspectives and interests. It is especially important to consider variations in desirability especially in contexts where the state does not have absolute control over land and where registration is voluntarily sporadic. There is a further paradox in these situations, where some agencies of the state may envisage the need to have land registered, but at the same time leave the initiative to the landholder, who by his/her circumstance does not see the need to register (Barry & Danso, 2014). Sewornu (2018), argues that without understanding the underlying reasons why landholders choose to use land registration systems or off-register strategies to secure their land, it is difficult to target aspects of the land registration system for improvement. At the micro level of individual land holders, the need for land registration might be occasioned following the occurrence of certain events such as intra-family contestations. However, if such needs do not arise, little/no effort is made to undertake registration. This shows that land registration might not be seen as inherently desirable by land holders especially in rural contexts. It is therefore important to identify the reasons why different groups of land holders might be interested in registration or not, and the factors that drive change in such decisions. This helps in finding out the appropriate time and manner to intervene with land registration. At the macro level of the state, it is understandable that governments are sometimes torn between their local realities and the requirements of donor agencies which add a second layer of political twist beyond the state's own political agenda to promote registration (McAuslan, 1998). This political twist has been at play in many land registration interventions in developing countries since they are mostly funded by donor agencies (McAuslan, 1998). For FFP-LA, there is the need to keep a balance between the state's desire to undertake land registration and the reality of landholdings and local economy within a community. If the local economic circumstances are ripe, it might be sufficient to entice people to undertake registration after an initial register is compiled. Figuring out the right time to deploy land registration can go a long way to promote sustainable land registers. However, it is important to mention that, where local conditions do not appear to be ripe for mainstream land registration interventions, local

systems of recording can be relied upon for upscaling later on, using flexible standards and gateways (Braa et al., 2007). For Ghana in particular, the Customary Land Secretariats (CLSs) can be instrumental in recording land rights at the local level for mainstreaming at a later time.

Second, for registrability, we suggest asking the questions; *how do rights change through codification; and what are the pros and cons, for whom? What rights cannot or should not be codified and hence need to be protected (if they need to be protected) by other means than registration?*

Registrability of land rights has been topical in both conventional and FFP approaches and has dominated discourses on land rights recording for decades especially for customary land rights (Barry & Augustinus, 2016; De Soto, 2000a; Enemark et al., 2014; Feder & Nishio, 1999; Zevenbergen et al., 2012a). While mapping land itself might be straight forward, mapping land relations can be complex and difficult to fit into predesigned administrative schemas. The difficulty lies in keeping a balance between recording and transformation, which is characteristic of land registration endeavours. It is vital to recognize that registration not only "maps what is there", but changes or catalyse changes in the social relations (family, clan, and tribe) by changing people's and group's relations to space especially where both private and communal rights of landholders overlap (Kingwill, 2011). As noted by Scott (1998), the cadastral map does not merely describe a system of land tenure; it creates such a system through its ability to give its categories the force of law. Thus, for FFP-LA, it is important not to obstruct relevant locally constructed land relations but to record them as is, so as to alleviate the transformative effect of land registration. For example, in the Upper East region of Ghana, we find highly dynamic rights for female heirs and earth priests, which by their nature are difficult to record and if at all any such efforts are made, they more or less result in transformation rather than representation of the existing rights, which might create the very problem that registration in itself sought to solve; insecurity of tenure. Therefore, land law, which is often used to redefine land rights in most land registration campaigns can be used to make express definitions of de facto land rights where possible while allowing alternative means of protection for highly dynamic land relations that bear local relevance even if no recording is done.

Third, for accessibility, we suggest asking the questions; *what are the current practices and underlying norms that provide access; and what are the variations in such practices across a territory in question (e.g. a nation state) and different forms of access and involved actors?*

Access to land registration is embedded in socio-cultural practices of land allocation, practices of landholding as well as practices of land registration

unlike some western contexts where access to land registration is contingent on the nature of interactions that ensue between state and citizen during registration (Szreter & Breckenridge, 2012). To conceive access purely as a state-citizen encounter appears narrow, and needs to be broadened especially for contexts where there are multiple layers of actors in the registration process due to the nature of land tenure. Where traditional authorities (non-state) play a substantial role in land control and registration, access to registration then becomes an encounter of differential powers embedded in socio-cultural structures of land governance and social stratification (Abubakari et al., 2018). For example, intra-family arrangements such as the definitions of who qualifies as a permanent or temporary lineal member by far determines how secondary and ownership rights to property are allocated (Abubakari et al., 2019b). By limiting certain groups of people to secondary rights, their ability to benefit from land in certain ways including registration is hindered (Ribot & Peluso, 2003). Socio-cultural strategies like the allocation of secondary rights to female heirs in the Upper East region result in non-registration since male members (holders of ownership rights) do not allow them to register such rights for fear of transforming them into exclusive individual rights. Even during the processes of registration, we see the effect of power differentials in the Ashanti region where chiefs foment land control by barring the allocation and registration of potentially perpetual rights like the usufructuary rights. Thus, the socio-political or cultural forces that produce land rights differentiation between chiefs and subjects, male and females, for example, can be deemed in themselves as determinants of accessibility aside administrative bottlenecks. Therefore, for FFP-LA, it is important to focus on the influence of power differentials in the process of surveying and registration, for example, by ensuring that different types of actors are included in both the design and implementation stages.

In sum, for land registration to really meet the objectives of being FFP, we need to look critically into contextual realities and evaluate the specific needs or constraints thereof within communities. Why registration is needed, when and from whose perspective needs to be understood hand in hand with the underlying social structures through which land rights are accessed or denied. A clear understanding of these variables is useful in setting the foundation for recording practices that closely reflect the empirical context. A reconsideration of some of the major assumptions running across various registration approaches can be part of a constructive way forward in the way land registration programs are designed and carried out.

Chapter 6: Conclusions and direction for future research

6.1 Introduction

Land information enhances decision making, revenue generation, security of tenure and land market operations. Therefore, the currency of land information is important as it gives a reflection of the reality. Keeping the land register up-to-date has been a challenge for many countries as land transfers in many places are not promptly reported for recording. Accordingly, scholars set out to identify the underlying reasons for such occurrences and their origins. So far, scholars have focused their attention on the internal functioning of land registration organisations in search of problematic features that drive the non-reporting of land transfers. This leaves a gap in understanding on how factors outside of the organizational setting also drive the non-reporting of land transfers. This thesis fills this gap, by seeking to understand how inheritance practices and the plurality of their legal underpinnings influence the processes of updating land information in the African context for the case of Ghana. This broader objective has been divided into three sub-objectives namely;

- To understand the rules of land tenure in the study areas and the extent to which they align with formal land registration in practice.
- To understand the diversity in inheritance practices and how they are influenced by different laws in the study areas.
- To analyse the extent to which the non-registration of inherited property derives from both bureaucratic and socio-cultural practices.

Section 6.2 presents a summary of the main findings for each sub-objective. Section 6.3 presents a summary of the research synthesis and general conclusion of the thesis in section 6.4. Section 6.5 presents a reflection on the contributions of the study as well as its limitations and directions for future research.

6.2 Summary of main findings

6.2.1 To understand the rules of land tenure in the study areas and the extent to which they align with formal land registration in practice.

This sub-objective provides an understanding of the nature of land rights within the study areas, how they are accessed, held and transferred. Additionally, the chapter gives an account of the processes that are followed in registering land rights across the Customary Land Secretariats (CLSs) and the Lands Commission (LC) and highlights differences between registered and existing land rights and the reasons that pertain thereto.

Land tenure in the study areas and Ghana in general is dominated by customary tenure where traditional authorities in the form of chiefs, earth priests[54] and family heads act as fiduciaries and hold land in trust for their respective landholding groups. Land governance is patterned into regions of centralized and decentralized structures. In the centralized governance structure, land ownership and political territorial control are conflated and woven into the chieftaincy hierarchy. In other words, chiefs govern both people and land. In the decentralized structure, land ownership resides with the institution of earth priest while chiefs govern people and exercise only political territorial control. However, in both land governance structures communal ownership of land is a characteristic feature. Chiefs and earth priests hold the allodial rights as fiduciaries on behalf of the members while indigenous members of the social group (family or community) have access to a range of land rights with the highest being a potentially perpetual right called usufructuary right. Other smaller customary land rights include shared tenancies and licenses. Leaseholds are also found in the study areas although the concept of leasehold is of European origin. The study findings indicate that the widespread emergence of the leasehold serves the economic function of land as it enables traditional authorities to commoditize and profit financially from the renewal of land holdings by adding time limitations to it use and occupation.

Although the role of customary institutions in land control is significant, they are still subject to the national legal framework of the Ghanaian state. The 1992 Republican Constitution of Ghana as well as the Land Registry Act (1962) and the Land Title Registration Act (1986) give a legal definition of the types of land rights albeit in different forms. These laws are implemented through a hybrid administrative scene that comprises both statutory and customary actors resulting in a two-phased registration process. The first phase entails land allocation and preparation of deed documents by the CLSs while the final registration takes place during the second phase at the LC. The outcome of the two-phased process results in only leaseholds. Explanations to this cut across the two phases and vary by region. In the first phase, two reasons were found. One reason is the assertion of land control by chiefs in the Ashanti region where some constitutional provisions are interpreted to imply a prohibition of the grant of perpetual rights. Thus, all usufructuary rights are truncated wilfully into leaseholds during the preparation of deed documents. The second reason is low administrative capacity of CLSs staff in the Upper East region. Essentially, the outcome of the first phase serves as input for the second phase, thus, misrepresentations of land rights in deed documents at the CLS's due to power assertion (as in the Ashanti region) and low capacity (as in the Upper

[54] The local Ghanaian term for earth priest is "Tendaana" which literally means land owner

East region) are carried over to the LC where they get registered. Even within the second phase in the LC, the use of narrow terminologies in the LC operational manuals to describe grants (as lease), grantee (as lessee) and grantor (as lessor) gives the impression as though leaseholds are the only registrable land rights.

Thus, from a legal standpoint, there is an established alignment between existing land rights and those enshrined in law. However, from the point of view of practice as carried out through a hybrid administrative setup, there is a misalignment between existing land rights and land rights that eventually get registered. This misalignment results in an implementation gap, where the processes of registration result in only leaseholds.

On this sub-objective, the study concludes that, the mere recognition of existing land rights in law does not guarantee the registration of diverse land rights. Instead, such attempts of recognition should take into consideration the power differentials among different actors as well as the implementation procedures necessary to support a practical realization.

6.2.2 To understand the diversity in inheritance practices and how they are influenced by different laws in the study areas.

This sub-objective delves into and explores the legal underpinnings of inheritance practices across the study areas. Specifically, it aims to identify, how the legal underpinnings manifest and what type of property relations they produce.

In Ghana, the Wills Act of 1971 (Act 360) and the Intestate Succession Law of 1985 (PNDC Law 111) are statutes that regulate testamentary disposition and intestate succession respectively. Additionally, there are unwritten customary laws on inheritance, which differ across communities and tribes and are patterned according to patrilineal and matrilineal systems. A third layer of inheritance laws are religious regulations, which vary by the faith of religious groups and cut across communities and tribes. While the statutory laws apply nationally, the reference to and application of customary and religious laws depend on tribal and religious membership.

The application of inheritance laws overlap as two or more of them may apply to an individual or a group, providing a space for choice making and blending based on the specific contingencies of the time and place, where the transfer takes place, and the place where it is enforced (whether in a community or courtroom). The diverse rationales of property distribution patterns or lines of property transmission are maintained through time through locally established

channels of enforcement. Essentially, the processes, which properties go through until the final sharing, are also processes that shape and for the most part determine whether or not property can possibly be registered.

In both Upper East and Ashanti regions the study found that inheritance practices produce a variety of land relations that lend themselves to registration unevenly. These include individual rights, joint property of the extended family, joint property of the conjugal family and secondary rights. Of all the types, only individual rights fit into the current land registration system. The schemes of property sharing exhibit further complexity depending on how it is done. For example, joint property of the conjugal family may be held as either divided or undivided shares within the same property (say a house) or across different properties. This therefore highlights the relationship between the dynamics of property (space) sharing and the potentials of recording. For instance, while beneficiaries of inherited property may have individual ownership (proprietary rights) over the physical property or sections of it, the possibilities of having them recorded more or less depend on how easy the physical property can be mapped (like a house or farmland) or how complex it is to be mapped (having rooms across different houses).

In conclusion, the manifestation of the plural inheritance laws in practice and the blending thereof produce land relations, which are more complex than those acknowledged by the land registration laws and those practically registered. This indicates that the precise definition of land rights in contexts of dynamically evolving land relations can be self-defeating.

6.2.3 To analyse the extent to which the non-registration of inherited property derives from both bureaucratic and socio-cultural practices

The registration of inherited property brings into contact socio-cultural norms, official norms and practical norms. The registration of inherited property extends beyond the two phased processes mentioned earlier in section 6.2.1 and encompasses a much wider range of actors. For example, key requirements for registering inherited property, such as the preparation of probates, letters of administration and vesting assents, are done by the court and legal professionals respectively.

While registration was found to play a very small role in rural areas, it takes on the form of what has been described in this study as "strategic registration" in urban areas. Strategic here means that responses to registration are based on the counter-weighting of legitimacies derived from within the family (non-registration) or the state through registration on part of the heirs. For instance, in Bolgatanga and Kumasi, when heirs inherit different rooms across different

buildings or different sections of the same building, they see little need for registration as the collective ownership serves as a form of tenure security against external claims. However, when heirs inherit a whole property, they seek legitimacy with the state through registration to delineate the property from the family circles. To register inherited property, heirs have to go through both the Customary Land Secretariats and the Lands Commission for first registration (instances when the property in question has not been registered before) and only the Lands Commission for subsequent registration (instances where the property in question has been registered in the past).

Practices of registration within the regional Lands Commission offices in both the Ashanti and Upper East Regions are both explicit (guided by express official rules reflecting official norms) and tacit (guided by evolved unwritten rules, reflecting practical norms). Where for first registration of inherited property, the Lands Commission follows the procedures in its operational manual for leaseholds, the procedures for subsequent registration of inherited property are not stated in the operational manual. They emerged as cases of inherited property are reported for registration and are based on the discretion and experience of Lands Commission officials. This type of improvised registration has been referred to in this study as "registration-on-demand". On-demand means that the procedures are not predefined, but actions taken are reactionary responses by the Lands commission officials to a public need. Because of the discretionary nature of the procedures for registering inheritance, registrants increasingly depend on the guidance of officials, which opens avenues for manipulation. Through these connections, official points of contact are circumvented or substituted with pragmatic ones. Although these practical norms in some ways benefit officials privately, they can help facilitate the registration processes at the same time.

In conclusion, the decision to register inherited property or not is reached based on the exchanges that ensue among and between actors within the family, the Lands Commission and the court. Registration is therefore used as a strategic response depending on the outcome of inheritance sharing at the family level. The problematic administrative features such as cost, procedural complexity and transaction time only come into play if the intra-family outcomes present the heir with the opportunity or the need to register. However, if the heir is satisfied and feels secured with the outcomes within the family, they see registration to be less necessary.

6.3 Summary of the research synthesis

To position this study in the ongoing discourses on emerging land administration approaches, the insights from the results and analyses of the sub-objectives have been used to scrutinize some of the fundamental

assumptions implicit in land registration thought, conceptualization and implementation as manifested in both conventional and emerging fit-for-purpose approaches. The identified assumptions are (1) land registration is desirable (2) all land rights are registrable and (3) access to the land registration system is an administrative event. For each assumption, the study highlights new perspectives based on the insights from the findings from Ghana and then show in how far the assumption holds or not. For example, in the case of Ghana, the desirability of registration among successors of inherited property is not pre-established but dependent on the outcomes of property sharing within the family. Also, regarding the registrability of all rights, some land rights in Ghana exhibit too much dynamism to be recorded. Examples include the rights of females in patrilineal communities and the spiritual sites held by earth priests. Furthermore, the conceptualization of access in the Ghanaian land context manifests more as a process rather than an event determined by administrative ease. Access to land registration is gained or denied through the processes of land rights allocation at the family and community levels.

Based on the findings from Ghana, the study evaluates these fundamental assumptions and suggests key questions (see chapter 5 of the thesis for details) along the lines of desirability of land registration, registrability of land rights and accessibility of land registration services. Such questions are pertinent to be asked and addressed when undertaking fit-for-purpose land administration. Although these questions emerged and are framed, based on the juxtaposition of the findings from Ghana and the identified assumptions, they are relevant as well for other contexts with emerging land registers where fit-for-purpose interventions are being prepared. By posing such questions, the study renews the debate and reflection on these assumptions, thus, helping to finetune further the quest of "fitting the purpose" of land registration and land administration more generally. In this way, the study contributes to and at the same time amplifies calls for the need for contextual appraisal and case specific solutions in fit-for-purpose land administration as initially noted by Barry (2018).

6.4 General conclusion

Overall, the findings of this study show that the plural regulation of inheritance from multiple sources of law manifest in diverse practices, which produce a variety of land relations. The different sources of law in practice are often modified or even blended leading to the production of multiple combinations. This makes inheritance practices more evolutionary and the land relations that they eventually produce rather emergent in nature. The dynamic choices that surround the sharing of property makes it difficult to align the emerging land relations to predefined registrable land rights as stipulated in law and carried

out in practice. Moreover, the differences in rationales between inheritance laws and land registration play an important role in this misalignment. For example, while the rationale of matrilineal and patrilineal inheritance sometimes is to ensure communal welfare through group rights, the practices of the state's recording system only create terminable individual rights as leaseholds. Overall, the study brings to the fore two major challenges to keeping the land register up to date. Both of these challenges derive from the effects of various inheritance practices. First, the outcomes of inheritance practices determine the necessity of registration. Second, inheritance practices also produce more land relations than what is practically being registered as "rights." In conclusion, the causes for outdated land registers are found in these two effects of multiple and blended inheritance practices.

6.5 Reflections

This section presents the contributions of the study and its limitations as well as directions for future research.

6.5.1 Contributions to scientific research

The most important contribution of this study pertains to the knowledge domain of land registration and land administration more generally. Extending the empirical scope of the study into socio-cultural practices beyond the confines of formal land registration in itself has addressed a gap that has subsisted in land registration discourses and interventions over decades. The study serves as an opener for a new discourse on the need to redraw the boundaries of influences that are at play when people are confronted or engage with registration. Although this study is situated in Ghana, the linkages that have been established between the external socio-cultural and the administrative scenes apply to the broader land context of Africa, since Ghana shares similar land tenure and socio-cultural practices with many other countries within Africa. So far, academic perspectives on the drivers of registration and non-registration have cantered on the internal working protocols of land registration organizations (Binns and Peter, 1995; Williamson, 1996; Zevenbergen, 2002; Deininger et al., 2010; Biraro et al., 2015). While these studies provide useful insights towards understanding the reasons of non-registration to some extent, their focus on the administrative scene of land registration has given a single-sided perspective to donor agencies and local implementers alike, suggesting one set of problems (technical) leading to the assumption of technocratic solutionism as a panacea for land registration. This study on the other hand shows that there is not one but many sets of hurdles to registration and thus, broadens the scope of "solution finding" as the factors that play roles in land registration are diverse in nature and cross-cutting in extent.

Within the context of Ghana, the findings of the study in chapter 2 of the thesis on the implementation gap between land laws and practical implementation are relevant in time for both the Lands Commission and other implementing agencies. The outcomes of registration being leaseholds is a phenomenon that has long characterized Ghana's land registration. While researchers have mentioned and criticized such outcomes in passing (Ehwi & Asante, 2016), there hasn't been any detailed examination of the underlying factors that propagate such outcomes. Even studies that were much more critical about the situation offered insights mainly from the point of view of legal interpretation as a way to shed light on the need to register diverse land rights, especially the usufructuary rights (da Rocha & Lodoh, 1999; Josiah-Aryeh, 2015). Going in detail, this study decomposes the underlying factors not only at the national level, but also according to regional differences in land governance structures highlighting both administrative set-up and practice as well as legal perspectives and to some extent political perspectives related to local land control. Clarifying and bringing to light such intricacies helps for contextual characterization, a useful recipe for clinical policy formulation and deployment (Barry, 2018). Such evidence has the potential of facilitating fit-for-purpose local level land administration interventions as suggested by Barry (2018) in his critique on land registration approaches and his call for evidence based interventions. The problem of the "gap" transcends Ghana and bears relevance generally in Africa as shown in the study of Alden-Wily (2002) as cited in Deininger (2003) and other public administration research (Olivier de Sardan, 2015). Such research is all the more important because, in recent years, policies and legal frameworks to recognize diverse land rights are being promoted (Enemark, et al., 2014) and implemented alongside new surveying technologies and techniques (Lengoiboni et al., 2019). In order to assess their potential and actual usage in land governance, we need to gain more in-depth understanding of historically evolved processes of land rights registration across different contexts; and how these affect the implementation of policies and legal frameworks developed at larger scale.

The analysis of land registration practices through the tripartite normative framework from public administration literature (Olivier de Sardan, 2015) adds a theoretical contribution to the knowledge domain of land registration. It helps to better understand and to characterize the actual happenings within and outside the administrative scenes of land registration in a way that more closely reflects reality than the formal/informal dichotomy that is often used to categorize processes and actors of different origins (e.g. customary and statutory). Before this study, land registration scholars have often used the dichotomous

differentiation of the neo-institutional economists (North, 1990; Ostrom, 2005; Pejovich, 1999) to refer to processes/practices and actors in land registration as formal and informal. For example, in a recent publication by UN-Habitat (2019) on implementing pro-poor land recordation, it states that "*…historically, customary and other informal tenure systems have been considered to be less sophisticated than formal tenures in the Western world*". Describing customary tenure as informal on the one hand automatically suggests the primacy of formal administration, which in itself is problematic given the prominent status of customary institutions in most parts of Africa for example. On the other hand, it fails to differentiate between the legitimacy of socio-cultural practices (which may be legitimate) and administrative misconducts (which are punishable) but subsumes both as "informal". Conceptualizing processes/practices and actors as social, practical and official norms adds an explanatory value in trying to analyse people's actions and reactions which take place within and outside the state's administration. For example, the "practical" strategic responses of successors of inherited property after the sharing of property are neither based on social norms (although they take place within the social arena) nor official norms but constitute a subtle set of norms that are reactionary and situation contingent. Additionally, the activities of land registration officials within the official arena which diverge from the official norms but sought to achieve its goals provide useful insights as to how such activities (practical norms) coverup for the shortfalls and compliment the rationales of the official norms (Helmke & Levitsky, 2004; Lund & Benjaminsen, 2002). Simply referring to such divergent activities as informal makes us lose sight of the gaps that they fill (complementary function) within the official arena.

6.5.2 Limitations of the study and directions for future research

It is important to note that this study has some limitations, which could be explored for further studies.

This study focuses on Ghana and may not exactly reflect the situations in other African countries, I suggest further studies should explore multiple cases from different country contexts to enable a broader understanding of the highly influential, yet rather understudied impact of inheritance on land information updating; especially when official land administration activities are not well aligned with diverse inheritance practices.

Also, given the fact that fit-for-purpose approaches are increasingly gaining ground in land registration practices, I suggest that future research should critically analyse in different contexts the following questions, 1) what are the socio-political reasons to register/not register

land for different groups; and how do they change through time? (2) how do rights change through codification; and what are the pros and cons, for whom? What rights cannot or should not be codified and hence need to be protected (if they need to be protected) by other means than registration? and (3) what are the current practices and underlying norms that provide access; and what are the variations in such practices across a territory in question (e.g. a nation state) and different forms of access and involved actors?

Additionally, in recent times, non-state actors like NGO's and even private for-profit organizations are promoting innovative land tools in many countries. This study did not take into account how the dynamics of inheritance and the socio-cultural practices of land holding are situated in such privately motivated small-scale land registration interventions. Future research should therefore take them into account as their role in land rights recording is increasing and most importantly in ways that provide for alignments with the statutory systems as in the case of Meridia in Ghana (Salifu et al., 2019).

Furthermore, this study was carried out qualitatively but a quantitative study could also help to statistically determine the relative significance of the key variables (reasons) that derive registration and non-registration of inherited land such as the feeling of security, marginalization, socio-cultural practices, cost and procedural complexity[55]. Such a study will enable us to identify and compare the influences of these variables which can help for both policy making and implementation. In the current study, the aim was to set the scene by seeking an understanding of the narratives and practices that surround inheritance transfers and subsequent registration. Further studies in this quantitative direction would therefore be a valuable addition.

[55] The type of statistical analysis presented by Prindex (https://www.prindex.net/) in July, 2020 on land tenure and registration can be an entry point

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Summary

Mapping of territory has become an intrinsic part of modern statecraft. Underpinned by the idea to make space more legible, states have pursued land registration for various aims. However, over the course of time, wide variations have been observed regarding the incidence of registration and accrued incentives between the global north and south. In the global south, a lot of land remains unregistered, resulting sometimes in tenure insecurity, weak property markets, low access to credit and poor spatial and economic planning. Although a large body of research tackles the more technical factors influencing non-registration, there is less research on how socio-cultural practices of land holding and transfer play a role in the non-registration of land. My study is positioned at the boundary of two spheres, namely formal land registration and socio-cultural practices of land inheritance. The study seeks to understand how non-registration of land derives from and between these two spheres, and contributes to existing literature by advancing explanations for the non-registration of land beyond bureaucratic practices and the official arena. The study was conducted in two regions of Ghana that exhibit classic examples of the prevailing inheritance systems, namely Upper East (patrilineal) and Ashanti (matrilineal) regions.

The study has three objectives. For the first objective, an analytical frame was developed based on literature in the field of policy implementation which was then used to analyse the practices of implementing land registration laws in Ghana. The first task was to find out the type of land rights that exist and how they align with existing land laws and practices of formal registration. Here, the focus was to understand the extent to which prevailing statutory laws and administrative practices provide room for the registration of diverse land rights. This was a very fundamental check, since land rights exclusion from law in itself has the tendency of propagating non-registration. The land governance scene in Ghana is hybrid in nature and entails both statutory and customary actors, who perform different roles in the registration process. Findings show an interesting phenomenon in Ghana whereby existing land rights align with the provisions of prevailing land laws fairly well; and yet many of such rights are not currently registered. As such there exists an implementation gap. The reasons for this gap are the ambiguity in the provisions of law, multiple interpretations of laws on the part of implementing actors, the use of narrow terminologies in operational manuals for land registration, struggles over land control between traditional authorities and their subjects/members, and administrative incapacity on the part of implementing actors. In combination, these factors have created a situation whereby only leaseholds become registered. The findings imply that the recognition of land rights is a continuum stretching across law and practice, and the two need to be streamlined to allow for the recognition and registration of diverse land rights. Legal provisions only

constitute an entry point, and are in themselves not sufficient to guarantee the recording of diverse land rights especially in hybrid land governance contexts, where differing rationales feed into the actions of actors from different frames (customary/statutory). Legal provisions need to be accompanied by workable implementation frameworks that align interests and practices of different actors in a way that serves the overall objective of the law. Therefore, to ensure the recording of diverse land rights, especially in contexts where multiple actors work across the state and non-state binary, the interests of different actors and their relative capacities should be taken into consideration along with an appropriate legal framework.

The second objective draws on research and theory in the domain of legal pluralism to understand how inheritance practices are situated within Ghana's legal plurality. The study delved into the diversity of existing inheritance practices and the different sources of law that regulate such practices. The focus of this step was to understand how socio-cultural practices of land inheritance take place within the Upper East and Ashanti regions and the opportunities such practices present for the recording of emerging property rights. The findings show that inheritance practices in Ghana are regulated through multiple sources of law; statutory, customary and religious. While the statutory rules of inheritance are superior in the eyes of the state, and have made some allowances for devolution according to personal law (customary or religious), actual preferences and relevance of the laws is determined by the social space, where inheritance takes place: in the community or in the courtroom. Thus, there exist differential tensions among the different sources of law. Where the statutory law aligns closely to existing customary or religious practices, it creates little or no tensions. However, where statutory law seeks to restructure the existing social structures and customs, it creates a considerable tension between beneficiaries who rely on different sources of law. The existence of multiple sources of law gives people the opportunity to engage in a sort of 'forum shopping' in ways that best serve their interests. This is made possible by the fact that multiple sources of law sometimes apply to the same person or group of people affording them the opportunity to orient themselves to preferred laws or blends thereof. The significance to registration of inheritance is that depending on the different sources of law used to guide inheritance processes, different types of property are produced in turn. These property types lend themselves differently to registration. Under the current practices of registration in the Upper East and Ashanti regions, property rights that are individual in nature lend themselves more to registration than those that are communal or secondary in nature. The findings thus suggest that the nature and associated restrictions of some inherited land rights potentially limit the possibilities of registration.

In the third objective, the study draws on Olivier de Sardan's tripartite normative framework along James Scott's idea of legibility making and describes three norms that play a role in the registration of inherited property in Ghana. The study juxtaposes the external socio-cultural practices hand-in-hand with the administrative practices within the bureaucratic arena to analyse how they interact and jointly coproduce agency in the registration and non-registration of inherited property. Three sets of norms were identified; the official norms, social norms and practical norms. Official norms of land registration expressly direct administrative processes and come into play fully during first registration of inherited property, whereby the express procedures for registering leaseholds are applied. Social norms play a very strong role at the family and community levels in directing how inheritance should be shared among successors and associated responsibilities and restrictions. Practical norms take different forms across the social and bureaucratic arenas. Within the bureaucratic arena, Lands Commission officials improvise procedures for subsequent registration of previously registered inherited property due to the lack of express procedures. Based on the improvised procedures, registrants are given direction to secure legal documents from the court such as probates and letters of administration. However, when successors of inherited property get access to these court documents, they sometimes see little need to undertake registration since the documents already prove their association with the property in question. Within the social arena, practical norms manifest differently. Successors of inherited property in urban areas engage in strategic choice making depending on the happenings within the family during inheritance. They resort to registration as a reactionary response to intra-family dealings of how space is shared. If they feel a sense of security within the family, they do not undertake registration and vice versa. Such strategic movements are not necessarily based on social norms, but they are practically improvised to counter the effects of intra-family dealings. The findings in this step imply that non-registration of inherited land does not result entirely from one set of administrative inefficiencies within the land registration organisation (Lands Commission), but it draws from multiple sources that cut across different state agencies as well as external socio-cultural practices.

Overall, the research concludes that the enhancement of registration requires that scholars and implementing agencies look beyond the technical processes within the land registration system. In other words, the causality proposition between administrative efficiency and enhanced registration does not hold uniformly across different contexts of tenure. Instead, attention should also be paid to external influencing factors emerging from socio-cultural practices that direct land holdings and transfers, their influence on administrative procedures and work, and vice-versa. Even within the formal domain, addressing non-registration would require proper alignments between statutory agencies that play roles in land registration, for example, the courts and land registries. An

understanding of the multiple influencing factors across different spheres would enable a better alignment between prevailing land rights, statutory land rights and practices of registration. Given inheritance as a major source of land ownership, such a broader understanding would go a long way towards increasing registration especially in the global south. This study therefore contributes to the discourse on the drivers of non-registration especially in the global south and thus informs policy development and implementation including the uptake of newer approaches such as fit-for-purpose land administration systems.

Samenvatting

Het in kaart brengen van haar grondgebied is een intrinsiek onderdeel geworden van de moderne staat. Gesteund door het idee om de ruimte beter leesbaar te maken, hebben staten landregistratie nagestreefd voor verschillende doelen. In de loop van de tijd zijn er echter grote verschillen ontstaan in de wijze van registratie en drijfveren daartoe tussen het mondiale noorden en zuiden. In het mondiale zuiden blijft veel land ongeregistreerd, wat soms resulteert in onzekerheid over de eigendomsrechten, onderontwikkelde vastgoedmarkten, beperkte toegang tot krediet en slechte ruimtelijke en economische planning. Hoewel er veel onderzoek is gedaan naar de meer technische factoren die van invloed zijn op niet-registratie, is er minder onderzoek gedaan naar hoe sociaal-culturele praktijken van landbezit en -overdracht een rol spelen bij het niet-registreren van land. Mijn studie positioneert zich daartoe op de grens van twee domeinen, namelijk formele landregistratie en sociaal-culturele praktijken van landerfenis. De studie tracht te begrijpen hoe niet-registratie van land voortkomt uit deze twee sferen en hun interactie, en draagt bij aan de bestaande literatuur door argumenten naar voren te brengen over niet-registratie van land buiten de bureaucratische praktijken en officiële arena's. De studie werd uitgevoerd in twee regio's van Ghana die klassieke voorbeelden zijn van de heersende vererving ssystemen, namelijk de regio's Upper East (ptrilineal) en Ashanti (matrilineal).

De studie heeft drie doelstellingen. Voor de eerste doelstelling werd een analytisch kader ontwikkeld op basis van literatuur op het gebied van beleidsuitvoering, dat vervolgens werd gebruikt om de praktijk van de toepassing van landregistratiewetten in Ghana te analyseren. De eerste taak was om uit te vinden welke types landrechten in de praktijk bestaan en hoe ze in overeenstemming zijn met de bestaande landwetten en praktijken van formele registratie. Hier lag de nadruk op het begrijpen van de mate waarin de heersende wetgeving en administratieve praktijk ruimte bieden voor de registratie van diverse landrechten. Dit is van zeer fundamentele belang, aangezien de uitsluiting van bepaald landrechten in de wet, de neiging tot niet-registratie versterkt. De land sector in Ghana is hybride van aard en omvat zowel wettelijke als traditionele actoren, die verschillende rollen spelen in het registratieproces. De bevindingen tonen een interessant fenomeen in Ghana aan, waarbij de bestaande landrechten vrij goed aansluiten bij de bepalingen van de heersende landwetgeving; maar veel van deze rechten momenteel toch niet geregistreerd zijn. Als zodanig bestaat er een implementatiekloof. De redenen voor deze kloof zijn de dubbelzinnigheid in de wettelijke bepalingen , uiteenlopende interpretaties van wetten van de kant van de uitvoerende organisaties, het gebruik van enge definities in operationele handleidingen voor landregistratie, strijd om controle over land tussen traditionele autoriteiten en hun onderdanen/leden, en administratieve capaciteit van de

uitvoerende organisaties. In combinatie hebben deze factoren een situatie gecreëerd waarin alleen erfpacht wordt geregistreerd. De bevindingen impliceren dat de landrechten een continuüm vormen dat zich uitstrekt over de wet en praktijk, en dat die twee gestroomlijnd moeten worden om de erkenning en registratie van diverse landrechten mogelijk te maken. Wettelijke bepalingen vormen slechts een startpunt en volstaan op zich niet om de registratie van diverse landrechten te garanderen, met name in een hybride land sector, waar uiteenlopende beweegredenen de boventoon voeren in de gedragingen van verschillende actoren (traditionele en wettelijke). Wettelijke bepalingen moeten vergezeld gaan van werkbare uitvoeringskaders die de belangen en werkwijzen van verschillende actoren op één lijn brengen een wijze die de algemene doelstelling van de wet dient. Om ervoor te zorgen dat diverse landrechten worden vastgelegd, met name in contexten waarin meerdere actoren van de staat en van traditionele autoriteiten binair werken, moet daarom rekening worden gehouden met de belangen van verschillende actoren en hun relatieve capaciteiten, samen met een passend juridisch kader.

De tweede doelstelling is gebaseerd op onderzoek en theorie op het gebied van rechtspluralisme om te begrijpen hoe vererving spraktijken zich binnen de juridische pluraliteit van Ghana manifesteren. De studie dook in de diversiteit van de bestaande vererving spraktijken en de verschillende rechtsbronnen die dergelijke praktijken reguleren. De focus van deze stap was om te begrijpen hoe sociaal-culturele praktijken van landvererving plaatsvinden binnen de regio's Upper-East en Ashanti en de mogelijkheden die dergelijke praktijken laten voor de registratie van verkregen eigendomsrechten. De bevindingen tonen aan dat erfrechtelijke praktijken in Ghana worden gereguleerd door middel van meerdere bronnen van het recht; wettelijk, traditioneel en religieus. Terwijl de wettelijke regels van erfrecht in de ogen van de staat superieur zijn, en enige ruimte voor invulling naar persoonlijk recht (traditioneel of reiligieuze) hebben gemaakt, worden de daadwerkelijke voorkeur en relevantie van de wetten bepaald door de sociale ruimte, waar de vererving plaatsvindt: in de gemeenschap of in de rechtszaal. Zo bestaan er uiteenlopende spanningen tussen de verschillende bronnen van recht. Wanneer de wettelijke bepalingen nauw aansluiten bij de bestaande traditionele of religieuze praktijken, leidt dit tot weinig of geen spanningen. Wanneer de wettelijke bepalingen echter tot doel hebben de bestaande sociale structuren en gewoonten te herstructureren, leidt dit tot een aanzienlijke spanning tussen begunstigden die afhankelijk zijn van uiteenlopende rechtsbronnen. Het bestaan van meerdere rechtsbronnen geeft mensen de mogelijkheid om deel te nemen aan een soort 'forum shopping' naar de praktijk die hun belangen het beste dient. Dit wordt mogelijk gemaakt door het feit dat meerdere rechtsbronnen soms van toepassing zijn op dezelfde persoon of groep mensen die hen de mogelijkheid bieden zich te oriënteren op voorkeurswetten of mengsels daarvan. De betekenis voor de registratie van de

erfenis is dat, afhankelijk van de verschillende bronnen van recht die worden gebruikt om het verervingsproces te begeleiden, verschillende soorten gebruiksrechten van vastgoed worden geproduceer. Deze vastgoedtypen lenen zich al dan niet voor registratie. In het kader van de huidige registratiepraktijken in de regio's Upper East en Ashanti lenen eigendomsrechten die individueel van aard zijn zich meer voor registratie dan gebruiksrechten die gemeenschappelijk of secundair van aard zijn. De bevindingen suggereren dus dat de aard en bijbehorende beperkingen van sommige vererfde landrechten de registratiemogelijkheden mogelijk beperken.

Voor de derde doelstelling put de studie uit het tripartiete normatieve raamwerk van Olivier de Sardan en James Scott's idee van 'leesbaarheid', en beschrijft drie normen die spelen bij de registratie van vererfd landbezit in Ghana. De studie plaatst de externe sociaal-culturele praktijken hand in hand met de administratieve praktijken binnen de bureaucratische arena om te analyseren hoe ze inter-ageren en gezamenlijk agentschap co-produceren bij de registratie en niet-registratie van vererfd bezit. Er werden drie sets normen geïdentificeerd; de officiële normen, sociale normen en praktische normen. Officiële landregistratienormen sturen nadrukkelijk de administratieve processen aan en spelen volop een rol bij de eerste registratie van erfpacht, waarbij de uitdrukkelijke procedures voor de registratie van erfpacht worden toegepast. Sociale normen spelen een zeer sterke rol op het niveau van het familie en de gemeenschap bij het bepalen van de manier waarop de erfenis moet worden verdeeld onder de erfgenamen en de bijbehorende verantwoordelijkheden en beperkingen. Praktische normen nemen verschillende vormen aan in de sociale en bureaucratische arena's. Binnen de bureaucratische arena improviseren ambtenaren van de Lands Commission om te komen tot procedures voor de vervolg- registratie van eerder geregistreerde verefd bezit vanwege het gebrek aan specifieke procedures daarvoor. Op basis van de geïmproviseerde procedures krijgen betrokkenen instructies om juridische documenten van de rechtbank te verkrijgen, zoals een verklaring van erfrecht.. Wanneer opvolgers van vererfd bezit echter beschikking krijgen tot deze gerechtelijke documenten, zien ze soms weinig noodzaak om ze te registreren, aangezien de documenten hun relatie met het vastgoed in kwestie al bewijzen. Binnen de sociale arena manifesteren praktische normen zich anders. Opvolgers van vererfd bezit in stedelijke gebieden maken strategische keuzes, afhankelijk van de gebeurtenissen binnen de familie tijdens de afwikkeling van de erfenis. Ze nemen hun toevlucht tot registratie als een reactie op de manier waarop de ruimte wordt verdeeld binnen de familie. Als ze een gevoel van veiligheid ervaren binnen de familie, gaan ze niet tot registratie over en vice versa. Dergelijke strategische bewegingen zijn niet noodzakelijkerwijs gebaseerd op sociale normen, maar ze zijn praktisch geïmproviseerd om de effecten van de omgang binnen de familie tegen te gaan. De bevindingen in deze stap impliceren dat het niet-registreren

van verefd land niet volledig het gevolg is van een reeks administratieve inefficiënties binnen de landregistratieorganisatie (Lands Commission), maar dat het zijn oorzaak vindt in meerdere bronnen die werkwijze van verschillende overheidsinstanties en externe maatschappelijke organisaties doorkruisen; in culturele praktijken.

In het algemeen concludeert het onderzoek dat de verbetering van de registratie vereist dat wetenschappers en uitvoerende instanties verder kijken dan de technische processen binnen het systeem van landregistratie. Met andere woorden, de causaliteitspropositie tussen administratieve efficiëntie en verbeterde registratie gedraagt zich niet uniform tussen verschillende praktijken van landbezit. In plaats daarvan moet ook aandacht worden besteed aan externe invloedsfactoren die voortkomen uit sociaal-culturele praktijken die grondbezit en overdrachten sturen, hun invloed op administratieve procedures en werkwijzen, en vice versa. Zelfs binnen het formele domein zou het aanpakken van niet-registratie een goede afstemming vereisen tussen wettelijke instanties die een rol spelen bij de formele registratie, zoals bijvoorbeeld de rechtbanken en kadasters. Inzicht in de uiteenlopende factoren vanuit verschillende terreinen, zou een betere afstemming mogelijk maken tussen heersende landrechten, wettelijke landrechten en registratiepraktijken. Daar vererving een belangrijke bron van grondbezit is, zou een dergelijk breder begrip een grote bijdrage leveren aan een toenemende registratie, vooral in het mondiale zuiden. Deze studie draagt daarom bij aan het debat inzake de drijfveren van niet-registratie, vooral in het zuiden van de wereld, en informeert dus over de ontwikkeling en implementatie van beleid, inclusief de acceptatie van nieuwere benaderingen zoals verantwoorde landadministratiesystemen.

About the Author

Abubakari Zaid was born on the 2nd of September, 1985 in Wa, Ghana. He graduated from the Kwame Nkrumah University of Science and Technology (KNUST) in 2009 where he obtained a BSc in Land Economy. After the Bachelor's degree, he did his mandatory National Service at the department of Land Economy, KNUST as a Teaching Assistant for one year. He then worked in a private consulting firm as a land administrator before joining the Ghana Lands Commission in 2013. In the same year, he started his MSc in Geo-information Science and Earth Observation at the University of Twente in the Netherlands and graduated in 2015. After completing the MSc programme, he returned to the Lands Commission and worked till 2016 when he returned to the University of Twente for a four-year PhD. In addition to the PhD research work, Zaid also performed teaching and advisory roles for MSc. Students. During his candidature, he received the International Federation of Surveyors (FIG) Article of the Month Award in February, 2017 and Best Geoforum Student Paper Award for 2020.

Zaid's research interests cut across land tenure, real property inheritance and innovative developments in land registration and administration.

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