

# **URBANISATION AND DEVELOPMENT OF LAND MARKET IN THE ABSENCE OF A COMPLETE LAND REGISTER IN DEVELOPING COUNTRIES: LESSONS FROM CENTRAL AND EASTERN EUROPE**

EBENEZER YAW OFOSUHENE

June, 2020

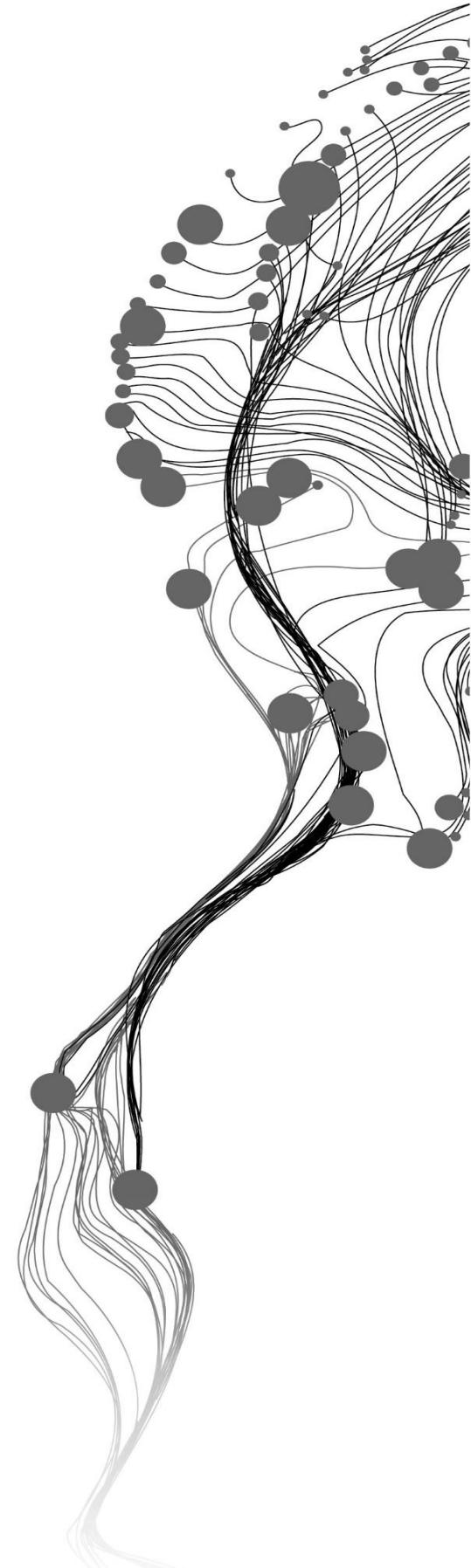
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## ABSTRACT

In the Global North where land registers have complete coverage of land information, land registration systems improve information symmetry among actors in the land market by reducing the uncertainty in identifying owners, extent, value and permitted use of land which reduces the risks associated with land transactions. Yet in the peri-urban areas of Sekondi-Takoradi in Ghana, there has been a surge in demand for land by investors and private developers for industrial and residential developments in response to the discovery of the Jubilee Oil Field off the coast of Ghana despite the low coverage of land registration in the area. The situation in Ghana is similar to the experience of Central and Eastern European (CEE) countries during the transition into market economies where the absence of complete land information stalled the restoration of private land rights and development of an active land market. This study investigates how actors in the land market carry out land transactions in the absence of a complete land register. Using a comparative research design, the context of CEE is set against Ghana to identify lessons that are useful to improve land registration in support of the urbanised land market in peri-urban areas in Ghana. Actors in the urbanised land market in Ghana rely on unofficial sources of land information from residents, Estate Agents, State officials acting in unofficial capacities and customary leaders in land transactions to validate official land records. The actors also adopt a host of measures including staying away from land transactions considered risky and payment of land values in instalments to manage risks in the urbanised land market. Similarly, during the early stages of transition in CEE, the land market dominated by land rentals was considered risky as actors failed to secure credit from lenders, governments withheld the right to the alienation of restored land and adopted area-based flat rates for land taxation. However, the CEE countries within a relatively short period achieved complete coverage of land registers through leveraging of existing strengths, computerisation of registration processes, prioritisation of user requirements and capacity development of human resources to meet the new demands of the land market. From the comparison of the state of land information, land registration systems and management of risk in the absence of a complete land register, the best practices identified from the experience of CEE countries included the completion of land registration within a short period, adoption of incentive-based and user-oriented land registration systems, and achievement of public trust in land registration systems which can be adapted to Ghana's context.

Keywords: *Land registration, Land market, Land information, Urbanisation, Actors, Risk*

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The name of the Lord is a strong tower; the righteous run into it and are safe. *Proverbs 18:10*

# TABLE OF CONTENTS

---

1.	General Introduction .....	1
1.1.	Introduction .....	1
1.2.	Background of Study .....	2
1.3.	Research Justification.....	4
1.4.	Research Problem Statement.....	4
1.5.	Research Objective.....	5
1.6.	Conceptual Framework .....	5
1.7.	Overview of Research Design and Methods .....	6
1.8.	Thesis Structure .....	6
1.9.	Summary .....	7
2.	Literature Review.....	8
2.1.	Introduction .....	8
2.2.	Urbanisation .....	8
2.3.	Land Tenure .....	8
2.4.	Land Registration .....	9
2.5.	Land Market .....	9
2.6.	Summary .....	11
3.	Research Design and methods .....	12
3.1.	Introduction .....	12
3.2.	Research Strategy and Design .....	12
3.3.	Selection of Case Study in Ghana.....	16
3.4.	Selection of Case Study in CEE.....	17
3.5.	Scientific Significance .....	18
3.6.	Ethical Considerations.....	18
3.7.	Summary .....	18
4.	CEE during the Transition period.....	19
4.1.	Introduction .....	19
4.2.	Historical Development of Land Tenure.....	19
4.3.	Land Registration Systems.....	21
4.4.	Emerging Land Market During the Transition Period .....	23
4.5.	Summary .....	27
5.	Customary land tenure in Ghana .....	28
5.1.	Introduction .....	28
5.2.	Land Tenure .....	28
5.3.	Land Registration Systems.....	33
5.4.	Land Market on Customary Land .....	35
5.5.	Summary .....	36
6.	Results .....	37
6.1.	Introduction .....	37
6.2.	Urbanisation and Increase in Demand for Customary Land .....	37
6.3.	Land Transaction Processes and Roles of Actors .....	39
6.4.	Land Information in Support of the Urbanising Land Market .....	44
6.5.	Managing Risk under the Urbanising Land Market. ....	48
6.6.	Summary .....	50
7.	Discussion.....	51
7.1.	Introduction .....	51

7.2.	Urbanisation and Increase in Demand for Customary Land, Apowa.....	51
7.3.	Land Transaction Processes .....	52
7.4.	The Roles and Influence of Actors in Land Transactions.....	52
7.5.	Comparative Analysis of Case Studies in Ghana and CEE.....	52
7.6.	Summary .....	56
8.	Conclusion and Recommendations.....	57
8.1.	Introduction .....	57
8.2.	Conclusions .....	57
8.3.	Recommendations.....	58
	Appendices .....	64

## LIST OF FIGURES

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Figure 1-1: A map showing the location of oil fields and coastal cities in Ghana ( <i>source: (Edyful &amp; Hooper, 2015)</i> )	2
Figure 1-2: Conceptual Framework of Study.....	6
Figure 3-1: Signpost of an association of landowners ( <i>source: Author's fieldwork, 2020</i> ).....	13
Figure 3-2: An interview session with respondents ( <i>source: Author's fieldwork, 2020</i> ) .....	14
Figure 3-3: Workflow of study .....	16
Figure 3-4: Map showing Sekondi-Takoradi and Apowa in the Western Region of Ghana. ....	17
Figure 5-1: Hierarchy of Customary Authority in the Study area ( <i>Author's construct</i> ).....	30
Figure 6-1: Signpost advertising serviced industrial plots for renting in Apowa ( <i>source: Author's fieldwork, 2020</i> )...	38
Figure 6-2: UML Activity Diagram of the land transaction process on Stool land in Apowa ( <i>Author's construct</i> )...	41
Figure 6-3: UML Activity Diagram of the official search process at the CSAU of RLC ( <i>Author's construct</i> ) .....	45
Figure 6-4: Interaction of Landowners with sources of Land Information ( <i>Author's construct</i> ).....	48

## LIST OF TABLES

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Table 1-1: Research Sub-objectives and Questions of the Study.....	5
Table 2-1: Management of risks under land registration systems ( <i>Author's construct</i> ).....	11
Table 3-1: Overview of respondents during fieldwork in Ghana.....	14
Table 4-1: Land Market Performance Indicators for Six CEE Countries ( <i>source: Dale and Baldwin (1999)</i> ).....	23
Table 5-1: Landownership structure in the Study area ( <i>Author's construct</i> ).....	32
Table 6-1: Official land information search process and requirements ( <i>Author's construct</i> ).....	45

## LIST OF APPENDICES

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Appendix One: Interview Guide for Fieldwork in Ghana .....	64
Appendix Two: Types of Land Registration Systems .....	68
Appendix Three: UML Activity Diagram of the land transaction process on Family land in Apowa.....	70
Appendix Four: UML Activity Diagram of the land transaction process on Individual land in Apowa.....	71
Appendix Five: Search Results from the RLC showing caveat. ....	72



# 1. GENERAL INTRODUCTION

## 1.1. Introduction

Across the globe, the rate of the urban population keeps increasing at the expense of the rural population. The United Nations (2018) lists the most urbanised regions of the world like North America with 82% urban population, Latin American and the Caribbean with 81% urban population, Europe with 74% urban population and Oceania with 68% urban population. The rate of urbanisation in Sub-Saharan Africa (henceforth referred to as SSA) is estimated to rise from 11.3% in 2010 to 20.2% in 2050 (UN-Habitat, 2014b). The increase in urban population is likely to influence the demand for necessities including food, shelter, potable water, access to good healthcare and education. The ability of governments to provide citizens with these necessities creates the divide among countries recognised as developed, developing and less developed.

Land provides the space for agricultural (food and animal) production, infrastructure (health, transport, housing, educational) and recreation. The growth of cities from an increase in urban population increases the demand for access to land for physical development. Land access for use may be secured through compulsory acquisition by governments for public development or negotiations between private entities depending on the recognised land tenure regimes existing within the jurisdiction of countries. In the Global North, public and private land ownerships are recognised whilst land ownership in the Global South includes customary tenure of land with overlapping communal and individual land rights based on customs. The negotiations for access and use of public, private and customary lands create land markets.

In Ghana, similar to other countries in SSA, where a large portion of land remains under the control of customary systems of tenure, access to land for urban development is mostly obtained through negotiations between developers and customary landowners. The rapid urbanisation of the coastal city of Sekondi-Takoradi (shown in Figure: 1-1) from the era of trade with European merchants, through colonisation and its current proximity to the Jubilee Oil field, warranted the search for land by developers in formerly rural areas surrounding the city. In the absence of a complete and reliable land register, parties involved in land transactions are confronted with risks arising from uncertainties shrouding the allocation of land for urban development.

Prior to accession into the European Union (EU), formerly communist Central and Eastern European (henceforth referred to as CEE) countries went through a similar phase when the cadastre<sup>1</sup> (used broadly) was incomplete and land information to validate land transactions were missing. The absence of land information was as a result of a suspension of registration processes in most countries after 1948 when communist parties took over (Bogaerts, 1998). The adoption of the EU principles contained in the “Acquis Communautaire<sup>2</sup>” comprised the development of a free-market economy providing for the growth of an active land market. The absence of land information regarding the ownership and location of parcels hampered the operations of privatisation schemes and the emerging land markets in CEE countries as an investment in property was considered risky (Dale & Baldwin, 1999).

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<sup>1</sup> Cadastre contains geometric records of land parcels linked to records of ownership or control of interests, value of land and improvements in the land (Yomralioglu & McLaughlin, 2017).

<sup>2</sup> The “Acquis Communautaire” is French for “that which has been acquired /achieved of the community”. It describes treaties and laws (covering 35 policy areas) of the EU that countries applying to join the body must accept and apply within the context of the country over transitional periods (Miller, 2011).

This study investigates how actors (buyers and sellers) in the land market operate in the absence of reliable and up-to-date land information in peri-urban areas of Sekondi-Takoradi and analyses how lessons from the transition stage in CEE countries could be adopted to improve the situation in Ghana.

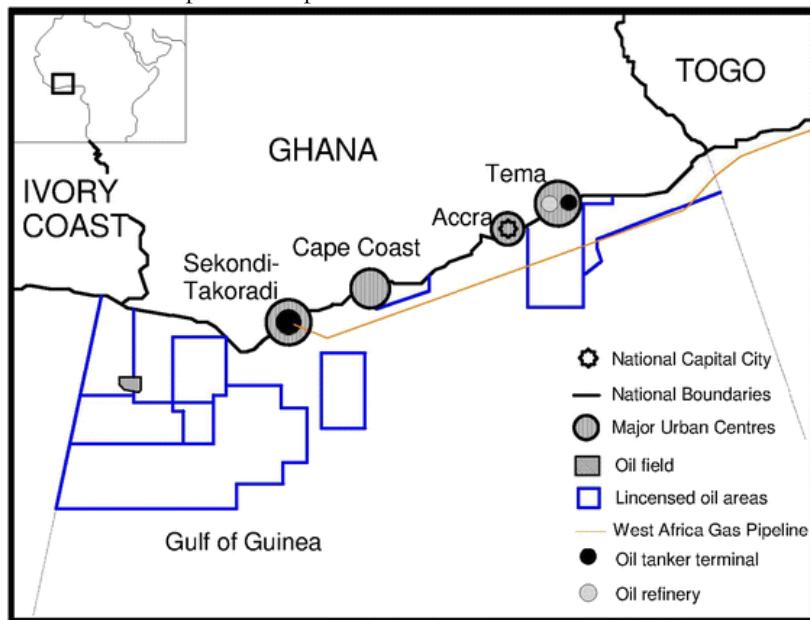


Figure 1-1: A map showing the location of oil fields and coastal cities in Ghana (source: (Eduful & Hooper, 2015))

## 1.2. Background of Study

In urbanised areas, the operation of the land market is enhanced as residents moving in and out of cities are likely to sell, buy or rent land. The availability of up-to-date land information supports land transactions as it becomes easy to crosscheck property ownership before making transactions. This facilitates the overall land market activity by reducing the possibilities of fraud, conflict and litigation. However, the dynamics appear different in developing countries where official land records are often out of date and most property transactions take place in informal markets outside of official records. According to UN-Habitat (2016), about 30% and often 10% of the land in developing countries is captured under formal land registration systems.

Sekondi-Takoradi is made up of the cities of Sekondi and Takoradi which existed separately until 1946 when they merged to form a single city (GSS, 2014b). Soon after Sekondi was recognised as a town in 1894, the newly established Railway Authority in 1898 had its headquarters built in the town. Takoradi was incorporated as a town in 1926 and by 1928 the first artificial harbour was developed along its coast. The completion of the harbour attracted the first major wave of migrants from neighbouring communities into the town (Obeng-Odoom, 2012). The Sekondi Town Council was also replaced by the Sekondi-Takoradi Town Council in 1946 when the two cities merged as one. A survey of Takoradi in 1948 reported the population of the town as 44,000 with substantial growth of the local economy from import and export activities facilitated by the new harbour and railway network (Obeng-Odoom, 2012). After independence in 1957, the government made conscious efforts to further promote the development of Sekondi-Takoradi by introducing strategic policies including a 25% reduction in income tax for investors operating businesses in the city. The initiative produced remarkable results and in the 1980s, Sekondi-Takoradi had 21% of wood-processing firms within its boundaries. The Market Circle (Central Business District) was also developed in the 1960s to enhance trade and other related commercial activities in the city.

The coastal city now doubles as the capital of the Sekondi-Takoradi Metropolitan Assembly (STMA) and the Western Region. The population of the Metropolis was estimated at 726,905 in 2019 from 559,548 in 2010 (with 96.1% considered urban) representing about a 30% increase in population in 9 years compared to a 23% increase (2,052,341 from 1,665,086) in the Accra Metropolis within the same period (GSS, 2014b). The growth in population has been mainly attributed to the discovery of the Jubilee Oil Field off the coast of the region in 2007.

The residential areas are categorised based on the availability of amenities and coincide with income levels as Chapel High, Beach Road and neighbouring Anaji attract residents from the high-income brackets (Eduful & Hooper, 2015).

During the time of fieldwork, construction was ongoing at the Takoradi Harbour to expand the harbour three times its current size. The expansion is to enable the harbour to cope with the estimated increase in freight forwarding and handling in line with oil exploration activities as the city reclaims its role as the centre of industrialisation in Ghana. The Head of Physical Planning Unit at the STMA mentioned plans to redevelop the city centre into high-rise buildings to cater for the estimated increase in the workforce from the harbour expansion. The city can boast of three major industrial activities namely; thermal power production, mining and quarrying, and manufacturing (GSS, 2014b).

The indigenous people occupying the land in Sekondi-Takoradi and its neighbouring towns and villages are predominately Akans. Fante is the most popular language in the area with its speakers (Fantes) forming (46.5%), Ahanta (12.2%), Asante (12.2%), Nzema (3.8%), Wassa (3.0%) with the other ethnic groups accounting for less than 3% of the total population in 2010 (GSS, 2014b). As other Akan dominated communities, the people practice the matrilineal system of inheritance and are organised under the authority of Stools. There are three Paramount Stools in the area namely; Sekondi Traditional area, Ahanta Traditional area and Essikadu Traditional area. The Sekondi and Ahanta Traditional area has 16 Divisional Stools that serves under the Paramount Stools. The Essikadu Paramount Stool has 5 Divisional Stools. There are also families with absolute ownership claims over land in the area. There were 44 land allocating bodies (25 sub-stools<sup>3</sup> and 19 families) from 1982-1991 which had increased to 160 (47 sub-stools and 113 families) by 2000 when the land market included land in the peri-urban areas (Farvaque-Vitkovic, Raghunath, Eghoff, & Boakye, 2008). Per the responses from interviewees included in the fieldwork in Ghana, there is a clear indication that the number of and allocating bodies have increased beyond the 2000 estimate as families continue to secede from the control of stools concerning the right to land allocation. Palmer (1996) categorizes the risk and uncertainty associated with land transactions into four problems; screening, incentive, monitoring and enforcement problems. In developing countries where the free flow of accurate information on land rights is missing to inform the decisions of actors in the land market, risk and uncertainties associated with land transactions are heightened. The situation is more pronounced in rural settlements immediately surrounding urban areas. Generally described as peri-urban areas, these settlements are influenced by the extension of urban activities beyond the administrative borders of urban regions and effects are reflected in population increases, increase in land values and changes in land use from agriculture into more urbanized use (Woltjer, 2014). Yet in these peri-urban areas of developing countries, property transactions are brisk despite the opacity in land information. The absence of reliable information contained in the land register does not necessarily deter participants from engaging in land transactions. Evidence from SSA countries with limited use of land registration systems attest to the existence and vastness of land markets negotiated and concluded outside the formal systems (Antwi, 2000; Yankson & Bertrand, 2012).

Sekondi-Takoradi fits the description above as the increase in the number of families and stools that are responsible for land allocation has created a complex situation in the land market. The identification of landowners is difficult under the customary system where there is no proper documentation and demarcation of the land rights of families. This stems from the reliance of customary system of tenure on the oral transfer of land in the presence of witnesses in the past leading to loss of vital land information when witnesses pass on (MLF, 2003). The cost of registration, complex procedures involved and slow nature of the land registration process has resulted in less than 20% of the land in Ghana captured under the formal system (Ehwi & Asante, 2016; Gambrah, 2002; The World Bank, 2011). The payment of land values to stools has been the cause of major disputes concerning Chieftaincy within Sekondi-Takoradi and peri-urban areas where land values have appreciated. The payment of compensation to the Chief of Essipon for land acquired by Ghana Gas company for their pipelines resulted in disputes where the legitimacy of the Chief was challenged by family members (interview with an official from the Office of the Administrator of Stool Lands). However, the city and its neighbouring settlements continue to provide sites for international oil

<sup>3</sup> Sub-stools includes the Divisional Stools and the “odikros” that serves under the authority of Divisional Chiefs.

companies trooping into the country and together with other infrastructural developments to support the oil industry have influenced the increase in land values. In the emerging land markets, private rights to land are involved in land transactions on formally communally owned lands.

The land register serves as the background reference for both buyers, sellers and land agents (henceforth referred to as actors) engaged in land transactions to legally legitimise and validate property holding status before concluding property transactions. It is unclear how actors validate ownership and property holding status amidst the information scarcity, how they weigh and manage the above-mentioned problems. This study, therefore, seeks to investigate how actors engaged in land transactions operate in the absence of reliable land information.

### **1.3. Research Justification**

The development of free land markets during the transition period of former communist countries in CEE focused on the privatization of land rights and implementation of land registration/cadastral projects to document information regarding ownership of defined parcels of land (Bogaerts, Williamson, & Fendel, 2002). A similar ideology, that land markets thrive with the existence of land registration and private rights characterized many land registration projects in the SSA. The challenges faced by land registration projects in the SSA region was mainly attributed to the inability of customary land tenure systems to co-exist with individualized access to land rights. However, literature related to the functioning of informal land markets especially in the urban areas of SSA region proves otherwise (Antwi, 2000; Migot-Adholla, Hazell, Blarel, & Place, 1991).

Taking into account the substantial cost of land registration projects, a careful assessment of the challenges of land registration in the SSA region is required. In a region where the larger population lives and works under informal systems, Palmer (1996) recommends analysis of formal and informal systems collectively. Through such analysis, conclusions could better facilitate the improvement of registration processes focused not only on documentation of land rights (first-time registration) but also on maintenance through updates from land dealings.

This study shares a similar objective by seeking to investigate from the perspective of actors how they cope within the land markets in the negotiation for land rights where reliable information concerning ownership and parcels cannot be provided by the formal registration system. The insights from actors in the land market can be useful in identifying priority areas which require policy and intervention measures in improving the land registration systems in the SSA region.

### **1.4. Research Problem Statement**

Landholding status and rights are not physical, and they cannot be seen directly by looking at a property. Instead, they are dynamic attributes that are recorded and updated continuously in a legal document called the land register. Specifically, in Ghana, the portion of land registered is low yet the rate of land transactions is increasing as a result of urbanization (Antwi, 2000). Larbi (1995) puts the allocation of land from customary land tenure system outside the formal registration system at 87% of all urban developments in Accra. The dominance of customary land allocation outside the formal registration system was confirmed by recent studies (Arko-Adjei, 2011; Kasanga & Kotey, 2001; Kuusaana & Eledi, 2015). It is therefore unclear how buyers and sellers negotiate the land market amidst the information scarcity, how they validate ownership and property holding status and how they weigh the associated risks.

In CEE, Dale and Baldwin (1999) mentioned technical delays in land registration processes as a factor that affected the smooth operation of land markets. Bogaerts (1998) stated that 20% of rural lands in the Czech Republic were registered as the exact location of most of the rural parcels could not be identified, yet these rural lands were involved in transactions. Investigating how actors carried out land transactions during the transition period when full coverage of the land registration was missing, can be useful to peri-urban land markets in fast urbanising cities in Ghana.

This study, therefore, seeks to understand how actors in the land market operate in the absence of reliable land information.

## 1.5. Research Objective

The main objective of this study is to investigate how actors in Ghana's urbanising land markets carry out land transactions in the absence of a complete land register in peri-urban areas and draw lessons from the experience of CEE countries that are useful for Ghana's context.

### 1.5.1. Research Sub-objectives and Questions

Table 1-1 below shows the Research Sub-objectives and Questions that tackle the various aspects of the main objective above.

Research Sub-objectives	Research Questions
1. To describe the urbanising land market in peri-urban areas of the Sekondi-Takoradi.	i. How is urbanisation influencing the demand for land? ii. What are the processes involved in land transactions? iii. What are the roles and influence of actors in the processes of land transactions?
2. To analyse the influence of land information on activities of actors in the land market in peri-urban areas of the Sekondi-Takoradi.	i. What sources of information do actors in the land market consider? ii. How is land information obtained and used in land transactions? iii. How do actors assess and manage risk associated with land transactions in the absence of complete land information?
3. To examine the influence of land information on activities of actors in CEE countries during the transition into market economies.	i. What was the state of land information during the transition era in the countries? ii. How did actors manage land information deficiency in land transactions? iii. What measures were adopted to improve land registration systems in the countries?
4. To compare the activities of actors in the land market in the absence of a complete land register in CEE and Ghana.	i. What traits are similar to the operation of actors in the land market in CEE and Ghana? ii. What are the best practices from the experience of CEE? iii. How can best practices from CEE be adapted to suit the context of Ghana?

Table 1-1: Research Sub-objectives and Questions of the Study.

## 1.6. Conceptual Framework

To show the scope and direction of this research, the various concepts as described above for this study are presented in Figure 1-2 below. The conceptual diagram shows the main concepts (urbanisation, land tenure, land registration and land market) with their respective relationships. The relationship between an increase in demand for customary land as a result of urbanisation and formalisation of customary land tenure through land registration have to an extent been described in the literature. Literature also describes how land registration systems help reduce the risk associated with land transactions by affording parties who rely on official land information with protection. Yet how the emerging land market operates (i.e. processes involved in the allocation of customary lands; actors involved in land transactions, their roles and influences on processes; risks associated with land transactions; and how actors manage these risks) when land information contained in the land register is incomplete remains unclear and forms the focus of this study.

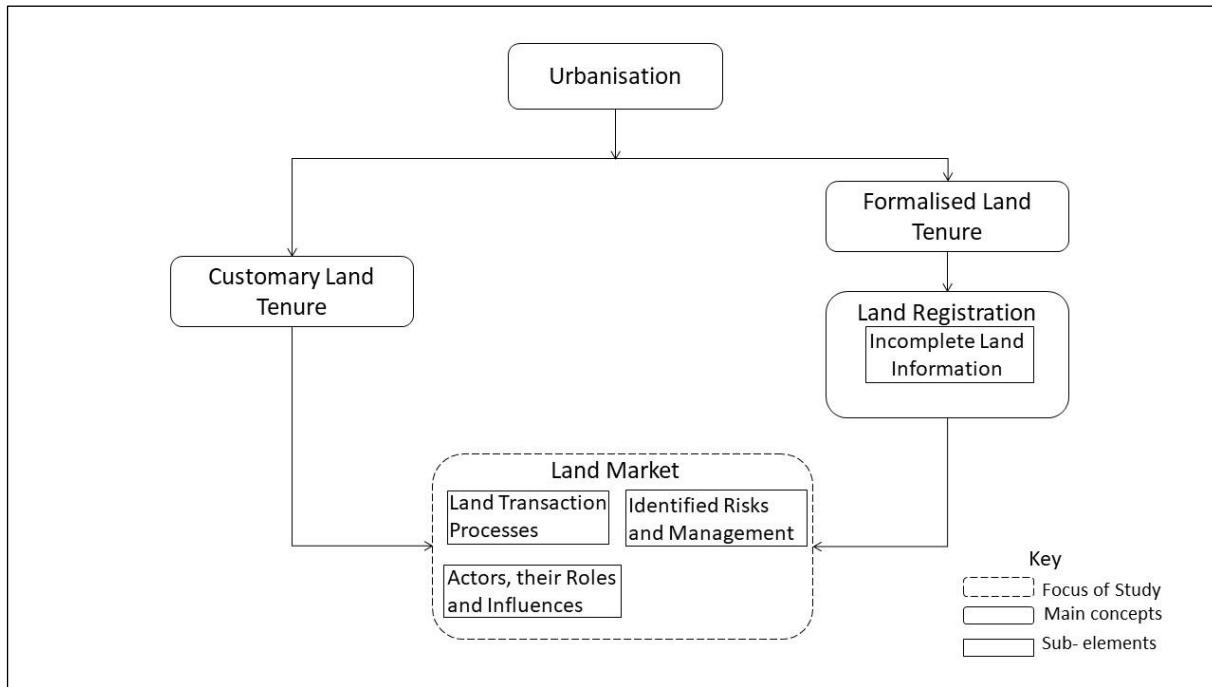


Figure 1-2: Conceptual Framework of Study

### 1.7. Overview of Research Design and Methods

This study adopts a qualitative research strategy as it emphasizes on words and not numbers in data collection and analysis. Initial review of literature provided a clear research background, justification and problem statement which further informed the choice of research objective, sub-objectives and research questions. The conceptualisation of the study with a focus on land transactions and associated risk (and risk management) in the absence of a complete land register was also facilitated by the initial review of the literature. Comparative research design using multiple case studies was further adopted to analyse the similarities and differences of the case studies from Ghana and CEE to derive useful lessons adapted to Ghana's context. The data for CEE was gathered through an extensive review of literature from discussion and working papers, published articles and reports of institutions and scholars that covered the transition of CEE countries from socialist controlled economies to market economies before accession into EU.

Primary and secondary sources were used in gathering data for the case study in Ghana. Semi-structured interviews were used to gather the opinions of actors engaged in land registration and land market in Sekondi-Takoradi and Apowa (peri-urban area). Secondary data from the review of published articles, legislation, reports, letters and court judgement were also gathered. Thematic analysis through the assignment of codes and themes to transcripts of field interviews using the Atlas.ti software approach was adopted for data analysis. Enterprise Architect software was used in the creation of Unified Modelling Language (UML) diagrams to explain the processes involved in land transactions and retrieving of formal land information.

### 1.8. Thesis Structure

The study is structured into eight chapters including:

#### Chapter 1: General Introduction

The chapter describes the need for undertaking this study by providing the background, justification, research problem statement, research objective, sub-objectives and research questions. The conceptual framework, an overview of the research design and methods and thesis structure are also provided in this chapter.

## **Chapter 2: Literature review**

The chapter presents the theoretical framework of concepts relevant to the study by reviewing the literature on urbanisation, land tenure, land registration and land market.

## **Chapter 3: Research Design and Methods**

The chapter outlines the research design and methods, provides justification for case study selections and presents the scientific relevance and ethical considerations for the study.

## **Chapter 4: CEE During the Transition Stage**

The chapter presents relevant background information on the historical development of land tenure in CEE, land registration systems and the emerging land market to facilitate an understanding of the state of land information during the transition period, management of land information deficiency in land transactions and modernisation of land registration systems in fulfilment of sub-objective three.

## **Chapter 5: Customary land tenure in Ghana**

The chapter presents relevant background information on the customary land tenure and management systems in Ghana. Here, the literature on land tenure, statutory interventions in land tenure, land registration and urbanising land market on customary lands are reviewed to provide the required background information to facilitate understanding of results from fieldwork in Chapter Six.

## **Chapter 6: Results**

The Chapter presents the findings from primary data collection through fieldwork exercise in Ghana. Analysed data from the fieldwork exercise is presented under urbanising land market in peri-urban areas of Sekondi-Takoradi, land transaction processes and roles of actors, land information in support of urbanising land market and managing risk under urbanising land market in fulfilment of research sub-objectives two and three.

## **Chapter 7: Discussion**

The chapter discusses the results of research sub-objective one from Ghana in light of the literature reviewed under Chapters Two and Five. Here, the case studies from CEE and Ghana are also compared to determine the similarities and differences in the state of land information, land registration systems and managing risk in the absence of complete land registers. This provides the basis for identifying lessons from the experience of CEE adapted to improve the situation in Ghana in fulfilment of sub-objective four.

## **Chapter 8: Conclusion and recommendation**

The chapter concludes and makes recommendations in summarising the study. The conclusions will be drawn based on the research sub-objectives and main research objective. This provides the basis for recommendations for future research.

### **1.9. Summary**

This chapter provided a short introduction by describing the response of land tenure regimes and land registration systems to urbanization trends and development of land markets under the background, research justification and problem statement. This informed the research objective, sub-objectives, research questions and conceptual framework that seek to investigate the research gap identified through the adoption of relevant methods and presentation using the outlined thesis structure. The next chapter reviews the literature on concepts relevant to the study.

## 2. LITERATURE REVIEW

### 2.1. Introduction

This chapter presents the theoretical framework of underlying concepts and relations between the concepts. The chapter is presented under sections that describe the review of literature on the main concepts, i.e. urbanisation, land tenure, land registration and the land market. The sub-sections present land information in support of urbanising land market and managing risk under the formal land registration systems that describe the relationship between the main concepts to facilitate discussions in Chapter Six.

### 2.2. Urbanisation

The world's rate of urban population is increasing at a fast rate from 30% in 1950 to 55% in 2018, with a projected 68% of the world's population to be urbanised by 2050 (United Nations, 2018). In handling global challenges including poverty and hunger, efficient management of cities in developing countries where large portions of populations live, have been identified as a more pragmatic solution (Cohen, 2006). According to Yankson and Bertrand (2012, p. 25) cities play an essential role in the development of countries because "cities are synonymous with modernization, economic development, social progress and cultural innovation". However, in the Global South, the way cities evolve and are managed obstructs their potential contribution to acting as a catalyst for tackling global challenges (Yankson & Bertrand, 2012). Cities as a hub for the concentration of population turns out as a source of the many problems of urbanisation as 43% of Africa's urban population lives below the global poverty line (UN-Habitat, 2008).

In SSA, early stages of urbanisation were characterised by the constant movement of the rural population and later small-town folks into cities as a result of the concentration of infrastructural and industrial projects in the cities (Yankson & Bertrand, 2012). Colonialists on the African continent are credited for the development of most cities that served as seats of government and centres of trade during the colonial era including Nairobi, Johannesburg and a host of others that remained as capital cities post-independence (Cohen, 2004). Later, suburbanization and annexation of the peri-urban areas from the migration of inner-city dwellers and settlement of rural migrants who cannot afford to live in the inner cities resulted in the creation of smaller cities around major urban cores (Cohen, 2004). These peri-urban areas exhibit characteristics of both the inner city and adjoining rural settlements (Gonçalves, Gomes, & Ezequiel, 2017). Carlucci, Chelli and Salvati (2018) mention in Europe, there is re-urbanisation of inner cities as cost of commuting from peri-urban areas increases, decrease in property prices and rehabilitation of housing and other amenities in the urban cores yet the rate of population growth is moderate as compared to the urban peripheries.

### 2.3. Land Tenure

Land tenure describes the rules, either formal or customary, that defines the circumstances under which the right to land are held (Dale & McLaughlin, 1999). Adams, Sibanda and Turner (1999) also describe land tenure to include conditions that guide the right to use and transfer land. There is, therefore, a distinction between arrangements for both the ownership and use of land or its products as land tenure (Payne, 1997). Land rights describe what one can do with the land in abstract and is likened to a bundle of sticks with each stick denoting one thing that could be done with the land (Dale & McLaughlin, 1999). Land tenure reflects what values society ascribes to their land

and this accounts for why land may be seen as just any other commodity to be exploited or as a social trust to be passed to posterity (Payne, 1997).

Economic-oriented classification of property categorises the property rights in land under open-access property, communal property, private property and state property. This classification is based on the popular thinking that the assignment of exclusive rights of control of resources to particular groups of people or individuals improves the chances of efficient management of resources to avoid degradation (Feder & Feeny, 1991). Developed countries are dominated by private property rights of ownership and use as it is recognised as secure and provides the best means of attracting long-term investment in land (Migot-Adholla et al., 1991). Early scholars and colonialists described the customary land tenure in SSA based on misconceptions from mere comparison with Western-styled tenure approaches. These misconceptions included: i) early land reformers neglected the case of SSA as they held the continent had abundant land resources with flexible native tenure institutions (Platteau, 1996), ii) misrepresenting the diverse customary tenure forms in SSA as “communal” with no private/individual land rights (Arko-Adjei, 2011), iii) customary land tenure contributes to insecurity of tenure therefore unable to attract investment resulting in low agricultural productivity (Cotula, 2007), and iv) customary land tenure systems are inflexible therefore not adaptable to change (Migot-Adholla et al., 1991). These misconceptions characterized the quest by colonialists and governments to replace customary land tenure systems with Western-oriented property rights system through land reforms. During the colonial era, new legislations were passed to transfer the management of customary land from traditional authorities to formalised institutions (Arko-Adjei, 2011). After independence, the countries in SSA at different stages have implemented land reforms ranging from market-oriented theories dominated by private property rights to nationalist-oriented collective property rights with state guarantee (Nkwae, 2006).

Contrary to these misconceptions, customary land tenure in SSA has been evolving in response to population growth, mechanization of agriculture and political reforms (Platteau, 1996). UN-Habitat (2014a) states that aside internal forces including population growth, urbanisation and industrialisation, there are also external forces like inherited colonial property regimes, international land laws and treaties that influences the evolution of land tenure in Africa. Security of land tenure has been identified as an incentive to promote investment, alleviate rural poverty and enhance resource management (Toulmin, 2008). Secured land tenure arises from harmonisation of statutory and customary practices in the wake of rapid changes to land tenure and the land market (UN-Habitat, 2014a). The harmonization of statutory and customary practices described as the adaptation paradigm provides legal protection for legitimate ownership and use rights by correcting the shortcomings associated with the operation of the two systems separately (Simbizi, Bennett, & Zevenbergen, 2014).

## 2.4. Land Registration

Land registration describes the process of recording interests people hold in land and therefore brings people and instruments (documents) together in organizations (Zevenbergen, 2002). The land register as a tool provides formal recognition for property rights and prescribes the nature and transfer of land rights (Dale & McLaughlin, 1999). The juridical cadastre as described by Dale and McLaughlin (1988) to include records of *legally recognised land tenure* is synonymous to the land register. Private conveyancing, deeds<sup>4</sup> and title registration are the most common types of land registration.

Descriptions of private conveyancing, deed and title registration are provided for in Appendix Two.

## 2.5. Land Market

Land markets facilitate the efficient distribution of land by allocating land rights towards more profitable use (Dale & McLaughlin, 1999). This is the economic perspective based on rational actions of suppliers (landowners) and people demanding land. The land market is comprised of land sales (transfer of ownership rights) and land rental

<sup>4</sup> “written record of a transfer of property rights from one person to another” (Palmer, 1996, p.63)

markets (transfer of use rights). The availability of land information, credit markets, insurance markets and low transaction costs favour the domination of the land market by land sales which invariably attracts investment and reduces poverty (Swinnen & Vranken, 2003). However, when the land market is shrouded with uncertainty, land rental markets dominate in the provision of land access for use when sales transactions are likely to occur sparsely.

### **2.5.1. Land information in support of urbanising land market**

Land information is essential in decision-making with regards to land management, investment and development (Dale & McLaughlin, 1988). Every prospective purchaser/investor/developer of land is likely to face uncertainties concerning where land is available, who is the rightful owner of the land, where are the boundaries of land, does prospective use conform to approved land use plan, what is the value of land and if the land is affected by any encumbrance. In very small and localised land markets, land information is symmetric as details concerning land ownership is common knowledge among community members (Palmer, 1996). There also exist local enforcement techniques for ensuring parties to land transactions comply with the terms of the agreement. The level of trust involved in land transactions is high while the rate of transactions is low.

Under urbanised land markets, the rate of land transactions is higher with a lot of non-members of land-owning groups acquiring land through formal and informal approaches. The localised land information thereby becomes inefficient to inform the activities of the many actors in identifying land parcels and owners with certainty which invariably creates distrust in land transactions. Landowners are more likely to know about defects inherent in their titles while prospective developers may also be proficient in land market performance. The availability or non-availability of information and its distribution among land market actors, therefore, influences the outcomes of urban land markets including under-pricing/over-pricing of land and prevalence of land disputes (Quaye, 2013). Land registration systems were developed to reduce the extent of information asymmetry among land market actors by maintaining a public register (with or without access restrictions) with records of land ownership and parcel information. Aside from the provision of land information, the ability of parties to rely on the land information contained in the register may depend on the coverage of the register, the currency of records, quality control measures, the guarantee of information and indemnity offered for use of information (Palmer, 1996). Therefore, the ability of land registration systems to provide land information does not invariably rid the land market of all inherent risks. The guarantee of information and indemnity for reliance on land information aims at protecting users against risks associated with land transactions that cannot be tackled by mere availability and dissemination of information.

### **2.5.2. Managing risk in a formal land market**

Palmer, (1996) categorises the risks associated with land transactions in situations where there is distrust into four problems. These are i) Screening problem; expensive to ascertain the magnitude of risk faced by parties in land transactions ii) Incentive problem; expensive to provide extra measures to ensure parties fulfil their obligations iii) Monitoring problem; expensive to defend property rights against all others iv) Enforcement problem; difficult to force parties to respect the agreement.

In formal property regimes, the degree of protection offered by the land registration system helps reduce the risk of actors in a land transaction. Under the Torrens system of land title registration, the curtain and insurance principle provide for reliance on only the register to verify ownership status and compensation for third parties when an error is contained in the land register (Dale & McLaughlin, 1999). In such instances, the problems of screening and incentive are catered for thereby reducing these components of risk borne by actors in land transactions. The vesting of title in registered owners and guarantee of title by the State also help manage the monitoring and enforcement problems. Under “improved” deed registration, an inspection of public registers to establish the chain of title and examination of deeds by registrars are meant to reduce the severity of screening and incentive problems. Registered instruments are prioritised to help minimize the monitoring problem involved in land transactions by providing parties with an advantage over competing claims. Finally, land transactions are only

deemed completed after registration of instruments to enable enforcement of land transactions. Table 2-1 below provides a summary of risk management under the deed and title registration systems.

After establishing the direct relationship between institutional credibility (the ability of institutions to deliver on its mandates) and trust in improving the efficiency of land transactions, Koroso, Zevenbergen, and Lengoiboni (2019) cites four challenges associated with the land market arising from mistrust of land institutions. The authors describe the challenges as:

Therefore, they (buyers and sellers) spend more time and resources to do extra work such as substantiating documents. Secondly, under non-credible land institutions contracts may not be honoured. If buyers and sellers do not have solid trust in land institutions, perhaps due to lack of contract enforcement and pervasive corruption, parties may fail to honour terms of a contract. Thirdly, fear of fraud or other kinds of manipulation may discourage people from engaging in the formal land transfer market and eventual investment. Finally, landowners may hesitate to lease their land, fearing that they may not get their land back once the lease period is over (Koroso et al., 2019, p.556).

Risks associated with land transactions	Risk management under (Torrens)	Risk management under “improved”
	Title registration	Deed registration
Screening problem	No need for further checks beyond the register except for overriding interests (curtain principle)	Keeping of public register for inspection by prospective buyers/ title insurance
Incentive problem	Reflection of the exact legal situation on the ground by register (mirror principle)	Robust examination of deeds by the registrar before registration
Monitoring problem	Guarantee of title by the State (insurance principle)	Prioritisation of registered deeds over unregistered ones in legal suits
Enforcement problem	Warranty of title of the registered owner	Completion of land transactions only after registration of the deed

Table 2-1: Management of risks under land registration systems (*Author's construct*).

## 2.6. Summary

Urbanisation has been established in literature to influence land tenure regimes through an increase in the demand for private rights to land at the expense of communal forms of landholding. Access to private ownership and use rights are negotiated between buyers and sellers in the land market. Land markets usually emerge from a few transactions among localised groups of people based on trust as information on land ownership forms part of local knowledge. The expansion of the land market beyond the confinement of these localised groups as a result of urbanisation requires certainty of ownership claims, permitted land use and land values which are provided by public repositories of land information (land registers). Land registration systems, therefore, exist to reduce information asymmetry among actors of the land market and reduce the risks associated with land transactions. The next chapter presents the research design and methods adopted for the study.

## 3. RESEARCH DESIGN AND METHODS

### 3.1. Introduction

This chapter operationalises the research by describing the methodology adopted for the study: research strategy and design, the justification for the selection of study areas, sampling techniques, data collection and data analysis. Description of data sources, ethical considerations, risk and contingencies and scientific significance of the research are also provided.

### 3.2. Research Strategy and Design

Bryman (2012) defines research strategy as the general direction with which social research is conducted. The author distinguishes qualitative research strategy as emphasizing on words in the data collection and analysis methods as compared to the emphasis on measurement in quantitative research. Aside from emphasizing on words, qualitative research strategy also provides flexibility to appreciate the research problem from the viewpoint of the respondents involved in the data collection exercise by helping realise the difference in opinions, values and behaviour (Mack, Woodsong, MacQueen, Guest, & Namey, 2005). Here, contradictions in opinions are captured to enhance diversity in responses which are essential for the study. The qualitative research strategy is ideal for addressing the research problem of this study by providing flexibility to gain the required insight on how actors engage in land transactions despite the absence of complete, accurate and reliable land register. This study comprised of three stages namely; pre-fieldwork, fieldwork and post-fieldwork stages as presented by the flowchart in Figure 3-3.

Research design structures data collection and the analysis of data in research (Bryman, 2012). The comparative research design approach using multiple case studies was adopted for this study. Hantrais (1999) justifies the use of this approach to explain the context, contrast and similarities among countries (multiple case studies) and measure its impact on the transfer of knowledge. The research sub-objectives one, two and three address in a real-world context how actors engage in land transactions in the absence of a complete land register in conformity with Yin's (2014) description of case studies. Afterwards, the case studies of Ghana and CEE are compared to produce the "best practices" in fulfilment of research sub-objective four.

#### 3.2.1. Pre-fieldwork stage

The early stages of this study included a description of the research problem and formulation of research objective, sub-objectives and questions to operationalise the problem statement. The theoretical framework to guide the discussion of findings later in the study was explored through a literature review. The initial results of the literature review and the already formulated research sub-objectives and questions provided a guide to interview questions that were posed to respondents during the fieldwork.

#### 3.2.2. Fieldwork stage

The fieldwork stage included the collection of primary and secondary data. Primary data was collected through semi-structured interviews with landowners, intermediaries in land transactions and Key Informants responsible for land administration in the area. The fieldwork process included:

##### **Entry and familiarization.**

Upon the first visit to the study area, per local customs and ethics, the researcher went to the Regional branch of the National House of Chiefs, Ahanta Traditional Council at Busua and the Divisional House of Chiefs at Apowa. Letters were served to secure permission for carrying out the data collection exercise within the city and town.

##### **Interviews**

Semi-structured interviews were conducted with Landowners, Estate Agents, a Local government official and Key informants that provide or use land information in activities related to the land transactions. The use of semi-structured interview was to allow room for expression of in-depth thoughts of respondents. The Key Informants

were selected through purposive sampling from actors in Statutory institutions (Planning Unit, Office of the Administrator of Stool Lands (OASL) and Regional Lands Commission(RLC)), Private institutions (Estate Agents) and Customary institutions (Customary Land Secretariat (CLS) and Ahanta Traditional Council). Key informants provided expert knowledge regarding the land market, land registration and land information in the city and peri-urban areas.

The other category of respondents were selected through a combination of purposive and snowball sampling methods. Landowners organised under *Residents Associations* and the Local government official were selected through purposive sampling and they further recommended a local Estate Agent and Family Secretaries to be interviewed (snowball sampling). These respondents provided local knowledge concerning the access to and use of land information in land transactions in the peri-urban area selected. The interviews were conducted in three stages to provide a comprehensive account of the situation on the ground. This involved:

#### **The first round of interviews with Key Informants**

An official each from the Physical Planning Unit of STMA and Ahanta West Municipal Assembly were interviewed to help identify urbanisation trends in the city and peri-urban areas. The planners also shared insights from experience with land acquisition for the provision of public services and infrastructure in their areas of jurisdiction. An official from the OASL and two Estate Agents were interviewed to solicit their perspectives on the landholding status and land market in the city and its peri-urban towns. The Estate agents provided a comprehensive description of the land market after the discovery of oil stressing on peoples' expectations and the actual happenings.

#### **Individual interviews**

A Local Government official who also doubles as a local Estate Agent was interviewed. Together with another local Estate Agent, they shared insights on land transactions concerning Stool land, family lands and transfer of individual lands. The respondents also described disputed areas in Apowa that are subjects of the contestation over ownership between the Chief and the families. Responses also addressed sources of land information, processes involved in accessing land information and verification of land information on grounds. The Secretaries of the landowning families were interviewed on how land transactions are carried out, registration of land documents and contestation over land ownership in Apowa. The landowners in neighbourhoods that sprang up after the discovery of oil were organised into *Residents Associations* (see Figure 3-1) and allowed a leader to speak on their behalf in interviews. Upon request, another landowner from the neighbourhood was interviewed to validate earlier responses by the leader.



Figure 3-1: Signpost of an association of landowners (*source: Author's fieldwork, 2020*).

### The final round of interviews with Key Informants

The earlier interviews helped streamline the questions for the final round of interviews with Key Informants. Representatives from the Traditional Council and CLS were interviewed concerning land ownership, disputes and customary land information records. Finally, the Deeds Registrar who also doubles as the Lawyer of the RLC and the Head of the Public and Vested Land Management Division (PVLMD) of the RLC were interviewed concerning the registration of land documents, the accuracy of land information and processes for accessing land information.



Figure 3-2: An interview session with respondents (source: Author's fieldwork, 2020).

A total of 18 respondents were interviewed in the data collection exercise. An overview of the respondents is provided in Table 3-1 below.

Respondent	Location	Number of respondents	Information required
Planning Officers (Planning Unit, STMA & Ahanta West Mun.)		2	Urbanisation trends in the city and peri-urban area Evidence of ownership submitted in support of permit applications The land acquisition process for the provision of public services
Estate Agents & Property Consultants		2	Overview of the land market in the city and peri-urban areas State of land information from official repositories
Officials (Registration & PVLMD, RLC)	Sekondi-Takoradi & Agona	2	Nature and accuracy of land information Provision of land information to clients
Official, OASL		1	Landownership status in the city and peri-urban areas Impacts of the land market on customary land tenure
Landowners		4	Land transaction process
Local Estate Agents/Local Government official	Apowa	2	Access to land information The risk associated with land transactions and measures adopted to address such risk
Secretaries to landowning families		3	Land allocation process Contestation over land ownership
Official (CLS)		1	Land ownership and state of land information provision
Official (Ahanta Traditional Council)	Busua	1	Land ownership status Disputes over land ownership

Table 3-1: Overview of respondents during fieldwork in Ghana.

### **Secondary data**

The fieldwork stage also included the collection of secondary data in the form of documents that are relevant for the study. The documents included a High Court judgement and documents tended as evidence in a suit between the Chief of Apowa and three families over land ownership. Other documents were indentures, application forms for land information and copies of feedback reports containing land information.

The data for the case study of CEE was from the review of documents including technical/working papers, reports of consultants, conference papers and journal articles. The literature provided enough information on land tenure reforms and uptake of registration activities in support of the emerging land markets during the transition from controlled economies into market economies.

### **Limitations of data collection**

The fieldwork period in Ghana coincided with National Identity card registration period for the Western Region. People had to queue early mornings to register and therefore the researcher had to check up on interviewees multiple times to get them. Interviews with individual landowners were problematic. Due to the disputes over land ownership in the peri-urban area, the landowners hesitated to engage in the data collection exercise making it impossible to organise a Focus Group Discussion as initially planned. However, interview with leaders of *Residents associations* and another landowner in the area to validate the leader's responses proved effective.

The Chief of Apowa could not be reached for an interview. After letters were served at the Traditional Council and upon numerous subsequent visits, the researcher failed to secure an appointment with the Chief or his close representatives (Elders of the Traditional Council). The statement of defence filed by the Chief in the High Court suit and letters from his office to the families were used in place of responses.

#### **3.2.3. Post fieldwork**

The audio recordings of the interviews from the fieldwork were transcribed at this stage. Manual transcription helped provide a comprehensive overview of the data before a detailed analysis was carried out. The transcripts were imported into Atlas.ti application and coded according to the research questions for the presentation of findings in Chapter Six. The results were then discussed in light of the theoretical framework (Chapter Two) in Chapter Seven before concluding the study with recommendations in Chapter Eight.

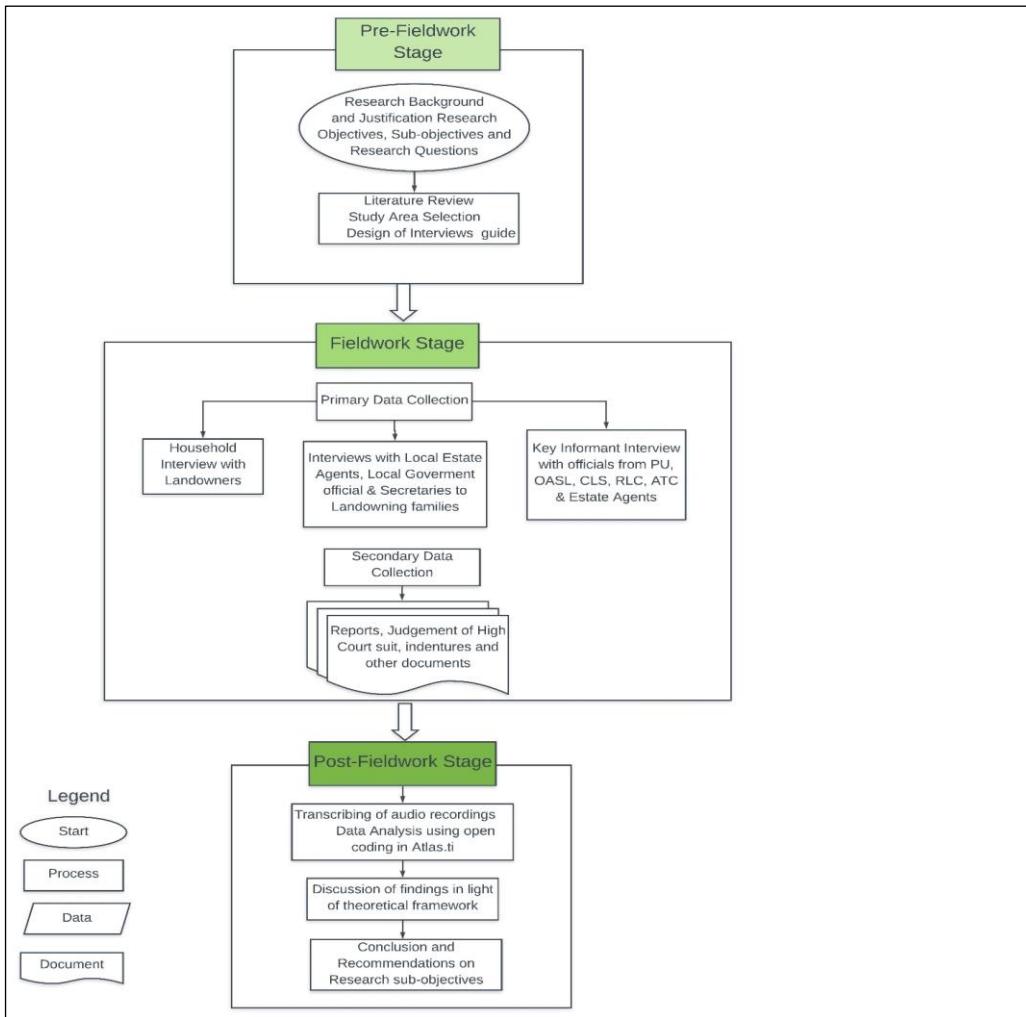


Figure 3-3: Workflow of study

### 3.3. Selection of Case Study in Ghana

The selection of the study area was premised on: the location of the town within the peri-urban area of Sekondi-Takoradi, expansion of the hitherto less vibrant land market that relied on customary historical evidence to support land ownership claims and emerging changes in land ownership patterns.

Apowa, the second most urbanised town in the Ahanta West Municipal Assembly lies about 10 kilometres from the commercial centre of Sekondi-Takoradi (see Figure 3-4). The Municipal Assembly (previously a District Assembly) was carved out of the then STMA in 1988 by a Legislative Instrument (LI 1395). The population of the town was 11,291 with 2,854 households in 2010 (GSS, 2014a). The area was noted for plantations of oil palm by the National Oil Palm Plantation and rubber by the Ghana Rubber Estates Limited (GREL). There were also a few individuals involved in the plantation of cash crop business. The plantations cover 40% of the total area of land in the Ahanta West Municipal Assembly.

The town became more prominent after the discovery of oil and subsequent acquisition of sites in the town by investors in the oil business. During the fieldwork, large corporations involved in the oil and gas, haulage and logistics, wood processing, cocoa processing and cement production were seen along the major roads including the Apowa to Agona (Municipal capital) stretch of the Takoradi-Agona road and the Apowa-Mpohor road. The notable corporations included Mantrac, Harlequin Oil & Gas, Scania, Renault trucks, Diamond Cement and Yinson Production. These acquisitions have attracted significant commercial and residential properties to the area in the last decade. The stretch from Takoradi to Apowa had been nicknamed “oil enclave” at the time of the fieldwork. Apowa contributes almost 60% of the revenue of the entire Municipality (field interview).

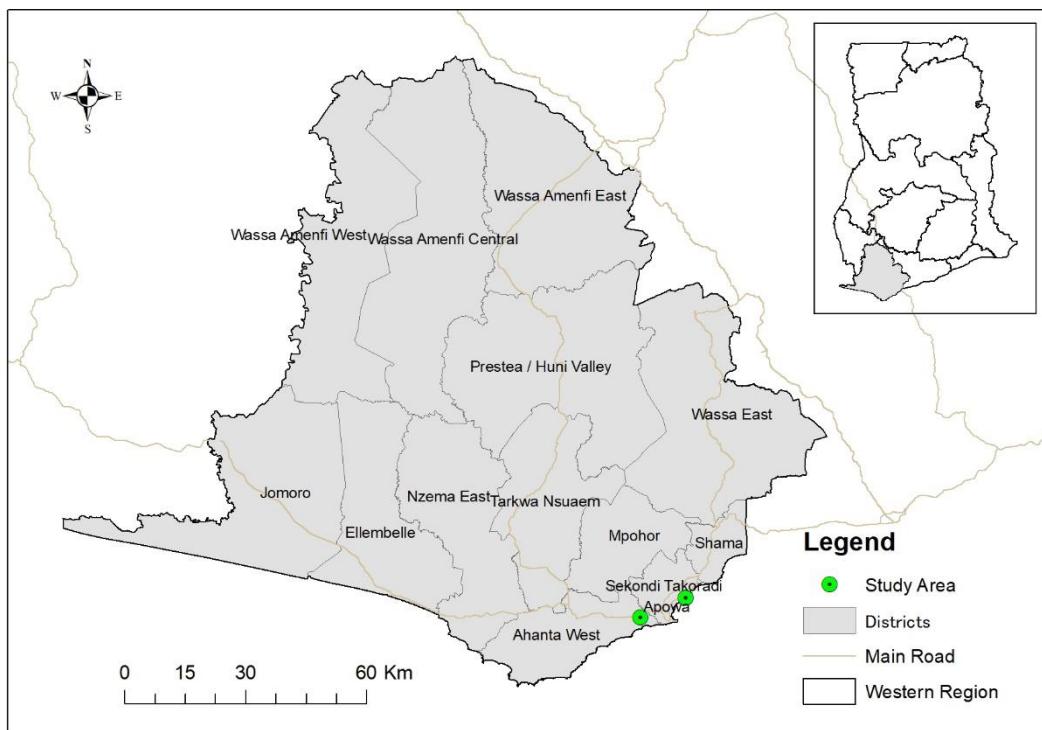


Figure 3-4: Map showing Sekondi-Takoradi and Apowa in the Western Region of Ghana.

### 3.4. Selection of Case Study in CEE.

The countries in CEE had diverse historical, political, and economic situations ranging from the practice of dictatorship to democracy and non-functional to functional land registry/cadastres during the socialist era (Osskó & Hopfer, 1999). Concerning land administration, literature from countries from the former communist bloc focused on the phases of collectivisation, privatisation and development of a market economy (van Dijk, 2003). The situation in countries during the transition period from centrally controlled to market economies exemplifies a continuum of social, political and economic arrangements yet with the similar agenda of establishing and supporting the pillars of the land market. The pillars of the land market as identified by Dale and Baldwin (1999) namely, land registration and cadastre, financial services and land valuation guided the major land reforms in CEE countries before accession into the EU.

A total of eight countries from CEE including Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland, Slovenia and Slovakia were the first batch of countries from the region to join the EU on 1st May 2004. From these countries, the Czech Republic and Slovakia (formerly Czechoslovakia), Latvia and Slovenia attempted full restitution of lands to owners after emerging from the socialist regime. In Hungary, the compensation form of privatisation was adopted where vouchers were distributed to claimants to either acquire land, apartments or pension (van Dijk, 2003).

Land tenure in Central and Eastern Europe at the time of the transition in the 1990s is similar to the situation in the study area in Ghana. The individual land rights as used in literature that addressed the transition period belonged to family units (Dale & Baldwin, 1999; Swinnen & Vranken, 2005; van Dijk, 2003). The land rights of family units previously organised under the collective rights of state and collective farms in the socialist era were split into separate legal interests that were registered during the transition period. All the countries that joined the EU in 2004 had agricultural land involved in land transactions when the land register was still being updated with the existing and new land rights from privatisation projects.

This study relied on literature that addressed the general characteristics of the CEE bloc. However, detailed descriptions from the experiences of the two countries were adopted for further analysis. The choice of the CEE

countries was limited to two due to time constraint and also to enhance an in-depth analysis of the situation of Ghana. Selection criteria were based on the availability of literature, the performance of the emerging land market, the status of land information at the date of accession into the EU and diversity among selected countries. The selection criteria were aimed at overcoming the gaps in the literature with the complementary nature of the studies, based on this Hungary and the Czech Republic were studied. The countries implemented different forms of privatisation schemes yet witnessed more demand for private rights to land formally collectivized under communist regimes. Demand for land rights and subsequent transactions created backlogs at the land registration offices. The two countries also feature prominently in the literature on the emerging land markets and land information.

### **3.5. Scientific Significance**

The function of reliable and up-to-date land information in a complete land register for verification of ownership status in land transactions has been documented in the literature. However, even when such information is not available or up-to-date, evidence shows the incidence of land transactions have been increasing as a result of urbanisation. This study sought to provide empirical findings as to how actors operate and manage risks associated with such land transactions. The findings aside from contributing to scientific knowledge will be useful to policymakers and stakeholders of formal registration systems to consider issues that actors prioritize when developing interventions.

### **3.6. Ethical Considerations.**

McKenna and Gray (2018) recommend researchers go beyond the description of approval from Ethics Committees by documenting the pragmatic steps included in the study to cater for the rights and reduce the level of harm to participants. Considering this, the researcher applied for the written consent (support letters) of the University which was shown to participants of the data collection exercise. The consent of local authorities (state/traditional) was also sought before contact with the respondents in the study area. A detailed description of how data was collected, analysed, discussed and reported was communicated in the language of participants clearly before seeking their approval for commencement. The data was anonymised to protect the identity of respondents. However, data sources were duly recognised when used in the study.

### **3.7. Summary**

This chapter described the adoption of a qualitative research strategy and comparative design with multiple case studies for this study. An overview of the processes, data and documents involved in the pre-fieldwork, fieldwork and post-fieldwork stages of the study is provided. Lastly, the chapter justified the selection of case studies from Ghana and CEE.

The next Chapter presents the land administration experience of CEE countries during the transition period.

## 4. CEE DURING THE TRANSITION PERIOD

### 4.1. Introduction

This chapter presents the results of the literature review on the experiences of CEE countries during the transition into market economies before accession into the EU. The data is presented under sections that describe the historical development of land tenure, land registration systems and emerging land market during the transition period. The chapter includes background information necessary for understanding the context in CEE and description of the state of land information during the transition period, management of land information deficiency in land transactions and modernisation of land registration systems as sub-sections in fulfilment of research sub-objective three.

### 4.2. Historical Development of Land Tenure

The political history of CEE is indispensable in any analysis of land administration functions concerning the region as it formed the basis of major land reform programmes and projects during the transition period. The notable political changes in the region that influenced relations to land included the two world wars, the introduction of command economies under communism and adoption of the market economies during the transition period towards accession into the EU. The historical account presented in this Chapter is mostly based on the synthesised overview of studies carried out by Bogaerts (1998), Bogaerts et al. (2002) and van Dijk (2003).

#### Pre-1990 situation

In former Czechoslovakia (formed in 1918), land reforms included the expropriation of agricultural land with the size of 150ha and more by the Expropriation Act of 1919. Another law passed in 1920 provided for the transfer of the expropriated land to municipalities, private individuals and organisations. Similar to Czechoslovakia, 411,000 poor farm labourers and landowners with smaller parcels in Hungary were entitled to between 0.5ha-1ha of the 570,000ha of land distributed in a bid to reduce the power of large estate holders from the feudal system. Unfortunately, the small nature of the allocated parcels rendered the project ineffective as the labourers continued offering their services to the large estate owners.

After World War II, Czechoslovakia re-occupied the Sudetenland, mainly inhabited by German-speaking people, and expelled almost 3 million Germans residing in the area. The government planned to allocate the land to citizens of Czechoslovakia to develop as settlements. The nature of the transfer of such a large tract of land within a short period resulted in the compromise of conventional methods for simplified procedures where land documents contained simple descriptions of the property identified by house numbers. The survey of parcels was replaced by rough sketches for reallocation plans. The collectivisation of land rights in 1948 further destroyed evidence of private parcels.

The focus of the socialist policy introduced under socialist rule of the region focused on communal ownership of land and equal distribution of resources as against private ownership and private revenue. There are four misconceptions associated with some literature that describes the socialist era of the CEE region. These are; i) all private land rights were scrapped after 1945, ii) collectivisation approach was uniform, iii) collective agriculture failed and iv) limitations on private tenure translated into putting a stop to all individual farming. The reality was far from what these misconceptions seek to portray. The large agricultural units were categorised under state and collective farms with smaller units used by households. The state farms were directly under the control of the State with land secured through private transactions with owners or expropriation. The private transactions had been criticised as *not voluntary* as owners were pressured to sell at prices below market values. Under this category of communal (state) farms, all rights of individuals to the land were taken over by the State. The collective (co-operative) farms, however, provided a system where labour was supplied by workers and revenues divided equally

among them. In theory, these agricultural units were supposed to be managed by representatives elected among the labourers unto Boards and General Assemblies but managers turned out as servants to the socialist regime. The collective farms took over the rights to use and alienate land from owners but owners held onto their ownership rights in principle. Owners could leave the collective farms but risked being allocated less productive land than what they provided earlier as the merging of parcels made it difficult to identify the distinct individual parcels as existed before collectivisation. There were household plots (gardens) that provided fresh vegetables and fruits for labourers with surpluses sold to urban folks to supplement income. In Hungary, household farming was supported in animal husbandry and gardening while the collective farms provided grains and other crops. The mechanisation of collective farms with state support in especially grain production attracted individual farmers to voluntarily give up their parcels to join the collectives.

However, there were challenges related to the implementation of the model of agriculture pursued under socialism. The push for an increase in production resulted in failed attempts to farm in terrains not suitable for agriculture including mountains and plains. This further resulted in large-scale degradation of soil involving 1million ha in Bulgaria. The socialist governments invested in agricultural units without paying much attention to the profitability of the ventures resulting in the shortage of funds to support the other sectors of the economy. Labourers engaged in collective and state farms were not motivated enough to deliver optimum inputs towards improving the productivity of farms. These factors contributed to the lower production of agriculture in this period.

#### **Post-1990 situation.**

After the fall of communism, countries of the CEE region carried out further land reforms towards changing the focus of land ownership and control from communal (State and collective farms) to private landholdings. The process was described as privatisation. The countries pursued different forms of privatisation procedures depending on the legal ownership status at the beginning of the reforms, asset ownership distribution among citizens and non-citizens in the future, land ownership distribution before collectivisation and perceived interference with farm structures. The privatisation forms included:

- i. Restitution: the return of the same land to previous owners or descendants.
- ii. Distribution: allocation of parcels similar to the original parcels in terms of size and quality to previous owners.
- iii. Sale: allocating state land to private individuals in exchange for monetary compensation.
- iv. Compensation: agricultural assets exchanged with money or vouchers that can be used to acquire land, apartment or pension.

#### **4.2.1. Privatisation in Hungary**

In Hungary, privatisation procedures were quite complex as different categories of people got access to land under different schemes. The first batch included the return of land under collective production to former owners who had pooled their land together during the controlled economy era. When the return of the same parcels of land proved difficult, lotteries were organised by the collectives to allocate the land. Almost half of the total land held by collectives was privatised through this *proportional* restitution. The other half of land held by collectives was privatised through compensation under the Compensation and Co-operative Transformation laws. Compensation laws provided for the re-allocation of land to former owners whose land had been seized after World War II or forcibly sold to collectives between 1970-1980. The owners or their descendants were allocated vouchers which could be exchanged for land, assets, pensions, shares or apartments. The value of vouchers allocated to claimants corresponded to the value of their land at the time of takeover by the collectives. The claimants who preferred land had to bid at auctions organised for this purpose with covenants to put the land into production before the expiry of five years or risk repossession. The newly allocated land could not be sold until the lapse of five years. The remaining land and assets of the collectives were allocated with the Co-operative Transformation law. The state farms were also privatised under the management of the State Property Agency. Shares in the state farms were sold to farm labourers, former owners with vouchers, banks and investors (both domestic and foreign). The

state farms were privatised through this procedure to protect the investments in mechanization already expensed on the farms. After privatisation, they were managed as joint-stock companies.

#### **4.2.2. Privatisation in the Czech Republic**

Land privatization was predominantly through restitution to former owners and their descendants (child, spouse, parent or siblings) who were citizens and also resided in the country as specified by the Land law, 1991. The government limited the scope of the restitution scheme to the situation between 1948-1990. This was to prevent the claim for land by the former German landowners in the Sudetenland region. Initially, former owners could only claim up to 150ha of land and rent out the land to others for cultivation. The restitution process emphasized on replacing the use right of owners whose land were held in the collectives as compared to ownership rights with state firms. The legislation required restitution of land taking into account the old boundaries which were difficult to recreate after the merging of parcels under the collective and state farms. This requirement stalled the restitution scheme in most areas. Where restitution proved difficult, the owners were entitled to compensation. Land that was not claimed by former owners was rented out by the Land Fund with revenues kept for claimants who might appear later.

#### **4.2.3. The efficiency of privatisation schemes in CEE.**

The land privatisation process across CEE created inefficiencies within the agricultural sector. Most of the claimants who received land allocations under privatisation schemes had no farming experience, resided outside the countries, lived in urban areas or had retired from farming. The countries that adopted restitution ended up with large tracts of unclaimed land managed by Land Fund agencies. In the Czech Republic, 500,000ha of unclaimed land was under the control of the Land Fund in 1998 (Giovarelli & Bledsoe, 2001). The State could not offer the land for sale as claimants could surface at any time in the future. The restitution process and system of inheritance of land also resulted in fragmentation of land into smaller parcels with numerous co-owners. After privatisation, a parcel with a size of 170m<sup>2</sup> in Hungary was co-owned by 120 individuals. The average size of a family farm in Slovakia upon split from former Czechoslovakia in 1992 was less than one hectare (Giovarelli & Bledsoe, 2001). An efficient land market was critical at this stage to redistribute land towards more productive use by active groups in agriculture.

### **4.3. Land Registration Systems**

Land registration systems before accession into the EU had been influenced by the empires that dominated the region (Bogaerts et al., 2002). These were the Germans, Austro-Hungarian Monarchy and Russia. The German Civil code provided for registration in the *Grundbuch* which proved the evidence of title to land from 1900, the Russian system maintained a fiscal cadastre managed by the municipality and the “Maria Theresa Cadastre” operated in the part dominated by Austro-Hungarian Monarchy from 1792 (Bogaerts, 1998).

The old Austrian system of land registration (Maria Theresa Cadastre) as prevailed in the majority of CEE countries, similar to the German system, provided for the *Grundbuch* or Land Book which operated separately of the cadastral map (Dale & Baldwin, 1999). However, countries including the Czech Republic, Slovakia Republic and Hungary managed to merge the land register and cadastre into unified systems of land registration. The registration system recognised conveyances as complete after being entered in the Land Book which served as the only evidence of land title (Bogaerts et al., 2002). The title registration differed from the Torrens system because the element of State guarantee of title registered in the Land Book was missing. The guarantee of the registered title was provided to an extent by the protection of title by *public faith* and limitation on the timeframe within which counter-title claims could be allowed (Zevenbergen, 2002).

The organisational structure of land registration as described by Bogaerts et al. (2002) included national, provincial and district levels. At the national level, State authorities (Ministries of Public Administration, Agriculture and Justice in Poland), Independent bodies (in the Czech and Slovak Republics) or specialised units of State authorities

(Department of Lands and Mapping of Ministry of Agriculture in Hungary) were responsible for land registration. The responsibilities were also shared according to Independent Authority responsible for recommending methods of registration without budgetary functions (the Slovak Republic); urban cadastre maintained by Ministry of Public Administration, rural cadastre maintained by Ministry of Agriculture and land registration by the local courts under the Ministry of Justice (Poland). The Czech Office for Surveying, Mapping and Cadastre (CZUK) was in absolute control of all functions (development, budgetary, staffing, methods, standards and legislation) related to land registration. The national authorities were assisted by institutes responsible for research and maintenance of cadastral maps including the Institute for Geodesy, Cartography and Remote Sensing in Hungary; the Land Survey Office and the Research Institute for Geodesy, Topography and Cartography in the Czech Republic. In Hungary, there existed 116 District Land Offices managed by 19 County land Offices and the Budapest Land Office managed 20 District offices within the city. Similar to Hungary, there existed 7 Regional, 77 District and 36 sub-district cadastral offices in the Czech Republic. Within both countries, the District (and sub-district) offices were responsible for land mapping and registration.

#### **4.3.1. The state of land information during the early stages of the transition period.**

Van Dijk (2003) described the privatisation process to have consisted of three stages; i) determining what a claimant is entitled to by referring to records contained in the *Grundbuch*, ii) determining the extent of the land parcel on the ground basing on maps (occasionally inaccurate) or text descriptions from the *Grundbuch*, and iii) providing land certificates to facilitate alienation. The first two stages of the process heavily relied on the completeness and accuracy of the land information available at the onset of the privatisation schemes. Land information contained in the *Grundbuch* was mainly from records of registration in the cadastre (map-based) and land register (text-based) as existed around the era of communism. The migration of people across the region in the 1950s crippled the land registration systems as a lot of ownership rights were not registered.

In former Czechoslovakia, similar to the other countries, compulsory registration of land was halted in 1951 by law after the Communist party assumed office. Yet the update of land information in the land register and cadastre were updated until 1958 when ownership rights became less significant as state and collective farms had taken over the use rights. The adoption of simplified methods of land survey and registration as described in Sudetenland above created further problems during the restitution phase as they were based on inaccurate plans. It was therefore not surprising when during restitution, the unavailability of complete and accurate land information resulted in the famous “missing parcels” situation. The “missing parcels” included approximately 15 million rural parcels (7 million in Slovakia and 8 million in the Czech Republic) that could not be delineated in the field.

The absence of complete and accurate land information in the *Grundbuch* also slowed the pace of privatisation across the region especially in rural areas where land was used for agricultural activities. In the Czech Republic, only 20% of rural lands had been returned to former owners by 1998, with an even lower percentage delineated in the field with ownership certificates. By the end of 1998, most of the countries in CEE were in completion phases of the various forms of privatisation schemes adopted. From privatisation, one common feature of the countries in transition was the creation of new land units and owners. In the Czech Republic, more than 430,000 property units had been restituted with 90% of the process completed, Slovakia had around 60,000 cases with 80% completed and more than 2.1 million new parcels were created in Hungary (Dale & Baldwin, 1999). The land registration systems of these countries were transformed to manage efficiently the land reforms during the transition period. In Hungary and the Czech Republic, the land registration systems (the land registry and cadastre) were consolidated into single entities in 1972 and 1992 respectively (Giovarelli & Bledsoe, 2001). The new system was to enhance access to land information in support of taxation and land transaction. However, the systems were overloaded with the quantities of new land parcels and landowners from privatisation which resulted in delays in the documentation of the new land rights and subsequent land transactions. In Hungary, the period between replacement of ownership rights and issuance of a certificate of title could take 18 months or beyond; and up to 2 years in Warsaw, Poland where about 40% of land rights were valid yet unregistered (Giovarelli & Bledsoe, 2001). The transfer of unregistered land was very complicated and demanding. In Poland, unregistered land could be

involved in a land transaction but the notary was required to first open a *registration volume*<sup>5</sup> and entries in the register could only be made by a judge which slowed the process (Prosterman & Rolfes, 2000). Land registration was carried out in a sporadic nature and the lengthy procedures involved further made land transactions on unregistered land less attractive.

#### 4.4. Emerging Land Market During the Transition Period

The most dominant groups in the post-privatisation agriculture in the CEE were Corporate and Family farms. The reason for the dominance of these agricultural units in land ownership, use and transactions (renting and sale) in the CEE region stems from the legal restrictions on ownership of agricultural land by foreigners. During the accession period, countries negotiated for restrictions on ownership by foreign nationals for a while (7 and 5 years for the Czech Republic and Hungary respectively). The family farms could be registered as a legal entity in agricultural production or unregistered yet in the agricultural business. These agricultural units controlled different sizes of land (2-55ha and 1300-2000ha for Family and Corporate farms respectively in the Czech Republic and Hungary), had disproportionate access to prime agricultural land and exhibited a varying degree of influences over land transactions. The land under the control of these agricultural units was constituted of portions of land owned or rented from other landowners.

Corporate farms inherited most of the land hitherto held under collective and state farms. The size of land owned by Corporate farms was about 5% of the total land size under its control. The Corporate farms rented land of its members, non-members, from Land Funds (consisted of unclaimed parcels and non-privatised state land) or bought land through sale contracts. The Family farms rented land from extended family members, other farmers, retirees and other landowners who were not engaged in active agriculture. This provided Family farms with almost 54% of land under their control and a single transaction could involve about 71ha in the Czech Republic. In Hungary, 17% of the Family farms had bought land in the emerging land market by 1997 which involved up to 12ha of land in a single transaction. The share of land that was sold was between 2-5% (occasionally less) in CEE in the transition period as only a few households were willing to sell their lands (Swinnen & Vranken, 2005).

Dale and Baldwin (1999) compared Performance Indicators of the land market in six CEE countries with the EU (see Table 4-1) norm (standard) to analyse the efficiency of land markets before accession into the EU.

	Performance Indicator	Czech	Hungary	Latvia	Poland	Slovakia	Slovenia	EU norm
1	How complete is the land regularization/restitution process?	60	95	50	75	30	90	100
2	How complete is the land title database?	90	80	30	50	30	0	100
3	What is the level of annual queries of the land title database?	10	15	5	10	10	10	60
4	What is the level of annual transfers of title?	1	2.5	1	1	1	1	7
5	What is the level of annual issue of mortgages?	0.1	0.2	0.05	0.05	0.1	0.1	9
	Overall assessment <sup>6</sup> (rounded to nearest 5 %)	35	45	20	30	20	25	100

Table 4-1: Land Market Performance Indicators for Six CEE Countries (source: Dale and Baldwin (1999))

The figures in the table above correspond to completed registration of ownership and boundary details. The Czech Republic and Hungary had advanced in all five Performance Indicators used for the study. However, per the EU standards, the countries under transition had a lot to do in terms of queries of the land registry database, land

<sup>5</sup> a book kept at the land registry to document all future transactions on the land

<sup>6</sup> Land Market Performance Indicator =  $(CEC_1/EU_1 + CEC_2/EU_2 + CEC_3/EU_3 + CEC_4/EU_4 + CEC_5/EU_5) * 100$

transfers and the issuance of mortgages. The last three indicators largely depended on the completion of the land privatisation and issuance of title certificates. The data for the annual transfer of titles do not reflect the true position of the land market in the countries described as the basis of analysis was scarce land sales (including 2% -5% of all land) to the neglect of the more popular land rental market.

#### **4.4.1. Management of land information deficiency in land transactions in CEE**

The previous description of the emerging land market in the absence of complete land information provided preliminary information on the need for land rentals and sales market to correct the shortcomings of land allocation through privatisation. Here, the activities of the government, credit suppliers, landowners and land acquirers (buyers and sellers) in the emerging land market influenced by the incomplete nature of land information is described.

##### **Withholding of landowners right to the alienation of their land.**

The last stage of the privatisation exercise was to provide land certificates to facilitate the alienation of land by the owners (van Dijk, 2003). As the land registration systems could not document all the new land rights and parcels quickly, governments took steps to restrict the sale of privatised land. These restrictions were meant to slow land transactions, manage land-use change from agricultural production to other land use and to prevent domination of land ownership by foreigners and companies. In Hungary, agricultural land could be involved in a sale agreement from 1996 but foreigners could not access the land market until 2011 (Giovarelli & Bledsoe, 2001). After 2011, farmers of Hungarian descent were still prioritised with pre-empty rights of purchase of agricultural land over foreigners.

##### **Ineffective land taxation**

The operation of an effective land/property tax requires; i) an overarching tax law, ii) land registration system with records of ownership, value, size and yield of each unit, and iii) the institutional ability to update records, estimate, impose and administer the tax (Prosterman & Hanstad, 1999). The land information from land registration systems is, therefore, key to the implementation of land taxation. Land taxes were low in countries in the CEE region as tax formed a small percentage of land values computed by the State e.g. 1.5% in Lithuania (Prosterman & Rolfs, 2000). Some scholars argued the low rate of land taxes influenced the unwillingness among new landowners to alienate their land for productive use (Giovarelli & Bledsoe, 2001). Prosterman and Hanstad (1999) stated that the lack of information on land values in former Czechoslovakia resulted in the adoption of area-based flat rates by the government to assess land tax. The use of area-based flat rates took into account only the quality of soil in the computation of land taxes. The under-valuation of land based on the single variable translated into lower tax revenue.

##### **Unavailability of credit to support the land market.**

The ability to use credit facilities provide landowners with an incentive to improve the collateral value of land through investing in the land (Prosterman & Hanstad, 1999). Lenders require access to reliable information to determine the extent of risk faced before giving out credit and also avoid unforeseen increases in risk during the term of the loan as credit naturally involves the exchange of current certainty for future promises (Bezem, 2001). During the transition period in CEE, investments in acquisition of land tied up the capital (savings) of farmers as they failed to offer land as collateral for credit to undertake other investments in mechanisation (Swinnen & Vranken, 2005). Lenders were unable to assess the risk associated with credit as essential land information from the registers were missing (incomplete). The emerging land markets were therefore considered risky by lenders.

##### **The prevalence of Informal short term leases.**

The state of land registration and restrictions pushed a lot of land transactions into the informal sector (Bogaerts et al., 2002). The family units in active agricultural production negotiated rent of land from family members and other farming units with excess land under their control. Swinnen and Vranken (2005) mentioned the rental figures from Albania in 2003 did not include the informal rental market between families and that out of 92% rental agreement between families in Romania in 1996, only 8% was registered. The situation in Bulgaria also shows the average length of rental agreements increased from 1 year to 3 years as rental contracts became more formalised

from 56% written contracts to 82% between 1997-2004. The family farming units preferred shorter rent periods on unregistered land as it was deemed less secure. The situation also differed among countries as unregistered family farms in the Czech Republic with almost completed privatisation and registration systems could arrange for rental agreements for an average period of 2.5 years around the same period (Swinnen & Vranken, 2005).

#### **Unfair competition between Corporate and Family farms arising from information asymmetry**

The managers of corporate farms had a lot of insight in economic indicators relevant for the agricultural sector, regulations controlling land transactions and the technical aspects of agricultural production including the soil quality in the regions (Swinnen & Vranken, 2005). The farm managers could also deceive new landowners who could not yet comprehend the nature of their land rights to permanently transfer their ownership rights to corporate farms (Prosterman & Hanstad, 1999). These characteristics of corporate farm managers provided them with a competitive advantage over the other landowners as they could negotiate for longer leases before price increases in the Czech and Slovak Republics (Ciaian & Swinnen, 2005). These advantages further entrenched the domination of agricultural production by corporate farms during the transition era. In the areas where the corporate farms dominated, land prices were very low as the land was rented from the Land Funds at about half or less of the prevailing market rates (Swinnen & Vranken, 2005). Later, when land registration systems included land information on almost all land parcels in the CEE countries, the unequal influence of corporate and family farms subsided. Around 2003, family farms could negotiate for the same contractual periods in leases as corporate farms in the land rental market (Swinnen & Vranken, 2005). All landowners could access information on land values and soil quality from the public registry in the later stages of the transition period.

#### **4.4.2. Modernisation of land registration systems in CEE**

The CEE countries especially the Czech Republic and Hungary at an early stage of the transition into market economies recognised the benefits and implications of reliable land information from land registers. During the socialist era, land registration was paper-based with the sparse manual update to the Land Book and Cadastral maps. This situation was as a result of the domination of the existing land tenure system by communal forms of land ownership and use rights at the expense of private ownership. The transition into market economies revived the land market through the creation of new land rights and subsequent land transactions which required access to reliable land information from the land registries. The benefits of land registration systems in support of the land markets, credit markets, consolidation projects, reporting on various sectors to the EU, agricultural profitability and sustainable land-use change created the need for paying critical attention to land registration in CEE (Ossko & Niklasz, 1998). The following measures were adopted to improve the land registration systems in CEE.

##### **Emphasized jurisdiction-wide coverage**

To register the new land rights, land parcels and supply the new products and services required by users of land information, the countries replaced the sporadic nature of land registration with compulsory systematic registration. The registration of title was based on full coverage of the “legal, administrative, financial and physical description information” within the land registration system (Ossko & Niklasz, 1998, p.2). The land registration systems included information on other objects aside from the 7.3 million parcels and 21.7 million parcels with 5.8 million owners in Hungary by 1999 and the Czech Republic in 2003 respectively (Faragó, 1999; Rydval, Slaboch, & Tomandl, 2005). Land information in the Czech register concerned: “objects including cadastral areas, land parcels, buildings, private flats and non-flat rooms; subjects including owners, joint owners and persons competent from legal relations to real property; and material rights to real estate: ownership rights, mortgages, easements and pre-emption rights” (Rydval et al., 2005, p.7).

##### **Leveraging of existing strengths of land registration systems**

The countries recognised that although the land registration systems inherited from the socialist regimes were limited in meeting the challenges presented by the transition into market economies, they largely remained useful and with some changes could meet the new demands for land information (Ossko & Niklasz, 1998). Therefore,

the countries were not in a haste to replace the land registration systems but countered on the inherent strengths including decentralised cadastral offices and human resources to foster the new changes. As mentioned earlier, the organisational arrangement of the land registration included national, provincial/regional, district and in some cases sub-district offices that provided easy access to all citizens, private corporations and public organisations (Rydval et al., 2005). The District cadastral offices of the Czech Office for Surveying, Mapping and Cadastre (CZUK) had a simple structure including a legal department: responsible for approving rights for registration and scrutiny of legal documents; cadastral update department: responsible for updating records based on approved rights from the legal department; and documentation department: responsible for the digitisation of paper-based records, administration of the database, checking land surveys submitted by private surveyors and provision of land information to users (Rydval, 2002). Deed contracts were examined based on: “the right of disposal of the transferor with the object of the contract, the legality of the form of the act, certainty and comprehensibility of the legal act, the contractual freedom of the parties” (Rydval, 2002, p.7).

The human resources of the CZUK included 5500 employees as at 2003 with: “graduate surveyors and cartographers 12%, graduate lawyers 6%, other university education 6%, secondary school - surveying 27%, other secondary school 46%, elementary education 2%. Nearly 74% of employees in the sector are females, 25% of personnel are at the age 41-50, 30% are older than 50 years” (Rydval et al., 2005, p.6). The mix of professionals and technical staff provided the required basic expertise that enhanced the uptake of land registration reforms in CEE.

### **Computerisation of land registration systems**

The countries in CEE recognised the usefulness of technology in improving the speed of land registration and therefore adopted computerisation strategies during the transition stage to meet the new demands of land registration systems. These strategies involved local and foreign experts, funding from the State and International partnerships, and sometimes formed part of cross-national projects. In Hungary, computerisation of land registration formed part of the Poland-Hungary Assistance for Reconstruction of the Economy (PHARE<sup>7</sup>) project financed by the EU and the Hungarian government to provide “the technical facilities to allow the land offices to computerize the records; assimilate the new compensation data units; and support the wider long-term aims of support for the economic reform” (UN-ECE, 1996, p.100). With support from the PHARE project, district land offices were equipped with networked personal computers and property sheet management software (CDPRS) which already included information on 6.5 million properties within three years (1993-1996) after installation (Ossko & Niklasz, 1998). The Czech Republic adopted a similar strategy for processing and dissemination of land information where an update of land information in cadastral offices was duplicated in the central database within two (2) hours (Rydval et al., 2005). The two countries also developed comprehensive Land Information Systems (LIS) namely: TAKAROS information systems and New Enhanced Information System in Hungary and the Czech Republic respectively to improve the access to land information by users.

### **Prioritisation of user requirements**

The land registration reforms heavily relied on ascertainment of user requirements and provision of incentives to improve the usage of land information. In Hungary, studies were carried out between (1993-1995) to examine the needs of users in restructuring land registration and mapping processes. These studies included assessment of large-scale mapping requirements, information requirements and processes at land offices, and uptake of computerised local land offices (UN-ECE, 1996). The cadastral offices in the Czech Republic provided land information in verbal (free to users), written and electronic formats to private users (Rydval, 2002). Public institutions at national and regional levels and municipalities, on the other hand, were provided with registration and land information retrieving services through the internet for free (Rydval et al., 2005). Form 2004, *Viewing the*

<sup>7</sup> EU initiative aimed at facilitating the development of CEE countries in transition to EU standards and improve the political and economic ties with the EU (Márkus, 2001).

*Cadastre* application was launched in the Czech Republic to provide the general public with free internet access to designated information on ownership and processes regarding entry into the land register (Pesl, Rydval, & Slaboch, 2004). However, users of land information retrieved electronically had to submit a written application and were required to use the information for only stated purposes in strict adherence to rules regarding privacy of data without sharing with third parties (Rydval, 2002).

#### **Capacity building of Human Resources (Staff)**

The United Nations Meetings of Officials in Land Administration (UN MOLA) in 1998 identified “lack of education in the management, legal, economic, human and ethical aspects of land administration; general lack of user-oriented approach to education; lack of continuity in education from universities to professions and appropriate linkage between the two” as a challenge in CEE (Markus, 2001, p.1). The CEE countries in transition towards market economies in addressing the challenge identified by UN MOLA and providing the necessary skillsets for manning new technologies adopted lifelong education and training strategies to enhance service delivery within the land administration sector. The educational strategies included re-orientation of university programmes and the introduction of distance learning for working professionals (Markus, 2001). Training strategies ranged from seminars, working visits to other countries, short training sessions to more advanced skill development projects like Open Learning for Land Offices (OLLO) under TEMPUS<sup>8</sup>/PHARE (UN-ECE, 1996). The OLLO was organised based on the partnership between the College of Surveying and Land Management, Faculty of the University of West-Hungary; Department of Lands and Mapping (State body responsible for land registration); and foreign universities to address issues of professional work, management, data usage and use of technologies (Márkus, 2001). The technical officers in cadastral offices in the Czech Republic undertook one-four weeks training in the early stages of the introduction of the New Enhanced Information System to facilitate data migration (Rydval, 2002).

#### **4.5. Summary**

The experience of CEE countries during the transition from socialist controlled economies to market economies exemplifies how land administration could be influenced by the political history of countries. The land reforms implemented through privatisation were delayed as useful land information on ownership from the land register was missing. However, in the absence of a complete land register, the literature clearly shows the emerging land market was considered risky yet transactions were arranged between farming units to provide access to land for food and animal production. The land registration systems managed to cope with the increase in demand for registration services and products by adopting efficient strategies to improve registration processes with shorter periods.

The next chapter presents the customary land tenure system of Ghana.

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<sup>8</sup> EU initiative created to enhance the bond with participating CEE countries with respect to higher education.

## 5. CUSTOMARY LAND TENURE IN GHANA

### 5.1. Introduction

This chapter presents background information on the customary land tenure system in Ghana, the land tenure in Apowa, statutory interventions in the customary system, land registration and urbanising land market on customary land in Ghana. The information provided under this chapter is from the review of literature that describes the perspective of local and international scholars of the customary land tenure and management system in Ghana. This chapter sets the context to facilitate understanding of the results presented in the next chapter.

### 5.2. Land Tenure

In line with International Charters on Human Rights, the 1992 Constitution of Ghana provides for the right to own property, right to the enjoyment of property unless required for the public benefit and the right to compensation for compulsory acquisition of property (Parliament of Ghana, 1992). In Ghana, the plurality of land tenure and management exist where land is held and managed by customary and formal institutions. Literature from Ghana categorises forms of land ownership into State land, Vested land, Stool/Skin land, Clan/Families land and individual land (Arko-Adjei, 2011; Kasanga & Kotey, 2001; MLF, 2003). The 1992 Constitution of Ghana is clear on the “trusteeship” position of the President and Stools/Skins/Clans/Families concerning landholding. The customary system accounts for 80% of total landholding in the country composed of stool, skin, clan and family lands (MLF, 2003). The land is managed chiefly by the RLC, OASL, CLSs, centralised traditional political institutions organised under a hierarchy of chiefs and decentralised families (Arko-Adjei, 2011). Aside from statutory regulations, customary tenure is also regulated by non-documented customary law which is legitimised by the traditions and beliefs of an identifiable group of people (UN-Habitat, 2014a). The forms of land ownership in Ghana are described below.

#### **State land**

In principle, the State did not own land but has accumulated land through compulsory acquisition and gift grants of customary land from the colonial era to date (Arko-Adjei, 2011). The State Lands Act, 1962 (Act 125) provides for the acquisition of land by the President through the publication of an Executive Instrument in the public interest or for public welfare. Upon compulsory acquisition of land by the President, all previous interests in the land are extinguished (Kasanga & Kotey, 2001).

#### **Vested land**

This form of landholding arrangement splits the ownership and use rights among customary landowners and the State. Vested land differs from State land in the sense that although the President retains control over alienation and use rights of the land, ownership rights remain with the customary landowners. Also, the State pays no compensation but prescribes the mode of sharing of income from the use of land in the form of rents (Kasanga & Kotey, 2001). The functions of the State concerning vested land include the allocation of land to investors/users, rent appraisal and collection, physical planning and prosecution for default on contractual arrangements (MLF, 2003). The Administration of Lands Act, 1962 (Act 123) provides for vesting of customary land in the President.

#### **Stool/Skin<sup>9</sup> land**

The 1992 Constitution under Article 295 (1) describes Stool land as “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 members of that community or company” (Parliament of Ghana, 1992, p.167). Compared to family/clan land, Stool/Skin land is held in trust for members of a tribe which represents a larger group of people. Stool lands dominate in areas with indigenous centralised political institutions where

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<sup>9</sup>Stool/Skin “is regarded as an immortal entity, represents the spiritual and physical embodiment of the people” (MLF, 2003, p.12). Literally represents the seat of the Chief or Traditional leader.

landownership serves as a symbol of traditional authority in the country e.g. Akan communities (MLF, 2003). The Stool holds the allodial interest which is superior in customary land tenure system on behalf of the people. However, in the Upper East and Upper West regions in the northern part of Ghana, the *tendamba* (earth priest) who are first settlers hold the allodial interest in land (Kasanga & Kotey, 2001).

### **Family/Clan land**

Family/clan (henceforth referred to as family) represents a group of people who trace their descents from a common ancestor and practice either matrilineal or patrilineal systems of inheritance (Arko-Adjei, 2011). There are two distinct classes of families based on land ownership in Ghana. The first class refers to families that hold allodial interest in land and therefore not subject to the authority of the Stool/Skin in terms of land ownership (MLF, 2003). These families are usually first-settlers and dominate the Volta and Greater Accra regions of Ghana. There are also portions of family lands scattered in the Central, Eastern and Northern parts of the country. The 1992 constitution is silent on the role of statutory land agencies in regulating family land and therefore it is treated as private property (MLF, 2003). The other class of families may hold usufructuary/customary freehold from long settlement or purchase of land. These families acquired customary freehold before Article 267(5) of the 1992 Constitution prohibited the creation of freehold interest on Stool/Skin land (Parliament of Ghana, 1992).

### **Individual land**

Individuals exercise this form of ownership over land acquired through purchase from families or Stool/Skin land. Land may also be acquired through inheritance. Individuals hold customary/common-law freehold over land devoid of restrictions from families or the Stool/Skin (Arko-Adjei, 2011). Individual and family lands account for thirty-five (35%) of land under customary tenure in Ghana (MLF, 2003)

#### **5.2.1. Customary land tenure in Apowa**

The people of Apowa form part of the Ahanta clan in the Western Region under the authority of the Ahanta Traditional Council at Busua. The Paramount Chief of Ahanta and President of the Ahanta Traditional Council bears the title *Otumfour* similar to the Overload of Asantes in Kumasi. There is a Divisional Chief that presides over the Apowa Divisional Council. The Divisional Chief of Apowa also serves on the Ahanta Traditional Council. The Apowa Divisional Council included the *Abusuapanin* (literally translated from family *abusua* head *panin*) and Secretaries of families as members with the responsibility to manage the affairs of the town. As a Divisional Chief, the *odikros*<sup>10</sup> in charge of the seven villages that surround Apowa namely; *Funkoe*, *Yabin*, *Kegyabir*, *Adjuaah*, *Nketsiakrom*, *Anuahun* and *Beahu* owe allegiance to the Stool of Apowa and form part of the Divisional Council. The hierarchy of customary authority is provided in Figure 5-1 below.

The root of title of the landowners in Apowa can be traced to two versions of historical facts proclaimed by Chief of Apowa and families with ownership claims to the land. The two versions, however, tend to accept the customary position of asserting ownership of the land upon discovery as the basis of the claim of both parties rest on the first to *break the virgin forest* (clear the land for farming). The families traced their root of title as descendants of the first settlers that *broke the virgin forest* for farming activities. There were nine families including the *Asamangama Royal family* (from which the Chief is selected), *Tufubene*'s family (responsible for the selection of the Chief), *Nsona*, *Ekissi*, *Bretu*, *Anona*, *Ntwea*, *Kome* and *Ebradzie* that broke the virgin forest. The number of families presently have increased from the original nine (9) credited with *breaking the virgin forest*. The document containing the judgement of the High Court mentions factions of the families including *Ekissi* and *Ekissi No.2* families of Apowa and *Nsona* and *Nsona* families of Apowa with different family heads. There are also factions of the families spread in Ahanta with one town/village from where they all trace their roots. The family secretary for *Anona* family in Apowa mentioned *there are about fifteen (15) factions in the family with our roots at Chaevon*. These families separately cleared portions of the forest for farming, established cottages to house their families and allocated uncultivated land to strangers who came later

<sup>10</sup> Traditional leaders responsible for managing the affairs of villages that are small to be incorporated under an independent Stool.

to farm in return for customary tributes. Later, they came together and selected Nana Amua Gyebu I from one of the families to rule over them. As a group, the families also agreed to present a portion of their harvest and drinks to the new Chief as a sign of paying homage. During the celebration of the annual *Kundum* festival, families also donated food and drinks to support the occasion. As urbanisation caught up the town, families replaced food and drinks with a one-third portion of the land value from land transactions to the Chief of Apowa. In the course of land alienation by the families, the Chief signed as a “confirming party” to authenticate the transaction. Three of the families had declared the extent of their land at the court under the Statutory Declaration Act, 1971 (Act 389) and had their cadastral plan plotted at the RLC at the time of the fieldwork.

The former Chief of Apowa, Nana Amua Gyebu XIV, proclaimed a different version of historical facts as the root of title. Per his version, the ancestors of the *Asamangama Royal family* owned all lands in Apowa and allowed the ancestors of the families to settle the land which had been reduced to a secondary forest by his ancestors. He also claimed some of the families were allocated land after marrying from the *royal family*. This was the basis of declaring the 14.5 square miles (3755 hectares) of land in Apowa and the neighbouring seven villages as Stool lands in 1987 under the Statutory Declaration Act, 1971 (Act 389). The Chief allocated a large portion of the land occupied by investors in Apowa during his tenure until his demise in 1995.

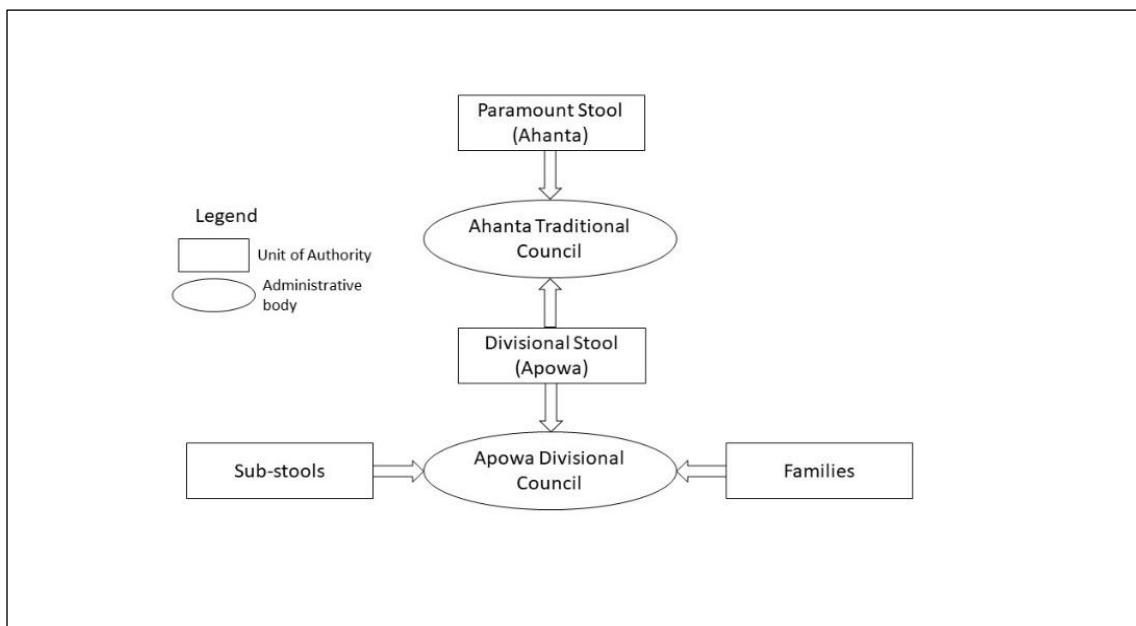


Figure 5-1: Hierarchy of Customary Authority in the Study area (*Author's construct*).

### 5.2.2. Institutional interpretation of historical facts concerning customary land tenure in Apowa.

The arguments over the right to alienate land in Apowa stems from non-conforming individual accounts and interpretation of historical facts. The District Assembly, Ahanta Traditional Council, the High Court and a private legal practitioner have had the opportunity to interpret historical facts according to their understanding.

The families petitioned the Ahanta West District Assembly to resolve the dispute over the right of alienation of land in Apowa in 1992. The Assembly referred the dispute to Paramount Chief of Ahanta who called together the *Abusupanin* of the families and Chief of Apowa (former Chief) for deliberations. In the letter addressed to the Assembly on 29<sup>th</sup> October 1992, the Committee members gave their judgement as:

- That with regard to early settlers, the fact each family has its land cannot be denied.
- That with those lands, they serve under the superior chief, they are under in terms of donation contribution, and of course annual festival homages.
- That before any such land is released to a company or firm etc. In terms of the lease agreement the landowner, be it *odikro* or individual family should be consulted for his or their consent and concurrence.

iv. That much as *Nana Apowahene* (Chief of Apowa) as a Divisional Chief has control over the Stool land under him, he should always consult the individual landowners whose land is required and seek their consent and concurrence.

The Chief wrote to the District Assembly expressing his disagreement with the findings of the Committee but the Assembly accepted the verdict of the Committee as its proceedings involved dialogue and consultations with both parties.

On 16 October 2006, a private legal practitioner who was then representing Nana Amua Gyebu XV (current Chief) of Apowa wrote to the Chief concerning his stance that:

- i. All Apowa Division Stool lands belong to the Stool of Apowa.
- ii. No individual or family or even *odikro* owns land in Apowa Division
- iii. All alienations of land within the Apowa Division must have the Chief as the lessor.

The lawyer in the letter notified the Chief of his inability to represent him henceforth citing his understanding of the customary law as:

- i. Every Stool owns land through the possession of its subjects.
- ii. The Stool alone does not break the virgin forest of all its land.
- iii. Every person or group of persons who break(s) the virgin forest of any land becomes the owner of the usufructuary title, which is however subservient to the Stool's allodial title.
- iv. The allodial owner i.e. the Stool cannot disturb the usufructuary title of the subject.
- v. The usufructuary owner i.e. the subject can alienate this title.

The High Court at Sekondi ruled in favour of the families in the consolidated suits of Eb. Robert Cudjoe VS: Amua Gyebu (Suit No. EI/58/13), Eb. Stephen Amoah Vs: Amua Gyebu (Suit No. EI/52/13) and Eb. Opo Kwame Vs: Amua Gyebu (Suit No. EI/55/13). The suits challenged the ownership claim of the Chief (Amua Gyebu XV) over all land in Apowa. The Judge in delivering the verdict quoted a portion of the decision in Nyamekye v. Ansah (1989-90) GLR 91 which stated:

but any portion of unoccupied or vacant land which the individual members of that community or tribe were able by their labour to reduce into their possession became individual's property and land so occupied would belong to their families after the individual's death. So long as the subject or family acknowledged their loyalty to the stool or tribe their determinable title to the portion of land they occupied prevailed against the whole world, even against the stool, community or tribe...

Although the judgement is being appealed by the Chief of Apowa, the institutional interpretations of the customary land tenure described above form the basis of the customary land ownership structure adopted for this study as provided in the Table 5-1 below.

Customary authority	Customary interest	Right to the allocation of land
Paramount Chief	Allodial holder	Absolute right to the allocation of his family's land. Entitled to a one-third share (1/9) of the Divisional Chiefs' share of proceeds from families' and sub-chiefs' land allocation
Divisional Chief	Sub-allodial holder	Absolute right to the allocation of his family's land. Entitled to a one-third (1/3) share of proceeds from land allocations of families and sub-chiefs within the Divisional area.
Sub-Chief	Sub-allodial holder	Absolute right to the allocation of land in the villages. Pays a one-third (1/3) share of proceeds from land allocations to the Divisional Chief.
Family Head	Usufruct	Absolute right to the allocation of his family's land. Pays one-third (1/3) share of proceeds from land allocations to the Divisional Chief.

Table 5-1: Landownership structure in the Study area (*Author's construct*).

### 5.2.3. Statutory interventions in customary land tenure

The customary land tenure system in Ghana has equally been influenced by the political history of the country from the era of pre-colonialism through colonisation to post-independence. Statutory interventions in customary land tenure are in three folds comprising of: i) control over the creation of interests in land by customary landowners, ii) compulsorily acquisition and vesting of land in the State to extinguish or limit customary rights respectively, and iii) control over the collection and disbursement of Stool land revenues (MLF, 2003).

The British through Indirect rule in the then Gold Coast supported local Chiefs. The Chiefs took advantage of the situation to interpret customary law to suit their interest by distorting historical facts of land ownership and boundaries. These distorted interpretations of custom by the Chiefs mostly formed the basis of written records by British scholars (Obeng-Odoom, 2016). The Chiefs became powerful and allocated land without recourse to customary formalities. The traditional checks and balances on the powers of Chiefs known as *asafos companies*<sup>11</sup> were disbanded with the help of the British (Obeng-Odoom, 2016). The British later established a Legislative Council<sup>12</sup> in 1874 and imported the legal regime in force in Britain to the Gold Coast. This paved way for passing the Public Lands Ordinance<sup>13</sup> to facilitate the compulsory acquisition of land by the British in the colony (Agbosu, 2000). However, the customary land tenure system was not targeted at this stage.

The Chiefs through the course of colonialism occasionally teamed up with the elites to protest against attempts by the Colonial government to vest forest, mineral and *wastelands*<sup>14</sup> in the Crown with the Lands Bill of 1894, 1896 and 1897 (Bennion, 1962). The Aborigines' Right Protection Society (ARPS) formed in 1897 resulted from such collaborative efforts by the Chiefs and elites to secure customary land rights against the Colonial masters. The Concessions Ordinance of 1900 made it mandatory for the details of concessions granted to be submitted to the Supreme Court for publication in the gazette (Bennion, 1962). The Supreme Court was mandated to give approvals or reject concessions before publication by paying critical attention to the size of land granted for logging or mining in concessions. Large tracts of land were likely to be rejected thereby limiting the power of natives to dispose of land. Afterwards, the Land Registry ordinance was passed in 1895 to provide for documentation of land transactions to improve land management (Agbosu, 1990). Finally, the Local Government Ordinance, 1951 (CAP 64) was passed to take over the rent collection on allocations of stool land (Ubink, 2009).

After independence, the State Property and Contracts Act, 1960 transferred all state properties including land which was under the control of the Governor-General to the newly formed government (Kasanga & Kotey, 2001). The Act also transferred the power to compulsorily acquire land to the independent government. The State Lands Act, 1962 (Act 125) was later passed to manage compulsory acquisition and compensation payments. Upon suspicion that opposition parties were funded by stool land revenues, President Nkrumah passed the Ashanti Stool Land Act and Akim-Abuakwa (Stool Revenue) Act in 1958 to vest the stool lands in the State (Obeng-Odoom, 2016). Later, the Stool Lands Act, 1959; Stool Lands Act, 1960 and Administration of Lands Act, 1962 vested all Stool/Skin lands in the State (Kasanga & Kotey, 2001).

The legislation that followed established the statutory agencies responsible for land management in Ghana. These institutions include:

#### Lands Commission

The Lands Commission was established by Lands Commission Act, 1971 (Act 362) under the 1969 constitution. The Lands Commission was charged with the sole management of state and vested lands on behalf of the President

<sup>11</sup> a group of youth, sometimes local army, with the support of the community that held Chiefs accountable for their actions. The group could *destool* (depose) a Chief for abuse of power.

<sup>12</sup> Established by the Imperial Charter of 24th July 1874

<sup>13</sup> Ordinance No. 8 of 1876

<sup>14</sup> vacant customary lands deemed by the colonial masters as without owners.

with the Lands Department operating as the Secretariat of the Commission. There exists a RLC in all regional capitals of Ghana. The Lands Commission Act, 1980 (Act 401) required the Stool to seek the *consent and concurrence* of the Commission before allocation of stool land to non-members of the landowning group. In practice, the concurrence of the RLC (whether or not the prospective use of the land conforms with the planning scheme of the area) is sought by allottees (lessees) and not the Stools upon land registration (Ubink, 2009). The same Act also provided for the establishment of the OASL to collect and disburse stool land revenues per prescribed formula. The current Lands Commission Act, 2008 (Act 767) merged four former independent land agencies namely: Lands Commission, Land Title Registry, Survey Department, Land Valuation Board into the new Lands Commission under the Ministry of Lands, Forestry and Mines (Ehwi & Asante, 2016). The new Lands Commission now has Survey and Mapping, Land Registration, Land Valuation, and Public and Vested Lands Management Divisions.

#### **The Office of the Administrator of Stool Lands (OASL)**

The 1992 Constitution provided for the separation of the OASL (Act 481, 1994) from the RLC. The mandate, however, remained to establish “a stool land account for each stool into which shall be paid all rents, dues, royalties, revenues or other payments whether in the nature of income or capital from the stool lands” (Parliament of Ghana, 1992, p.147). Article 267 (6) of the 1992 Constitution provides for the disbursement of the monies collected. There has been confusion over whether the Chiefs should continue receiving the symbolic “drink money<sup>15</sup>” (now proportionate to the open-market value) for land allocations (Ubink, 2009). Many officials of the OASL believe the “capital from the stool lands” as described by the Constitution includes the “drink money” and therefore should be paid to the OASL. However, to date, the Government has not taken any official stand in this regard and the Chiefs continue to keep the money.

#### **Land Use and Spatial Planning Authority**

This body replaces the former Town and Country Planning Department which operated in Ghana since 1945 under CAP 84. The new Authority was established by the Land Use and Spatial Planning Act, 2016 (Act 925) under the Ministry of Environment, Science, Technology and Innovation. The District/Municipal/Metropolitan Physical Planning Department as a decentralised unit of the Land Use and Spatial Planning Authority prepare Land Use Plans for the areas under their jurisdiction. These Land Use Plans forms the basis of the *consent and concurrence* of the RLC in Stool land dispositions.

### **5.3. Land Registration Systems**

Ghana operates plural registration systems including title registration, deeds registration and customary land registration (Ehwi & Asante, 2016). The policy of the government has been to gradually replace deeds registration with title registration but the relevance of the over 160 years of records held under the deeds system projects maintenance of the system long into the future (World Bank, 2003).

#### **5.3.1. Deed registration in Ghana**

Land Registration was introduced in the Gold Coast (now Ghana) by colonialists upon passing of the Registration Ordinance of 1883. The Ordinance provided for the registration of “any writing, memorandum, document or deed evidencing an interest in land or by which an interest in land was conveyed or transferred” (Agbosu, 1990, p.114). Land transfers were deemed complete only after registration and registered instruments were prioritised over unregistered ones. The registration process required inclusion of a plan and a description of the land parcel in the instrument but failed to provide instructions for surveying and preparation of plans. A new Ordinance came into force in 1895 which provided for a mere description of the boundaries and location of the land parcel. Currently, the Deed registration in Ghana is provided for by the Land Registry Act, 1962 (Act 122) and handled by the Land

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<sup>15</sup> “custom of bringing some drinks to the chief when acquiring land from him as an acknowledgement of the ownership of the land, to show allegiance towards the chief, and for the customary pouring of libations on the ground to seek the gods’ blessings for the transaction” (Ubink, 2009, p. 175)

Registration Division of the RLC. Act 122 fails to describe the types of instruments that could be registered but provides for the description of boundaries and location of the land parcel (could be referenced to a plan) deemed sufficient upon examination by the registrar. The Act similar to the previous Ordinances prioritises registered instruments and describes unregistered ones after its commencement except for a will or judge's certificate as *without effect*. A key distinction of Act 122 from previous Ordinances was the inclusion of a provision for registration of an instrument that proves the title of grantors as a condition for registration of instruments covering subsequent grants. After the introduction of title registration under the Land Title Registration Law, 1986 (PNDCL 152), deed registration operates in the entire country except for Greater Accra and parts of Kumasi.

The Land Registry Act, 1962 failed to provide for the registration of oral grants, made optional the inclusion of an accurate plan, uses outdated and worn-off topographic maps and characterized by lengthy and expensive procedures (Zevenbergen, 2002). The deed registration system has therefore failed to resolve land litigations and improve tenure security among right holders (Agbosu, 1990).

### **5.3.2. Deed Registration in the Western Region, Sekondi-Takoradi**

The Western Region forms part of the eight (8) regions in Ghana operating the deed system of land registration. Although the Land Registry Act, 1962 (Act 122) uses "may" with regards to the inclusion of a plan, all registered deeds retrieved from landowners during fieldwork included a site plan describing the extent and location of the subject land parcel with coordinates. The Officials at the Sekondi-Takoradi RLC interviewed confirmed the inclusion of an accurate site plan was compulsory for registration. The Western RLC according to the Head of the PVLMD was ranked *Best in Ghana* with regards to having the shortest turnaround time of twelve (12) working days to register a deed as at November 2019. World Bank (2018) estimated the average turnaround time for deed registration at 2.1 months with regional variations from 5.5 months in the Upper East to 0.7 in the Western Region. This to an extent confirms the speed of deed registration in the region. However, during the fieldwork landowners and Estate Agents mentioned turnaround time between three (3) to six (6) months. A landowner explained the situation as *normally the registration takes long and sometimes some documents get stuck or lost along the process. Fortunately, because my wife was working there, it took little time of about three months to have it registered*. The short turnaround time may not be accurate as officials could influence the speed of the process for friends and acquaintances. There is also a high probability that the short turnaround time may also depend on the low number of instruments submitted for registration. The respondents during interview sessions expressed very convincing arguments. Their opinions included: *People are ignorant about land registration. They just have documents from the Chief or family that granted the land* (Estate Agent, Sekondi-Takoradi); and *I had a problem with a land transaction about three months ago where the buyer had failed to register the indenture after I had handed the complete document to him. I thought the buyer had sent to the document to the Commission for registration. The buyer was also thinking the process was completed with endorsement by all signatories and therefore relaxed without developing the land too* (Estate Agent, Apowa).

There were also comments about the registration processes and cost involved. This included: *the bureaucracy is too much. The document will pass through about five (5) or six offices and with these offices, it will come to one officer three times. In most of the peri-urban areas, land values are relatively low so economically it is not wise to register a land you bought at Samreboi (a town in the Western region) for GH₵3000-GH₵4000 (€517-€690)<sup>16</sup>. The registration alone can cost about GH₵1500 (€257) or more which could be more than half the price of the land*. The Assemblyman of Apowa mentioned *land within commutable distances (of the city including Apowa) were going for about GH₵ 2000 (€345) (around 2007)*. The cost of registration from the responses is far expensive compared to land values outside the city.

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<sup>16</sup> The Euro (€) - Ghana Cedi (GH₵) exchange rate was €1=GH₵5.799 as at 13<sup>th</sup> February 2020.

### 5.3.3. Customary Land Secretariat (CLS)

The establishment of the Customary Land Secretariat under the Land Administration Project (LAP) clearly showed the commitment of the government towards the strengthening of customary land tenure system in Ghana. The CLS was part of a larger scheme to relieve the government of its role in the management of customary lands in Ghana in the long-run by developing simple procedures for land dispute resolutions, land allocation registration and documenting customary law relating to land tenure (Ubink & Quan, 2008). The CLS was established to meet “growing need for better information as a tool to prevent multiple allocations of the same parcel of land by customary land authorities and to improve their transparency and accountability” (World Bank, 2003, p.10). At the onset of the LAP in 2003, three (3) similar institutions were already in existence namely: Asantehene Land Secretariat, Akyem-Abuakwa Land Secretariat and the Gbawe-Kwatei Family Land Secretariat. These model institutions influenced the establishment of the pilot CLS under Stools or recognised landowning families (Arko-Adjei, 2011). Currently, there are eighty-eight CLSs across the country with 36,178 customary land tenure holders registered (World Bank, 2018). The CLS operates voluntary registration of land transactions upon demand by clients. The operations of the CLS under Stools has further entrenched the imbalance between the Chiefs and customary landholders as the Secretariat is subject to the authority of the Chiefs. This negates the initial motive of enhancing transparency within land transactions and accountability in customary land administration with the establishment of CLS (Ubink & Quan, 2008). There are a lot of ambiguities in the management of the CLS that remains subject to interpretation. These ambiguities include whether the CLS is a statutory or customary institution, who is responsible for paying the salaries of staff and maintaining the equipment in offices (Ubink & Quan, 2008). The ambiguities arise from the lack of a legal backing (legislative Act) for the establishment of CLS.

## 5.4. Land Market on Customary Land

Customary tenure with focus on communal forms of land ownership has been transforming in response in urbanization. The agricultural activities before the arrival of Europeans to Ghana have been described by authors as predominantly subsistence in nature (Kimble, 1963; Obeng-Odoom, 2016). There was an abundance of vacant land available for crop production and the customary leaders allocated land based on the need of household units. During this era, the land was allocated to members of landowning groups without rent yet “strangers<sup>17</sup>” had to fulfil some contractual obligations including giving up a share of farm produce to customary leaders as rent. Kimble (1963) mentioned the existence of land transactions among the Adangmes, Ewes and Akans not necessarily for profit from 1814. The rate of land transactions was low and the land sizes involved were also smaller.

The trade relations with the Europeans influenced the commoditization of land as large mining and logging concessions were granted to both locals and foreigners in exchange for monetary payments. The allocation of land for the building of forts and castles along the coast of Ghana was in exchange for rental payments in gold (Kimble, 1963). The seasonal agricultural tenancies also developed around this era where farmlands were given to strangers based on agreements that harvests will be shared equally (*abunu*) or divided into three (*abusa*) among the tenant farmer and landlord (Obeng-Odoom, 2016).

Currently, individuals within landowning groups prefer private rights in land as population increases and agriculture becomes more commercialised (MLF, 2003). Also, urban dwellers, developers, and investors require customary land for urban developments including residential and commercial properties. These factors have led to the advancement of the land market for customary lands in peri-urban areas where land values reflect current market prices as compared to tokens accepted for allocation early on (Arko-Adjei, 2011; Yankson & Bertrand, 2012). Arko-Adjei (2011) cites a range of contracts for allocation to land to developers by families, chiefs and members of landowning groups outside the formal land market in peri-urban areas of Accra. The advancement of the market for customary land introduced complications into existing customary land tenure system. There have been contests over the right of allocation of land between the Chiefs and usufructuary right holders with the Chiefs acting more

<sup>17</sup> “a stranger is a non-subject of a clan, tribe, skin or stool” (Kasanga & Kotey, 2001, p.13)

like “private landlords” of land under the control of Stools (Ubink & Quan, 2008). In the Northern part of Ghana, some Chiefs are claiming to hold the allodial title in land other than the *tendambas* (Kasanga & Kotey, 2001). Finally, access to land by both natives and strangers are arranged through negotiations in the market system as compared to the clear distinction in the past (Kuusaana & Eledi, 2015).

### **5.5. Summary**

The customary land tenure as the dominant form of land ownership in Ghana consisting of state, vested, stool/skin, family/clan and individual land has been influenced by legislation and statutory institutions through the imposition of limitations on the power to manage, use, and transfer land rights from the colonial era till date. The Deed and Title registration systems provide for the registration of deeds and land titles respectively in support of the formalised land market on customary lands. There also exist the CLS to support documentation of land transfers of customary land. Literature has established the low coverage of land registration in Ghana arising from the oral nature of past land transfers, expensive nature of registration, delays in the registration processes and the inaccurate information delivered to users. As the land markets in cities and peri-urban areas expand arising from the increase in demand for land, customary lands previously exchanged for tokens becomes valuable and sometimes result in conflicts over the right to allocation between usufructs and allodial title holders.

## 6. RESULTS

### 6.1. Introduction

This chapter presents the findings of the data collection exercise gathered through semi-structured interviews with respondents from the Statutory and Customary land agencies, Estate Agents, Local Authority and landowners in Sekondi-Takoradi and Apowa. The findings are described under sections on urbanisation and increase in demand for customary land, land transaction processes and roles of actors, land information in support of the urbanising land market and managing risk under urbanising land market in fulfilment of the research sub-objectives one and two.

### 6.2. Urbanisation and Increase in Demand for Customary Land

Around 2007 when oil was discovered off the coast of Ghana, Sekondi-Takoradi was already developed driving most of the industries engaged in the oil business and related workforce into the peri-urban areas of the city (Obeng-Odoom, 2012). According to the Planning Officials interviewed, some characteristics of the peri-urban areas determined the distribution of industrial, commercial and residential activities. The following factors attracted industrial, commercial and residential developments to Apowa.

#### The proximity of Apowa to Sekondi-Takoradi

Apowa lies about 10 kilometres to the west of Sekondi-Takoradi. This makes it easier for people residing in the town to commute to work in the city daily. Throughout the interviews, respondents cited the ease of getting to their workplace as a reason for acquiring land to develop residential properties in the town. The major road linking Apowa to Sekondi-Takoradi also forms part of the Ghana-Ivory Coast highway used by trucks to transport goods from the Takoradi Harbour to the landlocked countries of Burkina Faso and Mali (GSS, 2014a). This added to the competitive advantage of town in attracting the large scale industries in the oil business as haulage of goods is prime to the sector. It was therefore not surprising that during the fieldwork a host of prominent multinational companies were scattered within this part of the oil enclave.

#### The availability of large tracts of vacant land

Sekondi-Takoradi did not have the required vacant lands to accommodate the residential, commercial and industrial developments associated with the exploration of oil in the region according to the Planning Officials. Apowa, a few kilometres from the centre of the city, had large tracts of undeveloped lands at its disposal. The land sizes involved in the early transactions after the discovery of oil was huge. One of the Estate Agents reiterated: *Somebody took about 400 acres of land in a single transaction and hope to sell in the same manner. I know someone who wants to design his 500 acres for residential estate development.* He also mentioned that: *People thought they (oil companies) will have massive infrastructure and for that matter, they will need more land.* These land transactions were as a result of speculation where people with enough resources acquired the land with the intent to resell to the oil companies. These buyers were not only individuals as according to the Head of Planning, Ahanta West Municipal *they can be companies either oil companies or service companies in charge of mines buying chunks of land and reselling to other international companies entering the market.*

The large tracts of land involved in transactions may not be under the control of a single landowning group. Two respondents cited instances where a group of families and sometimes with the Stool pulled land resources together to meet the demand of large-scale investors. A family secretary described such process as: *When the land required is beyond the capability of a particular landowning family, the pool of resources by various families with land in the area is the only way out. When the land contributed by families exceed 10 acres, separate indentures are prepared by the families and the developer.* This made it easier for developers to access the needed land for their business activities.

### **The offer of serviced industrial plots to oil companies.**

Aside from the availability of large tracts of land for development, an interview with a family secretary revealed the landowning groups in Apowa together with the Planning Authority had demarcated land in *New Amanful*, one of the suburbs of the town, into industrial plots. The land was demarcated into plots of 5 acres with a layout already prepared. Individual buyers who had acquired large tracts of land also imitated this initiative by preparing layouts to cover their land and demarcated the land into industrial plots before advertising for renting (see Figure 6-1 below). This approach according to the Planning Officials ensures investors that the land was already in conformity with the Land Use Plan of the area and therefore acquiring permits for their development will not be burdensome.



Figure 6-1: Signpost advertising serviced industrial plots for renting in Apowa (source: Author's fieldwork, 2020).

#### **6.2.1. Urbanising land market on customary land in Apowa.**

The increase in demand for customary land arising from urbanisation in Apowa has influenced the people-to-land relationships as known before. Aside from changes in land tenure, the role of the customary and statutory institutions responsible for the management of customary lands has transformed under the urbanising land market. These changes are further described below.

##### **Customary land tenure**

Prior to the development of an active land market in Apowa, respondents stated that members of the landowning groups could have access to land for farming by merely seeking permission from their *Abusuapanin*. The arrangement for allocation of land was very simple and involved no payment of monetary consideration for the use of land as families controlled large portions of land. There was enough land to cater for the needs of members. As the rate of land transactions increased, the allocation of land became more formalised. The landowning groups became more knowledgeable and offered contracts of leases to buyers instead of offering common law freeholds in conformity with the restrictions of the Constitution. One of the Secretaries to the families explained: *Now we all know per the Constitution, we do not sell lands but only lease it and therefore someday when the lease expires, there is supposed to be a renegotiation between the parties.* The reversion of interest back to landowning families ensures posterity could also cater for their needs with the land resources of their families.

##### **Customary land tenure Institutional setup**

Interviews with respondents in Apowa revealed families controlled almost all the land with few pockets owned by individuals. The use of the term *families* in this regard includes the *royal family* from which the Chief is chosen to occupy the Stool (symbol of authority). All the respondents agreed with the local custom that families own land but serve the Stool with their land. Addressing the implications of the urbanising land market on the customary institutional setup, an official of the OASL described the situation as *In Akan dominated communities, lands are controlled*

*by the Stools headed by the Chief. So even though we have families that we call customary freeholders or usufructs, you (the families) are all under the umbrella of the Stool. The trend now is that these people (families) who are under the umbrella of the Stool are now on their own and alienating land without recourse to the Stool. You cannot have a Stool without land because the land is a symbol of control for our Stools and that is why if the land is taken away, it leaves the Stool as just a piece of wood. Because what forms the authority of the Stool is inherent in the land and the land is occupied by the people. So once the land is under your care, the people are under your care sort of. If you go to Ahanta for instance, it is chaotic and the families are fighting the Stool.* The respondent also mentioned the lack of consultations with the Chief meant the custom of paying one-third of all monies received from land allocations by families to the Stool is sometimes not adhered to. This was confirmed from copies of letters retrieved during fieldwork sent from the Chief to the families demanding the one-third of land values due to the Stool.

#### **The economic value of the land.**

Under the urbanised land market in Apowa, the land is traded for huge sums of money. The series of indentures retrieved during the fieldwork proves families are allocating land to investors and developers who can afford to pay valuable compensation. The value of land in the town has been increasing exponentially in less than a decade. A plot of land for residential development according to landowners and Estate agents interviewed was leased for GH₵2000-GH₵4000 (€345-€690) when the scramble for land began but commands from GH₵15000-GH₵40000 (€2586-€6896) at the time of the fieldwork. The landowners reiterated ordinary residents of the town cannot afford to buy land anymore. Respondents also attributed the increase in the value of land as the cause of the contestation between families and the Stools. An official at the OASL lamented *It is money and nothing else. This whole scenario is purely driven by money. A few years ago when I came here in 2007 just before the oil craze started, you won't hear of many issues.*

#### **Collaboration between statutory and customary land administration setups.**

The landowning groups maintain a close relationship with the RLC to secure their interest in land by requesting for caveats to be placed on the registration of their land encroached upon by others (interview with a representative of Ahanta Traditional Council). The Planning Unit according to officials has been liaising with the families that control large parcels to prepare layouts as development span into new areas. The OASL is in charge of the collection of all rents, royalties and fees accruing from the allocation of Stool lands. Currently, families also have arrangements with the OASL to collect ground rents on their behalf at a fee to cover administrative expenses of the Office (interview with an official from OASL). Similarly, the Deeds Registrar mentioned the RLC has a good relationship with the landowning groups. The close relationship with the landowners makes it possible and easier to resolve land disputes that may arise from land allocation and registration.

### **6.3. Land Transaction Processes and Roles of Actors**

The land transaction processes described here are based on the synthesized accounts of respondents interviewed during fieldwork. The right to allocate land rested primarily with the Stool and families. Individuals who acquired land from either the families or Stool could assign their interest to new buyers in subsequent transactions. The actors who play different roles in land transactions concerning either the stool, family or private land (assignment) may be similar. The distinction between the types of land transactions discussed in this section is only based on the interest of the grantor and therefore possible to have the other parties partake in the process in different capacities. This means, the Chief could perform a function in transactions involving family or individual land and the family could do the same in transactions involving individual land. Estate agents are usually contracted to assist buyers in land transactions.

#### **The Stool Land.**

The *Royal family* has land directly under its control which is allocated by the Chief to prospective developers on behalf of the family. Landowners who acquired land from the Stool mentioned other people from the *Royal family* including the Head of family, Elders and the Secretary to the family as essential to the land allocation process. The

process of land transaction began with the expression of interest by prospective developers to acquire land. Almost all the landowners interviewed spoke to someone about their intention first before being introduced to an Estate Agent, a representative of the Stool or the Chief. The first point of call for prospective developers/Estate Agents (henceforth referred to as “buyer”) could be anyone from the town as information on land ownership was local knowledge among residents. When finally introduced to the Chief, there is an agreement on the availability of vacant land that matches the buyer’s requirement including size, location and probable use of the land. The Elders thereafter lead the buyer for inspection of some vacant lands until he chooses a site and then reconvene at the Chief’s Palace to negotiate the land value. The buyer shows a commitment by making a symbolic payment per custom for the land value with *Schnapp* (local gin) and requests for a *site plan* (cadastral plan) to conduct an *official search* at the Client Service Access Unit (CSAU) of the RLC. Portions of the town were not covered by *layouts* (Land Use plan) at the onset of land transactions and therefore Surveyors demarcated and prepared the *site plan* for plots when buyers expressed interest in acquiring such land. The *site plan* is signed by a registered Land Surveyor and authenticated by the Regional Land Surveyor (on behalf of the Director of Survey) before the Chief, Head of Family and Secretary to the family endorses the back. The buyer pays for the land value when the result of the *official search* shows the land is *unaffected* (unencumbered) by any land transaction. The indenture is prepared and signed by a Lawyer before being submitted to the Chief, the Head of family and Secretary to sign. The name of the Stool is included in the indenture as the grantor as against the name of the Chief to signify the land belongs to the Stool (a group of people as against an individual). The indenture is also signed by the grantee (buyer) and his witnesses. Finally, the indenture is submitted at the CSAU for registration. The steps involved in this type of land transaction are represented in the activity diagram (Figure 6-2) below.

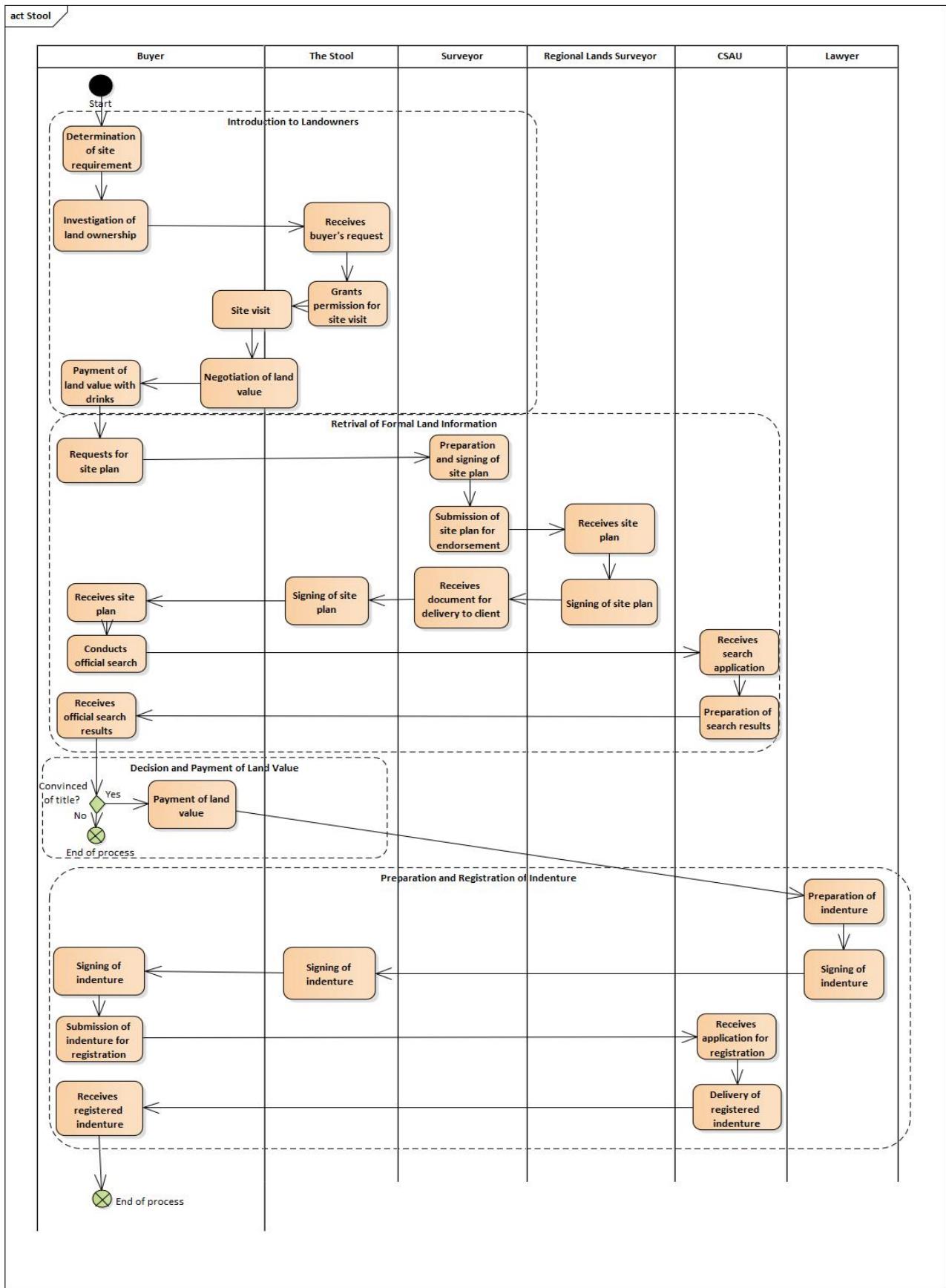


Figure 6-2: UML Activity Diagram of the land transaction process on Stool land in Apowa (*Author's construct*)

### **Family land**

The *Abusuapanin* is responsible for the allocation of family land to prospective developers. Some land-owning families have formalised Secretariats to assist with their land transactions headed by the Family Secretary. The family secretaries are chosen among the members of the family with formal education and sound knowledge of the landholding customs and arrangements of the town. Prospective developers or their Estate Agents (henceforth referred to as “buyer”) are usually introduced to the Chief before he invites the *Abusuapanin* during instances where there is no vacant Stool land that meets the buyer’s requirements. Also, buyers could be directed to the Secretary before meeting with the *Abusuapanin* and the Elders of the family. The family is informed of the site requirements and when there are vacant lands that meet the requirements, the buyer visits the site with the Elders and Secretary. Later, the family reconvenes with the buyer and inform the buyer of the land value yet negotiation and payment are reserved for later. The buyer requests for the *site plan* endorsed by *Abusuapanin*, Family Secretary and an Elder on the back to conduct an *official search* at the CSAU to confirm whether the land is *affected* by a transaction or not. When the result shows the land is *unaffected*, the buyer negotiates the land value with the family and may decide to pay for land value or proceed to investigate on the ground to confirm the search results from the RLC depending on how satisfied one may feel with search results. When convinced of the family’s ownership claim from field investigation, the land value is paid and the preparation of the indenture begins. As custom demands, a one-third portion of the payment of land value is paid to the Stool. The lawyer prepares and signs the indenture before sending it to the same parties that endorsed the *site plan* to sign. The name of the *Abusuapanin* and the family is included as the grantor. The Chief signs the indenture as the *confirming witness* to the transaction. The buyer receives the indenture and signs with his witnesses before submitting it at the CSAU for registration. The steps involved in this type of land transaction are represented in the activity diagram in Appendix Three.

### **Individual/Private land.**

The land falling in this category has been the subject of an earlier allocation by the Stool or family to an individual. Land transactions involving the transfer of individuals’ interest in land are mostly negotiated by Estate Agents. The Estate Agents could either assist prospective developers to find land or may be contacted by the seller to advertise land on their behalf. The parties agree on the availability of vacant land that meets the buyer’s requirement and proceed to the site for inspection. The buyer (could be the Agent) thereafter receives a price quote and requests the *site plan* to conduct an *official search* at the CSAU. When the ownership claim of the seller is confirmed by the results of the *official search* (previously registered land), land value is negotiated and could be paid at this stage or further field investigations are undertaken by the buyer to validate the search depending on how convinced one may feel with search results. The land value is paid after the buyer is satisfied with the results of the field investigations. A lawyer prepares and signs the indenture before sending it to the seller to sign with his witnesses. The buyer also signs with his witnesses and submits the indenture at the CSAU for registration.

During instances where the head-lease (between the Stool/family and the seller) was not registered, the seller introduced the buyer to the Chief as the new lessee. The Chief will request an indenture to be prepared with the name of the Stool as the grantor. The indenture is prepared with the term (duration) as a fresh lease. Here, the land value is paid to the seller but the Chief will take a *signing fee* (less than the land value) from the buyer and sign the indenture. The seller and buyer will also sign before the indenture is submitted at the CSAU for registration. The steps involved in this type of land transaction are represented in the activity diagram in Appendix Four.

#### **6.3.1. General stages in the land transaction processes**

Basing on the processes described under land allocations by the Stool, families and individuals, the following are typical of all land transactions;

##### **Introduction to landowners**

At this stage, the prospective developer settles on the ideal location of land taking into consideration the intended use of the land. This is usually followed by consulting with officials of the RLC and OASL, Estate Agents or ordinary residents to determine the land ownership structure in the area. Here, prospective developers are likely to meet or be recommended to Estate agents to assist in finding landowners who might have land that suit the site

requirements. A meeting with the landowners is arranged and if there is an agreement on the availability of land that meets the requirement, a site visit is arranged. When transaction concerns Stool land, symbolic payments of land value is paid after negotiation of land value when the prospective developer is satisfied with the site offered by the Stool. Land transactions involving family and individual, however, only involves receipt of a quotation of price from the landowner at this stage.

#### **Retrieval of formal land information**

After agreement on the site, the prospective developer requests for the site plan to carry out an investigation of title from the CSAU. The CSAU serves as the front office of the RLC by receiving requests for land information, other land registration services and delivering feedback to clients.

#### **Decision and payment for land**

The prospective developer after receipt of the feedback from the CSAU will decide whether he is convinced of the landowners' title or to carry out further investigation on the ground. When convinced with the feedback from CSAU, the prospective developer pays for the land. Further investigations will be based on land information held by the Stool, families or Estate agents.

#### **Preparation and registration of indenture.**

The final stage involves the preparation of the indenture, signing by required parties and witnesses and submission for registration at the CSAU. After registration, the registered deed is delivered to the client by the CSAU.

#### **6.3.2. Influence of actors in the processes of land transactions.**

The complex nature of processes within the urbanised customary land market as shown by the description of land transactions earlier allows for various actors to be engaged in land transactions. The actors that play important roles in land transactions include the Stool, families, estate agents (surveyors) and officials from the State land agencies. Analysis of the activities of actors from interviews revealed actors leverage their power and network to influence the process or outcome of processes in land transactions. This section analyses the activities of the Stool, families, estate agents and State officials in the land market.

#### **The Stool**

Under the customary land tenure system, the Stool is the most powerful institution in the allocation of land exercising both direct and indirect control in the process. There is a statutory declaration at the RLC that categorises all the land in Apowa and suburbs as "Stool land". Therefore, all documents submitted at the RLC for first-time registration without the name of the Stool as the grantor is likely to be rejected. The declaration formalised the customary position of the Stool as the originator of land title and made the Chief more powerful. An estate agent described the situation during the tenure of the former Chief as *I believe and can recall at that time, no family had access to land. The Chief (former Chief) kept all the proceeds for himself. The family only benefitted when clearing of the land affected their livelihood from farming activities. The company will cause for the valuation of the crops and pay compensation to the family but the land value was reserved for the Chief alone. During his time, no one had a say in land matters.* The former Chief had more knowledge than the families in issues relating to statutory provisions covering customary land. Aside from declaring all the land in Apowa as "Stool land", he also allocated family land to companies with the excuse of employing the youth (interview with the Local Government official).

Also, secretaries of families and a section of landowners believed the Chief has a close relationship with Officials at the RLC and this made it difficult for the families to rise against his authority. The relationship between the Chief and Officials according to a Landowner *made it possible for the Chief to access information on vacant family lands which he subsequently allocated without the knowledge of the families.* The Chief's *Abusuapanin* was mentioned as another powerful actor in the allocation of land. The *Abusuapanin* is believed to be the mastermind behind the current dispute over the right to allocate land between the Chief and the families.

#### **The landowning families**

The educated people within landowning families in Apowa have contributed to securing the interest of their members in land transactions. This class of people according to the Local Government official have been

challenging the powers of the Chief for a long time. During the reign of the former Chief, he mentions *this category of “troublesome” people made sure their families received their share of compensation for land allocations while other families were ignored*. A local Estate Agent interviewed confirmed by mentioning that *the educated people also helped their families to declare their land at the court and then register the declaration at the Lands Commission*. Therefore, such families can allocate their land without any form of consultations with the Stool. During the fieldwork, copies of the registered statutory declaration covering the land of three (3) of such families in Apowa were presented to the researcher. The families sometimes bypassed the Chief of Apowa and proceeded to the Paramount Chief at Busua to have him sign their indentures as a *confirming party*. According to one of the family secretaries: *some of the indentures I prepared were sent to the Overlord at Busua for his signature as a confirming party and afterwards registered at the Lands Commission*.

Through the efforts of these elites, the families are more knowledgeable about customary land administration today. This led to suit of the Chief in 2012 by the eight (8) families challenging the ownership claim of the Chief at the High Court. Judgement had been awarded to three (3) of these families already to allocate their lands. The families at the time of fieldwork had begun processes to declare their land.

#### **Estate Agents (Surveyors)**

The land market in the town has been described as chaotic by officials of RLC and OASL with disputes over the claim of ownership. Yet there are Estate Agents who manage to negotiate land transactions even under the current circumstances. These Estate Agents boast of local expertise with a clear idea of the customary land tenure system in the town. As natives of Apowa or Surveyors having worked in the town for a long time, these local Estate Agents claim to know of all land that falls under disputes and avoid them in their daily transactions (interview with local Estate Agent). These disputes could be among family members, between the Chief and families and between families and individuals. The Estate Agents could arrange for an unofficial search to ascertain the status of land using their networks at the RLC.

Also, the local Estate Agents who hail from Apowa have a good relationship with the Stool and the families and can negotiate for terms that are favourable for their clients. Explaining how this is done, a Local Estate Agent mentioned: *When the land is owned by the family, I add the name of the Head of Family/ Secretary as a confirming witness to the transaction to commit them to the transaction although the Chief is recognised as the grantor. This is to prevent future instances where the family could turn around and challenge the title of the buyer*.

#### **Officials at the Statutory Land Agencies**

The officials come into contact with landowners often with regards to land registration and collection of ground rents. From this interaction, officials are familiar with the family heads and Chiefs responsible for land allocation in the region. The Deed Registrar mentioned *he is likely to spot inconsistencies in the name of grantors when any other party aside from the recognised family head or Chief allocates land*. The Registrar also invites these family heads and the Chief for discussions when disputes arise. The Regional Lands officer (RLO) has also been influential in terms of documents that are registered at the RLC. During the interview with the Secretaries to the families, they stated that as of 2015, indentures with the name of the families as grantor could be registered at the Commission. The RLO as at then agreed that families have the right to allocate their land and therefore allowed for registration of these documents. However, after his death, the new RLO thinks otherwise and documents with families as grantor are rejected.

#### **6.4. Land Information in Support of the Urbanising Land Market**

Land information required to inform the decisions of actors in the land market is secured mainly from the formal and informal sources (field interviews). Formal land information is managed by the Records department of the RLC and accessible to the public by applying to the CSAU. Informal source of land information, therefore, refers to any other source of information secured aside the official records of the RLC or without going through the application process prescribed by regulations.

#### 6.4.1. Formal land information

The RLC provides information on registration, judgements and statutory declaration on land to actors in the land market who seek to verify ownership claims. The process of accessing land information from the RLC is usually referred to as *official search* in Ghana. The interview with landowners, officials at the RLC and OASL, and Estate Agents revealed the use of formal land information adds credibility to the land transaction process as documentary proof can be provided in times of dispute. A summary of the processes and requirement for an official search is provided in Table 6-1 and the activity diagram (Figure 6- 5) below.

Actors	Activity
Client	Submits a completed search application form with: i. two copies of the site plan with clear gridlines and acreage ii. name of applicant and address iii. photocopy of valid National Identity card. Payment of official fees depending on the use of the land
Client Service Access Unit (CSAU)	Receives the application. Crosscheck to make sure all requirements are met. Receives the search result for delivery to the client.
Records Dept.	Retrieves the information. Head of Records crosschecks the information.
Typing pool	Types the information in an acceptable format.
PVLMD (official in charge of search)	Check for consistency in the flow of land information (tracing of the root of the title) Checks for conformity in dates. Disclosure of any judgement (caveat) Signs the document.

Table 6-1: Official land information search process and requirements (*Author's construct*).

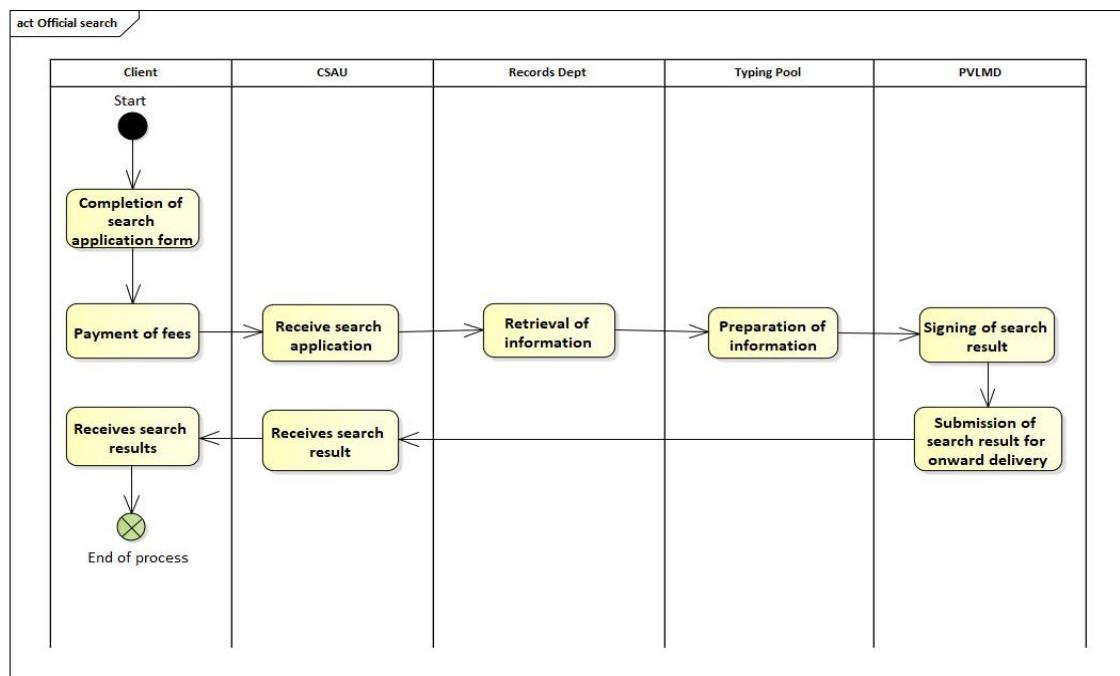


Figure 6-3: UML Activity Diagram of the official search process at the CSAU of RLC (*Author's construct*)

##### 6.4.1.1. Challenges associated with accessing formal land information.

Officials are supposed to work within six (6) weeks specified by regulations to provide the results of an official search to clients (interview with Head of PVLMD). Landowners and the Estate Agents complained that often the

waiting period exceeds the allotted time. The Head of PVLMD cited errors contained in applications submitted by clients as the reason accounting for the delays. The wrong edging (delineation of the parcel) of site plan makes it difficult for officials to identify the subject property and requires calling back clients for corrections.

Also, the information managed by the Records Department is to a large extent paper-based. The sheets containing information are occasionally worn off which result in the inaccuracies of search results. The use of National and Local grids in the preparation of cadastral plans also accounts for some of the inaccuracies in land information given to clients. Human errors in writing and typing of information account for the inconsistencies in search results from different dates. The Head of Records and Official from PVLMD that signs the search result do not receive the files on the subject land to crosscheck information. They usually rely on what is produced before them, check the format and signs the result.

Finally, all the landowners and Estate Agents expressed their concern with regards to the disclaimer issued with formal land information. On the search result document, there is a caveat that exonerates the RLC from any risk that the user may encounter upon relying on the information provided (see Appendix Five). The Head of PVLMD mentioned he does not see the essence of the caveat when clients are supposed to be informed by the official search results. Yet, there have been series of occasions where the Commission used this caveat as a defence in the court against clients. The caveat defeats the purpose of land registration whereby the RLC cannot guarantee the authenticity of land information contained in the land register. This further reduced the trust among users as expressed by the landowners and Estate Agents.

#### **6.4.2. Informal land information**

The informal sources of land information also proved very significant to actors engaged in land transactions. As there exist incomplete land information from the records of the RLC, actors have to be strategic in retrieving information from other sources. The official from the OASL provided an accurate description of the use of informal land information as:

*Professionally I will tell you (prospective buyer) to tread cautiously. If you conduct a search at the LC (Lands Commission) and find the land is vacant, it is not enough. That is one of about ten steps. You will have to go to the grounds, make enquiries. If there are neighbours speak to them asking questions like “who owns these lands”, “who did you buy it from”, “did you get your documents”, “how did you go about it”. If they tell you how they went about theirs then you might have gotten some assurance that you are dealing with the right people and yours (land transaction) will go through (succeed). The reason is that the LC which is supposed to be the final arbiter in these matters has weaknesses.*

The Landowners and Estate Agents listed four sources of informal land information that remain useful to the activities involved in land transactions.

#### **Residents**

Land information concerning “who owns which parcel of land at where” formed part of local knowledge among residents of the town. The Coordinator at the CLS lamented, *everyone is aware of where families own their lands. The residents can easily direct strangers to individuals and families owning lands.* This form of land information is gathered from the “lived experience” of residents who may not have necessarily directly witnessed events but hears “bits and pieces” of information from different sources over time and puts them together. The process of gathering this information makes it least reliable yet useful in early stages of transactions to identify landowners and vacant land.

#### **Public officials acting in unofficial capacities**

Officials working with the statutory land agencies (RLC and OASL) were essential sources of land information for prospective developers and estate agents in the land market. The land information accessed through this medium is based on documentary information managed by the agencies however not retrieved via official channels. This source of information proved useful to actors at the early stages of land transactions by helping to identify vacant lands and whom to contact. One of the landowners interviewed mentioned *fortunately, my wife was then working with*

*the Lands Commission so she had a friend there whom she informed we wanted land to buy. The guy directed us to this place.* The information can be verified later in an official search making it more reliable than the local knowledge of residents.

### **Estate Agents**

The Estate Agents that assist in land transactions offer empirical land information gathered over the years from practical experience. The agents work with the Stool, families and individuals in their activities. Although this source of land information is non-documentary, it remains reliable as it reflects the situation on grounds. This source is more reliable than the unofficial information from public officials. An Estate Agent described the process of investigating land information as *I visit the site and whomever I find there, I do engage them in conversations. Interestingly, you can get information on the landowner, other landowners they share boundaries with and even pending disputes on land. I can be on the ground for about a month investigating the ownership of the subject land.*

### **Customary leaders**

The custom of the people in Apowa dictates their land tenure system from past generations. This is the most authentic source of informal land information as it easily traces the roots of all land titles. The reliability of this form of land information also rests in the complexity of changing the narration. The customary landowners always rely on customs to prove their claims to land. This source of the land information forms the basis of all documentary land information held by the Statutory land agencies. Traditional authorities and the elderly in communities are usually the keepers of local custom. An example of the use of land information from this source was the referral of the land dispute between the Chief of Apowa and families over land ownership to the Ahanta Traditional Council as described in Chapter Five.

#### **6.4.3. Customary Land Secretariat (CLS) as a source of land information**

The CLS for Ahanta was established less than five (5) years ago at the seat of the Paramountcy to provide records of customary landholdings and allocations at the local level. The Coordinator of the CLS mentioned the role of the CLS as a source of land information was to be achieved by undertaking an inspection of the land, keeping a log of land allocations, preparing and endorsing indentures with the seal of the Paramount Chief. During the initial stages of its establishment, all the land allocations by Sub-Chiefs and Divisional Chiefs were processed at the Secretariat as such transactions required the signature of the Paramount Chief to be complete. This made it easier to keep records of all land allocations by the Stool. However, the inspection of land parcels before processing was impossible as the Secretariat lacked adequate funds to employ a registered Surveyor. Land allocations by the families formed a larger portion of all land transactions in the area and included bigger tracts of land. However, land allocations from families were not submitted to CLS for processing. Later, the Chiefs failed to direct allottees to submit indentures at the CLS. During the fieldwork, the CLS was only handling land allocations by the Paramount Chief. The Coordinator mentioned *there is no need coming to the CLS for such information* as residents could provide developers with land information rendering the Secretariat almost redundant.

#### **6.4.4. Land information in support of the land transaction process.**

Three out of the four general stages of the land transaction processes described earlier namely; i) introduction to Landowners, ii) retrieval of formal land information, and iii) decision and payment for land contained elements of investigation of the title of landowners. The investigation of title under the first stage helps identify the landowners responsible for land allocation within the area. Here, less reliable information from residents and public officials in informal capacities could suffice in the identification of the landowners. The less reliable information from the previous stage is verified from the official records of the RLC. As described earlier, information from the official records adds credibility to the land transaction process. In the event of a land dispute in the future, reports of official search could be provided in court to prove prospective developers acted in *good faith*. Investigation of ownership title in the last stage if necessary involves the validation of information with the most reliable source of land information from the customary leaders. The customary leaders are usually consulted when there is inconsistency in the identity of landowners from the first stage and as documented in the official records of the RLC. The role and relationship between the sources of information are provided in Figure 6-4 below.

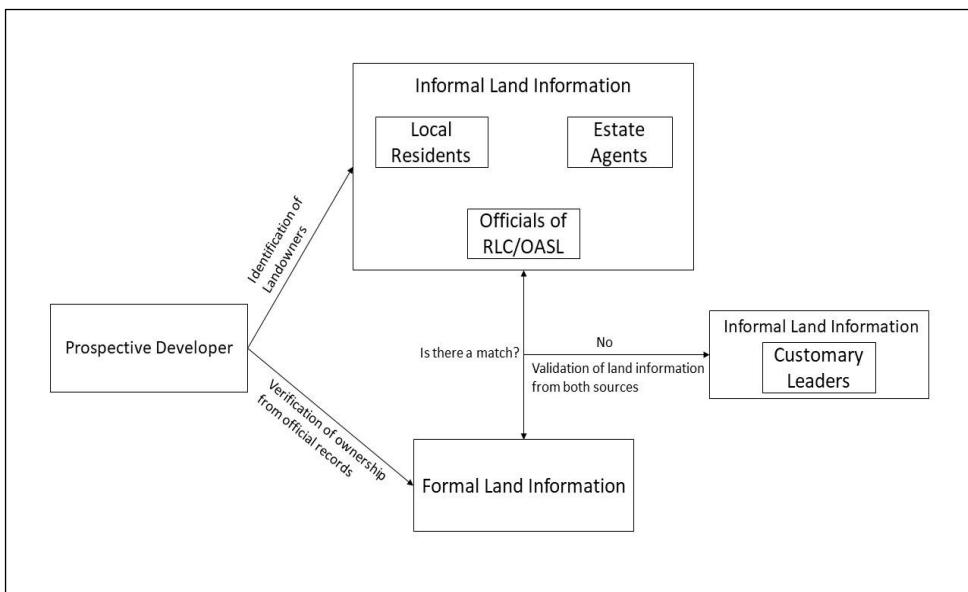


Figure 6-4: Interaction of Landowners with sources of Land Information (*Author's construct*)

## 6.5. Managing Risk under the Urbanising Land Market.

The urbanising land market in the peri-urban area is faced with challenges. Adopting the four categories from Palmer (1996) as described in Chapter Two, the risks associated with land transactions in Apowa are described under the following sub-sections.

### 6.5.1. Screening problem

The verification of ownership claims in land transactions is a complex task under the current system of land tenure prevailing in Apowa. The families, individuals and the Stool owning and allocating land makes it difficult to ascertain the rightful landowners that actors could deal with. An Estate Agent pointed out, *That is where you have to be very careful if you want to buy land here. You have to be careful to make sure you are dealing with the right persons otherwise you will be paying money and throwing money away here and there. There are examples of land racketeering. People use the land to extort money from other people.* The situation requires the identification of actors and a comparison of different versions of land information before land transactions can be concluded. The identification of rightful persons responsible for allocation of land is further complicated when different factions of the same landowning feel entitled to deal with buyers. A landowner gave an example from the *royal family* as, *usually, the lands are seen as vacant when the site plan is not prepared or there is no physical development on the land. The nephews of the Chief are not privy to all land transactions carried out by the Chief and sometimes when in need of money they feel they could also allocate some lands. They convince people looking for land desperately and allocate land to them which might turn out to have been sold by the Chief to another party.* Another shared his experience from a transaction involving family land as *later we heard the seller had heard the land she held had been sold to another party by a pastor from the same family. She had therefore sought to resell to another person and excuse herself from any looming trouble.*

The different actors either decided to stay away from land transactions considered *risky* or adopt a range of measures to combat the risk associated with transactions. The local government official mentioned: *as of today, I would advise no one to come to Apowa in search for land* while an Estate Agent mentioned: *I do not advise people to buy lands that are not registered at the (Lands) Commission.* When land transactions involved the transfer of unregistered leaseholds, a Landowner interviewed mentioned he had advised someone before to *conduct a search at the Lands Commission and when declared vacant, proceed to the family head to swear an affidavit that the family knows the seller (lessee of the family) before any form of payment is made.* With the affidavit, the family commits to the transaction and could be held

responsible when the details turn out untrue. A local Estate Agent mentioned some clients specifically demand registered land. He explained *the land transaction will just involve an assignment of interest which commands higher prices than ordinary land parcels. Land parcels range from GH₵ 12,000 - GH₵ 15,000 (€2068-€2586) but registered land could command as much as GH₵ 30,000 - GH₵ 40,000 (€5172-€6896). For the sake of tenure security, well-to-do (rich) developers still pay for such land.*

#### **6.5.2. Incentive problem**

The families without statutory declaration covering their land find it difficult to convince buyers of their title. The formal land information at the RLC denotes their land as part of Stool land and therefore will only accept to register documents that bear the name of the Stool as the grantor. Including the name of the Chief as grantor according to one of the family secretaries *meant the reversionary interest in land will rest in the Chief upon expiration of the lease and someday there will be no family lands but Stool lands.* The family secretaries mentioned they informed buyers of this challenge and hope the buyer agrees to still go on with the transaction.

The agreement on payment of land values in instalments between prospective developers and landowners helped foster trust between the parties. Majority of the Landowners and Estate Agents had used an instalment plan to pay for land value. A local Estate Agent elaborated on this by saying *two-thirds of the money is paid to the landowning group when the cadastral plan is prepared and authenticated by surveyors. The last one-third is paid when the indenture is signed by all the parties including the Chief.* Another landowner described *I think I paid in three tranches. When I did the first payment, I requested a site plan so I could register the land in my name and the Chief gave me permission to prepare it. I made the second payment when they signed the site plan and the final payment upon signing of the indenture to be registered.* The official from the OASL also mentioned he advised people: *not to finish paying all monies for the land until the document is given to you.*

The landowners also cited the level of trust in Estate Agents influenced their decisions to acquire land even though they are well aware of the risks associated with land transactions. A Landowner commented: *people keep buying land here depending on who is selling the land to them. Trust is key in engaging in land transactions here. Some local agents are more likely to know all lands under dispute and would advise developers to stay away from these lands.* A local Estate Agent mentioned although registering land leased from families is difficult, *most of the families are in constant occupation of the land and therefore people buying land from them without registering it at the Lands Commission can still develop their land peacefully.*

#### **6.5.3. Monitoring problem**

The protection of land rights against all others is an expensive process. The situation has given rise to harassment of landowners who secured their land from the Chief on disputed lands by families, double payments to Chiefs and families for the same parcel of land and the existence of many vacant lands under dispute.

The families had to defend their title in the court for six (years) and afterwards had to declare their lands. The legal fees concerning the suit at the High Court drained the resources of most families. Explaining their ordeal, a family secretary mentioned *we had to employ the services of a new lawyer who commutes from Accra to Takoradi each time we have a hearing at a cost. The three families paid almost GH₵ 1000 (€170) for his expenses each time he appears in court.* Now the families also have to pay for the cost of preparation of cadastral plans and other fees to declare their land.

After securing judgement from the High Court, the families went back to most of the landowners who bought land from the Chief to renegotiate their deals and demand payment of land values. A family secretary described: *people out of reason sat with the families and paid some monies to them and the families issued receipts to them.*

The many disputed undeveloped lands exist because: *neither the family or the Stool can cause development to commence. This is a headache for the people who have bought the land. Red bands are hanging on the land and foundations of buildings* (interview with local Estate Agent). The red band signifies *danger* and therefore meant to deter developers from visiting the site. During the fieldwork, a lot of sites had packed sandcrete blocks, sand or developed substructure (foundations). Findings from the interviews revealed these were measures adopted by landowners to communicate to all others that the parcels are already subject of land transactions. The official from the OASL also described another reason:

*sometimes you do not feel the issue (land disputes) until the day you touch the land by sending machines to the field. Therefore I advise prospective buyers to pay a deposit to the seller and while the registration process is going on after the search at the Lands Commission and on the ground, try and touch the land and see. If nothing happens or no one comes after you after some time, then you can proceed. Per the Official, this is the *real test* to find out if the land has been sold to other parties. The undertaking of any development activities on the site constitutes what is described as *touching the land*.*

#### **6.5.4. Enforcement problem.**

According to the officials of RLC, OASL, CLS and the Traditional Council, the customs surrounding land tenure in the area also accounts for the difficulty in enforcing judgements. The customary and other Alternative Dispute Resolution (ADR) measures cannot force parties to obey agreements. Within the legal environment, there are options for appealing of verdicts of the court and even seeking injunctions to restrict the carrying out of judgements. The dispute between the Chief and families had travelled through ADR mechanisms before reaching the courts. The official at OASL mentioned disputing parties do not see ADR measures as effective. He explained: *when brought to our attention we use our experience and influence to find an amicable solution but sadly most of the time they prefer the law court.*

After delivery of judgement by the court, there has been a stay of execution on the judgement delivered by the High court in favour of the families from the appeal case filed by the Chief. For the past two years, no summons has been issued and the judgement is also hanging (interview with family secretaries). The landowners occupying disputed land are anxious about their fate when the matter is finally settled. A leader of the Residents Association of landowners occupying a portion of the disputed land explained; *some may not have their peace of mind to sleep because of the issue. As an association, we have leaders whom our members look up to. We have told them to relax and that if this is indeed the situation and we are waiting for the families to come.*

## **6.6. Summary**

The urbanisation of Sekondi-Takoradi and its peri-urban areas from oil-related activities has increased the demand for land by investors in the oil-business and private developers. The resulting urbanised land market is supported by land information from formal and informal sources. Access to land in Apowa, a peri-urban area, is provided by the Stool, families and individuals through similar land transaction processes. The land transaction processes and outcomes are influenced by the activities of the Stool, families, Estate Agents and officials from the State land agencies. The risks (screening, incentive, monitoring and enforcement) associated with land transactions and risk management measures adopted by actors are presented.

The next chapter discusses the results presented in this chapter using the theoretical framework provided in Chapter Two and experiences of the CEE during the transition stage in Chapter Four.

## 7. DISCUSSION

### 7.1. Introduction

Chapter Two presents the theoretical framework for the study by drawing from relevant literature. Chapter Four provided information on the experience of CEE in fulfilment of the research sub-objective three. Chapter Six also presented the results of the case study in Ghana in fulfilment of research sub-objectives one and two. This chapter first presents a discussion of the results of the research sub-objective one using literature from Chapters Two and Five under sections on urbanisation and increase in demand for customary land, Apowa; land transaction processes; and roles and influence of actors in land transactions. Then a comparative analysis of the results of research sub-objectives two and three are presented in light of literature from Chapter Two to derive lessons adaptable to the context of Ghana in fulfilment of the research sub-objective four.

### 7.2. Urbanisation and Increase in Demand for Customary Land, Apowa.

Sekondi-Takoradi has been a hub for the concentration of urban population from 1898 when the headquarters of the Railway Authority was built in the town through 1928 when the Takoradi harbour was developed to date after the discovery of oil. These infrastructural developments attracted migrant workforce from the interior parts of the country per studies that argue a direct linkage between a city's function as an urban centre and its ability to attract rural population (Cohen, 2004, 2006; Yankson & Bertrand, 2012). The movement of rural people into Sekondi-Takoradi, urbanisation of peri-urban areas including Apowa, the annexation of peri-urban settlements into jurisdictional boundaries of the city since the establishment of the Sekondi-Takoradi Town Council in 1946 and plans to re-develop the city centre into high-rise buildings exemplify urbanisation trends observed in the literature (Carlucci, Chelli, & Salvati, 2018; Gonçalves, Gomes, & Ezequiel, 2017). Sekondi-Takoradi also provides an example of cities on the continent developed by colonialists as centres of trade and governance as described by Cohen (2004).

Apowa provides space for the establishment of oil-related businesses and residential developments to house the corresponding increase in workforce moving into the area. The socio-economic changes associated with the discovery of oil and a corresponding expansion in the manufacturing and service industries underlie the increase in demand for land in the area. These socio-economic changes as described by Cohen (2006) include the trooping in of new investors and residential developers. The expansion of the land market on customary lands in Apowa thrives contrary to the misconceptions in early studies that the customary land tenure system in SSA cannot attract long term investment in land and is inflexible (Cotula, 2007; Migot-Adholla, Hazell, Blarel, & Place, 1991; Platteau, 1996). In Apowa, the customary land tenure system has been very responsive to the changes in demand for land by taking initiatives to already demarcate and plan sites for industrial developments. Although the landowning structure includes numerous families, the results as presented in Chapter Six mention families pooling resources together to meet the demand of investors.

The customary land tenure existing in Apowa has been transforming under the urbanised land market in the area. The grant of access to land has developed from an oral agreement between family members and the family head without payments of any consideration to more formalised leases covered by indentures. Following the trusteeship position of the Stool/Skin and families recognised under the Constitution, the ownership rights are maintained by landowning groups with use rights transferred under leases. The holding of ownership rights is also in fulfilment of the responsibility of the landowning groups to recognise land as a social trust to be passed down to future generations as described by Payne (1997). The existing land market also recognised land as a vital commodity traded for valuable compensations. The increase in the value of land similar to observations in Accra (capital city) by Arko-Adjei (2011) has created awareness among families to safeguard their right to the allocation of family lands against the Stool. Similar to the observations of Ubink and Quan (2008), the Chief is acting more like the

“private landowner” of all land in Apowa resulting in the conflicting claims over land ownership. Under the urbanised land market, the cooperation between the customary landowners and Officials from the State land agencies improves the management of customary land through efficient planning of space, land revenue mobilisation and dispute resolution.

### **7.3. Land Transaction Processes**

The Stool remains the most powerful authority within the urbanising land market in Apowa performing functions even in transactions on family and individual lands. This confirms the important role played by the Stool in the control of customary land in Ghana as mentioned by Ubink and Quan (2008). The communal ownership of land is recognised in land transactions with the inclusion of the name of the Stool and the families in indentures. The process of allocation of customary land as described under Chapter Six improves transparency and accountability of customary land authorities. The grant of leases on family and Stool lands involves members of the landowning groups other than the family head or the Chief. Indentures are supposed to be endorsed by at least other members aside the Chief or family head to be recognised as valid. The process also ensures leaders are accountable to their family members. Similar to the equitable allocation of Stool land revenues by the OASL, a portion of the customary one-third payment of land values to the Stool is supposed to fund development projects and social occasions including the celebration of the annual festival.

The land transaction process appears lengthy with grants on family lands followed by Stool land and simpler on individual land. However, the level of investigation of title in land transactions on Stool land is less robust as compared to family and individual land. This shows the recognition of the superiority of title of the Stool within the customary land tenure system.

### **7.4. The Roles and Influence of Actors in Land Transactions.**

The land market in Apowa includes suppliers (families, the Stool and individuals) and people demanding land (investors and developers) as identified by Dale and McLaughlin (1999). These parties are supported by Estate Agents and Officials of State land agencies in negotiating land transactions in Apowa. The Estate Agents especially locals prove very useful in land transactions as they liaise with both landowning groups to ensure investors and developers get the best of deals. Relationship between landowning groups and the officials of the State land agencies especially RLC determine the level of influence wielded by actors. This depends to an extent on the discretionary powers of officials in interpreting the laws governing land registration and management of customary lands. The declaration of land and registration under Act 122 provides a levelled ground for allocation of land by the Stool and the families. The provision to register Statutory Declaration covering Stool and families ownership claims under Act 122 further provides legal protection for socially recognised (legitimate) titles as described by Simbizi, Bennett and Zevenbergen (2014) under the adaptation paradigm of tenure security.

### **7.5. Comparative Analysis of Case Studies in Ghana and CEE.**

The results from Chapters Three and Six provide evidence of land transactions in the early stage of the transition in CEE and Apowa, Ghana respectively. The Chapters also describe how actors engage in land transactions (formal and informal) in the absence of reliable land information from the land register. This section compares the state of land information, land registration systems and the activities of actors in the land market to identify best practices from the experience of CEE. These best practices are adapted into lessons useful to the context of Ghana.

#### **7.5.1. The State of Land Information**

Although the state of land information (incomplete land register) in the case study from Ghana is similar to the situation in CEE countries during the early stages of the transition period, the underlying factors responsible differ in some instances. Land registration had been in force in CEE since 1792 after the introduction of the *Maria Theresa*

*Cadastre* by Austro-Hungarian Monarchy but was halted by communist governments sometimes through legislation (in the Czech Republic). Aside from halt of land registration systems, the update of land information in the land register was almost “useless” as use rights were taken over by the State and collective farms rendering ownership rights less significant. The migration of people across CEE and the adoption of the simplified survey and registration methods further worsened the situation. The earliest form of registration of instruments covering land transfers in Ghana was after the introduction of the Registration Ordinance in 1883 by the Colonial government. Before that, land transfers in Sekondi-Takoradi, similar to all areas in Ghana with customary ownership of land, in the past had been through oral grants in the presence of witnesses.

Land registration had been carried out sporadically in CEE as existing in Sekondi-Takoradi now before the adoption of compulsory registration during the latter stage of the transition period. As the land market emerged in CEE, the registration systems had been overwhelmed by new land rights and owners from privatisation projects resulting in delays in the registration process. Aside from delays resulting from the bureaucratic nature of land registration processes in Sekondi-Takoradi, registration is expensive compared to the low land values in towns and villages served by the RLC confirming earlier criticisms of the registration process by Ehwi and Asante (2016). The data from Ghana confirms that many people in the Sekondi-Takoradi and surrounding settlements are not aware of the importance of land registration and therefore, the turnaround time of twelve (12) working days as described earlier may not be a true reflection of the situation when a lot of transactions are not registered under the formal system. In Ghana, land information from the land register is supplemented with information from CLSs and other local sources including residents, public Officials acting in unofficial capacities, Estate Agents and customary leaders.

### **7.5.2. Land Registration**

Under Appendix Two, it is established that deed and title registration systems are comparable contrary to the hitherto distinction in literature as two extremes of land registration systems. Palmer (1996) suggested comparing deed and title registration based on the inclusion of robust examination measures by registrars and adoption of parcel-based registers. According to Henssen (1988), land registration systems should satisfy three basic requirements including authoritative, complete and valid. These requirements provide the basis of comparing the title registration systems in CEE during the transition period and the deed registration in Ghana.

The title registration system as existed in the CEE countries relied on a unified land register including ownership information and cadastral details on land parcels similar to the deed registration system in Ghana. However, the institutional setup differed as the CEE countries had national authorities with decentralised regional/provincial, district and sub-district levels supported by research institutes. In Ghana, there exists a RLC at the regional level. The quest to provide basic land registration services in Ghana at the local level warranted the establishment of CLSs to supplement the activities of the RLC by maintaining records of customary land allocations. However, most of the CLSs failed in this regard similar to the CLS serving Apowa.

#### **Robust examination of deeds**

The land registration systems emphasised on robust examination of deeds before registration. The legal department of the District Cadastral offices in the Czech Republic examined the right of the seller, the legality of the transaction, comprehensiveness of the transaction and freedom of parties (Rydval, 2002). In Ghana, the Land Registry Act (Act 122) providing for the deed registration relies on the expertise of the registrar to determine the sufficiency of deeds submitted for registration. The provisions of the Act remain ambiguous including the provision to request grantors to prove their right to the disposal of land as a condition of registration. The use of “may” extensively in the Act subjects the provisions to the interpretation of the registrar.

#### **Adoption of a parcel-based registers**

The unified land registers maintained under the registration systems included cadastral details describing the location and boundaries of registered parcels. The cadastral information was updated after deeds were approved. As described in Chapter Five, fieldwork data from Ghana revealed the inclusion of a cadastral plan was made compulsory for registration of deeds by instructions of Officials contrary to the description of Act 122 and scholars including Agbosu (1990) and Zevenbergen (2002) as optional.

### **Authoritative**

The Land Book used in CEE was authoritative as it was recognised by the State as the only evidence of title (Bogaerts et al., 2002). The land register in Ghana is authoritative as the State recognises instruments not registered under the deed system as *without effect*. However, Act 122 makes exceptions by leaving out a will or judge's certificate as *with effect* even when unregistered.

### **Complete**

At the beginning of the transition period in CEE after 1990, the land registers were described as with low coverage (20% of rural land covered in the Czech Republic by 1998). Upon accession into the EU, the Czech Republic and Hungary had complete land registers. The land register also contained information on objects aside land parcels (buildings and flats) and other forms of land rights (pre-emption rights for agricultural parcels). In Ghana, the actual coverage of the land register cannot be ascertained. Yet the 20% coverage as described by Ehwi and Asante (2016) forms the basis of assuming that the land register covers less than a quarter of land parcels in the area. The land register only registers instruments concerning land parcels.

### **Valid**

The title registration system in CEE provided proof of the land information (validity) contained in the land register by providing a limited timeframe within which counterclaims could be submitted (Zevenbergen, 2002). Upon expiration of the timeframe, registered titles were deemed valid and therefore prioritised over unregistered claims. In Ghana, registered instruments are prioritised (recognised as valid) over unregistered ones.

Comparing land registration systems through this approach reveals the superiority assigned to the title registration system in literature may not hold under all circumstances as observed by Henssen (1988), Palmer (1996) and Zevenbergen (2002). The title and deed registration compared above reveals many similarities in implementation under robust examination of deeds, adoption of a parcel-based register, authoritative, complete and valid. However, there were a few differences including the exception of some documents in Ghana under authoritative and inclusion of other objects and rights in CEE under coverage. These differences, however, reflect the contextual implementation of the registration systems and do not necessarily account for the superiority of one system over the other. The Land Registry Act, 1962 (Act 122) proves that basic criticisms in literature including Palmer's (1996) argument that the legal capacity of grantors to carry out transactions remains questionable after registration under deed registration may not hold under all circumstances as Act 122 requires grantors to first register proof of their right to transfer land.

#### **7.5.3. Managing Risk in the absence of a complete land register**

The emerging land market in CEE during transition similar to the land market in Apowa was dominated by land rentals (leasing) in the absence of complete land information. In both case studies, there existed informal land transactions (predominantly rentals) negotiated outside the formal registration system. The actors engaged in land transactions adopted measures to manage the problems (risks) associated with land transactions as described in Chapter Two. These measures complement the limited protection afforded by less sophisticated registration systems and are discussed under the four problems by Palmer (1996). Here, management of the problems through the activities of actors in the land market is compared with the protection offered by the registration systems. A distinction is made between the early (1990-2000) and latter (2000-2004) stages of transition in CEE. The latter stage of transition coincides with the period when the land registers were complete.

##### **Screening problem**

To address this problem, measures ranging from simply staying away from transactions considered risky in both case studies to the use of sophisticated approaches to secure one's interest were adopted. These sophisticated approaches included negotiations for short leases in CEE, securing affidavit from head lessors (landowners) in the transfer of unregistered leases and demand for only registered leases in Apowa, Ghana. Upon completion of land registration in CEE, buyers engaged in land transactions were fully informed by comprehensive land information from the land register. In Ghana, the coverage of the land register remains low and therefore land transactions are still considered risky.

### **Incentive problem**

The negotiation of land rentals from close families by family farms in CEE in the early stages of transition confirms Palmer's (1996) observation that in localised markets where ownership information is common knowledge among actors, land transactions are agreed based on trust. Trust was also significant with regards to the land market in Apowa as buyers were confident with the local expertise of Estate Agents and felt comfortable using the periods between instalments to further establish the authenticity of land transactions. However, during the latter stages of transition, the measures by actors in the land market were replaced by the trust in the robust scrutiny of deeds by registration departments. Further incentives were offered to clients by the registration systems through the provision of free registration services to State organisations and free access to portions of land information. The inaccuracies contained in search results and caveat associated with reliance on land information from the RLC was a disincentive to land information users in Apowa.

### **Monitoring problem**

During the early stages of transition in CEE, unclaimed and disputed lands from privatisation projects were held by Land Funds awaiting identification of rightful owners. The ownership rights of such land parcels were restored after conflicts were resolved between disputing parties to avoid clashes over ownership in the emerging land market. In Apowa, prospective developers used visible signs on the land parcel to communicate to others that land parcels are subjects of leasehold transactions. At the latter stage of transition in CEE, prioritisation of registered titles over unregistered ones protected registered owners against competing claims. Similar protection was provided for registered instruments in Apowa.

### **Enforcement problem**

There are not many actors in the land market can do with regards to enforcement of contracts than to rely on the legal regime in force in countries. The title registration systems as existed in CEE similar to the deed registration in Sekondi-Takoradi and Apowa recognised land transactions as complete and therefore enforceable after registration.

The efforts by actors described above especially under screening and incentives were replaced with protection provided by the completed land registration systems in the latter stages of transition in CEE. Trust remained very essential with the activities of actors in both formal and the informal land market.

#### **7.5.4. Best practices from the experience of CEE countries during the transition era**

The land registration systems as existed during the early and latter stages of transition in CEE shows the possibility of transforming basic registration systems into robust systems that satisfies the changes in demand for land information by users. The transformation process is described below.

##### **Completion of land registration within a short period**

The CEE countries achieved a complete land register within a relatively short period (1990-2004) through a change from sporadic to compulsory systematic registration, the reliance on existing decentralised land/cadastral offices, capacity development of human resources and computerisation of land registration processes. Upon achieving complete land registers, the risks associated with land transactions were efficiently tackled with informed decisions based on the availability of land information as described by Dale and McLaughlin (1988).

##### **Adoption of incentive-based and user-oriented land registration systems**

The land registration systems in CEE during the transition stages prioritised the requirements of users to develop approaches tailored to meet their needs. The early studies comprehensively assessed all aspects of land registration including registration procedures, adoption of technology and demand for land information by various users. The delivery of free services to private and public clients further entrenched the importance of the land registration and delivery of land information in the emerging land market. The land registration systems at the early stages recognised the privacy of registered owners by ensuring land information was used for intended purposes only.

##### **Achievement of public trust in land registration systems**

The success of land registration systems and provision of land information during the transition period in CEE rested on the trust of users of land information. The trust of users (public) in the accuracy and reliability of land

information translated into a useful asset that replaced the need for State guarantee of title as existing under the Torrens system of title registration.

#### **7.5.5. Adaptation of best practices to the context of Urbanising land market in Apowa**

The urbanising land market on customary lands in Apowa provides evidence of the need to improve the existing land registration to meet the demands of actors. The comparative analysis proves the deed registration in Ghana with improvements could meet the demands of actors in the urbanising land market. The best practices from the experience of CEE during the transition stage can help improve the deed registration in Ghana. Yet the differences in the contexts identified from the comparative analysis requires adaptation of the best practices from CEE to be useful to Ghana's context as discussed below.

##### **Completion of land registration within a short period**

The customary land tenure system as existing in Apowa comprised of land ownership by the Stool, families and individuals. The results from Chapter Six describes the control of large tracts of land by the Stool and a few families in the area. The compulsory systematic registration of the allodial, sub-allodial and usufructuary interests provides a greater chance of achieving full coverage of the land register in a relatively shorter period. The number of landowners is less and therefore could be registered first to provide the needed land information to support the land market. During fieldwork, the stool and three families already had their statutory declarations plotted and registered at the RLC. The RLC could provide the needed assistance to the remaining families currently in the process of declaring their land by preparing accurate cadastral plans and subsequent registration at reduced costs. Simplified versions of records of the RLC should be provided to the CLS to improve its activities.

##### **Adoption of incentive-based and user-oriented land registration systems**

The establishment of CLSs to develop simpler processes for land registration as described by Ubink and Quan (2008) in Apowa failed to take into consideration the customary land management system existing in the area. Arko-Adjei (2011) mentions the two models of CLS under the control of the Stool or families with an absolute allodial interest in land. Although the CLS at Busua which serves Apowa was established based on the first model, the landowning structure existing in the area does not exactly fit the context of the Asantes or the Akuapems where the Chiefs exercise absolute control over land allocation. The Stool and families in Apowa appear to exercise almost the same level of control over customary land in the area and therefore require effective participation in the management of the CLS. The Coordinator should actively engage the family representatives (family secretaries) who are directly involved in land transactions to solicit information on land transactions.

##### **Achievement of public trust in land registration systems**

The actors in the land market mentioned delays with retrieving land information from the RLC, inaccuracies in data, exoneration of the RLC concerning the provision of land information and bias of officials as the basis of mistrust. Similar to observations by Koroso, Zevenbergen, and Lengoiboni (2019), actors spend more time in securing useful information from informal sources because of mistrust of the RLC. The RLC should adopt measures to improve upon the accuracy of land information, speed up land registration by establishing a legal department to perform the functions of the single registrar, delete the caveat from search results and formalise the provision of free verbal land information to actors to inform the early stages of land transactions during identification of landowners. The responses during fieldwork clearly show actors prefer documentary evidence of official searches during the latter stages of land transactions and therefore the RLC stands to raise revenue from the delivery of land information.

#### **7.6. Summary**

The urbanising land market in Apowa provides space for industrial and residential developments associated with the discovery of oil. The customary land tenure has been transformed by the increase in demand for land confirming observations by earlier studies. The emerging land market in CEE during the transition and the urbanising land market is similar in terms of the state of land information, land registration and management of risks. Yet the experience of the CEE provides best practices that can be adapted to the context of Ghana.

## 8. CONCLUSION AND RECOMMENDATIONS

### 8.1. Introduction

The main objective of this study was to investigate how actors in Ghana's urbanising land markets carry out land transactions in the absence of a complete land register in peri-urban areas and draw lessons from the experience of CEE countries that are useful for Ghana's context. This chapter presents the conclusions to the research sub-objectives and the main research objective of the study. The chapter also presents recommendations for further studies based on the conclusions.

### 8.2. Conclusions

The conclusions presented below provide the required information under the research sub-objectives and finally to the main research objective.

#### 8.2.1. Research sub-objective One

The research sub-objective one was to describe the urbanising land market in peri-urban areas of the Sekondi-Takoradi. The results of the data collection showed Sekondi-Takoradi could not provide the space needed for industrial activities associated with the exploration of oil off the coast of the city. The peri-urban areas, therefore, attracted investments in the establishment of industries and development of residential properties based on characteristics of peri-urban settlements. Apowa attracted investments based on proximity of the town to the city, availability of space and offer of serviced industrial space. The urbanised land market influenced the customary land tenure, customary institutional setup, increased land values and promoted collaboration between customary and statutory land management institutions in the area. Land transactions differed slightly on Stool, family and individual lands offered for leases concerning the steps involved and robustness of authentication of the title of landowners. The steps involved were grouped under introduction to landowners, retrieving of formal land information, decision and payment for land, and preparation and registration of indenture. Estate Agents and officials from the State land agencies were active in land transactions within the area. The activities of landowners, Estate Agents and officials from the State land agencies influenced land transactions and land registration.

#### 8.2.2. Research sub-objective two

The research sub-objective two was to analyse the influence of land information on activities of actors in the land market in peri-urban areas of the Sekondi-Takoradi. The results of the data collection showed actors in the land market in Apowa relied on land information from formal and informal sources. The steps involved in retrieving land information (official search) from the RLC is presented by Table 6-1 and Figure 6-3. The inefficiencies (low coverage of the land register, inaccurate information contained in the land register, delays in retrieving land information and disclaimer exonerating the RLC from risks) of land information results in gathering of complementary information from informal sources. Informal sources of land information included lived experience of residents, verbal information from officials acting in unofficial capacities, practical experience of Estate Agents and historical knowledge of customary leaders. The CLS in the area was not consulted by actors in land transactions and therefore redundant. In the absence of a complete land register, actors adopted a host of measures including staying away from land transactions considered risky, adoption of instalments in paying for land, carrying out basic developments on land and formation of resident associations to manage the screening, incentive, monitoring and enforcement problems (risks) associated with land transactions.

#### 8.2.3. Research sub-objective three

The research sub-objective three was to examine the influence of land information on activities of actors in CEE countries during the transition into market economies. The review of literature on transition from centrally controlled to market economies in CEE describes the development of an active land market. The land information

contained in the Land Book during the transition stage comprised of ownership information from the land register and parcel-based information from the cadastre. The halt of land registration and update of land information in the Land Book during the period of socialism resulted in the loss of valuable land information to support privatisation projects and land transfers in the emerging land market. The absence of complete land registers resulted in delays in privatisation. To manage the absence of reliable land information from the land register, governments withheld alienation rights of landowners and adopted area-based flat rates as the basis of land taxation. Lenders considered the emerging land market risky and therefore avoided supplying credit to landowners. The family farms negotiated for land from external family members and also acquired shorter leases. There existed an unfair competition between corporate and family farms as a result of information asymmetry. The land registration systems in CEE were improved through emphasizing of jurisdiction-wide coverage, leveraging of existing strengths, computerisation of registration processes, prioritisation of user requirements and capacity development of human resources to meet the demands of the land market.

#### **8.2.4. Research sub-objective four**

The research sub-objective four was to compare the activities of actors in the land market in the absence of a complete land register in CEE and Ghana. The state of land information, land registration systems and management of risk in the absence of a complete land register in the two case study areas were compared. Land registration was carried out sporadically and slowly in the early stages of transition in CEE similar to the current situation in Apowa. The comparison of land registration systems involved consideration of the robustness of deed examinations, adoption of a parcel-based register, authority, completeness and validity. The management of risks under the land registration systems and through the activities of actors was also compared. The best practices identified from the experience of CEE countries included the completion of land registration within a short period, adoption of incentive-based and user-oriented land registration systems, and achievement of public trust in land registration systems. These best practices were discussed in the context of Ghana.

#### **8.2.5. General conclusion**

The land market on customary land in Apowa, a peri-urban town of Sekondi-Takoradi, has been expanding after the discovery of oil. The access to land required for industrial operations and residential developments is provided by the Stool, families and individuals owning land in the area. The activities of actors involved in land transactions are informed by land information from formal and informal sources. The absence of a complete land register in the study area in Ghana similar to the early stages of transition in CEE resulted in the adoption of measures to complement the level of protection provided by land registration systems. The risks identified with land transactions include screening, incentive, monitoring and enforcement problems. Although actors engage in land transactions despite the deficiency of land information in Apowa, the best practices from the experience of CEE countries could be useful in addressing the identified challenges of land registration.

### **8.3. Recommendations**

This study adopted a simple approach to comparing land registration systems based on the robustness of deed examinations, adoption of parcel-based registers, authority, completeness and validity. It is recommended a more detailed comparative study of the various deed and title registration systems is undertaken on a global scale to ascertain if findings hold. The case of countries operating deed and land title registration systems concurrently using the same or similar institutional setups and human resources like existing in Ghana could contribute immensely to scientific knowledge. A further study is also needed in developing a third model for the establishment of CLSs in Ghana that shares management powers between the Stools and families responsible for land allocation within the same area as existing in Apowa. Finally, it is recommended studies are undertaken to address the issues of institutional credibility and mistrust of state land agencies in Ghana as identified in this study.

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# APPENDICES

## Appendix One: Interview Guide for Fieldwork in Ghana

Thank you for taking time out of your busy schedule to participate in the data collection process for this study. My name is Ebenezer Yaw Ofosuhene from the University of Twente, Faculty of ITC in The Netherlands. I am researching the topic: **Urbanisation and development of the land market in the absence of a complete land register in Developing countries: Lessons from Central and Eastern Europe**. The purpose of this interview is to gather empirical data about how land transactions in peri-urban areas of Sekondi-Takoradi are arranged with limited access to reliable and up-to-date formal land information.

I would like to verify if you are still willing to voluntarily participate in this study although you have previously given consent. This interview will last for about 30 minutes and before we start I assure you all your responses will be treated in confidentiality and used for this academic study only. Please, may I record our conversation for later transcription?

Finally, if you have any questions before we start, maybe something might still not be clear.

### Interview with Planning Officer, STMA

#### Introductory Questions

1. Can you please tell me about yourself and your work at the Planning Authority?
2. May I ask how long you have been working with the Planning Authority?

#### Research Questions

3. How would you describe the growth of Sekondi-Takoradi over the past decade?
  - i. Is there a connection with the discovery of oil?
  - ii. How would you describe the influence of the discovery of oil on acquisition and development of land in Sekondi-Takoradi?
  - iii. Which new land uses have been coming up in the area?
  - iv. Do your views hold for peri-urban areas of the city?
4. Which town in the periphery is most urbanised after the discovery of oil?
  - i. Why do you think so?
5. What challenges have the Planning Authority been experiencing concerning the change in demand for land and development?
6. How is the Planning Authority managing such challenges?
7. How does the Planning Office liaise with landowners in the region?
8. Which circumstances require the verification of land ownership?
  - i. What forms of documents are usually provided?

### Interview with Planning Officer, Ahanta West Municipal

#### Introductory Questions

1. Can you please tell me about yourself and your work at the Planning Authority?
2. May I ask how long you have been working with the Planning Authority?

#### Research Questions

3. How would you describe the growth of Apowa over the past decade?
  - v. Is there a connection with the discovery of oil?
  - vi. How would you describe the influence of the discovery of oil on acquisition and development of land in Apowa?
  - vii. Which new land uses have been coming up in the area?
4. How is access to land arranged in Apowa?

5. What challenges have the Planning Authority been experiencing concerning the change in demand for land and development?
6. How is the Planning Authority managing such challenges?
7. Which circumstances require the verification of land ownership?
  - ii. What forms of documents are usually provided?
  - iii. How is the authenticity of land documents verified by the Planning Authority?
8. How does the Planning Office relate to landowning groups in the town?
  - i. Are there any other services the Planning Unit offers to landowners?
  - ii. Does the office in any form handle land disputes?
9. Do you know anyone who has experienced challenges with land transactions?

### **Questions for Land Registration Officer at the RLC, Sekondi-Takoradi**

#### Introductory Questions

1. Can you please tell me about yourself and your work at the Lands Commission?
2. May I ask how long you have been working with the Commission and the Land Registration Division?

#### Research Questions

1. What is your general impression of the state of land registration in the region?
2. What forms of land tenure are registered?
3. Has there been a change in the rate of land registration after the discovery of Oil? How would you describe this change?
4. Do you perceive a difference in the rate of land transactions and the demand for land registration in the region?
5. Do your responses for Questions 3 and 4 hold for within the city and its peri-urban areas?
6. Which forms of land information do participants in the land market usually request from the Division?
7. Can you take me through the processes involved in accessing such information?
8. Have you experienced situations when information in the register is proven inaccurate/out-of-date?  
What kind of inaccuracies: textual/spatial?
9. How do you advise market participants to progress in such cases?
10. Aside from the land register, what other sources of land information in your view do land market participants consider?
11. What forms of risks are market participants likely to face and how do they manage this risk in the absence of reliable land information?

### **Questions for the CLS Coordinator, Busua**

#### Introductory Questions

10. Can you please tell me about yourself and your work at the Customary Lands Secretariat?
11. May I ask how long you have been working with the Secretariat?

#### Research Questions

1. Can you provide a brief overview of the Secretariat's functions concerning land allocation and registration?
2. What forms of land tenure are registered at the Customary Land Secretariat?
3. What role does the Secretariat play in land transactions where the Stool is not a party?
4. Do you think there's been a change in the rate of customary land allocation after the discovery of Oil?  
How would you describe this change?
5. How do market participants get access to land information from the CLS?
6. Can you walk me through the process involved in accessing such information?
7. Have you experienced situations when information in the land register is proven inaccurate/out-of-date?  
What kind of inaccuracies: textual/spatial?

8. How do you advise market participants to progress in such cases?
9. Aside from the CLS, what other sources of land information in your view do land market participants consider?
10. What forms of risks/problems are market participants likely to face when required land information is not available or up-to-date?
11. What mechanisms in your view are adopted to manage such risk?

### **Questions for the Official of OASL, Sekondi-Takoradi**

#### Introductory Questions

1. Please tell me about yourself and your work here at the OASL.
2. For how long have you worked with OASL.

#### Research Questions

3. Can you describe the land ownership setup in Sekondi-Takoradi?
4. How would you describe land transactions before and after the discovery of oil?
5. How will you describe the situation around Apowa?
6. How has the land market influenced the customary tenure in Apowa?
7. How does your function in the ADR process help manage disputes with land transactions?
8. What will be your advice to people seeking to buy land in Apowa?
9. What is your final remark concerning the expansion of the land market and measures to curb the challenges?

### **Questions for the Traditional Authority and Family representatives, Apowa**

#### Introductory Questions

1. Can you please tell me about yourself and position on the Traditional Council?
2. May I ask how long you have been occupying this position?

#### Research Questions

1. What forms of land tenure are recognised within the traditional area?
2. How has the discovery of the oil affected demand for land within the area?
3. How is the allocation of land carried out?
4. Is there a difference in the process of allocation of land for natives and non-natives?
5. What forms of land disputes are brought to the Stool for settlement?
6. When disputes concern ownership/use status, how does the Stool address such matters?
7. What sources of land information informs the decision of the Stool?
8. How is such land information gathered to enable settlement of disputes?
9. How would you describe the land market in this area in general?
10. What are the challenges associated with land transactions in this area?

### **Questions for Estate Agents, Sekondi-Takoradi and Apowa**

#### Introductory Questions

1. Can you please tell me about yourself and your work at this company?
2. May I ask how long you have been working with the company?
3. How long has the company been in operation?

#### Research Questions

1. How would you describe the land market in this area?
2. Can you take me through the steps involved in acquiring land on behalf of clients?
3. What challenges do you face in terms of:

How do you arrange access to:

- i. Access to land information (from what sources and how?)

- ii. Land registration at both CLS and Lands Commission
- iii. Disputes over land ownership

4. What strategies do you adopt to manage the abovementioned challenges?
5. Have you experienced situations when information in the land register is proven inaccurate/out-of-date? What kind of inaccuracies: textual/spatial?
6. How do you progress in such instances when information is unreliable?
7. In the absence of land information from the Lands Commission or CLS, what mechanisms persuades you to undertake transactions?
8. What strategies are adopted to protect the newly acquired land from others?
9. What local mechanisms are available for handling land disputes?
10. What opportunities do you envisage for the development of the land market in the area?

### **Questions for Individual Landowners**

#### Introductory Questions

1. May I ask for how long you have owned this land?
2. What informed your decision to acquire land in this area?

#### Research Questions

1. What form of land tenure do you hold over your land?
1. How would you describe the land market in this area?
2. How did you acquire this land and from whom?
3. What challenges do you face in terms of:
  - i. Access to land information (sources and processes involved)
  - ii. Land registration at both CLS and Lands Commission
  - iii. Disputes over land ownership
4. How is land information verified on grounds (the type of information, source and use)?
5. What extra mechanisms persuade people in land transactions in the absence of reliable information from the Lands Commission or CLS?
6. What strategies are adopted to protect the newly acquired land?
7. What local mechanisms are available for handling land disputes?
8. What opportunities do you envisage for the development of the land market in the area?
9. Do you know anyone who has encountered problems during or after the acquisition of land?

Additional questions for landowners who have experienced challenges in land acquisition

2. What problem have you faced/are you facing concerning the acquisition of your land?
3. How did you/are you managing the problem?
4. In your opinion, what extra mechanisms if available could help to manage such challenges?

Thank you for the insights shared on the issue. Your responses are very informative. Just to provide a quick recap of your responses, you said ..... What are your final remarks about the topic of the study?

Pleasure interviewing you. Have a nice day.

## Appendix Two: Types of Land Registration Systems

This section describes the three popular types of land registration systems identified from literature namely: private conveyancing, deed registration and land title registration.

### Private conveyancing

The transfer of interests through private conveyancing involves “the signing, sealing, and delivery of documents between private individuals with no direct public notice, record, or supervision” (Dale & McLaughlin, 1999, p.36). The role of the government is limited to establishing the legal framework for land transfer in private conveyancing. Here, notaries are usually engaged to supervise land transactions with surveyors charged with the delineation and recording of land parcels (Dale & McLaughlin, 1988). The seller in a land transaction proves his title by having documents that trace the root of title from past transactions to the very one that included him as the purchaser (Zevenbergen, 2002). To enhance the security of title transferred, insurance companies may be contracted to provide title insurance to cover for losses in the future. Private conveyancing is susceptible to fraud, expensive, slow and deprives the state of access to useful land information (Dale & McLaughlin, 1988, 1999; Zevenbergen, 2002).

### Deed registration

Under deed registration, a public registry is created to keep copies of deed that details land transactions (Dale & McLaughlin, 1988). The registry provides a central point for verifying the title of sellers in land transactions other than tracing all documents held privately that cover previous transactions as proof of title. Deed registration also provides some form of protection in transactions as registered deeds take precedence over unregistered ones (Zevenbergen, 2002). Where there is a conflict between registered deeds, the logging time of the entry of deed in the registry *all things being equal* is prioritised over the date of the contract. Registration under the deeds system does not necessarily prove title with the existence of a copy of the deeds in the records but only shows proof that a land transaction took place. The legal capacity of parties to carry out the land transaction remains questionable even upon registration (Palmer, 1996). The system is also criticised for lacking robust check mechanisms to determine the validity of documents before registration. The tracing of roots of title from registered deeds is a necessary process to establish a genuine chain of a title but very time-consuming.

### Title registration

Under land title registration, the land parcel is prioritised over the description of the land transaction (deed). Each land parcel is identified on a map/plan and linked to ownership information, details of tenure and encumbrances in the register (Dale & McLaughlin, 1988). The Torrens system of land title registration (introduced by Sir Robert Richard Torrens in 1858 in Australia) adheres to “the mirror principle (the register faithfully reflects all facts which are material to title); the curtain principle (the register is the sole source); and the insurance principle (an injured party will be compensated if the register has a flaw and fails to reflect the title correctly)” (Palmer, 1996, p.64). As conclusive evidence of title, title registration requires robust checks of validity of title by registrars. The nature of checks before approval and requirement for accurate parcel details from surveys delay the registration process and increase the cost (Dale & McLaughlin, 1999).

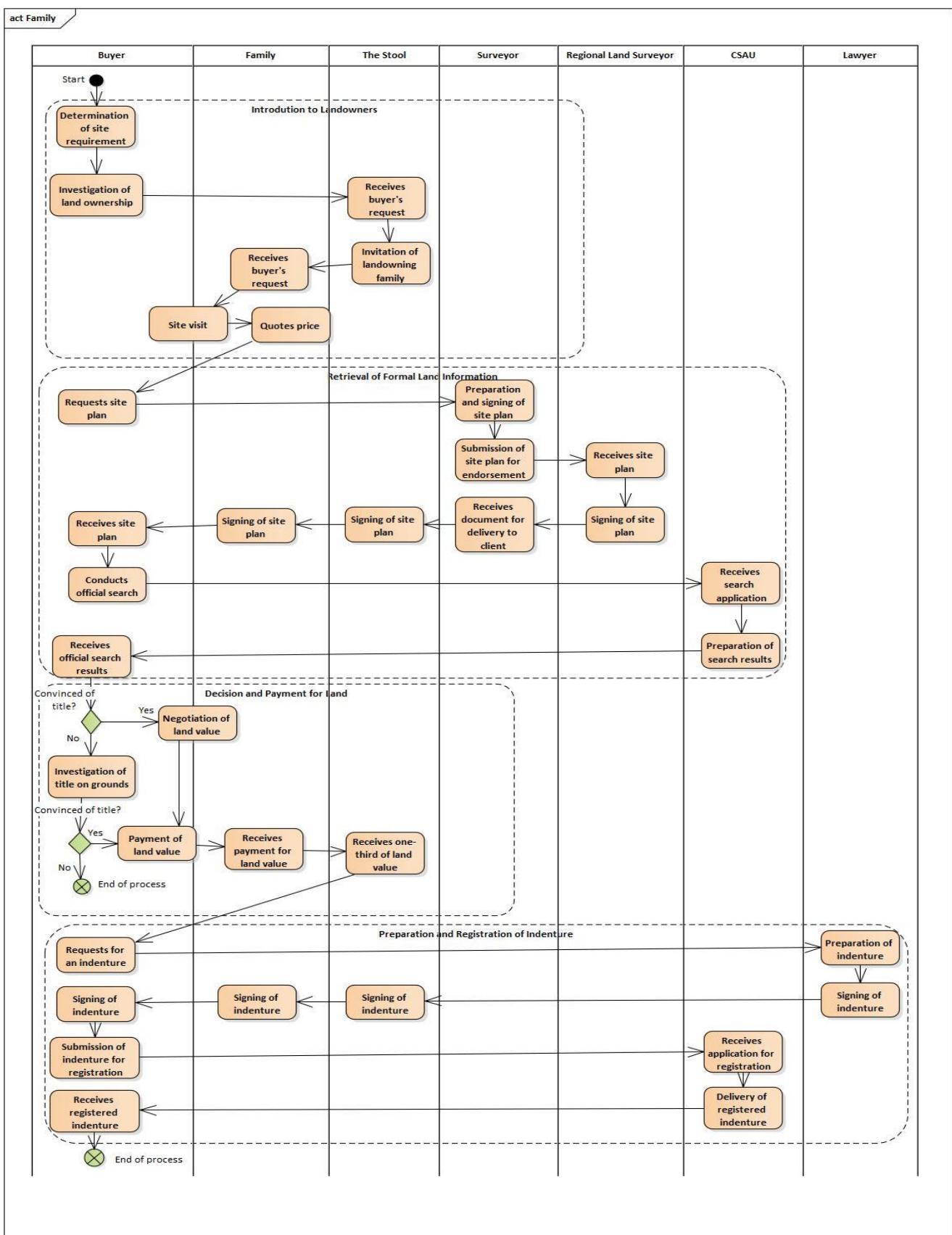
### Deed versus Title registration

Palmer (1996) argues the superiority assigned to title registration in literature over deed registration based on the quality of information may not hold for all circumstances. The author mentions emphasizing on robust examination measures by registrars and adoption of parcel-based registers under deed registration could blur the disparity between both systems. Zevenbergen (2002) basing on “improved” deed registration systems in South Africa, Scotland, the Netherlands and Ontario, Canada also argues improvements to the deeds registration could enhance its comparability to title registration. In America, private insurance firms support the deed registration system by providing title insurance policies to cover the insured. The policies protect claimants by providing cover for “record defects” (inconsistencies that should have been detected from the land register) and “non-record defects” (risks outside the scope of complete land registers including deeds submitted after the death of grantor and instances of non-identifiable successors) (Palmer, 1996). According to Henssen (1988, p.37), “not only a

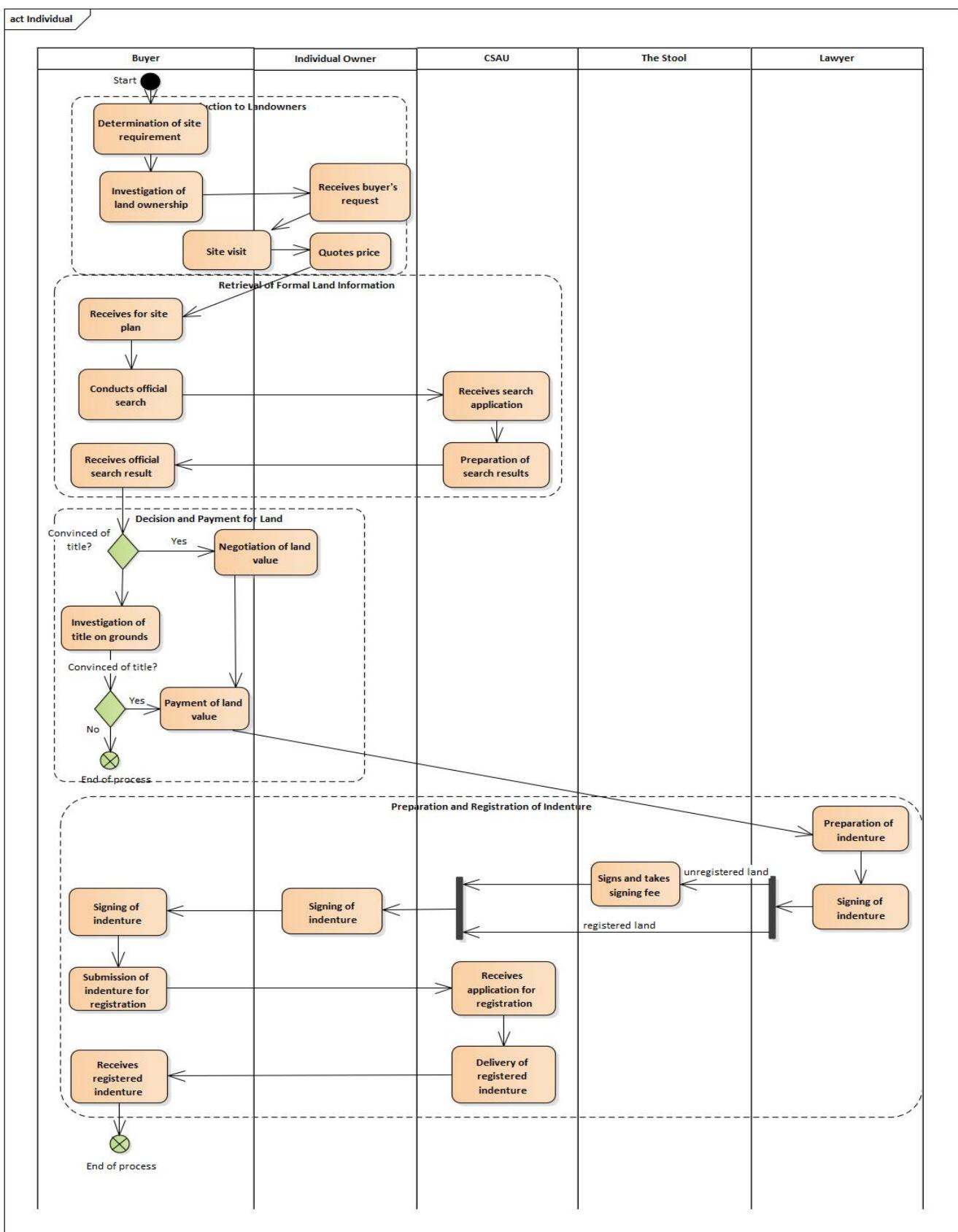
provision in law gives a strong legal evidence, an efficiently, effectively updated system and well trained officials which are concerned with the 'deed' give in principle the value to the registration system". The deed and title registration systems should, however, meet three basic requirements that include:

- i) It should be authoritative: it must carry the authority of the government.
- ii) It should be complete: the registration system must provide a complete record of all data required to be registered.
- iii) It should have validity: the act of registration conveys legal validity or proof of the data registered (Henssen, 1988, p.37)

Appendix Three: UML Activity Diagram of the land transaction process on Family land in Apowa



Appendix Four: UML Activity Diagram of the land transaction process on Individual land in Apowa



**Appendix Five: Search Results from the RLC showing caveat.**

