Customary Tenure Institutions and Good Governance

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SUMMARY

Although customary tenure institutions come under considerable strain and their functions tend to be weakened by the existence of a statutory institutional framework, many people in peri-urban areas continue to rely on customary tenure arrangements for land delivery. These institutions maintain their traditional power and social responsibility to allocate the rights to use land, resolve conflicts and carry out overall management of customary land. Yet, little attention has been given to whether or not the activities of these indigenous institutions meet good governance objectives in land administration. This paper analyzes key governance issues within customary land delivery and presents a framework for assessing customary tenure institutions for peri-urban land governance. The framework which is constructed on five governance dimensions is built on an empirical study in three peri-urban customary areas in Ghana and literature from other areas. We conclude that while indicators of other qualities may be also important, measures of efficiency and effectiveness in land delivery processes, equity in distribution and allocation of land resources, accountability of stewardship, participation of community members in land management activities and decision-making, transparency and access to information are essential to any complete assessment of good governance in customary land delivery processes.

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1. INTRODUCTION

Since the UN declaration of the Millennium Goals for Development in 2000, 'good governance' as a concept has been on top of the agenda of the development discourse, influencing many policy objectives of governments and international organisations all over the world. There are now clear indications that both governments and donors are recognising the importance of governance in attaining sustainable development goals. However, the emphasis given to different aspects of sound governance varies in different settings, and also depends on the focus of the organisations.

Over the last decades, many international organizations through several campaigns have given increasing attention to the importance of introducing good governance principles in land administration (LA) projects. These global campaigns are necessary from the fact that governance in land tenure and administration cannot be separated from governance in other sectors (FAO, 2007). Where governments are not committed to democracy, the rule of law and human rights, it will be difficult to improve governance of land tenure and administration. Many of these campaign initiatives have been influenced by the World Bank, UN-Habitat, FAO, UNDP and FIG (UNDP, 1997; UNCHS-HABITAT, 2000; FIG, 2001;2004; UNDP, 2006; UN-HABITAT, 2007). These campaigns cover a wide range of issues cutting across the different governance dimensions, even though they have their own objectives. The campaigns underline security of tenure and access to land as important factors for improving the life of the poor and achieving sustainable development (Zimmermann, 2006).

Despite much colonial legislative influence, customary authorities continue to play a prominent role in many parts of Africa. Many peri-urban cities still depend on customary tenure arrangements for land delivery. Customary tenure institutions administer virtually all the land in these areas, even where the demand for land transactions and more formal property rights are rapidly increasing (Deininger, 2003). The institutions still maintain their traditional power to allocate land and provide land for many people and for many purposes. They interact with statutory institutions in the administration of customary land. Furthermore, customary tenure institutions have introduced several innovations in land delivery processes as a way of reaffirming their control of land and to be adaptive to the statutory systems (Arko-Adjei et al., 2009). These are reasons why some schools (Fourie, 1998; Deininger, 2003; Ho, 2009; Toulmin, 2009) are seeking for decentralising land administration (LA) to the local level and for developing local institutional capacity to enable them manage their own lands. These scholars argue that customary tenure institutions are a preferable option to reinforce accountability, to ensure low-cost land delivery and to achieve equity. Their argument has support from the fact that customary tenure institutions are built on structures and procedures that are open to public scrutiny and amendment and therefore more sensitive to the local

conditions (UN-HABITAT, 1996). For example, Kasanga and Kotey (Kasanga and Kotey, 2001) argue that customary tenure institutions in Ghana are able to guarantee accountability to the local communities and villages more than the state land management mechanisms.

Nevertheless, the superimposition of state management institutions has stunted customary tenure institutions and disabled them to effectively manage their lands (Kasanga and Kotey, 2001). Consequently, these institutions have not been able to evolve to the extent that they can cope with the speed, volume, diversity and complexity of land management issues in peri-urban areas. Several reports from peri-urban areas in Africa indicate that when customary land transactions become increasingly monetised, important issues of effectiveness, equity and accountability are raised (Ubink, 2007; Toulmin, 2009). Particularly, customary land delivery activities are marked by abuse of power, land grabbing, conflicts, evictions, tenure insecurity and lack of accountability of stewardship. This involves important land governance issues that require critical assessment, especially if the institutions required for administering land are to be built on the institutional framework of customary tenure. We argue that since the customary tenure institutions are at the entry point of both customary and statutory land delivery processes, it is appropriate to extend good governance assessment in LA to the customary tenure institutions. Assessing governance in customary tenure institutions presents an opportunity for holistic diagnosis and improvement in LA, which otherwise would not be possible if limited to only formal institutions and legislations. In this study's context, the term 'customary tenure institutions' is used to describe a system of authority in charge of managing customary land. Such institutions are constituted by chiefs, councils of elders, indigenous courts and steering committees who are responsible for regulating access to land, managing conflicts and security among community members, regulating settlements, and recording and maintaining land records.

Starting from these considerations, the goal of this study is to analyze the current customary land delivery processes in peri-urban areas and to develop a framework for assessing land governance in the customary tenure institutions. Although LA covers a number of functional areas (Enemark, 2005), this paper highlights the land tenure aspects in the assessment of the customary tenure institutions. The argument in this paper is outlined in three stages. First, it outlines some key governance concepts and related issues in LA. Second, the paper outlines some important governance issues arising from the field study conducted in three peri-urban customary areas in Ghana and also from literature to illustrate why governance in customary tenure institutions needs to be considered. Third, based on the findings, the paper discusses issues that can be considered when assessing good governance in customary land delivery. The framework discusses efficiency and effectiveness of the customary tenure institutions for providing tenure security and dispute resolution, transparency and accessibility to information, equitable distribution of land resources, participation, and accountability of stewardship.

2. GOOD GOVERNANCE AND LAND ADMINISTRATION

Nowadays, governance does not only occupy a central state in the development discourse but it is considered as a crucial element to be incorporated in development strategies (Zimmermann, 2006). The discourse of governance and its emphasis is generally influenced by the policy objectives and the context within which it is being applied. According to FAO (2007), on the one hand, for those who see authority and power in society vested in many institutions, governance reflects the role of the private sector and civil society in decision-making alongside that of the government. On the other hand, for those who see the view of governments restricted to how the state serves its citizens, governance is seen from how officials and public agencies acquire and exercise power and authority to determine public policy and provide public goods and services. Simply put "governance" means the process of decision-making and the process by which decisions are implemented (UN-ESCAP, 2009). In the civil society, governance inheres cooperation between civil and political societies and between the state and its citizens (Roy, 2008). Hydén and Mease (2004) further elaborate on governance as "the formation and stewardship of the formal and informal rules that regulate the public realm, the arena in which the state as well as economic and societal actors interact to take decisions". In this paper, we use governance as defined by FAO (2007) as the process of governing:

> *"It is the way in which society is managed and how the competing priorities of interests of different groups are reconciled. It includes the formal institutions of government but also informal arrangements for achieving these ends. Governance is concerned with the process by which citizens participate in decision-making, how government is accountable to its citizens, how society obliges its members to observe its rules and laws"*

Good governance therefore relates to the way important decisions are made by the society, organisations or groups of persons and it encompasses the choice of persons to participate in such decision-making as well as who and how to render accounts of the entire process and stewardship. According to the former UN Secretary General Mr. Kofi Annan, "good governance is perhaps the single most important factor for eradicating poverty and promoting development" (cited in Graham et al., 2004). Since land is one of the four basic factors of production (i.e. land, labour, capital and entrepreneurship) and characteristically fixed in supply, it requires maximum attention through prudent administrative practices.

The need for good governance in LA is influenced by increasing incidences of tenure insecurity and land conflicts. The recent privatization and liberalization of the property/land market, and the increasing demand and competition for land have given rise in many developing countries to high insecurity of tenure in many areas (Bell, 2007). The sources of tenure insecurity are very complex and can be linked to many factors (Wily and Hammond, 2001). Several reports from many areas in sub-Saharan Africa indicate that the vulnerable in the society, especially indigenous farmers and urban poor have been forcibly evicted from their land as a result of urban development (Toulmin and Quan, 2000; Ubink, 2008). Similarly, Zimmermann (2006) reports that millions of women around the world suffer abuses of their equal rights to own, inherit, manage and dispose of land. According to Zimmermann, efforts to recognise women's rights in land have been met with formidable resistance because of patriarchal control in land tenure. Furthermore, illegal grabbing of land has also become a

common practice. The land of vulnerable ethnic minorities is grabbed to enable illegal, or government-sanctioned concessions to proceed (Bell, 2007). The rich and powerful people in society claim land of others, thereby causing land disputes and conflicts (Mathieu, 2006). Furthermore, tenure insecurity may result from the formalisation of customary tenure through land registration. Land registration based on the titling of customary land gives security of tenure to few and insecurity to many others who have other interests in the registered lands (Toulmin and Quan, 2000; Österberg, 2002).

The above highlighted problems have been attributed to weak governance in the various institutions in charge of administering land (Magel and Wehrmann, 2001; Zakout et al., 2007). Particularly, in recent times, LA activities have been associated with bribery and corruption, especially in the developing world (Van der Molen and Tuladhar, 2007). The major contributing factors to bribery and corruption are poor remuneration of civil servants (Bell, 2007) and lack of rule of law (Zimmermann, 2006). Bribery and corruption tend to benefit power holders - political elites and government officials more than the poor and vulnerable groups (Bell, 2007; Van der Molen and Tuladhar, 2007). Furthermore, weak governance has been linked to lack of comprehensive regulatory framework governing security of tenure, insufficient or incoherent and improperly enforced legal provisions, lack of transparency and access to information, inequity and unfairness, lack of accountability, irresponsiveness of institutions to the plight of land users and inability for citizens to participate in land governance (UNDP, 1997; FIG, 2004; UN-HABITAT, 2004; UNHS and Transparency International, 2004; UNDP, 2006; FAO, 2007; UN-HABITAT, 2007). For example, weak governance distorts decision-making processes of public officials entrusted in the people's best interest and brings about inequality which in turn impedes economic development (Zimmermann, 2006). Similarly, slow and bureaucratic procedures and high cost for services makes LA institutions and judicial services only accessible to the rich in society. Since LA is aimed at improving tenure security, it is important therefore that institutions in charge of administering land promote good governance principles so as to protect property rights of individuals and groups, particularly vulnerable groups such as the poor, women and indigenous farmers (Zakout et al., 2007).

In addition, the development of the World Bank's supported land related projects indicate that since the year 2000, the Bank's attention has been focused on institutional reforms to promote good governance (Bell, 2007). Many of these land reform projects explicitly deal with issues of corruption, accountability, efficiency, transparency and development of good governance monitors and spatial data infrastructures. With most of these land reforms activities in developing countries being funded by the World Bank, IMF and other donor agencies, it means that governments who show elements of good governance are likely to benefit from these financial institutions and attract investments. Other global governance campaigns (UNCHS-HABITAT, 2000; UNHS and Transparency International, 2004; FAO, 2007) also recognise that quality of land governance is the most important factor for eradicating poverty and for improving tenure security. In these campaigns, the argument is that clear and transparent rules, efficient processes, access to land information, improved tenure security for the poor and reduction of corruption have a direct link to achieving sustainable development goals.

It is evident from the literature discussed above that governance in LA can be assessed based on several dimensions. However, governance issues in customary land delivery take a different form. Therefore, extensive studies are needed in order to develop a framework for assessing governance in customary tenure institutions.

3. LAND GOVERNANCE ISSUES IN PERI-URBAN CUSTOMARY AREAS OF GHANA

3.1 Study area and methods

This study aims at assessing whether customary tenure institutions meet good governance objectives in land administration. To do so, we used the case study research design. A case study approach was deemed appropriate for this study because it is well suited to investigate the interaction between phenomenon and their real-life context (Yin, 2003). It is also an appropriate method for descriptive studies where the goal is to describe the features, context and processes of phenomenon (Yin, 2003), which is the purpose of this study.

Three customary areas in Ghana were selected as case study to provide empirical evidence to highlight the key governance issues within the institutional arrangements of customary land delivery. These are Japekrom stool land, Tamale skin land and Gbawe family land. The areas were selected based on the diversity in the structure of the customary institutional setup and varying land use actors. In addition, the areas were chosen for fair representation of the three types of land owning groups in Ghana, and to determine whether the perceived problems highlighted are a growing national problem. The tenure systems of the study areas blend elements of customary systems with statutory systems. In other words, users gain access to land through a blend of "customary" and "statutory" arrangements. Access to customary land is governed by customary and statutory laws and controlled by both statutory and customary institutions. The statutory laws contain provisions guiding the management of all customary lands in the country.

In all the study areas, access to land and natural resources is governed by rules that determine who can use the resources and under what conditions. These rules are implemented by authorities that make the rules and enforce them. These authorities whose legitimacy is drawn from traditions are what we describe as customary tenure institutions. The nature, responsibility and powers of the customary tenure institutions differ in the three areas. In Japekrom and Tamale customary areas, the institutions exist as an organised body in hierarchy headed by "paramount chiefs" and manned by different levels of sub chiefs and committees. In Gbawe customary area, however, the tenure institutions exist as an autonomous body with four basic facilitating divisions headed by the "family head". Apart from the level of hierarchy, the major difference in the organisational structure is the facilitating divisions or committees that are set up in accordance with the needs and aspirations of the land owing group. For example, Land Boards, Customary Secretariats and Land Allocation Committees have been instituted to manage all land related issues. This

institutional setup dissociates political chieftaincy from land chieftaincy, both of which were handled by chiefs and family heads.

The study was conducted between September 2007 and January 2008. Due to the exploratory nature of the study and secondly to get a deeper understanding of the current land use and management systems in the study areas, we used more discursive data collection tools (Yin, 2003) to obtain information from the stakeholders. These discursive tools were appropriate because it is suitable and easy to be understood by both illiterates and literates. The tools also allow the use of follow-up questions which provide a deeper understanding of the subject under study. Different data collection tools were employed to obtain information from a range of stakeholders. Two focus group discussions were held in Gbawe, eight in Japekrom and eight in Tamale. The focus group discussions were focused on chiefs and elders, land allocation committees and unit committees[1] in the communities. One oral narration was conducted in Gbawe, two in Japekrom and four in Tamale. The oral narrations were conducted for some selected elders to highlight the tenure system and the land delivery processes. Semi-structured interviews/questionnaires on how landholders and users (303) have conducted and participated in land acquisition processes, land use, land transfer and the indigenous dispute resolution were conducted. Questionnaires were used for selected land sector agencies and private professionals (18) to understand their interaction with customary tenure institutions. Secondary data (both published and unpublished) was gathered through a literature study which helped to understand the nature of the tenure system in the study areas. Thematic and issue based content analyses were used to analyse the transcripts and secondary information for answers to identify the key governance issues. Based on these key governance issues, we created a framework for assessing governance in customary tenure institutions (Table 1). The framework describes the dimensions and the indicators that provide an in-depth analysis of the customary land delivery processes and the interaction between the institutions and other stakeholders.

3.2 Key land governance issues

Arko-Adjei et al. (2009) have discussed in detail the tenure changes in peri-urban areas in Ghana. However, in support of the argument in this paper we highlight here the critical areas that need to be considered in developing a framework for assessing governance in customary land delivery of peri-urban areas.

Access to land and security of tenure
Prior to colonisation, indigenous members of customary areas could access land through the lineage system while non-community members access land through grants of various forms. The study reveals that individualisation and commercialisation of customary land have created many tenure insecurity problems for both indigenes and settlers. Tenure insecurity problems in customary land are complex and may stem from many sources. Commonly

[1] In the local government system of Ghana, villages have unit committees whose majority members are elected while few are appointed by government in consultation with traditional authorities. They are involved in decision related to education, revenue mobilisation, environmental monitoring, etc.

among them are loss of usufructs rights, forced eviction, divorce, and disenfranchisement as a result of cross cultural marriage between matriarchal and patriarchal families which leaves children without inheritance rights (Mahama and Dixon, 2006). The study indicates that most indigenes that lost their land in Tamale and Japekrom are farmers whose farmland gave way to residential developments. These lands are given to settlers for residential purposes. The farmers are compensated for only the crop they have lost or with a residential plot. These indigenous farmers, whose livelihood depends on farming, later sell the plot given to them and become landless. The state may also be a source of tenure insecurity. According to Wily and Hammond (Wily and Hammond, 2001) some indigenes in Ghana have lost their land to the state through compulsory acquisitions without compensations. According to the report, compensation on land claimed by the government over 30 years has not been paid to the affected persons. Migrants and tenants find it difficult to access land or have to do so on severer conditional terms, for a shorter period and for payments which are often equivalent to having purchased the land outright (Cotula and Chauveau, 2007). Several other reports on secure tenure show that the pressure from increasing demand and competition for land has in several developing countries led to tenure insecurity for disadvantaged groups (Kasanga and Kotey, 2001; Wily and Hammond, 2001; Ubink, 2007; Zakout et al., 2007). For example, Kasanga and Kotey's report from peri-urban Ghana revealed that widows and divorced women who lost their agricultural land were not compensated.

Fluidity of customary laws

Our earlier study revealed that manipulation of customary laws is another important source of tenure insecurity. Fluidity of the customary laws gives room for manipulation of various customary rules that seek to protect subsistence and security of the group/community ownership. Some chiefs and elders coalesce into interest groups that re-interpret the customary laws to support today's opaque, inequitable and somewhat convoluted system of customary LA. Similarly, in Ubink's (2007) study conducted in peri-urban Kumasi, Ghana, she observed that "some chiefs claim that land belongs to the royal family in which the chief heads and that the royal family had only given out the land for farming purposes, to temporary caretakers, and can reclaim it when its use is changed without any need for compensation". Furthermore, lack of documentation or codification of customary laws allows people to interpret them the way that suits them.

Land grabbing and informal land markets

Although it is claimed that customary land cannot be sold or completely be alienated, land sales have become more or less an acceptable feature in peri-urban areas due to the fast developing land markets in such areas. A broad range of varied contracts allowing access to land between prospective developers and local land owing families and chiefs exists in all the study areas. With these developments, inheritance rights over land under customary tenure are no longer guaranteed as many people belonging to the land owing families are left to compete for less land (Amanor, 2006). This competition for land creates land grabbing, informal land markets and conflicts. For example, in the Japekrom customary area, indigenous members sell their farmland in which they have usufructory rights without the knowledge of institutions in charge of allocating and distributing the land. Consequently, there have been severe struggles between indigenous farmers and families on the one hand and chiefs on the other hand over

the right to convert farmland into residential use (Arko-Adjei et al., 2009). These forms of informal land markets coupled with the widespread use of middlemen in customary land transactions have also been observed in parts of Nigeria (Ikejiofor, 2006). Invariably, land developers are likely to face high cost for the land acquisition processes in such areas. This study observes that many settlers have lost their land because they have acquired their land through the wrong person.

Access to information and services

The study indicates that customary tenure institutions in all the study areas are accessible to all persons. Therefore access to land information and services is not difficult. However, the quality of information to be accessed is always questioned. Until recently, land delivery was oral and in many customary areas, there are no structures for proper documentation, maintaining and recording land information. Even where information is kept, it is distorted and disorganised, mostly in the hands of individuals[2], thereby making it difficult to obtain comprehensive and up-to-date information on land allocation and dispute resolution..

Distribution of community resources

Rights in customary land exist to protect all interest groups in the land owning groups. It is the responsibility of customary leadership to ensure that the proceeds from communal land are equitably distributed among all community members (Ikejiofor, 2006). With land becoming short in supply as a result of urbanisation, gender and intergenerational equity has become a challenging issue in customary tenure systems (McEwan, 2003). The question is whether the customary systems as they exist today have strategies that protect different groups of today and the generations to come? Whereas Olima and Obala (1999) report from Kenya that within the community/land trust group land has been allocated on the basis of need rather than financial ability, the situation in some parts of Ghana looks different. Land resources get in the hands of few people while proceeds that come from land sales are not used for the benefit of the community. In many communities in sub-Saharan Africa where patrilineal inheritance is practiced, women do not gain access to land in their own rights.

Abuse of power and stewardship

The object of customary land governance is that land is vested in groups whose leader is entrusted with the responsibility of administering their land for and on behalf of the entire group. Chiefs and heads of families, clans and tribes are not in anyway permitted to take any unilateral decision concerning the acquisition or occupation and use of land or the utilisation of resources emanating from the land. This structure of customary systems should make customary tenure institutions accountable to local people because of strong kinship ties (Clement and Amezaga, 2009). However, several authors suggest that accountability in customary tenure systems diminishes especially where these customary mechanisms for holding chiefs accountable have collapsed (Toulmin, 2009). Under such conditions, customary authorities abuse the power vested in them by exhibiting opinions showing that they no longer hold a fiduciary position (Kasanga and Kotey, 2001). For example, Ubink (2008) reports that in Ghana, some chiefs assume complete ownership responsibility, and

[2] Interview with the Regional Stool Land Administrator, Tamale, 15 December 2008

display tendencies to adopt landlord-like positions with regard to customary land. They take unilateral decisions and in many cases the activities concerning the land are executed without the knowledge of the community members (Ubink and Quan, 2008). Some chiefs and headmen abuse their responsibilities by allocating large tracks of land to themselves or their associates, especially individuals who provide them with money, beasts, alcohol and material goods and services (Mugyenyi, 1988). In such areas, chiefs' administrative roles in land right transactions enable them to appropriate community members' interests for purely economic motives.

Land conflicts
Although there is no immediate data available, land conflicts exist in all the study areas. The main sources of conflict in these areas are uncertainty of boundaries or allocation of the same piece of land to more than one person. Uncertainty of boundaries occurs when the land marks by which the real boundaries are defined no longer exist. These conflicts can be linked to many factors like improper documentations, weakening customary tenure institutions and their structures for accountability and stewardship, manipulation of customary laws, land grabbing and tenure insecurity.

4. FRAMEWORK FOR ASSESSING GOOD GOVERNANCE IN CUSTOMARY TENURE INSTITUTIONS

A lot of work has been done in developing guidelines as to what constitutes a good LA systems (Williamson and Ting, 2001). However, very little has been done on developing criteria and indicators for assessing governance in LA systems (Bell, 2007). Of all the good governance indicators, the World Bank Governance and Doing Business Index by Kaufmann et al. (2007), United Nations Development Programme Governance Indicators (UNDP, 2006) and the UN Habitat Governance indicators (UNHS and Transparency International, 2004; UNDP, 2006; UN-HABITAT, 2007) are the most commonly used for international comparisons of state performance and assessing governance in many projects in LA. To date, the World Bank national indicators project and the UN Habitat Governance indicators projects have perhaps been the most ambitious (Stewart, 2006). Since 1996, the World Bank has over the years in Governance and Doing Business Index published good governance ratings, using several hundred indicators addressing six key aspects connected to accountability, political stability and rule of law, and control of corruption (World Bank, 2006). Similarly, the United Nations Development Programme Governance Indicators lists 33 indices of what may be broadly considered national good governance indicators (UNDP, 2006). The UN Habitat urban governance indicators project, on the other hand, categorises and measures good urban governance into 26 indicators of five categories (Stewart, 2006). These indicators assess the ways individuals and institutions, private and public, plan and manage the common affairs of a city. In addition, the UN Habitat Transparency International Toolkit (2004) provides tools to support transparency in local governance. The toolkit stresses that land information systems have to be available with guaranteed open access. Furthermore, the FAO's land tenure studies provide guidelines on what the institute and its many international collaborators have discovered are "good practices" for a peculiar aspect of land

tenure and administration (FAO, 2007). The guidelines develop norms and guiding principles for institutions in charge of land tenure and administration. All these indicators can be grouped into the following governance dimensions; efficiency; effectiveness; transparency, consistency and predictability; integrity and accountability; subsidiary, autonomy and depoliticization; civil engagement and public participation; equity, fairness and impartiality; and legal security and rule of law. In the framework of assessing LA systems from a global perspective, Burns et al. (2007) distinguish two levels of governance assessments. In the top-level, the indicators for the assessment should look at the policy and legal framework for LA. In the second level, the framework recommends qualitative indicators for assessing customary tenure and quantitative indicators for formal LA institutions. Particularly, the qualitative indicators should address the "legal recognition of customary rights and clarity of identity of customary authority, boundaries of customary authorities and customary rights".

It is evident that governance in LA can be assessed through several governance principles and indicators. Whichever combination of governance criteria is used for the assessment, they mutually reinforce each other and cannot stand alone (Kaufmann et al., 2007), and they cannot be exhaustive and each shall be disputable (Stewart, 2006; van der Heijden, 2009). However, the goals pursued, the object of the evaluation and the context within which it is being applied should determine what to measure and how to measure it. Although the issues cut across customary systems, to our knowledge they are much related to civil society, the performance of statutory institutions and the regulations that establish them. Particularly, attention is given to how LA institutions can be reorganized through policy reforms, institutional developments and use of new technologies to deal with the issues related to bribery and corruption, inaccessibility of information, bureaucratic processes, rule of law and conflicting legislation, but not on how customary tenure institutions should perform in order to meet good governance objectives in LA. This means that specific indicators need to be developed for assessing governance in customary tenure institutions. These indicators can be used to compare customary tenure institutions within a country and across countries. They can also be used to develop policies and guidelines to streamline the activities of the indigenous institutions.

From the empirical study and literature discussed above, issues related to governance in customary land delivery revealed a number of domains or variables which could be weaknesses or strengths of customary land delivery processes. Specifically, the issues are related to access and openness, participation, use of local knowledge, supremacy of custom and usages, stewardship, ownership and control, accountability, fluidity and flexibility of customary laws, equity, the institutional field, policy, constitutional and legal dimensions and capacity of the key actors of the customary tenure systems. These may be internal features that form the core of the operations of the institutions and are directly under their control or external features like land policies, constitutional stipulations which influences the customary tenure system. More importantly they give the general idea of what is important to consider when developing a framework to assess customary tenure institutions for land governance.

Though indicators of other qualities may be important, the study focuses on efficiency and effectiveness, accountability, participation, transparency and equity as essential to any

complete assessment of the customary tenure institutions. The choice of these dimensions from the long list put up by various views on governance was based on the following factors: 1) the dimensions selected were found to be common in most governance literature, and touch on issues of critical importance in customary land delivery in peri-urban areas; (2) they have adequate bearing with governance in customary LA; and (3) to some extent, these dimensions overlap and ensure a wider spectrum of governance issues considered. For example, rule of law and responsiveness in customary systems is much related to efficiency and effectiveness. Drawing from the literature on governance and the empirical study in three customary areas, the established links between the selected governance dimensions and various characteristic of governance related to customary land delivery are discussed below.

Efficiency and effectiveness

Because studies on customary land delivery are related to tenure security, efficiency and effectiveness of the institutions to promote tenure security for all land users are used as the main goal of the assessment. Indicators like implementation of customary laws, measures put in place to address tenure security, use of competent persons, existence of a well-established information-desk, clarity of land delivery processes; and enforcement of resolved land conflicts are potential determinants of efficiency and effectiveness of customary land delivery. The choice of these indicators is based on the argument that efficiency and effectiveness require the formulation of strategies that enable the production of results that meets the need of society (Kaufmann et al., 2007), and the development of policies and programs that enable delivery of high quality services and standards (FAO, 2007).

Efficient customary land delivery requires that procedures for land allocation and dispute resolution follow *due process* as defined by customary law. Customary tenure institutions need to develop new ways to record and maintain land information that ensures improved service delivery within reasonable time. Equally important is a well-established information-desk that links customary authorities and land users, and is much needed to ensure accessible land information. Procedures for land allocation and conflict resolution should be clear and simple. When the procedures are clear and land information is accessible, it gives less opportunity for corruption. Effective customary land delivery ensures that rights of all groups and stakeholders of the landholding groups are respected and protected. Effectiveness also depends on the use of competent persons to control every aspect of the land delivery processes as to produce accurate work. It requires well-enforced customary laws and regulations in land tenure and justice delivery. Effectiveness requires that customary institutions enforce and respect community decisions and the decisions taken to resolve land conflicts. Effective customary delivery relies on professional advice from the statutory institutions and other professional bodies. When customary laws are followed and competent persons are used, the incidence of land conflicts could be reduced, thereby improving the tenure security of all land users.

Transparency and accessibility

Transparency and access to information have been sighted as solutions to the increasing incidence of bribery and corruption associated with resource management (UN-HABITAT, 2007). Transparency is built on the free flow of information between stakeholders (Kaufmann

et al., 2007) and enables them to uncover abuses and defend their interest (UNDP, 1997). Transparency requires that processes, institutions and information are directly accessible to those concerned with them, and enough information is provided to understand and monitor them. Promoting better access to information for all stakeholders, transparency strengthens accountability of all actors (Piotrowski and Van Ryzin, 2007). Transparency is at the entry point to participation, accountability and equity (UN-HABITAT, 2007).

Transparency and accessibility in customary land delivery means the institutions that have been entrusted to keep information on customary land should be accessible to community members and other users of land information. Inaccessibility of institutions and land information leads to abuse of power and corruption. Therefore, information on all land allocations and the use of land resources must be accessible to all people, including statutory land agencies. Access to information also depends on the availability of mechanism for recording and maintaining land information. Thus, customary tenure institutions should put in place mechanisms for recording and maintaining land information and information-desks where land users can easily interact with institutions. In addition, the procedures for acquiring land must be clear and open to all stakeholders. This means that chiefs and land allocation committees should not take any unilateral decision concerning land acquisition, occupation and use of land. Decisions on how land is allocated and used in the community must be made at meetings that are open to all the stakeholders of the customary land. Community members should be allowed to present their views on the decision making processes. Furthermore, clarity of customary laws can improve transparency. Therefore, mechanisms should be put in place to educate the community members of the customary laws binding the use of land. Where possible, customary laws must be coded and recorded for future reference.

Accountability

Accountability means demonstration of stewardship and is cited as important for reducing bribery and corruption (FAO, 2007). Accountability combines with transparency in the discourse of good governance as they both emphasize the necessity for institutions to make their activities open to their clients (Schultz, 2008). Included in these dimensions are all the factors that make customary tenure institutions accountable of their stewardship to community members, reporting on what they have been entrusted to do, responding to questions, explaining actions and providing evidence of their performance (FAO, 2007). Factors like the frequency of interaction with community members, feedbacks, record keeping and publicity of financial statements are important to measure accountability in customary tenure institutions. Customary authorities must report regularly on what they have been entrusted to do by responding to questioning, explaining actions and providing evidence of their functions. A proper accounting system and record keeping in land delivery processes are much desired. Specifically, the institutions must regularly publish accounts on land sales/leasing or any allocation. They must also subject themselves to periodic checks by making their records available for external auditing. These measures will not only prevent corruption and abuse of power by customary authorities who enrich themselves with community resources, but can be seen as a basic step of commanding confidence and trust over stewardship of resources that has been placed under their care.

Equity and fairness

Equity is one of the fundamental footings of sustainable developments (World Commission on Environment and Development, 1987). Brown and Corbera (2003) view equity as fairness of outcomes both now and in the future with respect to who benefits or is included in the process of decision-making for development action. Curry (2001) discusses equity from two perspectives: distributional and intergenerational equity. The former refers to the distribution of rights fairly and across the contemporary population of interest. Distributional equity ensures that the needs of the minority, the vulnerable in society such as women, and children as well as the poor are catered for. In the latter, the focus is on how rights are proportioned such that they are used effectively and efficiently to the present and future generations. Intergenerational equity addresses the mechanisms that ensure that resources being utilized today can be available for use by the next generation.

A number of indicators that measures equity has been included. These indicators are based on the concept that "all people should have the same access to service and receive the same service standards (Kaufmann et al., 2007; Zakout et al., 2007). Customary tenure institutions are expected to deal fairly and impartially with community members and settlers by providing non-discriminatory access to land, information and justice delivery. The indicators address how the needs of all interest groups – sub families and members constituting the land owning group – are considered in the land allocation process and distribution of proceeds accrued from land resources. Specifically, when compensation has been paid to land losers, all the affected persons must be treated fairly. In addition, customary tenure institutions must put in place measures that ensure tenure security of women, other vulnerable groups and future generations.

Participation

Participation enables citizens to be involved in governance through consensus-building and engage with civil society without curbs on the media or on freedom of expression and association (FAO, 2007). Participation enables all individuals who are part of the decision-making tp feel ownership of all the activities undertaken and be responsible for it. In customary land delivery, participation should be addressed from membership composition, procedure of selection, the level of diversity in the representation of interest as important determining factor of participation in customary land delivery. The extents to which subgroups within the land owning groups, gender groups and other stakeholders are represented in the decision-making processes and how customary tenure institutions collaborate with professional institutions in the land delivery process are worthy of consideration

Participation requires that all the family groups constituting the land owning group must be represented in the various divisions of the customary tenure institutions that take decision on the use of communal land. Particularly, the committees in charge of land allocation and decisions making must be instituted in such a way that they cut across the various family groups, gender groups and settlers. Customary tenure institutions must also allow community members to participate fully in land governance through consensus building. In addition, professional institutions should also be consulted when necessary to provide advice.

Participation leads to improved accountability, reduction of conflicts, a more flexible and efficient management, increased legitimacy, and it implies better use of place-specific knowledge etc.

Table 1 presents the final breakdown of the dimensions into operational indicators. It describes the variables that can be measured within the various aspects of land delivery, particularly on land allocations, dispute resolution and decision making process.

Table 1
Framework for assessing good governance in customary tenure institutions

Governance Dimension	**Indicators**
Efficiency and Effectiveness	▪ Are the procedures for land allocation and conflict resolution clear and simple? ▪ Are competent people used in the land delivery process? ▪ Are customary laws applied in the land delivery process? ▪ Are there means for keeping records on land information? ▪ Are statutory institutions and other professionals involved in the land delivery process? ▪ Does the tenure practice protect the land rights of the poor and marginal groups (women and peasant farmers)? ▪ Are there mechanisms of protecting the rights of land developers? ▪ How adequate are the human and financial resources? ▪ How responsive is the institutions to the need of the community members? ▪ Are land conflicts solved timely and at reasonable period? ▪ Are there appeal mechanisms for conflict resolution?
Transparency and access to information	▪ Are the rules governing land allocation clear? ▪ Is information on land delivery accessible to the general public? ▪ Is information shared and exchanged with statutory institutions? ▪ Is there an information services/desk or customary land secretariat? ▪ Is there any means of publicising information on customary land ? ▪ Are there feed back sections to community members? ▪ Are the procedures for public decision-making clear? ▪ Is information on decision on the use of resources open and available to the community members? ▪ Are there mechanisms for community members to petition against decision-making?
Accountability	▪ Are there mechanisms for questioning and explaining the ongoing activities in the community? ▪ How often are community members informed about the land activities carried out? ▪ Are land developers given any form of evidence of payment to cover their acquisition? ▪ Are there proper financial accounting system? ▪ How often does proceeds from allocation made public to the community? ▪ Are the financial statements open for external auditing?

Governance Dimension	Indicators
Equity and fairness	▪ Is land distributed equally among community members? ▪ Is land distributed equally among men and women? ▪ Does the customary tenure system give uniform protection to indigenes and settlers? ▪ Is land resource used appropriately to create wealth to benefit all community members? ▪ Is land information equally accessible to all community members and the general public? ▪ Are people given equal opportunity to express their views during the decision-making on the use of community resources? ▪ Are due compensations paid to all community members equally? ▪ Are contending parties in land conflict given equal opportunity to provide evidence to prove their case?
Participation	▪ What is the level of involvement of community members in the land delivery processes? ▪ Are community members involved in the appointment of leadership? ▪ Are community members involved in the choice and use of community resources? ▪ How often do customary tenure institutions interact with community members? ▪ What is the level of collaboration and coordination with statutory land agencies and the local government?

5. CONCLUSIONS

This paper has outlined the general governance problems within customary land delivery processes, with particular attention to peri-urban areas in Ghana. The study indicates that customary tenure institutions in peri-urban areas raise important issues of good governance which affect the effectiveness of customary land delivery in those areas. Whereas governance issues in statutory land delivery are more related to the performance of institutions in charge and the laws that establish them, the study reveals that governance in customary land delivery are more related to abuse of power, fluidity of customary laws, access to land and tenure insecurity, land grabbing and informal markets and inequity in the distribution of land resources. While indicators of other qualities may also be important, the paper highlights that measures of efficiency and effectiveness, equity, accountability of stewardship, participation of community members in land management activities and decision-making, transparency and accessibility are essential to any complete assessment of good governance in customary tenure institutions. These five dimensions on good governance, elaborated into several operational indicators, are interrelated and cannot stand alone. For example, when structures that have been sustaining transparency and participation in the customary tenure institutions are well in place, accountability is improved. This also leads to further efficiency and effectiveness of decision-making and higher tenure security for all persons. Therefore, the indicators should not be taken single-handedly but efforts should be made to touch on all the indicators if one wants to achieve good governance in customary land delivery.

Although the study indicates that customary tenure institutions in peri-urban areas raise important governance issues, the institutions are built on structures that promote accountability, transparency and accessibility. These structures ensure that customary tenure institutions frequently report on their stewardship to community members. These structures are in place and the broad legitimacy of customary tenure institutions in many sub-Saharan African countries give them an advantageous position to govern land in peri-urban areas, thereby supporting the decentralization of land administration to the local level. Thus, institutions for administering land in customary areas can be built on the institutional framework of customary land tenure. Nevertheless, the autonomous nature of the institutions has the potential of breeding corruption and abuse of power. For these reasons, statutory institutions could provide the necessary guidelines to regulate the activities of the customary institutions to ensure that they adhere to the principles of good land governance. A regulative framework that enforces customary tenure institutions to be more accountable to their people, especially a rule that makes them submit their financial statements through external auditing, are much desired. We argue, however, that if indigenous knowledge and the capacity of customary tenure institutions could be enhanced, land governance in such areas can be improved. Therefore, there is the need to look for appropriate tools that can enhance indigenous knowledge and improve local community capacities to take inventory of land tenure information.

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