Formal and Informal Land Institutions, Land Information Deficiencies, and the Development of Urban Land Markets in Ghana

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Dedication

I dedicate this thesis to my faithful wife, Mercy, my two lovely daughters, Benedicta and Bennita and my adorable son Michael Benjamin for their constant support and unconditional love.

I love you all dearly.
Acknowledgements

“For I know the plans I have for you, declares the Lord, plans to prosper you and not to harm you, plans to give you hope and a future.” (Jeremiah 29:11)

Foremost, I would like to thank God Almighty for providing me the opportunity and strength to undertake and complete the PhD programme and taking care of my family during my long absence from home.

The completion of the PhD thesis has been challenging but fulfilling experience. The experience has been challenging because of the stress associated with being apart from my wife and children during the period of the PhD programme. However, the experience has been fulfilling due to exposure to new ideas and concepts during the PhD journey. I could not have completed such an extensive research without the support and assistance of diverse number of persons and institutions.

This thesis would not have been possible without the help, support and patience of my joint-supervisors, Prof. G. Brent Hall and Dr. David Goodwin. Their good advice and friendship have been invaluable on both academic and a personal level, for which I am extremely grateful. Particularly, I would like to extend my profound gratitude to Prof. Brent for facilitating my admission into the PhD programme and being a constant source of encouragement throughout the research journey. To Dr. Goodwin, his rich experience in African land tenure was very valuable in guiding my thoughts.

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Abstract

This thesis investigates how differences in social structures and their associated processes influence the operation and outcomes of local land registration systems in Ghana. In order to address the land information deficiencies, the thesis argues that a clear understanding is required of the institutional arrangement of the interrelationships between the implicit informal institutions that underlie land tenure arrangements and explicit formal institutions. The informal institutions, which are usually unwritten, refer to the social norms, customs, or cultures, which influence social relations. The thesis adopts and extends an analytical framework that incorporates elements of the concept of social capital in order to identify relevant linkages to the social context of a jurisdiction. The primary thesis contribution centres on an empirical comparison of two different socio-political organisational structures and processes in Ghana, namely the cities of Accra and Kumasi, which respectively are non-centralised and centralised in their customary land tenure arrangements. An ethnographic research approach utilising multiple methods of data collection and sources of evidence is used to examine historical and contemporary socio-cultural factors relative to their impact on the prevailing land tenure systems in these two cities.

The result of the investigation shows that complex elements within their social contexts influence institutional and urban land market outcomes. The context-specific elements include the nature of the socio-political organisational structures, the nature of the interactions between formal and informal institutions, the level of tenure security, and the nature of implementation of the respective legal frameworks. An important implication of the thesis is that although urban contexts exhibit conditions that require formalisation of land rights, there is a need for differentiated strategies that respond appropriately to the conditions of the social context. This suggests that in order to address land information deficiencies, the introduction and improvement of land registration systems must implicitly and explicitly consider context-specific factors if they are to achieve land development and information management objectives.
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<tbody>
<tr>
<td>ALS</td>
<td>Asantehene Lands Secretariat</td>
</tr>
<tr>
<td>AMA</td>
<td>Accra Metropolitan Assembly</td>
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<tr>
<td>ARCC</td>
<td>Ashanti Regional Coordinating Council</td>
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<tr>
<td>ARPS</td>
<td>Aborigines Rights Protection Society</td>
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<tr>
<td>CAHF</td>
<td>Centre for Affordable Housing Finance Africa</td>
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<tr>
<td>Cap.</td>
<td>Chapter of the British Colonial Ordinance</td>
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<tr>
<td>CLS</td>
<td>Customary Land Secretariat</td>
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<tr>
<td>CPP</td>
<td>Convention People’s Party</td>
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<tr>
<td>ECA</td>
<td>Economic Commission for Africa</td>
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<td>FAO</td>
<td>Food and Agriculture Organisation of the United Nations</td>
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<tr>
<td>GBA</td>
<td>Ghana Bar Association</td>
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<tr>
<td>GDP</td>
<td>Gross Domestic Product</td>
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<td>GhIS</td>
<td>Ghana Institution of Surveyors</td>
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<td>GIA</td>
<td>Ghana Institute of Architects</td>
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<td>GIP</td>
<td>Ghana Institute of Planners</td>
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<tr>
<td>GIS</td>
<td>Geographic Information System</td>
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<tr>
<td>GKMA</td>
<td>Greater Kumasi Metropolitan Area</td>
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<tr>
<td>GREDA</td>
<td>Ghana Real Estate Developer Association</td>
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<tr>
<td>GSS</td>
<td>Ghana Statistical Service</td>
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<tr>
<td>GTC</td>
<td>Ga Traditional Council</td>
</tr>
<tr>
<td>HFC</td>
<td>Home Finance Company</td>
</tr>
<tr>
<td>JICA</td>
<td>Japan International Cooperation Association</td>
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<tr>
<td>KMA</td>
<td>Kumasi Metropolitan Assembly</td>
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<tr>
<td>KTC</td>
<td>Kumasi Traditional Council</td>
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<tr>
<td>LAP</td>
<td>Land Administration Project</td>
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<tr>
<td>LC</td>
<td>Lands Commission</td>
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<td>LI</td>
<td>Legislative Instrument</td>
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<tr>
<td>LRD</td>
<td>Land Registration Division</td>
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<td>LVD</td>
<td>Land Valuation Division</td>
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<tr>
<td>MLF</td>
<td>Ministry of Lands and Forestry</td>
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<tr>
<td>Acronym</td>
<td>Full Name</td>
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<tr>
<td>MLGRD</td>
<td>Ministry of Local Government and Rural Development</td>
</tr>
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<td>MMDA</td>
<td>Metropolitan, Municipal and District Assemblies</td>
</tr>
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<td>MWWH</td>
<td>Ministry of Water, Works and Housing</td>
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<tr>
<td>NHC</td>
<td>National House of Chiefs</td>
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<tr>
<td>NLC</td>
<td>National Lands Commission</td>
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<tr>
<td>NRCD</td>
<td>National Redemption Council Decree</td>
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<tr>
<td>OASL</td>
<td>Office of the Administrator of Stool Lands</td>
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<tr>
<td>OECD</td>
<td>Organisation for Economic Co-operation and Development</td>
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<tr>
<td>PNDCL</td>
<td>Provisional National Defence Council Law</td>
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<tr>
<td>PVLMD</td>
<td>Public and Vested Land Management Division</td>
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<tr>
<td>RLC</td>
<td>Regional Lands Commission</td>
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<tr>
<td>SDF</td>
<td>Spatial Development Framework</td>
</tr>
<tr>
<td>SHC</td>
<td>State Housing Company</td>
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<tr>
<td>SMD</td>
<td>Survey and Mapping Division</td>
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<tr>
<td>SSA</td>
<td>Sub-Saharan Africa</td>
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<tr>
<td>SSNIT</td>
<td>Social Security and National Insurance Trust</td>
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<tr>
<td>STDM</td>
<td>Social Tenure Domain Model</td>
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<tr>
<td>TCPD</td>
<td>Town and Country Planning Department</td>
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<tr>
<td>UMLIS</td>
<td>Urban Land Information Management System</td>
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<tr>
<td>UN</td>
<td>United Nations</td>
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<tr>
<td>UN-Habitat</td>
<td>United Nations Human Settlements Programme</td>
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Chapter 1

Introduction

This thesis seeks to understand how social structures and their associated processes influence the operation and outcomes of land registration systems in Ghana and ultimately on the development of a viable local urban real estate market. In the thesis the term real estate is used interchangeably with ‘property’, that is land and its improvements as well as an associated bundle of rights (Mooya 2009). The real estate or property market is taken to include the institutional framework within which the market operates, which facilitates the exchange of property rights. It encompasses land delivery, transfer, valuation and pricing. For formal land registration systems and cadastral systems to succeed in providing the relevant information needed for the development of a viable urban real estate market, it is essential to understand the socio-political organisational structures that underpin the prevailing customary urban land tenure systems within particular jurisdictions.

The relevance of the thesis is premised on the compelling challenge faced by development partners, academics, and practitioners among others to reduce poverty in virtually all developing economies (Hammond and Antwi 2010; Mwangi 2011). It is estimated that 50% of the population of Africa lives on less than $1.25 a day (United Nations 2009; World Bank 2012). Hence, to address this challenge, it has been suggested that developing countries should utilise the potential inherent in their relatively viable land resources to promote economic development and generate wealth (Deininger and Feder 1998; World Bank 2003; Deininger and Feder 2009a). In this context, the real estate industry is estimated to contribute three-quarters of the wealth of most economies (World Bank 1989, 1993), and it is also a significant factor for investment and employment generation (Karley 2009).
In order to benefit from the underutilised potential of urban land resources, several writers have advocated the introduction and improvement of land registration and cadastral systems (Hanstad 1998; Moyo 2007; Dale, Mahoney, and McLaren 2010). However, evidence from empirical research in a number of developing economies including those in SSA continues to show mixed or inconclusive outcomes from the implementation and operations of such systems (see Barry and Fourie 2002; Toulmin 2009; Hammond 2006; Feder and Nishio 1998). Hence, there is an important need to address deficiencies in the operations and outcomes of land registration systems in general and urban registration systems in particular.

The thesis contributes to fulfilling the above need. It adds to the on-going academic and professional efforts aimed at finding sustainable strategies to improve the operations and outcomes of land registration systems so that they can effectively facilitate the development of viable local land and real estate markets. The primary thesis contribution centres on an empirical comparison of two different socio-political organisational structures and processes that underpin the land tenure arrangement in two urban jurisdictions in Ghana. It assesses the relationships between differing institutional arrangements on the operations and outcomes of the land registration systems, and, ultimately, on the functioning of the local urban real estate markets. Based on the lessons learnt from this investigation, recommendations for a responsive and functional land information management framework are identified.

1.1 Land Information and the Urban Real Estate Market

The role of information in the functioning of various sectors of the economy is well established (Stigler 1961; Melody 1987, 2003; Stiglitz 2008; Dale and McLaughlin 1988). Land information that is relevant, reliable and up-to-date is required for the real estate sector within cities for them to function efficiently and contribute to economic development (Adlington et al. 2000; Hammond 2006; Dale et al. 2010). This information, which includes land ownership and rights, land use, location and value, is required by market participants to make informed decisions. In the formal urban real estate sector for instance, the first thing that a properly counselled purchaser or creditor of land typically seeks to know in any transaction is whether the person purporting to be
the seller or borrower is indeed the true owner of the real estate in question. Second, they would need to know what the property in question is actually worth by considering its intrinsic qualities such as its location and improved conditions. Third, and assuming that points one and two are properly addressed, a formal process of land title transfer would be initiated and ownership of land would move from a seller to a purchaser. During this process, value is realized from the land in the form of a financial transfer that involves not only cadastral instruments (such as land title) but also financial instruments such as a mortgage against the intrinsic value of the land (i.e. the land value). Hence, the realization of the transferable value in land clearly points to the importance of institutional arrangements and land information in the facilitation of well-functioning urban land and real estate markets.

However, in reality, real estate markets, particularly in developing countries, are often plagued with information asymmetry. The situation is not uncommon, as shown by Akerlof (1970), where sellers know more about the state of their goods than buyers. In the real estate market sellers tend to know more than the purchasers about the true ownership status of their land and any defects in their title. Equally, purchasers may also know more about market data relating to properties than the seller (D’Arcy and Keogh 1998; Hammond 2006). In a free real estate market, the parties to a transaction are not obliged to disclose to each other information that may impact on the value of the real estate. The possibility thus exists for parties to a transaction either to over-price or under-price real estate, depending on their individual goals and objectives. This, in turn, may lead to market inefficiencies. Hence, the availability or non-availability of information, determined by its effective management and dissemination, are important factors that may affect the structure and outcomes of the market (D’Arcy 2005; Norris, Schweikhardt, and Scorsone 2008).

One of the fundamental impediments to achieving functional real estate markets, and that has proved to be intractable in developing countries, is the way land information is managed (Methven, Sutherland, and Nkwae 2007). It is estimated that less than 1% of the area of Africa is covered by any form of cadastral map (Fourie and Nino-Fluck 2000), and only 2-10% of its land area is estimated to have documented title (Wallace and Williamson 2006; Toulmin 2009; Hammond and Abdulai 2011). It
follows from this reality that the availability of land tenure information is limited to areas with formal documents. However, even in these areas, access to relevant information is restricted through inadequate management arrangements (Augustinus 2003; Latu and Dacey 2006). As a result of these challenges, decision-makers and market participants, including administrators, creditors, real estate professionals and service providers have to rely on questionable or incomplete data to form their opinions (Fourie and Nino-Fluck 2000; Rode 2010). This, in turn, leads to increases in transaction costs and market inefficiencies (Ahene 2009), and the possible under-utilisation of the market for economic development (Kironde 2000; Galal and Razzaz 2001; Leduka 2004). In short, it can be said that an implication of the land information challenge is the possible curtailment of opportunities for the development of viable real estate markets, especially in urban areas where land per unit area is worth considerably more on the open market than the same unit area of rural land.

Consequently, many governments across SSA are in the process of introducing or improving land registration and formal titling systems (Palmer 1999; Manthorpe 2003). One of the stated aims of this process is to achieve modern land information management in order to facilitate the development of the land market (Wallace and Williamson 2006; Dale et al. 2010). The new formal systems are often part of land reform programmes sponsored by development agencies such as the World Bank and the other bilateral and multilateral development partners (Burns 2007; Deininger and Feder 2009a; Mitchell 2009).

It is often assumed that, because formal systems and institutions have enjoyed some positive outcomes in terms of realising wealth in developed countries, they will succeed equally well in developing economies (see Dickerman and Barnes 1989; Pessali 2011a). However, as noted above, findings from empirical studies across several developing countries, including those in SSA, show that the performance of formal land registration systems has been mixed (Barry and Fourie 2002; Mitchell 2009). While some studies point to positive links between land titling and access to credit (Feder and Nishio 1998), others show inconclusive results (Besley 1995; Payne, Durand-Lasserve, and Rakodi 2009), or negative outcomes such as the curtailment of rights of the marginalized and vulnerable through abuse of the system by the elite (Lastaria-Cornhiel 1997; Blocher
2006; Toulmin 2009). Toulmin, Delville and Traoré (2002), further suggest that modern land registration systems cannot easily handle multiple rights in the same piece of land. Consequently, such systems are not able to provide adequately the information needed for rational decision-making where multiple rights commonly exist (Fourie and Nino-Fluck 2000). In some cases the information they produce may be inconsistent with the situation on the ground (Hammond 2006; Platteau 1995), which is primarily due to their inability to capture and update subsequent transactions (Platteau 2000).

Various reasons have been suggested for such deficiencies in land registration. First, introduced land registration systems typically emerged out of historical accidents and are not specifically designed to bridge the gaps in real estate information (Hammond 2006). For example, it has been suggested that the primary objective for the introduction of land registration in the colonial era was to protect the interest in lands acquired by European settlers, plantation owners, mercantile traders, and timber and mineral concessions (Meek 1949; Ninsin 1986; Bruce and Migot-Adholla 1994). Second, dysfunctional legal regimes in many developing countries make it almost impossible for such systems to operate effectively (Bromley 2009). Third, unclear and often conflicting institutional mandates of the multiple agencies involved in the land title registration process often undermine the systems and leave users confused and sometimes disappointed and disillusioned (Antwi 2000). Fourth, design and operational inadequacies of the systems have been blamed for negative outcomes (Kanji, Cotula, Hilhorst, Toulmin and Witten, 2005). Fifth, their focus appears to have been limited to facilitating conveyancing systems to the neglect of other important considerations, such as their information management aspects (Nichols and McLaughin 1990; Nichols 1993).

Despite the existing knowledge of the above deficiencies, a clear roadmap for improving the outcomes and performance of land registration and cadastral systems continues to prove elusive. It therefore stands to reason that an alternative means of addressing the deficiencies in the operations and outcomes of land registration systems must be explored if there is any chance for viable urban real estate markets to evolve in developing countries.
1.2 Problem Statement

During the introduction and improvement of formal land registration and cadastral systems, little attention is typically given to examining the nature of persisting social institutions that underpin prevailing customary land tenure practices. Hence, this thesis argues that for introduced formal systems to succeed in providing the relevant information needed for the development of a viable urban real estate market it is first essential to examine the socio-political organisational structures and social context that underpin the prevailing customary land tenure practices.

Socio-political structures and social context have been shown to impact significantly on the introduction and outcomes of formal systems. For example, findings from the seminal study by Putnam (1993) showed that the prevailing differences in social capital between northern and southern Italy had an impact on the performance of the regional governments established in 1970. The concept of social capital, examined in detail in Chapter 2, describes aspects of a society’s social structure that influence the performance of its institutions. Putnam (1993:182) pointed out that “social context and history profoundly condition the effectiveness of institutions”. Trebilcock and Veel (2008) further suggested that, for a given formal property right regime to be well established, it must to a large extent conform to the persisting social norms and customs within a jurisdiction. Barry and Fourie (2002) concurred, attributing the challenges faced in the implementation of cadastral systems to the lack of adequate consideration of peculiar social and political complexity of the context within which they function.

The above observations are particularly important given that in most countries in SSA, customary land institutions and processes continue to contribute significantly to the operation and outcomes of urban and peri-urban land and real estate markets as well as the management of information. For instance, it is estimated that 80% of the land area in SSA is under the control of the customary sector (Augustinus 2003), and between 70% to 90% of participants in the land market rely on processes involving customary institutions to access information about land when making real estate decisions (Antwi 2000; Nkurunziza 2008; Knight 2010).
Besides the significant role of customary land institutions, the property rights allocated or alienated to market participants are socially embedded and defined by a social contract regarding access to and use of resources (Hann 1998; Lund 2000; Cousins 2007). The property rights are further nested into each other and also into larger diverse and dynamic social institutions which include membership and status in social units such as the extended family or lineage system, chieftaincy regime, marriage and miscellaneous alliances (Biebuyck 1964; Berry 1989; Ezigbalike and Selebalo 1999; Diaw 2005). The social embeddedness of the land tenure arrangement means that the values and practices of particular social units may either constrain or advance the allocation of and access to land resources. This may in turn impact on the operation of the formal land registration and cadastral system, because only the property rights allocated within a land tenure regime are recorded in the formal system.

Customary institutions and processes are far from static. They have been and continue to be shaped by a number of complicating factors including historical and colonial influences, the socio-cultural differences of various tribes and clans, continuous inter-cultural interactions, rural-urban linkages and economic and demographic changes (Colson 1971; Firmin-Sellers 1996; Katz 2000; Cotula and Neves 2007). The combined effect of such factors is the emergence of diverse, complex and dynamic socio-political organisational structures. These complex structures can be categorised at a high level into centralised/hierarchical ‘states’ or non-centralised/acephalous ‘states’ (Fortes and Evans-Pritchard 1940; Daannaa 1994; Asante 1965; Larbi 1994).

The diverse organisational structures, discussed in detail in Chapter 3, can themselves influence and/or define the institutional arrangement of actors, rules, principles, procedures and practices of particular societies regarding the control over, access to, and administration of land resources. In other words, customary land tenure institutions and processes have a significant role to play in the scheme of improving land administration in general and land information management in particular. It therefore stands to reason that to deal effectively with the land information challenge the complicating factors influencing a customary land tenure system must be identified and closely studied.
However, there appears to be little consensus on the relevance of customary land tenure and its institutions in economic development. The debate in the theoretical and empirical literature is divided broadly between the ‘formalist’ and ‘traditionalist’ schools, with variations in between. On the one hand, the ‘formalist’ school argues that the communal nature of land tenure systems is a major disincentive for investment and for the development and emergence of a well-functioning property market. Hence, the proponents of this school of thought advocate transformation of land tenure systems through the process of formalisation. In particular, they propose that this should occur through the issuing of individual titles to enable the owners to use the registered property in order to secure loans and invest for further wealth creation (De Soto 2000).

On the other hand, the ‘traditionalist’ school argues that customary systems are generally not a disincentive to investment (Abdulai and Ndekugri 2008), and that in most cases “indigenous tenure may provide equal or higher investment incentives than private rights” (Sjaastad and Bromley 1997:548). Proponents of this view further suggest that customary institutions have the necessary built-in structures to manage their lands effectively, and that these systems are both dynamic and resilient (Kasanga and Kotey 2001). Given this, there are grounds to advocate for the decentralisation of land administration systems away from central government and centralised institutions, down to the local level.

A further important dimension in this on-going debate, is that what is today known as ‘customary’ may be the result of manipulation and reinterpretation to serve the needs of colonialists and the elite in society (Ranger 1983; Spear 2003; Peters 2009; Amanor 2001). Other writers have suggested that customary systems are not transparent or accountable (Ubink 2008b), and moreover the elite and some customary authorities manipulate the concept of ‘custom’ and customary rights to the disadvantage of certain vulnerable groups (Whitehead and Tsikata 2003; Amanor 2005).

Findings from recent research by Arko-Adjei (2011), appear to point to the possibility of applying good governance principles to adapt formal land administration systems to customary institutions in order to overcome some of the shortcomings identified above. However, for such an adaptation to be successful, it is argued that the
persisting structural and cognitive elements of the land tenure arrangement and their interactions with the formal system should be identified and examined within specific jurisdictions. Hence, the main general questions that frame the research problem addressed in this thesis are:

*How do the varied socio-political and organisational structures that underpin customary land tenure systems within Ghana help to explain the outcomes of land registration systems, specifically their urban real estate information management aspects?*

And conversely,

*How have formal administration systems shaped “custom” or the interpretation of “custom” in the land administration domain?*

The above questions are particularly important in view of the suggestion by Doré (2001:14) that, “when policy neglects history, culture and social context, huge amounts of effort and funding can be wasted on misconceived initiatives, resulting in lost opportunities, as well as frustration and fatigue”. This warning is timely for many countries in SSA where formal systems such as land registration are currently being introduced. Clearly, for introduced formal systems to be relevant in the development of a viable real estate market, especially in urban areas, the complexities of the customary land tenure institutions must be examined as outlined above.

1.3 Research Goal and Objectives

Following from the above research questions, the overarching goal of this thesis is to explore the impact of socio-cultural differences underlying land tenure systems in Ghana on the operations of its urban land registration systems.
1.4 Specific Research Objectives

The research goal is broken down into three specific objectives:

1. To identify and examine, in two purposively chosen study areas, relevant historical and contemporary socio-cultural factors relative to their impact on the prevailing land tenure systems and operations of land registration systems.

2. To compare the nature and characteristics of the local urban real estate markets in the study areas, with a view to identifying similarities and differences, the information requirements of the market participants, and the opportunities and constraints in meeting these requirements.

3. To identify the conditions required for the development of a responsive and locally relevant land information framework based on the outcome of the preceding objectives.

1.5 Scope of the Study

The empirical investigation is undertaken in two urban jurisdictions in Ghana namely, Accra and Kumasi. Accra, which is the capital city, is located on the coast of Gulf of Guinea. The city depicts a non-centralised customary land tenure administrative structure in the country. On the other hand, Kumasi, which is the second largest city, is located approximately 270 km north of Accra. It depicts a centralised customary land tenure administrative structure. Customary land tenure, for the purpose of this thesis is defined to include the indigenous traditional land authority structures (chiefs, heads of extended lineages and their elders), indigenous rules (custom) and processes that govern land relations in terms of access to and control over land. Even though ‘customary law’ is distinct from the indigenous rules and customs that existed in the pre-colonial period (Okoth-Ogendo 2002), the thesis acknowledges, because of manipulation and transformation, a clear distinction of the two is difficult (discussed in detail in Chapter 3 Subsection 3.1.2.2). With respect to the market, the research focuses on land transactions and assesses the perception of property owners who had successfully negotiated land transactions and undertaken land registration in these jurisdictions.
The findings and observations reported in the thesis are valid within the above contexts. However, the results can also be evaluated against other jurisdictions if other researchers follow a context-specific and ethnographic approach such as that used in the thesis.

1.6 Overview of Research Methodology

An ethnographic research methodology utilising a comparative approach is used in this thesis. Broadly, the ethnographic approach (discussed in detail in Chapter 5), facilitates an in-depth examination and understanding of how contextual issues relating to land tenurial arrangements have influenced the outcome and land registration systems and urban market development. When undertaking ethnographic research, it is often difficult for a researcher not to influence the process. In some cases, the researcher brings into the research certain pre-conceptions and pre-conditions, such as personal knowledge, insights and experiences. Hence, the background of the researcher, which may shape the pre-conditions, may have an effect on the setting and the research process and is a potential source of bias, especially in interpreting data and analytic results.

In the context of this research, it is pertinent to bring to the fore the fact that the author was in the position of an insider researcher. Specifically, the author is a public servant working with the Lands Commission, the umbrella organisation in charge of land administration in Ghana. Prior to undertaking PhD research, he was also the Head of the Planning Unit and the Acting Project Administrator of the first phase of the Land Administration Project, a multi-donor sponsored project aimed at reforming the land administration system in Ghana. Even though being an insider researcher has an advantage, as suggested above, it also presents its own challenges. However, to minimise any potential biases in the research process, a reflexivity analysis, in addition to other measures taken to ensure ethical standards required of social science research are adhered to, is undertaken and reported in Chapter 5.
1.7 Structure of the Thesis

To achieve satisfactorily the research goal and objectives, the thesis is divided into eight further chapters. Specifically, to guide the subsequent research process, Chapter 2 provides the conceptual and analytical framework that depicts the relationship between the social context of the institutional arrangements of land tenure and the emergence of local urban real estate markets. Chapter 3 builds on the conceptual discussion in Chapter 2 to present a comprehensive review of the literature related to the nature of the land tenure systems and the urban land and real estate markets, focusing on Ghana.

Chapter 4 outlines the criteria for the choice of the case study areas and introduces the empirical setting of the research. Chapter 5 presents the methodological approach that guides the study in meeting the research goal and objectives one through three. The chapter describes the method used for the empirical work, the population sample is identified, and the specific methods used to solicit and analyse information are presented.

Chapters 6 and 7 are devoted to the presentation of the findings from the case study cities of Accra and Kumasi. Chapter 8 undertakes a cross-case analysis by comparing and contrasting the findings from Chapter 6 and 7. These three chapters present the analysis and results of the findings within the context of each of the case study areas. The thesis is concluded in Chapter 9. Its achievements and contributions are reviewed and recommendations are made for future research.
Chapter 2

Social Context and Institutions

This chapter presents a conceptual framework for the linkages between institutions and the social organisation or structure of a society. The framework facilitates understanding how elements within the social context influence the outcomes of formal land registration systems, and, ultimately, how these impact the effectiveness of the market. The chapter argues that in order to address the land information deficiencies in Sub-Saharan Africa (SSA) a clear understanding is required of the institutional arrangement of the complex interrelationships between the implicit informal/customary institutions that underlie the land tenure arrangement and explicit formal institutions. The development of the conceptual framework is an important component of the thesis since it serves to articulate the variables of importance and it assists in operationalising the research objectives stated in Chapter 1. It guides the collection of data and its subsequent analysis later in the thesis (Creswell 1998; Yin 2003a, 2003b, 2011; Perry 1998).

The chapter is structured in four sections. Section 2.1 discusses important aspects of the term ‘institution’ to achieve a clear understanding of the factors that can impede or enhance institutional outcomes. The discussion considers three perspectives on the conceptualisation of institutions. Section 2.2 discusses two characteristics of institutions, namely their degree of formality and hierarchy, which influence institutional change. Section 2.3 discusses factors within the social context that influence institutional change and outcomes. Based on the prior discussion, Section 2.4 presents an analytical framework that facilitates the understanding of the linkages between the outcomes of institutional arrangements in a given context and urban real estate market processes and outcomes.
2.1 Defining Institutions

An institutional approach provides the opportunity to understand how key features of a society influence the process and outcomes of institutional change. For instance, Greif (1998:80) identified three fundamental issues which are of concern in institutional analysis, and are also relevant to the goal of this thesis. First, institutional analysis is concerned with understanding why societies develop along different institutional paths. Second, it seeks to understand why institutions that have been ‘successful’ in one society are not always successful in others. Finally, it seeks to understand how the informal and formal institutions of a society interact. Scott (2007:460) adds that institutional theory is concerned with:

… the deeper and more resilient aspects of social structure. It considers the processes by which structures, including schemas, rules, norms, and routines, become established as authoritative guidelines for social behavior. It inquires into how these elements are created, diffused, adopted, and adapted over space and time; and how they fall into decline and disuse.

The above aspects of institutional theory provide a useful general framework to examine the complex interrelationships between, on the one hand, social values, rules, norms and customs that underlie the social structure or organisation of land tenure systems, and, on the other hand, the institutions that govern the implementation of a particular land tenure regime. This examination is possible due to the close link between social organisation of society and institutions. Campbell (2004:1) describes institutions as the foundation of life that shape human interactions. This description suggests that any change in the institutional environment or arrangements of society can have fundamental impacts on its social organisation or structure.

In the same way, certain characteristics of social organisation can influence the process of institutional change and outcomes. For instance, Greif (1994:913) proposed that how a society is organised in terms of its economic, legal, political, social, and moral enforcement institutions, together with its social constructs and information transmission and coordination mechanisms can affect its economic performance and growth. Some of the important outcomes that the organisation of a society may affect include the flow and quality of information, the behaviour of its members, and the
generation of trust among members within a particular social network (Granovetter 2005). In short, the fundamental issues of institutional analysis are relevant in examining and understanding the factors that impede or facilitate the processes of institutional change and its outcomes.

The vagueness in the definition of the term ‘institution’ contributes to difficulties in analysing and understanding institutional change and its outcomes. Although several studies have established the role that institutions play in influencing a variety of social, economic and political outcomes, the term is not consistently defined or used in practice (Pierson 2000; Hollingsworth 2000; Roland 2004; Parto 2005). This has resulted in a number of criticisms. For example, due to the vagueness of the term, its utility has a means of promoting economic development has been questioned (Chang 2006). Fleetwood (2008:241) described the term as a “catch all” used to refer to a diverse range of things from money, table manners, property and other factors all the way up to the state. Portes (2006:249) further concludes that when “an institution can be anything – from the incest taboo to central bank – we do not have a sufficiently delimited object to examine how it changes over time”. The implication of the vagueness of the term is that there must first be a clear understanding of an ‘institution’ to be able to identify and explain the factors that can impede or enhance institutional outcomes.

In order to clarify the term ‘institution’, Subsection 2.1.1 discusses the definitions of the term from both the original and new institutional perspectives. The discussion focuses on the definition of institution from three strands of new institutionalism in order to identify its different elements. Based on the different conceptualisation of the term, Subsection 2.1.2 considers three perspectives that underpin the logic of institutional change.

2.1.1 Old and New Institutionalism Perspectives

The historical and contemporary roots of the term ‘institution’ contribute to the diversity in its definition and utilisation. The core ideas of old institutionalism are rooted in the works of Marx (1952), Weber (1968), Veblen (1909), and Commons (1924) among others (see for example, Samuels 1995; Scott 2007). Whilst orthodox economists rely on the forces of demand and supply to explain the allocation of
resources in an economy, proponents of early institutionalism posited that to understand fully the functioning of an economy requires an examination of how institutions, habits, rules, and their evolution influence the functioning of society (Hodgson 1998).

Consequently, the old institutionalists argued that limiting understanding of the functions of an economy only to include market operations would result in a restrictive understanding of how economic development actually occurs (Herath 2005). They pointed out that the “real determination of whatever allocation occurs in any society is the organisational structure of that society – in short, its institutions. At most, the market only gives effect to prevailing institutions” (Samuels 1995:571). In effect, early institutionalism asserted that the market is embedded within a framework of other complementary institutions such as formal laws, regulations and social norms. Thus, the proponents of the core ideas of old institutionalism rejected the assertion of orthodox economic theory that the market is the essence of the economy.

The core ideas of old institutionalism were largely ignored in economic and social analysis due to two related factors. First, the proponents of this school of thought were criticised for lacking a comprehensive and coherent theoretical and methodological approach to the study of institutions (Williamson 1998; Hodgson 1998; Scott 2007). Second, institutional issues diminished as a result of the continuous development and application of sophisticated econometric models by neoclassical economists to explain prevailing economic issues at an increasing level of abstraction (Richter 2005). The combined effect of the two factors was that neoclassical economic theory overshadowed the core ideas of old institutionalism, particularly before the Second World War.

The limitations of neoclassical economic theory to explain fully the post-Second World War economic difficulties led to the re-emergence of institutionalism. In fact, the limitations led to calls for alternative theoretical explanations of diverse social and economic outcomes (Parto 2005; Furubotn and Richter 2008). In response to these calls, ‘new’ institutionalism emerged primarily to clarify how institutions determine various social, political, and economic outcomes (Hall and Taylor 1996; Steinmo 2008; Radaelli, Dente, and Dossi 2012). Even though the emergence of new institutionalism provides useful insights into the analysis of the role of institutions in determining
outcomes, some researchers suggest that new institutionalism still lacks a common coherent framework (Castellano and García-Quero 2012).

The lack of a coherent framework is largely due to the overlap of different disciplines such as economics, sociology, and political science (Peters 2000; Nelson and Sampat 2001; Scott 2007). Consequently, at least three different approaches to the analysis of institutions have evolved, namely rational choice institutionalism, historical institutionalism, and sociological institutionalism (Hall and Taylor 1996). In order to enhance understanding of the term institution, the following discussion focuses on the perspectives of the three strands of new institutionalism in order to identify and understand the emphasis placed by each.

2.1.1.1 Rational Choice Institutionalism

Rational choice institutionalism is fundamentally an extension of the neo-classical economic theory of choice. The extension is achieved through an integration of new assumptions about both the constraints that individuals face and the process by which they seek to maximize their needs within those constraints (Barković 2008). Three assumptions underlie the rational choice perspective of institutions (Hechter, Opp, and Wippler 1990). First, it is assumed that individuals act to fulfil their preferences. Second, individuals in the process of fulfilling their preferences are confronted with certain constraints, such as imperfect information and transaction costs, which are under their control or to which they are subjected. Finally, it is assumed that, given existing constraints, individuals choose the best available options that can maximise their needs. Institutions are regarded as the "humanly devised constraints that structure political, economic, and social interactions [consisting] of informal constraints (sanctions, taboos, customs, traditions, and codes of conduct) and formal rules (constitutions, laws, property rights)” (North 1991:97).

From the rational choice perspective, institutions evolve to structure the choices that individuals make. Consequently, the proponents of the rational choice perspective focus on the strategic, goal-oriented behaviour of individuals or groups within the constraints of the institutional environment. In the context of the land market, the analytic focus is on issues such as property rights and transaction costs (Williamson 1998, 2000; North
A key implication is that whilst individuals have access to incentives provided by institutional structures, they retain their individual cognitive capacities and make their own decisions. From this perspective, human agents are central to the development of institutions.

2.1.1.2 Sociological Institutionalism

Proponents of the sociological perspective of institutions assert that the social structure of society, shaped by norms, influences individual actions, and that the members of society have to conform to societal values (Tang 2010). Hence, sociological institutionalists define institutions broadly to include “not just formal rules, procedures or norms but the symbol systems, cognitive scripts, and moral templates that provide the ‘frames of meaning’ guiding human action” (Hall and Taylor 1996:947). From this societal perspective, individuals are fundamentally seen as social beings influenced by the cultural and normative institutions of the society they live in. As argued by (Thelen 1999:386), institutions are the result of “collective outcomes, but not in the sense of being the product or even the sum of individual interests. Rather, institutions are socially constructed in the sense that they embody shared cultural understandings (shared cognitions, interpretive frames) of the way the world works”. This perspective questions the methodological individualism approach of the rational choice perspective, where self-interested and rational individuals are privileged. Hence, consideration of the social context within which institutions operate is of fundamental importance.

2.1.1.3 Historical Institutionalism

Historical institutionalists perceive institutions as “the formal or informal procedures, routines, norms and conventions embedded in the organizational structure of the polity or political economy” (Hall and Taylor 1996:938). Stated differently, institutions represent the formal and informal rules and procedures that govern a society, and that are codified in laws such as the constitution. In this respect, historical institutionalists perceive institutions as emerging from and being sustained by features of their broader political and social context. Thus, historical institutionalists are more concerned with understanding how political-historical processes or path-dependence affects political and social outcomes.
With respect to the relationship between individuals and institutions, historical institutionalists take a middle ground. For instance, Steinmo (2008:163) points out that historical institutionalists perceive human beings as “both norm abiding rule followers and self-interested rational actors” (emphasis in original). That is to say, how an individual behaves depends on the individual, on the context, and on the prevailing rules. Knill and Lenschow (2001:190) suggests that that the historical institutionalist approach to institutional analysis is to borrow eclectically from the other two schools of thought. In effect, historical institutionalists rely on both rational choice and sociological approaches to institutional analysis.

From the above discussion, it can be seen that the term ‘institution’ has been conceptualised variously. Table 2.1 shows the wide range of definitions by different authors, which confirm the diverse nature of this concept. The table shows that the term has been conceptualised as the rule systems and cultural schema that impact on the allocation of resources and the actions of individuals and therefore on the outcomes of social, economic and political actions.

A common understanding from the three perspectives discussed above is that an institution has formal, informal, and organisational aspects. The formal aspects of institutions are the written rules, which are intended to guide actions. The informal aspect, which is usually not written, refers to the social norms, customs, or cultures, which influence social relations. Finally, the organisational aspect refers to how people are organised in a particular setting. In addition, the multiple aspects of institutions operate and interact at different levels of society to influence the interactions among individuals, organisations and the state in varying degrees (Parto 2005).

The three strands of new institutionalism discussed earlier differ on the emphasis they place on the aspects of institutions and therefore use different logic in explaining how institutions change (Radaelli et al. 2012). Rational choice institutionalists take an efficiency perspective regarding the development of institutions. Proponents of this view are interested in how individuals or groups make rational choices in the face of constraints, which lead to the emergence of efficient institutions. Institutions are perceived as providing incentives and opportunities and can therefore enable or inhibit actions of rational humans regarding outcomes.
<table>
<thead>
<tr>
<th>Author/Proponent</th>
<th>Definition of Institution</th>
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<tbody>
<tr>
<td>Veblen, 1919&lt;sup&gt;1&lt;/sup&gt;</td>
<td>Settled habits of thought common to the generality of men.</td>
</tr>
<tr>
<td>Neale, 1994&lt;sup&gt;1&lt;/sup&gt;</td>
<td>The regularities of people's actions and their responses to questions about what they are doing.</td>
</tr>
<tr>
<td>John R. Commons, 1924&lt;sup&gt;1&lt;/sup&gt;</td>
<td>Collective action exercised by different types of organizations – such as the family, the corporation, the trade union, and the state – in control of individual action.</td>
</tr>
<tr>
<td>Wesley Mitchell, 1950&lt;sup&gt;1&lt;/sup&gt;</td>
<td>A convenient term for the more important among the widely prevalent, highly standardized social habits.</td>
</tr>
<tr>
<td>Scott, 2001&lt;sup&gt;1&lt;/sup&gt;</td>
<td>Resilient social structures composed of cultured-cognitive, normative, and regulative elements to bring order and stability to social life.</td>
</tr>
<tr>
<td>North, 1991&lt;sup&gt;2&lt;/sup&gt;</td>
<td>The humanly devised constraints that structure political, economic, and social interactions of informal constraints (sanctions, taboos, customs, traditions, and codes of conduct), and formal rules (constitutions, laws, property rights).</td>
</tr>
<tr>
<td>Grief 2006&lt;sup&gt;3&lt;/sup&gt;</td>
<td>A system of rules, beliefs, norms and organizations that together generate a regularity of (social) behaviour.</td>
</tr>
<tr>
<td>Portes, 2006&lt;sup&gt;4&lt;/sup&gt;</td>
<td>They are the set of rules, written or informal, governing relationships among role occupants in social organisations like the family, schools and other major areas of social life: polity, economy, religion, communications and information, leisure.</td>
</tr>
<tr>
<td>Fleetwood, 2008&lt;sup&gt;5&lt;/sup&gt;</td>
<td>Institutions are systems of established rules, conventions, norms, values and customs; institutions consist of, or are constituted by, established rules, conventions, norms, values and customs.</td>
</tr>
<tr>
<td>Hall and Taylor, 1996&lt;sup&gt;6&lt;/sup&gt;</td>
<td>The formal or informal procedures, routines, norms and conventions embedded in the organizational structure of the polity or political economy.</td>
</tr>
</tbody>
</table>


Sociological institutionalists, on the other hand, emphasise the role of the cognitive-cultural context on the preference and actions of individuals. Thus, the values and norms that underlie the social system are posited to play a critical role in shaping various outcomes. Historical institutionalists are concerned with understanding how political and historical processes affect political and social outcomes. They focus
therefore, on how conflicts, arising from differences in power and interests in wider society, shape political and social outcomes.

Given the different logics that underlie the explanations of institutional change by the three strands of new institutionalism, there is a need to examine these logics in detail in order to enhance understanding the nature of the factors that shape institutional change.

2.1.2 Perspectives on Institutional Change

This subsection builds on the preceding discussion regarding the conceptualisation of institutions. The subsequent discussion is organised around the three broad themes identified from the conceptualisation of institutions by the three strands of new institutionalism namely, efficiency, culture and both conflict and power perspectives.

2.1.2.1 Efficiency Perspective of Institutional Change

Two assumptions underlie the efficiency perspective of institutional change. The first is that institutions are created and changed based on the decisions and choices of rational actors (individuals and groups) in their quest to satisfy their preferences (Oyerinde 2006). That is to say, rational actors create or change institutions in order to lower the transaction cost of exchanges. The efficiency perspective therefore asserts that well-defined rights, including those that relate to property, are needed to deal with scarcity of resources, and firms are set up to mitigate market failures and make them more efficient. The second assumption that underlies the efficiency perspective of institutional change is that the direction and effect of institutional change is predetermined to move towards Pareto efficiency (Tang 2010) or optimality. Pareto efficiency refers to the presumption that institutional change will result in a state where change in one condition does not adversely affect change in another. Thus, the focus is on changing ‘the rules of the game’ in order to achieve efficiency in resource allocation and use.

Even though the efficiency perspective provides useful insights into the role of human agents in institutional change, there are some shortcomings. First, it is criticised
on the grounds that it is not able to explain empirically why inefficient institutions continue to persist in the real world when there is every indication that the greater good would be served if they are replaced (Srivastava 2004). To address this shortcoming, Tang (2010) notes that variations on the efficiency perspective include the possibility of external factors, such as path dependence, in their explanation of institutional change. In addition, through the application of game theory, it is suggested that there may be multiple equilibria and therefore some less efficient institutions may persist.

Second, the focus on efficiency is criticised for failing to take account of equally appropriate but presumably less efficient approaches to achieving particular outcomes. Particularly in relation to the development of property rights regimes, Dutt (2011) argued that due to the quest for efficiency, the focus has been on establishing full private ownership ignoring the fact that there are different configurations of bundles of property rights that can equally well provide incentives for increased production. This argument is of particular relevance to countries in SSA where, because of the multiplicity of land rights that may exist, the formalisation of land rights through the issuing of land titles may result in unintended outcomes such as the curtailment of rights of the marginalized and vulnerable.

Third, any underlying assumption that institutional change is always optimal is open to criticism because it ignores the important role of social and historical factors, which are of concern to historical and sociological institutionalists. In reality, due to the effect of path dependence, the direction of institutional change is not always directed towards optimality. In other words, historical and other past events may have profound effects on the trajectory of institutions, which may result in different institutional outcomes. In addition to historical and social factors, institutional change may result from power struggles among persons and groups with different goals who want to take advantage of a given situation (Harriss 2003; Oyerinde 2006). Consequently, the assumption that institutions evolve through rational decisions is questioned.

2.1.2.2 Cultural Perspective of Institutional Change

The cultural perspective of institutional change asserts that because the boundaries between a society’s institutions and its culture are blurred (Portes 2006), institutional
persistence and change must be explained with reference to the underlying cultural values of the society. As a result, the approach to institutional change may be more about the logic of social appropriateness than efficiency (Olsen and March 2004). This is to say that, because the actions of members of a society are assumed to be influenced and driven by rules acceptable to the whole society, as specified by its institutions, institutional change is perceived as enhancing culturally valued legitimacy rather than efficiency in transactions (Olsen and March 2004). Consequently, the underlying cultural values of a society may strongly influence institutional change. This point is highlighted by Thelen (1999:386) when she observed that “even when policy makers set out to redesign institutions, they are constrained in what they can conceive of by these embedded, cultural constraints”.

Even if it is accepted that cultural constraints influence policy, the cultural perspective of institutional change has been criticised for not having a clear explanation of how institutions change. For instance, Campbell (2004) pointed out that the cultural perspective fails to specify the mechanisms by which cultural factors affect the deliberations of actors to effect change. Similarly, Tang (2010) pointed out that even if the cultural perspective is able to explain how individuals adjust to changes in society, it does not adequately address how the social system changes. Chang and Evans (2000:21) suggested that, if it is agreed that culture can change, this means that the role of human agents in institutional change will be enhanced since their cultural views will be brought to bear on institutional change.

2.1.2.3 Conflict and Power Perspective of Institutional Change

Three assumptions underlie the conflict and power perspective of institutional change (Srivastava 2004; Tang 2010). First, the perspective acknowledges that conflicts of interest exist in a society due to the divergent opinions that exist among its members. Second, due to these divergent interests, there is constant confrontation among the different agents in their efforts to achieve their interests. Third, social, and institutional change occurs because of the struggle between the different forces in society. In other words, because of the unequal balance of power among actors, conflicts arise through which it is assumed that change occurs.
Even though an initial conflict may be resolved, other conflicts may arise due to the initial disturbance of the situation. In some circumstances, collaboration among to be ‘conflicting’ groups may also lead to change. Thus, instead of a static approach to institutional change, this perspective takes an historical approach in order to achieve an in-depth understanding of the social structures within which people are embedded and which subsequently shape their lives (Srivastava 2004). The focus on the social structures of society is because they are seen as mirroring the asymmetries of power that exist.

The preceding discussions on the efficiency, cultural, and conflict and power perspectives of institutional change show that institutional development or change is complex. These complexities relate to the dynamic interactions of disparate factors such as the interests and preferences of individuals, which are shaped by their economic, social, and cultural context, as well as historical and political factors. Given the dynamic factors that shape institutional change, in order to identify and understand the factors that may impede or enhance institutional change it is pertinent to establish the interrelationships among diverse aspects of institutions that operate at different levels of a society.

2.2 Characteristics of Institutions impacting on Institutional Change

Building on the discussion of the three perspectives of institutions and institutional change, this section discusses two characterisations of institutions, namely their degree of formality and their hierarchical nature. An objective of the discussion is to identify how the key characteristics of institutions can contribute to understanding of the factors that may either impede or enhance varied outcomes of institutional arrangements.

2.2.1 Degree of Formality

The definition of the term institution in Section 2.1 revealed that an important characterisation of an institution is its degree of formality. In defining institutions, North (1990, 1991) distinguished between formal and informal rules that constraint human behaviour. Similarly, proponents of the other perspectives of the term institution
allude to its formal and informal characteristics (Hall and Taylor 1996; Campbell 2004; Portes 2006). Hence, understanding how the formal and informal aspects of institutions interact can provide useful insights into factors that may impede or facilitate successful institutional outcomes.

Even though the distinction between formal and informal institutions may be useful, it is often difficult to ascertain in which category to put a particular institution. This difficulty can be attributed to the context-specific nature of institutions (de Soysa and Jütting 2006). Hence, the distinction between formal and informal aspects of institutions are often not consistent (Kingston and Caballero 2009). For instance, whilst some authors determine the degree of formality based on whether a rule is written or not (North 1990), others base the distinction on whether the rule is enforced by the state or endogenously by particular groups within society (Helmke and Levitsky 2004). Then again, formal and informal processes are often associated with what is either legal or illegal (Jenkins 2009). Yami, Vogl, and Hauser (2009) outline six criteria to differentiate formal and informal institutions (depicted in Table 2.2). This table shows the difference between formal and informal institutions along six dimensions: (1) the nature of their evolution, (2) their functional and structural arrangement, (3) the extent of external input and material support, (4) the level of consideration of social and cultural embeddedness, (5) their ownership, and (6) their enforcement and monitoring mechanisms.

Applying the distinguishing dimensions of institutions, informal institutions can be described as endogenous, site specific, socially and culturally embedded. Informal rules may include the social norms, attitudes and values which are socially accepted and can be said to be part of a society’s cultural heritage (Pejovich 1999). Even though these informal rules are often not written, they are endogenously enforceable. Formal institutions, on the other hand, are typically exogenous, operating at national, regional and district levels, and owned and enforced by state machinery. Examples of formal rules are the written codes, regulations, and laws that include the constitution and legal codes, which determine the governance and enforcement arrangements usually undertaken by the state.
Table 2.2 Differences between Informal and Formal Institutions

<table>
<thead>
<tr>
<th>Aspects</th>
<th>Informal Institutions</th>
<th>Formal Institutions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nature of evolution</td>
<td>Endogenous</td>
<td>Exogenous</td>
</tr>
<tr>
<td>Functional and structural</td>
<td>Site specific</td>
<td>Common at the district, regional and national level</td>
</tr>
<tr>
<td>arrangements</td>
<td></td>
<td></td>
</tr>
<tr>
<td>External input and material support</td>
<td>Low</td>
<td>High</td>
</tr>
<tr>
<td>Consideration of social and</td>
<td>High</td>
<td>Low</td>
</tr>
<tr>
<td>cultural embeddedness</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ownership</td>
<td>Local community</td>
<td>State</td>
</tr>
<tr>
<td>Enforcement and monitoring</td>
<td>Based on community</td>
<td>Legally by the state</td>
</tr>
<tr>
<td></td>
<td>agreement</td>
<td></td>
</tr>
</tbody>
</table>

Source: Adapted from Yami et al. (2009:154)

In order to identify their relative influence, it is important to have an understanding of the nature of inter-relationships between formal institutions and the implicit informal institutions (Harriss 2003:351). Interactions among formal and informal institutions can take different forms. In this context, Helmke and Levitsky (2004) developed a framework that seeks to show the potential outcomes of four different patterns of interactions that may exist between formal and informal institutions. Table 2.3 shows, conceptually, the potential outcomes that may occur with respect to different configurations of the relationship between formal and informal institutions. The table shows that depending on the effectiveness of formal institutions, complementary, accommodating, competing or substituting relationships with informal institutions can emerge, resulting in either convergent or divergent outcomes.

The different possibilities of interactions that may occur between informal and formal institutions can facilitate understanding institutional outcomes in particular settings. A convergent outcome may occur under two circumstances, namely when informal institutions and effective formal institutions are complementary and when informal institutions substitute for ineffective formal institutions. A complementary relationship exists when formal institutions take into consideration prevailing informal social and customary norms in a society (Trebilcock and Veel 2008). Under such
circumstance, both institutions operate in an integrated manner to achieve common objectives.

Table 2.3 Typology of informal-Formal pattern of relations

<table>
<thead>
<tr>
<th>Outcomes</th>
<th>Effective Formal institutions</th>
<th>Ineffective formal institutions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Convergent</td>
<td>Complementary</td>
<td>Substituting</td>
</tr>
<tr>
<td>Divergent</td>
<td>Accommodating</td>
<td>Competing</td>
</tr>
</tbody>
</table>


A convergent outcome may also be possible when, due to ineffective or non-existent formal rules, informal norms and customs fill-in ‘enforcement gaps’ in order to create some order in society (Blocher 2006). In both circumstances, there are often positive outcomes.

Two circumstances can result in divergent outcomes of the interaction between formal and informal institutions. Under the first circumstance, effective formal institutions may accommodate informal institutions as long as the informal institutions do not undermine the formal law. However, when a formal institution is ineffective, then there is likely to be competition with prevailing internalised informal institutions, leading to a divergence in outcomes. In both circumstances, the possibility of ‘forum shopping’ between formal and informal institutions may occur and the resulting dualism may in turn lead to legal uncertainty and its attendant negative outcomes.

The classification of institutions based on the degree of formality highlights the importance of informal institutions in influencing outcomes. The importance is emphasised by Soysa and Jutting (2006) who point out that formal institutions alone do not shape human behaviour, since much of what goes on in society can be explained also by informal institutions that are grounded in and emanate from a society’s culture. Consequently, it is pertinent to consider the influences of informal institutions in institutional development particularly because of their possible impacts on institutional outcome in different settings. Ensminger (1997:166) drew attention to the potential negative impact of ignoring informal institutions when he asserted that when “formal
systems are imposed upon a society with which they are out of accord, self-enforcement may erode and externally engineered incentives may fail to yield the predicted results”.

2.2.2 Hierarchical Characteristics of Institutions

Diverse formal and informal institutions can operate at different levels of society (Parto 2005). Srivastava (2004) identified three levels at which institutions function, namely the macro, meso and micro levels. The constitution of a country is at the macro level, where the broad but fundamental rules and structures that underpin the economy are specified. For example, with respect to property, the constitution could specify the principles underlying property relations. The various laws and regulations, such as land registration and planning laws enacted by the state to give effect to the broad principles set out in the constitution are found at the meso level. The day-to-day operational procedures in the implementations of the laws and regulations function at the micro level. In addition to these formal procedures, customary rules, norms, and processes operate to govern particular property relations. Underlying the formal rules of society are micro rules, which affect most transactions in daily life.

Williamson (2000), identified four levels rather than three at which various institutions in an economy operate according to the effect and time they take to change. The four levels shown in Figure 2.1 are the social embeddedness level, the institutional environment level, governance level, and finally the resource allocation level. According to the framework in Figure 2.1, the first social embeddedness level is where informal institutions such as customs, norms, traditions, and religion, are located, and these take a long time to change. Importantly, institutions at Level 1 are posited to affect fundamentally activities at the other levels of the framework (Williamson 2000). For instance, institutions at Level 1 provide the foundation for formal institutions such as political and economic legislation.

At the second level, the institutions that define the “rules of the game” exist with regard to, for instance, property rights definition and the enforcement mechanisms. In other words, formal institutions located at this level define the rules and laws of property rights, such as land registration legislation, and their enforcement. These rules have a long-term change horizon. The governance institutions, such as the courts and
land registration agencies that enforce and operationalise the rules set out by the Level 2 exist at the third level. These institutions take a relatively short time to change.

![Figure 2.1 Four Levels of Social Analysis](Source: Adapted from Williamson (2000:597))

The operations and performance of Levels 2 and 3 institutions depend on the extent to which they conform to existing implicit institutions. A challenge faced at Levels 2 and 3 is that, given the multiplicity of institutions operating at different levels of society, it is often not certain which type of institutional arrangement is suitable for a particular setting in order to achieve a particular outcome (Srivastava 2004). Finally, institutions at the fourth level define the day-to-day allocation of resources in an economy, or what can be described as the market institutions. Changes at this level are
continuous. According to Williamson (2000), this is the domain of neo-classical economic theory.

Although the four-level framework identifies different institutions at different levels of an economy, it does not address fully the complexities of interactions among and between the levels, or how institutional change occurs (de Laiglesia 2006b). To address these shortcomings the four level hierarchy is reclassified into two broad categories – ‘Slow-moving’ and ‘Fast-moving’ institutions using the rate at which each of the institutions change (Roland 2004). Based on this classification, the ‘Slow-moving’ institutions are mainly the informal intuitions at Level 1 of the framework in Figure 2.1. The ‘Fast-moving’ institutions, on the other hand, are the more formal institutions at the other levels. Accordingly, the interactions between the ‘fast-moving’ and ‘slow-moving’ institutions determine the outcomes of institutional change. Roland (2004) suggests that a clash between a host country’s ‘slow-moving’ institutions, such as social norms and power structures, and ‘fast-moving’ formal institutions accounts for the failures of transplantation of ‘successful’ institutions from one location to another.

Even though the above suggestion confirms the conclusion reached in Subsection 2.2.1 regarding the importance of informal institutions in determining positive or negative outcomes, it falls short of clearly establishing the mechanisms through which such informal institutions influence institutional change. Hence, to gain insight into the mechanisms of institutional change points out that there is the need to undertake a systematic examination of the informal institutions and their impacts on formal rights (Cao 2012). The next section focuses on this task to establish the link between elements within a social context and institutional outcomes.

2.3 Social Context and Institutional Outcomes

This section examines the mechanisms through which informal institutions, such as customs, influence the operations and performance of formal institutions. The discussion follows on from the preceding discussions in Section 2.1 and 2.2, which respectively defined the term ‘institution’ and its two characteristics. The objective of
the section is to achieve an empirical and conceptual understanding of the link between key elements in the social context and institutional development and outcomes.

The discussion is structured in three parts. Subsection 2.3.1 discusses the impact of implicit informal elements within the social context on various outcomes from the perspective of empirical studies and practice. The second and third parts of the section seek to establish a conceptual understanding of how relevant factors within the social context influence outcomes. Specifically, Subsection 2.3.2 examines the structural and cognitive aspects of the concept of social capital in order to identify their key elements. Subsection 2.3.3, deepens the conceptual discussion by distinguishing the elements of social capital into their symbolic and material realms in order to clarify the mechanism through which these elements can influence various institutional outcomes.

2.3.1 Empirical Link between Social Context and Outcomes

Empirical studies have confirmed that certain tacit elements within the social context can have varying impacts on outcomes. For example, in a comparative analysis of the economic development of Nigeria and Botswana, Aworawo (2012) attributed the differences in the pattern of economic development of the two countries to the contrasting social structures of the countries. In a study of the implementation of new property rights regimes in two cities in Vietnam, Hanoi in the north and Ho Chi Minh City in the south, Kim (2007:6) found that the differences in local politics and culture with respect to social norms underpinning property accounted for different outcomes. The finding that differences in social norms about property accounted for different outcomes is particularly significant because of the fact that the same legal and administrative regime prevailed in both urban centres.

In a study from Nigeria, Oyerinde (2006) found that different indigenous ordering principles regarding land relationships in three relatively similar Yoruba communities, namely Abeokuta, Ibadan, and Ile-Ife, resulted in different outcomes in terms of the development, distribution, and transformation of land rights. A significant observation in this case is that the three communities were ethnically similar, yet the outcomes were different. This observation implies that context-specific social factors defy ethnic
homogeneity. It is important to note that some of the outcomes were in the nature of land conflicts, showing that differing social contexts can have negative consequences.

Finally, Rakodi and Leduka (2004) found in six African cities – Lusaka in Zambia, Maseru in Lesotho, Enugu in Nigeria, Kampala in Uganda, and Gaborone in Botswana – that between 50% and 70% of land for housing is accessed through ‘informal’ mechanisms, which are mostly based on indigenous norms and institutions (Jenkins 2009). This particular finding highlights the influential role of indigenous norms and institutions in mediating the urban land economy. Hence, such institutions cannot be ignored if formalisation of land rights is to be successful.

Taken together, the studies cited above emphasise the importance of factors implicit within a social context in influencing change and outcomes. In other words, implicit informal mechanisms can have important influences on the outcomes of formalisation of land rights. Particularly with respect to the Vietnam and Nigerian cases, it is clear that, as far as formalisation of property rights are concerned, context-specific factors, even within the same country, are capable of influencing outcomes of change. One implication of these findings is that, in order to understand differences in institutional outcomes of fundamentally similar societies, it is important to scrutinize their social environments (Postlewaite 2011). Consequently, the examination of context-specific factors is important if transplantation of institutions or institutional development is to stand any chance of success.

The dominant approach to institutional development is one that takes for granted the impact of the social context within which the institutions operate. The approach is based on a strategy where homogenous institutional designs mostly from developed countries are transplanted to developing and transitional countries (Portes 2006; Chang 2007). An assumption is that the reason for the underdevelopment of developing countries is due to the inefficiencies that exist in their local institutions. Hence, for these countries to catch up with the rest of the world, it is suggested that institutions and policies which have been ‘effective’ in developed countries, can simply be transplanted to less developed ones (Pessali 2011a).
In the land sector, the implementation of the dominant approach is often through various land administration and land tenure reform projects. The standard package often includes formalisation of land rights through the issuance of land title certificates. For instance, Peters (2009:1318) pointed out, “right up to the end of the 1980s, the World Bank’s prescription was to replace customary systems with titling and private property rights, which were posited as necessary preconditions for modernization and development”. Even though the introduction of land registration systems may be beneficial under certain circumstances (discussed in Chapter 3), the pressure on African states to adopt western land administration systems, which emphasise individualisation, collateralisation and market forces, has been described as inappropriate and counterproductive (Methven et al. 2007:85; Bromley 2009; McFarlane 2010).

Since the mid-1990s, there appears to have been a shift in policy from imposition of conditionalities to ‘country ownership’ of programmes and policies, especially by the World Bank. Clearly, the shift to country ownership is a positive attempt on the part of the Bank to take on board peculiarities of countries in policy and institutional development (Dreher 2009). However, despite the shift in policy it is often not clear what exactly constitutes ‘country ownership’, since it can be applied to a range of situations. At one extreme, ‘country ownership’ could mean that a country is allowed to design and implement independently its own programmes and policies. At the other extreme, the term could be applied to a situation where a country is not directly involved in the design and implementation of a programme at all, but only kept informed (Buiter 2007; Dreher 2009). Consequently, in view of the apparent vagueness in the term, institutions and policies continue to be ‘imposed’ on developing countries under the guise of ‘country ownership’ (Murray and Overton 2011).

The difficulty inherent in applying the dominant approach of institutional development to African states centres on the failure of the approach to consider the pre-existing social context. Evans (2004:32), described the dominant approach as ‘institutional monocropping’, as it is based

…on both the general premise that institutional effectiveness does not depend on fit with local sociocultural environment, and the more specific premise that idealized versions of Anglo-American institutions are optimal
development instruments, regardless of level of development or position in the global economy.

In other words, the assumption is that institutions that have proved ‘successful’ in developed economies can be simply transplanted and used in other countries without fully considering the local conditions. This assumption is fundamentally flawed on the grounds that, since institutions are not introduced into an ahistorical socio-economic vacuum, they may not be effective if the conditions existing in the local context are disregarded. Chang (2006:11) concurs with this view and goes further to explain that:

…in the same way in which there are a lot of tacit elements in technology, there are a lot of tacit elements in institutions. So some formal institution that seems to be working well in an advanced country may be working well only because it is supported by a certain set of not-easily-observable informal institutions. (Emphasis in original)

The above assertion reinforces the importance of implicit informal institutions within a social context in the determination of the outcomes of institutional development. In view of the importance of such implicit informal institutions, institutional change may not be effective if local indigenous institutions and beliefs are not considered. Boettke and Fink (2011:5) emphasised the importance of indigenous institutions when they suggested that, endogenously evolved institutions are “relatively sticky” because they are founded in the existing institutions and beliefs. In other words, for institutional change to be effective, ‘homegrown’ institutional change is preferred.

In spite of the important influences that implicit informal institutions have on the effective functioning of formal institutions operating at different levels in an economy, they are inadequately considered in institutional analysis (Burke and Young 2011; Postlewaite 2011). For instance, Williamson (2000:596) conceded that socially embedded institutions, such as social norms and customs, are often taken as given in institutional analysis by most of the new institutional economists. On occasions when norms and customs are considered in institutional analysis they are often considered as add-on factors or filters (Pierson 2000; Parto 2005; Chang 2006, 2010).

The reason for the inadequate consideration of implicit informal institutions is not far-fetched. Kim (2007:6) pointed to the inadequacies of the tools used in institutional
analysis when she acknowledged that “while institutional factors like social norms, culture, and political economy have a lot of intuitive resonance, it is usually more difficult to analyse their concrete impacts on market transactions. They do not usually lend themselves to statistical analysis.” Portes (2006:234) goes further to point out that “economists do not routinely deal with the multiple elements of social life or their interaction and, in their attempts to do so, they often confuse them, producing impoverished or simply erroneous perception of reality”.

To avoid an erroneous perception of reality, there is a need to focus on understanding the mechanisms by which informal institutions such as customs steadily influence the operations and performance of formal institutions, most of which are located at different levels of society. Instead of focusing on only the impacts of formal institutions on socio-economic outcomes in institutional analysis, there is a need to highlight in clearer terms how informal institutions, such as norms and customs, influence formal institutions, such as the operation of the law (Casson, Della Giusta, and Kambhampati 2010). The importance of the need to understand the mechanisms of influence is reinforced by the assertion of Middleton (1988:xi) that “complex social and historical processes cannot be simplified in the interest of quick economic development”.

### 2.3.2 Social Capital and Outcomes

Following the above discussion, this subsection examines key aspects of the concept of ‘social capital’ and their significance in explaining how elements of the social context can shape institutional development and produce different outcomes. An objective of the discussion is to achieve a conceptual identification and understanding of the mechanisms through which elements within a social context can influence institutional development and outcomes.

The concept of social capital, as noted in Chapter 1, has gained prominence in explaining how the social context of a society can influence different outcomes. It was indicated that the concept describes aspects of society’s social structure that influence the performance of its institutions. However, the growing application of social capital is notorious for the diversity of its definition. For instance, although Putnam (1993)
attributed social capital to include features of social organisations such as trust norms and networks, Coleman (1988:98) extended this definition considerably when he noted that social capital “is not a single entity but a variety of different entities, with two elements in common, [namely that] they all consist of some aspect of social structures, and they facilitate certain actions of actors – whether persons or corporate actors – within the structure”. Bourdieu (1986:249), on the other hand, pointed out that that it is “the aggregate of the actual or potential resources which are linked to possession of a durable network of more or less institutionalized relationships of mutual acquaintance and recognition – or in other words, to membership in a group – which provides each of its members with the backing of the collectivity – owned capital”. Finally, Katz (2000:115) noted that, “relationships among individuals give rise to something valuable. This intangible value – social capital – can then be drawn upon to improve individual and collective well-being.”

The varied applications of the concept of social capital have led to some ambiguities, and therefore to criticisms. In terms of definitions, it is often unclear whether social capital is an individual or a collective concept. In its application, the distinction between the measures of the sources of social capital and the measures of its outcomes are also unclear, and often only the positive outcomes of the concept are highlighted, disregarding possible negative aspects (Portes 1998; Stone 2001). However, social capital may also be manifest in negative outcomes that worsen rather than improve the performance of institutions and the development process (Adhikari and Goldey 2010). As a result of the ambiguities, the concept of social capital has been described as a ‘buzzword’, embracing “[a]lmost any form of social interaction…” (Fine 2007:567). Hence, the full utility of the concept is called into question.

On close examination of the various definitions and applications of social capital, it is noted that evidently it is often framed in terms of the structural characteristics of groups and networks of social relations, as well as the norms and rules governing these relations (Stone 2001). In order to enhance analytical and empirical clarity it is prudent to have a clear understanding of how the specific notion of the concept is applied in particular circumstances (Quibria 2003:14). This is especially important since social capital is context-dependent (Foley and Edwards 1999), and therefore factors such as history, traditions, culture and value systems, which shape various social structures (e.g.
those that underpin the customary land tenure systems in SSA) are important to consider
(Katz 2000; Adhikari and Goldey 2010).

Following from the above observations, for social capital to be useful it “needs to
be addressed in terms of (a) what its constituent elements are, (b) what the connections
are that exist among these, and (c) what consequences can be attributed to these
elements and their interaction” (Uphoff 2000:217 emphasis in original). Thus, two
different but interrelated components of social capital are identified in the literature,
namely a structural and a cognitive component. These two components encompass the
constituent elements of social capital and are relevant for the purpose of this thesis.

The structural and cognitive aspects of the concept are useful for understanding how
socio-political organisational structures that underpin land tenure systems, such as those
in SSA, influence outcomes. The structural component relates to the tangible and
observable aspects of social interactions, such as roles, rules, precedents, and
procedures and the cognitive component refers to intangible and qualitative factors that
govern social relations, such as values, norms and customs (Stone 2001; Uphoff 2000).
It is argued in the literature that it is the interactions between these two components
which define, shape or limit institutional outcomes that are either positive or negative

Consequently, to facilitate an empirical investigation of how the elements within the
cognitive and structural components of social capital may impede or facilitate the
process of institutional development and its outcomes, a clear understanding of the
interdependence between the social organisation or structure of a society and its
institutions is required. The following subsection discusses the nature of the
interdependence or connections between social organisation and institutions.

2.3.3 Social Structure and Institutions

This subsection builds on the preceding discussion by establishing conceptually the
interdependence between social structure or organisation and institutions. Understanding the interdependence is important because how a society is organised in
terms of the position and roles of authority figures, and the nature of the rules, customs
and norms governing social relations, can have varying impacts on institutional development and outcomes. The interdependency between institutions and social organisation clarifies the mechanism through which different institutional outcomes may occur. To clarify the mechanism, Subsection 2.3.3.1 outlines conceptually the distinction of social life into its symbolic and material elements and their relationships. Based on the distinction, Subsection 2.3.3.2 identifies and discusses the interdependence between social organisation and institutions.

2.3.3.1 Conceptual Distinction of Social Life

A conceptual distinction of social life is necessary to facilitate understanding the interrelationships among the diverse elements of social capital. The conceptual distinction is achieved by recognising that various elements of social life can be distinguished between the symbolic realm and the material reality (Portes 2006). Even though social life may consist of culture and social structure, this is not always obvious (Porpora 2002; Portes 2006). The distinction is obscured because both aspects of social life work together to establish the types of acceptable and unacceptable relationships that exist in a society (Bada 2003). However, Portes (2006) shows that the elements of culture constitute the symbolic realm of social life, whilst elements of social structure make up the material reality of social life. Particularly, the relevant elements of culture that underpin social relations, mutual understanding, and order include the (a) values, (b) norms, and (c) body of knowledge required to exist in a society. The key elements of social structure that are observable parts of social life include (a) power structures, (b) class structure and (c) status hierarchies or positions in a society (Portes 2006). Social structure depicts the actual network of social relationships of individuals as they interact with each other according to their social roles and status within the patterns of society (Radcliffe-Brown 1952; Nadel 1957; Stets and Burke 2003).

The above distinction of social life coincides respectively with the cognitive and structural components of the concept of social capital discussed in Subsection 2.3.2. Establishing this distinction facilitates understanding the differences that often occur between what is generally agreed to by society and what actually takes place. In other words, the distinction “provides the basis for analysing the difference between what “ought to be” or is expected and what actually “is” in multiple social contexts.” (Portes
The distinction is followed by arranging the elements of social life into their hierarchical characteristics in order to determine their causal influences.

The conceptual framework, shown in Figure 2.2, represents the relationships among the elements of social life. The components of the framework are (1) the symbolic realm of culture, (2) the material reality of social structure and (3) the level of causal influences of various elements. The symbolic elements include the values, norms, and skills repertoire or body of knowledge and roles, whilst the material components include power, class structure, and status hierarchies or positions.

![Figure 2.2 Conceptual Arrangement of Elements of Social Life](Source: Adapted from Portes (2006:241))

The elements of the symbolic and material components of the framework are arranged in terms of their causal influence from ‘deep’ to ‘surface’ or visible factors. The ‘deep’ factors, such as values and power, even though fundamental to social life, are not obvious in everyday life, whilst the ‘surface’ factors, such as roles and status hierarchies, are the visible aspects of social life (Portes 2006). The directions of the arrows in the diagram show the hypothesised causal influences of the various elements (Portes 2006). For instance, on the symbolic side of Figure 2.2, values influence norms and skills repertoire, whilst on the material side, power structures shape the class
structure of society. The detailed causal influences of the elements of the framework and their implications are discussed in the following paragraphs.

The symbolic realm component of Figure 2.2 shows that values are at the core of culture. Licht (2008:728) has argued that values provide the “abstract ideas about what is good, right, and desirable in a society” and are shared implicitly or explicitly among members of a society. In other words, values provide general moral principles, such as what is good or desired. As such, values can be inferred from everyday behaviour and they underlie the norms and the skill repertoire or the body of knowledge of a society (Portes 2006; Igboin 2011). Hence, values or principles are fundamental in understanding what goes in any aspect of social life and consequently they can facilitate an understanding of differences in societies.

Norms are fundamentally the rules that guide members of a society in their day-to-day activities. Scott (2011:152) defined norms as the “internalised cultural standards of conduct that specify the expected or approved ways of pursuing culturally defined goals and so regulate the ways in which people behave in relation to these goals”. Stated differently, norms provide the expectations that others will do what is right and reflect the cultural values of the society (Portes 2006). Consequently, norms are pervasive, affecting all spheres of social life. The pervasiveness nature of norms is emphasised in the assertion by Burke and Young (2011:311) that:

Norms define property rights, that is, who is entitled to what. They determine what commodities are accepted as money. They shape our sense of obligation to family and community. They determine the meanings we attach to words. Indeed it is hard to think of a form of interaction that is not governed to some degree by social norms.

A distinction can be made between legal norms, which are codified, and customary norms, which are unwritten and frequently obscure (Scott 2011). Hence, norms may be both the formal and informal rules that guide everyday life. When norms are stable, generally acceptable, and internalised by the society, they can be referred to as customs or conventions (Scott 2011). According to Portes (2006) norms are not ‘free-floating’, but they come together in organised forms as “roles” which are at the visible level of the symbolic realm, shown in Figure 2.2.
Roles are the “organised expectations directed at the incumbents of positions in a given society” (Scott 2011:155). In other words, roles are the set of behaviours that are prescribed for individuals filling particular social positions, such as traditional rulers within African society or various types of officers within a formal organisation. For instance, with particular reference to the role of traditional rulers in Ghana, Brempong (2006:27) outlined a wide range of expectations such as undertaking socio-economic development in localities not covered by central or local government; maintaining law and order through arbitration, invoking the time-honoured values of their political communities.

Even though the expectations of traditional rulers span the cultural, political, and economic spheres, role expectations are generally context-specific because they are shaped by the normative values and norms that exist in a particular society. In addition, the requisite skills or body of knowledge, which may vary across societies, shapes roles. Hence, the role of a chief in one traditional area may be different in another. Similarly, the role of the registrar in a land registration system can differ between different countries.

Having outlined and discussed the elements of the component of the symbolic realm in Figure 2.2, attention is now turned to the elements of the material reality component. The material realm of a society addresses the varying influences of the interests of individuals and groups with varying degrees of power. As shown in Figure 2.2, the key elements of social structure consist of power, social class, and status hierarchies. These elements are also arranged in hierarchical order of causal influence and correspond to the elements of the symbolic realm.

At the deep level of social structure is the power that persons possess to coerce others. Power is a basic element of social structure and may be defined as “the ability of an actor to impose his or her will despite resistance” (Portes 2006:239). For instance, elites in society who have power over resources will usually want to maintain the status quo and will often seek to change societal values so that others will accept a given situation as appropriate (Portes 2006). Stated differently, persons who are committed to certain values or interests, use their authority or legitimate power to maintain practices
or structures that are beneficial to them. Hence, power plays a critical role in the historical preservation of patterns of societal values (Powell 1991).

The class structure usually reflects the power differentials in a society. Just as values are reflected in norms, different levels of power in a society are reflected in its social classes. Social classes or structures of society may refer to the “large aggregates whose possession of or exclusion from resources leads to varying life chances and capacities to influence the course of events” (Portes 2006:240). The aggregates of social classes are determined based on the different levels of control and power over resources by persons occupying positions within the social structure of society. In addition to differences in accessibility to resources, social classes are also defined by the level of acquired expertise and ability to link up with others within the same class (Portes 2006). Hence, the class structure of society is usually reflected in areas such as property ownership, administrative and political relations, and the legal system.

The underlying nature of power differentials, reflected in the different class structures, is made visible through the status hierarchies or positions in societies. Status hierarchies are defined by legitimate power or authority by which different roles are played (Portes 2006). Stated differently, the underlying structure of power in a society is reflected in the different status hierarchies, which are in turn linked to roles on the symbolic side. In short, status hierarchies are the actual positions that are occupied by authority figures and other members of a society. This relation establishes the interdependency in Figure 2.2 between the symbolic realm and material reality of social life at the individual level of the framework.

### 2.3.3.2 Interdependence between Institution and Social Organisation

The interdependence between the elements of the symbolic and material components of society is fundamental to the understanding of the conceptual interrelationship between institutions and social structure, or the organisation of a society. The double-ended arrows between the symbolic and material realms at both the individual and collective levels of Figure 2.2 depict the interdependence between these components of society. At the individual level, roles on the symbolic side specify the expectations or functions of persons occupying status hierarchies or positions in a social
structure. This means that deep-seated values, norms and the skills repertoire influence role expectations, whilst power and class structures shape status hierarchies and, hence the implementation of roles.

The interrelationship between institutions and organisations at the collective level of the framework provides the means to define ‘institutions’. At the collective level, a collection of roles come together to form institutions, whilst a group of status hierarchies or positions form organisations. Consequently, following Portes (2006:241), ‘institutions’ can be defined as representing the:

… symbolic blueprint for organisations: they are the sets of rules, written or informal, governing relationships among role occupants in social organizations like family, schools, and other major institutionally structured areas of organizational life: the polity, the economy, religion, communications and information, and leisure.

The interrelationship established by the above definition means that institutions have social structures reflected in how a society is organised (Portes 2006). The definition further shows that institutions are the rules that provide the blueprint or design by which organisations are supposed to operate. This conceptualisation implies that whilst institutional rules specify what ought to be done in a particular situation, the characteristics of an organisational structure determine what is actually done. Simply put, institutions symbolically specify how organisations are to perform.

One implication of the above conceptualisation of institutions is that it directs attention to the key areas of social context that must be examined in order to understand the factors that may impede or enhance the outcomes of institutional development. The areas of examination include context-specific elements such as the values or principles, norms, and required skills that underpin institutional rules, and the characteristics of different configurations of the power structures, class structures and status hierarchies that shape organisations. It is the nature of the interactions of these factors in a social context that may have varying influences on institutional development and its outcomes.

Consequently, in order to explain varying institutional outcomes requires an understanding of the complex interplay of the symbolic and material realms of society.
This interplay may result in different institutional outcomes across and within countries. That is to say, the interactions of different configurations of power and class structures that influence organisational structures and context-specific cultural elements that underpin institutions can influence the implementation of similar institutional rules. Institutional outcomes may differ because of the different impacts of the diverse arrangement of power and class structures that underlie organisations. Due to conflicting interests and influences that may arise, occupants of positions in organisations may differ in the implementation of similar institutional rules. Further, certain context-specific cultural values and norms within a society may influence the implementation of formal institutional rules by organisations, which may in turn affect institutional performance (de Laiglesia 2006a).

The potential impact of the effect of the interplay of power structures and cultural factors in determining outcomes was acknowledged by Harriss (2003:351) when he observed that:

[w]hether or not the rules of corporate governance in India will be changed in such a way as to be effective will depend upon the outcome of a power struggle between different fractions of Indian business and their political supporters, and on ‘deeper’ changes in habits of thought and behaviour.

Similarly, with specific reference to land registration systems, Bromley (2009:26) highlighted the complexities of the interplay of both legal and cultural practices, and power relations in influencing the outcomes. He argued that:

…the imposition of alien legal and cultural practices into any setting rarely works as imagined. And those impositions cannot be expected to work as imagined precisely because the larger institutional setting into which they are transplanted differs so profoundly from the legal and cultural setting from which they are taken. All legal arrangements, whether titles, bankruptcy laws, property rights arrangements, or family and divorce protocols are the evolved – and evolving – manifestations of a complex pattern of scarcities, priorities, power relations, and local circumstances. To suppose that a tiny piece (titles) of that complex cultural and legal fabric can be transplanted into a new web of complex relations and work as it seemed to work elsewhere is naive in the extreme (2009:26).
The implication of the above assertions is that ‘getting institutions right’ goes beyond simply transplanting to other countries formal rules and regulations seen to be operating effectively in some contexts (Johnson 2009). In this context, for institutional development initiatives to be effective, it is important to identify and understand what makes a particular institutional arrangement successful in one jurisdiction and fail in another (Ornert 2006:451). Clearly, what is required is a context-specific empirical understanding of the impacts of the key elements of a jurisdiction. To facilitate such an empirical investigation, the next section presents an analytical framework that incorporates the conceptual issues discussed in this section.

2.4 Analytical Framework

Building on the conceptual discussion in the preceding section, this section presents an analytical framework that can facilitate an examination of how the institutional arrangements regarding urban land registration can influence urban real estate market processes and outcomes. The discussion is structured in four parts. The first part provides an overview of the different components of the framework and their interrelationships. Following the overview, the other three parts of the section consider in detail each of the components of the framework relative to the thesis goal and objectives.

2.4.1 Overview of the Analytical Framework

The analytical framework shown in Figure 2.3 has four components, namely (1) the institutional arrangement, (2) the institutional outcomes, (3) the market processes, and finally (4) market outcomes. These components establish, on the one hand, the link between an institutional arrangement and its outcomes and, on the other hand, market processes and outcomes.

The arrows indicated in Figure 2.3 show the interrelationships and feedbacks between the various components. The solid blue arrows linking the various components portray the direction of causal influence. For instance, the nature of a given institutional arrangement may result in certain institutional outcomes that in turn influence market.
Figure 2.3 Analytical Framework

Source: Adapted from (de Laiglesia 2006b:14)
processes and ultimately market outcomes. During this process, there may be subtle reverse influences or feedbacks between the components, depicted by the broken blue arrows. The solid red arrows show the interrelationships that exist between formal and customary sectors of the social context of land administration. The solid blue arrows within the institutional arrangement component of the framework represent the internal interactions between institutional rules and organisational structures of the agencies within the formal and informal sectors.

Broadly speaking, the institutional arrangement component depicts the complex external and internal interactions between formal and informal sectors of a social context regarding land administration in general and land registration in particular. The complexity is reflected in the two levels of interrelationships and interactions within a social context, namely the inter-organisational relationships between the formal and informal sectors, and the internal interactions of institutional rules and the organisational structures of various agencies within each sector. The institutional arrangement component of the framework is fundamental because what takes place within this component has impacts on the other components.

The institutional outcomes component focuses on the outcome of interest resulting from the interrelationships within the institutional arrangement component. In the context of this research, the institutional outcome of interest relates to the nature of information management aspect of land registration systems. The nature of land information management is determined by the clarity of the land delivery system in a jurisdiction, which is in turn largely defined by the characteristics of two related processes, namely the land acquisition and transfer processes, and land rights documentation and registration processes.

Taken together, the market processes and the market outcomes components of the framework in Figure 2.3 define the functioning of the urban real estate market. As explained in Chapter 1, stakeholders in the market require relevant up-to-date land information to make informed market decisions. Hence, the nature of urban real estate information management affects the effectiveness of the market processes. The ease
with which stakeholders are able to meet their information requirements, depending on a given institutional outcome, affects the characteristics of the market processes. The effectiveness of market processes, in turn, contributes to the explanation of the characteristics of market outcomes in terms of values and the volume of transactions.

The following subsections discuss each of the components in more detail. One objective of the discussion is to identify relevant questions relative to the thesis goal and objectives stated in Chapter 1.

2.4.2 Institutional Arrangement Component

In Subsection 2.3.3.2, it was shown that conceptually, institutions consist of symbolic and material elements, which interact to influence institutional outcomes. The institutional arrangement component of the framework, shown in Figure 2.3, incorporates this conceptual distinction of institutions in order to provide greater opportunity to understand and explain why similar institutional forms may produce different outcomes even in the same country. The incorporation of the conceptual distinction of institutions directs attention to the underlying aspects of a social context that must be examined in order to identify possible causes of the differences. The key areas that the interdependence directs attention to are (1) the characteristics of the inter-organisational relationships and (2) the internal interactions of agencies within the social context of institutional arrangement. Consequently, the following subsections discuss sequentially the two levels of interrelationships and interactions noted above.

2.4.2.1 Inter-organisational Relationships

The nature of inter-organisational relationships of agencies within the formal and customary sectors may have important implications for the outcomes of the operations of land registration systems. This is because diverse agencies, within the formal and customary sectors, interact among themselves in order to achieve the overall objectives of a land administration system.
The customary, legal and policy framework for land administration often defines the set of rules that guide collaboration among the different agencies that administer land within the formal and customary sectors. The fact that there may be rules governing inter-organisational collaboration within a jurisdiction may not necessarily mean that these rules will be complied with by the organisations that exist in that jurisdiction. Possible reasons for the non-compliance of inter-organisational rules may be due to disputes over mandates and jurisdictions among agencies. In this context, Lund and Boone (2013:6) note that, “[d]ifferent ministries, regional branches and government agencies often struggle over turf and jurisdiction over particular issues, either to claim them (for power, rent, prestige, et cetera) or to disown them (to avoid blame, liability, et cetera)”. In a similar vein, they point out that “…customary institutions may compete among themselves” in a jurisdiction (ibid).

Conflicts resulting from the non-compliance with inter-organisational institutional rules may significantly affect the achievement of desired objectives. Accordingly, the effectiveness and outcomes of institutional arrangements may vary, even within the same country. Further, the extent of accommodation of customary and administrative processes in a jurisdiction may influence the effectiveness of the land delivery process. Consequently, it is pertinent to address questions such as:

- What is the nature of the legal, institutional and policy framework for land administration in a given jurisdiction?
- What mechanisms are available for interaction between the formal and customary sectors? and
- What are the prospects for and constraints against institutional linkages for effective management of land information?

Addressing these questions in an applied setting will contribute to the identification of the distinct characteristics of the institutional arrangements, which in turn will contribute to understanding better the observed outcomes. In addition, answers to these questions will help explain for observed differences in outcomes for similar institutional arrangements.
Interactions between Institutional Rules and Organisational Structures

At the deeper level of the institutional arrangement component, the nature of internal interactions between the symbolic blueprints (institutions rule) and the organisational structure of agencies within the formal and customary sectors may have important influences on the outcomes of institutional development. These interactions would have important influences because institutional rules, as explained in Subsection 2.3.3.2, specify what ought to be done in a given context, whilst organisational structures determine how things are actually done. Hence, an institutional outcome is dependent on the extent of the implementation of the prevailing institutional rules by formal and customary organisations. This means that to be able to explain both institutional outcomes and observed differences, there is a need to identify and examine the nature of institutional rules that underpin the operations of agencies within the formal and customary sectors as well as how these rules are implemented by organisations.

Institutional Rules

Institutional rules provide the legal or customary framework that guides the operations of agencies. In the context of this thesis, they set out the principles that underpin the mandate or functions of the formal and customary agencies involved in land administration and are defined by the context-specific symbolic elements identified and discussed in Subsection 2.3.3. Hence, institutional rules have important implications for both formal and customary sectors of land administration in general and land registration in particular.

The institutional rules that underpin formal agencies are defined by the principles that underlie the legal and policy instruments used to establish particular institutional forms such as land registration. The institutional rules set out the formal structure of organisations and define the objectives and functions of an organisation or system, based on specific principles (Meyer and Rowan 1977). The operations of formal land registration systems, such as the Deeds and Title systems, have different underlying principles and practices that guide their operations. For instance, some of the
fundamental principles of the Torrens titling system include the curtain, mirror and insurance principles (Simpson 1984; Hanstad 1998).

In the ‘informal’ customary sector, institutional rules that govern the processes of allocation and access to land are often not written. However, these rules are underpinned by context-specific social and cultural values, norms and customs, which provide the general framework for the governing of interpersonal, and land relations. Customary norms prevailing in a particular context, in addition to specifying the roles of authority figures such as tribal chiefs and heads of families, may also influence the actions of persons occupying positions in formal organisations (de Laiglesia 2006a). Schickele (1952:734) highlighted the importance of social values and norms when he asserted that:

…land problems cannot be discussed without reference to some set of social values, some system of ideas concerning ethical norms in which people believe and toward which they orient their behavior. These social values are reflected in the institutions of a society and in the goals that individuals and groups pursue.

The extent of conformity of formal principles to the prevailing legal and cultural context of a society may have significant implications on their effective implementation and outcomes (Trebilcock and Veel 2008; Bromley 2009). De Laiglesia (2006b:31) highlighted the importance of social norms and customs in shaping legal norms when he argued that they create a “legal culture that can be very resilient and which policy should take into account if it is to succeed in shaping institutional outcomes” (2006b:31). Fitzpatrick (2006) agreed with this point and noted that a change in property right regimes in developing countries can be affected by the nature of the interactions between formal state institutions and local norms.

Particularly if formalisation of land rights is to be successful and able to capture relevant land information, the legal norms that underlie the process must align with the customary norms of society (Blocher 2006; Trebilcock and Veel 2008). This alignment is particularly important because, as argued by Fitzpatrick (2006:1046), the “degradation of these norms, often in circumstances of state antagonism and
illegitimacy, is at the heart of modern property rights failure in the Third World ”. The alignment between formal rules and implicit norms is most relevant in the urban context, where the resulting tensions from a divergence between formal state control and regulation of land and the social dynamics on the ground may result in informality.

An implication of the above observations is that for positive institutional outcomes to be realised, there must be at best compatibility between, or at most mutual recognition of, legal and customary norms. This is because a divergence between formal legal rules and custom may lead to legal dualism, which may in turn cause legal uncertainty (Platteau 2009).

Organisational Structures

Although institutional rules, as discussed above, set out the principles that underpin the institutional forms or designs, such as their formal structures and functions, the actual implementation of the rules may differ from place to place and from time to time. The implementation of the rules may differ because of the influences of the underlying deep power and class structures, which determine how persons in actual positions in formal or customary organisations perform their functions. Hence, the characteristics of the organisational arrangement can have significant impacts on how effectively or otherwise a particular legal or institutional rule would be implemented and, hence, on the subsequent institutional outcomes.

The organisational structures of formal agencies are usually contained in their legal instruments of establishment. These instruments, such as Acts of Parliament, specify the functions and mandate of organisations in terms of roles of officials and skills required to achieve their mandates as well as the processes and procedures of operations. The level of effectiveness of the implementation of the mandates is largely dependent on the nature and characteristics of the organisational structure of the agencies involved in the registration process.

The capacity of agencies within the formal sector in terms of their level of understanding of the principles and practices of introduced systems, such as land
registration, may affect the outcome of such systems. The effective performance of land registration is dependent on a solid understanding of its principles and practices by the implementing agencies. Where this understanding is either lacking or inadequate, there is the possibility of suboptimal performance or the generation of unintended outcomes. In effect, inadequate understanding of the principles may lead to different interpretations of institutional rules, which in turn can lead to variations in the processes and procedures in different jurisdictions even within the same country.

The nature of the organisational structures that underpin land tenure arrangements may have important implications for the effectiveness of the interpretation and implementation of the customary rules. As was indicated in Chapter 1, and is discussed in detail later in Chapter 3, different forms of organisational structures underpin the customary land sector in SSA. The different configurations of authority structures and processes under the centralised and non-centralised social organisational structures may influence access to and control over land resources. In addition, the ability of customary authorities to cope with challenges posed by rapid urbanisation, such as increased demand for urban land and rising land values, can have a significant impact on outcomes. In a situation where the traditional authorities are not able to cope with these challenges, negative practices may arise, such as speculative land purchasing or the usurpation of processes by the elite leaving the most vulnerable members of society at risk (Ubink 2009).

The above dynamic and complex interrelationships and interactions within the institutional arrangement component of the analytical framework can influence access to and control over land resources, and therefore have implications for any effort to implement or improve land registration systems within a social context. Consequently, if the condition of land information is to be improved, it is pertinent to address the following questions:

- *How have historical and contemporary factors shaped the socio-political organisational structures that underpin the land tenure arrangements?*
- *Which social characteristics persist relative to the administration of land?*
• *What negative externalities exist relative to customary land administration?*

Addressing the above questions and the others raised in this subsection provides the frame of reference in this thesis for examining the relationship between the prevailing institutional arrangement for land registration and the emergence of a functional real estate market, especially for urban land.

### 2.4.3 Institutional Outcomes Component

The institutional outcome component of the framework, shown in Figure 2.3, relates to the nature of information management component of land registration systems in a particular jurisdiction. The processes and procedures regarding the allocation, acquisition, transfer, documentation and registration of land rights may determine the effectiveness of urban real estate information management. In other words, the clarity of the land delivery process influences the ability to capture reliable, complete and up-to-date urban real estate information such as land ownership and rights, land use, location and value. In addition, the clarity may influence the operation of land market processes and outcomes.

The urban land delivery system in most countries in SSA is complex. In fact, in many countries, the delivery of urban land is mediated by a complex combination of customary, informal and formal rules and processes (Larbi 1994; Mattingly and Durand-Lasserve 2004; Rakodi and Leduka 2004; Kihato 2010). The complexity of the land delivery system in terms of the involvement of embedded social institutions is highlighted by Rakodi (2006). She points out that “[l]and delivery systems reflect complex patterns of interaction between actors in property markets … governed by institutions or rules derived from deeper social structures, political systems and legal orders” (2006:264–265). Even in cities where statutory agencies control land, informal and customary processes continue to play important roles in the land delivery process, often due to dysfunctional formal systems (Nkurunziza 2008; Odum and Ibem 2011).
Consequently, informal and customary land delivery channels have been “making up for the inefficiencies of public land management” by supplying most of land used for housing in urban areas of SSA countries (Fekade 2000:135; Durand-Lasserve and Selod 2012). Given the complexities governing urban land delivery systems, it stands to reason that in order to explain the nature of the urban real estate information management in a jurisdiction, it is necessary to gain a clear understanding of how customary and formal processes operate in tandem and independently either to enhance or to impede the urban land delivery process. Any impediments encountered in the land delivery process may result in fewer persons acquiring and registering their land rights, which may in turn affect the ability to capture or update required information. It is therefore pertinent to address the following questions:

- **How do existing socio-political organisational structures facilitate or impede land administration?**
- **What factors account for the nature of operation and performance of formal institutions, where present, involved in land information management in general and land registration in particular?**

A number of measures have been identified to assess the effectiveness of land administration systems. Studies undertaken by the United Nations Food and Agriculture Organisation (FAO) and its international collaborators have developed guidelines for assessing good practice in land tenure and land administration (FAO 2007). The indicators identified to measure the success of land administration reforms points to security, clarity and simplicity, timeliness, fairness and accessibility as important to improve the quality of land information systems (Burns 2007). To assess the effectiveness of tenure security in land administration, indicators such as the total number of parcels registered, the number of land transfers registered, the time taken for registration and the annual running costs are used (Chimhamhiwa et al. 2009). Additional guidelines developed to ensure that activities of professional surveyors meet good governance objectives in land administration include the UN-FIG Bogor and Bathurst declarations on cadastre and LA, FIG-Agenda 21 and FIG-Guidelines on Women Access to land (UN-FIG 1996, 1999, 2001).
The above indicators suggest variables that are important in assessing the effectiveness of governance in land administration systems. The variables include participation and empowerment, transparency and access to information, equity and fairness, legitimacy, accountability, efficiency and effectiveness, the rule of law, legitimacy and responsiveness (Arko-Adjei 2011). These variables highlight the different ways in which power relations are structured in a given society. In order to assess the clarity of the urban land delivery process, the indicators have been narrowed to an understanding of the time spent, number of steps taken, and cost involved in the acquisition, transfer and registration of land rights.

The above measures of the land delivery process can facilitate the assessment of the effectiveness of the process for the capturing, storing and disseminating land information for market participants and other stakeholders. Further, the assessment of the nature of the urban real estate market information management must focus on the extent to which formal and informal agencies accommodate, complement, substitute, or conflict with each other in the implementation of institutional rules that underpin the land delivery system. In other words, the assessment must examine how administrative and customary processes are integrated within a social context.

The effectiveness of urban real estate information management may affect the functioning of the processes of urban real estate market in terms of how stakeholders meet their requirements for the relevant and up-to-date land information that is required to make informed decisions.

2.4.4 Market Processes and Outcomes Components

The market processes and outcome components of the framework in Figure 2.3 focus on how market participants react to the impact of the interactions between the formal and customary sectors in a particular context. Given the complexities of interrelationships that occur within each social context regarding the administration and access to land, even in urban areas, there is a need to approach the assessment of market outcomes differently. In this context, Kihato (2010) argued that “understanding urban land markets on the [African] continent is not so much an exercise in retrofitting
existing neo-classical explanatory devices, but rather [in] analysing these markets in their own terms and developing a new vocabulary for explaining what we see on the ground”. Consequently, following Keogh and D'Arcy (1999), the market is perceived from an institutional perspective. This perspective allows the assessment of market outcomes to shift from a focus on the overall efficiency of the market to the effectiveness of the market processes that lead to specific market outcomes.

This shift in focus makes it possible to identify the relative influences of social processes on the market’s operation as well as how the market shapes customary land administration practices. Further, it allows for the information needs of the participants in the market to be identified and assessed in addition to how the requirements for information are being met. The examination therefore focuses on the interactions among the various market participants in terms of the channels available for accessing information as well as the identification of constraints (Arvanitidis 1999:8). It is expected that such an institutional approach to market analysis will provide a better prospect for gaining important insights into the structure of the market itself. Relevant questions that would improve the understanding of these processes include:

- What are the information needs of the participants in the urban real estate market in the case study cities, and how are these currently met?
- What are the main sources of financing land transactions?
- How do the urban real estate market operations shape customary land administration practices and vice versa?

The above questions and those mentioned earlier in this chapter form the pathways of the research that is presented in the remainder of this thesis.

2.5 Summary

This chapter has discussed how key elements within the social context of a jurisdiction may influence the outcomes of institutional development. The chapter first
clarified certain ambiguities regarding the term ‘institution’ in order to have a clear understanding of how it is conceptualised and defined. It discussed three perspectives on the term in order to identify the essential elements and their interrelationships. An important outcome of the discussion was that the term ‘institution’ is multidimensional, having disparate ‘formal’ and ‘informal’ elements operating at different levels of society. However, in spite of the important influences ‘informal’ institutions, embedded in the social context, have on formal institutions, inadequate consideration is given to them in institutional analysis. Through a discussion of empirical studies regarding institutional development in developing countries, the impact of different factors within the social context on institutional outcomes was identified.

In order to gain a conceptual understanding of the link between the social context and outcomes, the chapter discussed the concept of ‘social capital’. Elements of the cognitive and structural components of social capital that were identified as influencing outcomes were conceptually split into the symbolic and material realms of social life, respectively, in order to identify their causal influences. The distinction provided a conceptual means of gauging how the various elements within the social context influence outcomes. Based on this conceptual distinction, the term ‘institution’ was proposed as the symbolic blueprint of any social organisation that provides the set of rules, either formal or informal, that guide social life. One important implication of this conceptualisation of the term institution is that it facilitates an understanding and explanation of why similar institutional forms generate different outcomes in different societies. Similarly, it can assist in explaining why institutional blueprints are not always implemented to the letter.

To facilitate the examination of the link between institutional outcomes and market processes and outcomes, an analytical framework was presented in Figure 2.3. The analytical framework incorporated the conceptualisation of social life into its symbolic and material realms in order to facilitate the examination of how similar institutional forms may produce different outcomes in different jurisdictions. The framework linked institutional arrangements and outcomes with market processes and outcomes. Thus, the framework provides a means to examine and identify factors within the social context that may affect the outcomes of the institutional arrangement for land registration and,
ultimately, on the effectiveness of the urban real estate market processes and outcomes. An important aspect of the framework is that when the essential elements of the social context are examined historically, it can enhance understanding of the factors that impede or enhance institutional change.

The next chapter builds on the conceptual and empirical discussion in Chapter 2 by reviewing relevant literature on the nature and characteristics of land tenure systems in SSA with respect to the institutional arrangements that characterise their management. Historical and contemporary factors influencing land tenure arrangements in SSA are also reviewed. Relevant literature on the legal, institutional and policy frameworks relative to the approaches to formalisation of land rights are discussed, with a particular focus on land registration and cadastral systems. Relevant literature on the nature of the land and real estate market particularly in the urban context of SSA countries is also discussed, focusing on the institutional arrangements relative to the information requirements of stakeholders.
Chapter 3

Land Tenure and the Urban Land Market in SSA

This chapter discusses the factors that condition the development of a viable urban real estate market in Sub-Saharan Africa (SSA). The conceptual discussion in Chapter 2 revealed that the nature of the institutional arrangements for land administration in a jurisdiction largely determine institutional outcomes in terms of the clarity in the land delivery process. The discussion revealed that the nature of the land holding arrangement in a jurisdiction can significantly influence the nature of land information management, and ultimately this influences the functioning of the land economy in general and the local urban land and real estate market in particular.

This chapter comprises four sections. Section 3.1 discusses customary land tenure systems in SSA with particular reference to the characteristics of the authority structures and rules that underpin their operations. The discussion takes an historical perspective in order to gain deeper insights into the factors that have influenced the trajectories of the prevailing land tenure systems. The first section contributes in part to addressing objective one of the thesis. Section 3.2 discusses perspectives of the real estate market focuses on the role of property rights and transaction costs in understanding the operations of the land market. Section 3.3 extends the discussion to consider the justifications and challenges regarding the formalisation of land rights with particular focus on SSA urban context. Section 3.4 summarises the chapter.

3.1 The Nature of Indigenous Land Tenure Systems

This section examines the nature of the social organisational structures and rules that characterised the prevailing land tenure systems in SSA. Land tenure systems in SSA are diverse. Varied rules and structures, both formal and customary, underpin the institutional arrangements of land tenure and govern the land delivery process in terms
of access to and control over land resources. The diversity in the tenure arrangements stems from the varied influences of historical, social, political, cultural and economic factors that are found in different parts of the continent, and even within different parts of the same country (Cotula, Toulmin, and Hesse 2004; Bruce 1988; Akuffo 2009). The combined effect of these factors, as was indicated in Chapters 1 and 2, influences the socio-organisational structures and rules that underpin land the tenure arrangements.

Subsection 3.1.1 discusses the relevance of the social organisation of societies and its relationship with the nature of the prevailing land tenure systems. Subsection 3.1.2 discusses the influences of colonial and post-colonial policies and actions on indigenous land tenure systems with reference to the authority structures and principles, as well as the rules and customs that govern land relations.

### 3.1.1 The Social Organisation of African Land Tenure Systems

To understand the nature and operations of a land tenure system requires an examination of how authority structures in a society control and grant various forms of access to land resources for its members. Okoth-Ogendo (1989) emphasises the importance of the relationship between authority structures and the allocation of access to resources. He argues that, since claims to property are made with respect to the rights held in them, the “existence of a right is best understood in terms of a [form of] power which society allocates to its various members to execute a particular range or quantum of functions in respect of any given subject matter” (Okoth-Ogendo 1989:7). Further, Cousins (2007:293) points out that “…access to land (through defined rights) is distinct from control of land (through systems of authority and administration)”. This distinction is important because, as Cousins (2007:293) elaborates:

Control is concerned with guaranteeing access and enforcing rights, regulating the use of common property resources, overseeing mechanisms for redistributing access and resolving disputes over claims to land. It is often located within a hierarchy of nested systems of authority, with many functions located at local or ‘lower’ levels.

In other words, the role of authority structures is to ensure equitable access to land and provides mechanisms that allow the resolution of any disputes that may arise. Okoth-
Ogendo (2002:2) elaborates further on the characteristics of the organisation of authority structures that characterise indigenous land tenure. He asserts that, at the structural level, indigenous land tenure is:

…managed and protected by a social hierarchy organised in the form of an inverted pyramid with the tip representing the family, the middle the clan and lineage, and the base the community. These are decision-making levels designed to respond to issues regarding allocation, use and management of resources comprised within the commons on the basis of scale, need, function and process.

The above description of the structure of management of indigenous land tenure suggests that the characteristics of the social organisation that give form, meaning and relevance to a land tenure system may influence the control over and access to land resources for all members of the broader social group. The important role that authority structures play land control and administration is dependent on how the particular social unit is organised in terms of the political structure and resource allocation (Akuffo 2009; Berry 1989). Hence, the nature of the social organisation of land tenure can influence the operation of the land market (Yngstrom 2002).

One implication of the above discussion is that there may be different groupings such as families, clans and lineages within a jurisdiction that control various aspects of access to land resources. This means that the activities of the diverse groups may collectively shape the pattern of land allocation. The head of a group acts with the consent and concurrence of the principal members and elders of that group, constituted as the ‘management committee’ of the land owning group (Bentsi-Enchill 1964:44). Hence, none of the members of the committee can act alone. Rather, they act on behalf of and in the interest of the broader social group. The consequence of not consulting may render any decision taken illegal. Cousins (2005:493) acknowledged this point when he suggested that the head of the lineage or the “chief had to obtain the cooperation of headmen and advisers, and to act without them would have been regarded as unconstitutional and would fail”. Mamdani (1996:45), agreed, going further to assert that the head of the lineage or chief typically has to undertake “double consultation” with his councillors and the whole community. Hence, there is a system of accountability for the actions of the authority structures of diverse groups.
The nature of the interdependencies among different social groups involved in indigenous land tenure management may have an important influence on access to land resources. Delville (2000:98) highlighted the importance of the nature of the interdependencies within the wider socio-political structure of a jurisdiction in resource allocation. Specifically, he argued that:

The distribution of rights is ... based on the socio-political system (the political history of the village and region from which the alliances and hierarchical relationships between lineages are derived) and on family relationships (access to land and resources depending on one’s social status within the family)...

Similarly, Swallow and Bromley (1995:111) argued that “[t]he structure of government under which a common property regime operates – whether it be centralized, diffused, or minimal – determines the type of institutions that can be implemented to govern relations among members and between members and non-members”.

The implication of the above discussion is that characteristics of the interrelationships among constituent parts of a social group or ‘community’ may have important impacts on the management of land resources. Hence, there is a need to understand the nature and characteristics of the diverse socio-political organisational structures that may exist in SSA.

Chapter 1 indicated that the diverse socio-political organisational structures that underpin African societies could be broadly categorised into two classes, namely centralised and non-centralised states (Elias 1956). Such a broad categorisation does not reflect the complexities in the characteristics of the socio-political organisational structures between and within countries. These complexities may be due to differences in the distribution of authority in various groups and the nature of interaction among groups (Kaberry 1957; Eisenstadt 1959). For example political structures may exhibit different characteristics because authority and power may extend from kinship and lineage groups to other forms of association such as age-sets, local groups, cult groups and title societies (Kaberry 1957). Consequently, different variations of centralised and non-centralised states exist in different parts of the continent.
With specific reference to West African societies, Brown (1951:275), relying on how authority figures in various kingship groups, associations and states exercise authority, identified four categories of social organisations, namely (1) where authority is exercised only in and through kinship groups (e.g. Tallensi). (2) authoritative associations with kingship groups (Ibo and Yakö), (3) where authority is exercised by kinship groups, associations, and state organization (Mende and Yoruba), (4) state organization and subordinate kinship groups, while associations are absent or of minor political importance (Ashanti, Dahomey, Nupe). Hence, there is a continuum of different levels of organisational structures ranging from the non-centralised states to the centralised states.

With respect to the whole of SSA, Table 3.1 provides an overview of the continuum of different socio-political organisational structures that exist. The table outlines the main features of the different types of structures and examples within the two broad categories of centralised and non-centralised states noted earlier. Specifically, there are five sub-categories of non-centralised states and three types of centralised states.

A fundamental difference between the centralised and non-centralised states is the extent of distribution and exercise of authority, as well as the level of interactions among the sub-units of the states. In the centralised states, authority is exercised hierarchically and there is often an alliance among different lineages, clans and families bonded by common ancestry and operating under the jurisdiction of an overlord who may have both jurisdictional and some level of proprietary control over the subgroups and their land (Elias 1956; Larbi 1994). In addition, there is a well-structured hierarchy of administrative and judicial functions.

The extent of control within the power structures of the centralised states depends on the “degree to which (a) the major groups regulate their own affairs in various spheres, and (b) the extent to which the major political offices are vested in various ascriptive groups” (Eisenstadt 1959:211). This distinction is significant, because in applying these criteria, two subtypes of central states can be distinguished, namely ‘centralized monarchies’ such as those of the Zulu, Ngoni, Swazi, and Tswana kingdoms, and ‘federative monarchies’ such as Bemba, Ashanti, Pondo, and Xhosa kingdoms.
<table>
<thead>
<tr>
<th>Type of Structure</th>
<th>Key Features regarding the nature of subgroups</th>
<th>Examples</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>NON-CENTRALISED POLITICAL AUTHORITY</strong></td>
<td>There is no specially organized, central political authority or organization. Political activity takes place within the subgroups of the society and through their interaction</td>
<td></td>
</tr>
<tr>
<td>Band organization</td>
<td>(a) Composed of relatively un-differentiated, loose bands, families and territorial units with rudimentary political interaction.</td>
<td>Plateau Tonga (Zambia)</td>
</tr>
<tr>
<td>Segmentary Tribes</td>
<td>(b) Segmentary tribes organized in corporate lineages between which there is extensive political and ritual interaction; A high degree of organized interdependence and complementarity among the various component units.</td>
<td>Tallensi (Ghana), Bantu Kavirondo (Kenya)</td>
</tr>
<tr>
<td>Universalistic (Age-Groups) Segmentary Tribes</td>
<td>(c) In addition to the organized kinship groups, other important groups and principles of social and political interaction exist, notably in those cases where various criteria of universalistic allocation of roles are manifested in age groups and regiments.</td>
<td>The Nandi (Kenya, parts of Uganda and Eastern Zaire) and Masai (Kenya)</td>
</tr>
<tr>
<td>The Ritually Stratified Tribes</td>
<td>(d) Kinship and lineage groups interact based on a special hierarchical stratification into classes (mostly in the ritual field).</td>
<td>The Shilluk (South Sudan), and the Ankole (Uganda)</td>
</tr>
<tr>
<td>Acephalous Autonomous Villages</td>
<td>(e) The importance of family and kinship groups diminishes in favour of various specialised associations based on the universalistic criteria of achievement and interacting chiefly in the economic and social spheres.</td>
<td>Yako (Burkina Faso), Ibo, Ibibio, and some Yoruba groups (Nigeria)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>CENTRALISED STATES/SOCIETIES</strong></th>
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</tr>
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<tbody>
<tr>
<td>Centralised and Federated Monarchies</td>
<td>(f) The kinship and lineage groups are the most important units that bear political action.</td>
<td>Zulu (South Africa), Ngoni (Malawi, Mozambique, Tanzania and Zambia), Swazi (Swaziland), Tswana (Botswana), Bemba (Zambia), Ashanti (Ghana), Pondo and Xhosa (South Africa),</td>
</tr>
<tr>
<td>(g) Some universalistic groups also exist, such as regiments or age-groups.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Monarchies Based on Associations and Secret Societies</td>
<td>(h) Societies in which various types of associations perform central tasks.</td>
<td>Mende (Sierra Leone)</td>
</tr>
</tbody>
</table>

Source: Compiled from (Eisenstadt 1959:205–206)
The distinction between the centralised and federative monarchies is that in the ‘centralized monarchies’, there is a high level of centralisation and everything works up to the head of the hierarchy. With respect to land tenure, the head of the hierarchy has the final say in all dealings concerning land, even though he may have appointed officers or sub-chiefs acting on his behalf. In the ‘federative monarchies’, power and authority are diffused to a greater extent to other authority structures within the hierarchy and the head of the hierarchy may or may not have direct proprietary control over land matters (Eisenstadt 1959:211).

In the non-centralised states, authority is vested in the various subunits or groups. Even though the lineages, clans and families may also have common ancestors as in the centralised states, they exist as independent entities within the same jurisdiction. They do not have ‘chiefs’ in the sense of the centralised states. There is a “…wide political influence to men of singular ability, but the influence of these men was not hereditary or authoritarian. Their positions depended on tendering good advice and having it accepted by their peers” (Tignor 1971:341). Even though there may be some form of association among the independent groups, the nature of the relationship is often not proprietary. That is to say, even if a ‘chief’ is appointed to oversee the alliance, his role will not extend to the administrative control of land of the groups (Agbosu 2000:12). This is because, as Eisenstadt (1959:207) argued, the “…basic lineage groups – the various maximal lineages – are the primary bearers of political roles and tasks” and are therefore vested with proprietary powers such as the allocation and regulation of land use.

The significance of the nature of the diverse social organisations that characterise indigenous land tenure systems in SSA is that they can influence the administration of land in terms of the delivery of land or property rights, which is important for the operation of land markets, as discussed in Subsection 3.2.2. The influence on the land delivery process may be positive or negative. In centralised societies, such as those noted in Table 3.1, because of the well-structured administrative and organisational structure, it is expected that effective administration of land resources will occur. On the downside, however, the hierarchy may create complex bureaucracies, which may eventually make access to services cumbersome for ordinary citizens or residents in affected jurisdictions. In the decentralised states, because of the dispersed nature of
authority to sub-units or lineages, there may be challenges in dealing with, for instance, land boundary disputes among the various lineages in a jurisdiction. However, because of the less hierarchical structure it could be argued that access to land resources may be easier.

The extent of influence of the centralised and non-centralised structures on land administration in SSA can be related to the nature of the changes that have occurred to the different indigenous organisational structures due to colonial and post-colonial influences. As was noted in Subsection 2.4.2.2 of Chapter 2, it is pertinent to have a clear understanding of historical and contemporary factors that have influenced the persisting land tenure systems, especially with respect to their underlying social organisational structures. Consequently, the next subsection discusses the influences of colonial and post-colonial policies and actions on indigenous land tenure systems with reference to the authority structures and the principles, rules and customs that govern contemporary land relations.

3.1.2 Changes to Indigenous SSA Land Tenure Systems

The various indigenous structures and associated rules governing indigenous land tenure systems in SSA underwent tremendous changes during over a century of domination by various colonial powers, and the changes have continued in the post-colonial period (since approximately post-1950). Subtle changes to indigenous land tenure systems commenced when Africans first encountered Europeans during the period of ‘gradual colonialism’, around the 15th century. However, manifestations of the changes became apparent during the period from the 19th Century up to the middle of the 20th Century when actual colonialism commenced following the “Scramble for Africa” (Mamdani 1999).

To place the discussion in context, Subsection 3.1.2.1 discusses certain misconceptions that are associated with SSA indigenous land tenure systems. Subsequently, Subsection 3.1.2.2 examines the influences of colonial policies on indigenous land tenure systems, and Subsection 3.1.2.3 considers the changes that have occurred after colonialism ceased to operate formally.
3.1.2.1 Misconceptions about African Land Tenure

Certain misconceptions about pre-colonial African land relations have underpinned changes to the land tenure systems in SSA since the colonial era. In spite of the clear diversity in the social organisational structures, these misconceptions stem from an erroneous perception that all pre-colonial African societies had a centralised authority structure of administration headed by a ‘chief’ (Tignor 1971; Geschiere 1993). The colonial authorities, according to Mamdani (1996:39) assumed that the organisation of pre-colonial African societies “…was monarchical, patriarchal, and authoritarian. … [They] presumed a king as the center of every policy, a chief on every piece of administrative ground, and a patriarch in every homestead or kraal”. This misconception of African society formed the core of the assertion that pre-colonial African land relations were communal and, as a result, individuals did not have any definable right to such lands. Hence, there was no such thing as a free market. Consequently, the indigenous land tenure systems were perceived not to provide incentives for investment in productive ventures necessary for economic development. Based on this simplistic conclusion, the agenda of colonial authorities was to convert often complex indigenous forms of land tenure to a single western-based tenure form in order to make them conducive to economic development.

The implication of the colonial misconception is reflected in the often-quoted judgment in the Nigerian case Amodu Tijani v. Secretary, Southern Nigeria (26 [1921] 2 A.C. 399, at 404-405). Several of the claims made in the judgement illustrate the nature of the subsequent misconceptions about the indigenous land holding systems, as exemplified by the following excerpt:

…the notion of individual ownership is quite foreign to native ideas. Land belongs to the community, the village or the family, never to the individual. All members of the community have an equal right to land, but in every case the chief or headman of the community or village, or the head of the family, has charge of the land, and in a loose mode of speech is sometimes called the owner. He is to some extent in the position of a trustee, and as such holds the land for the use of the community or family.

This excerpt serves as the basis for discussing the implications of the misconception about the indigenous land holding systems. The assertion in the judgment that
individual ownership is foreign to native ideas may not be entirely the case. This is because indigenous land tenure arrangements incorporate a spectrum of rules and processes that include collective tenure, individual tenure and common access (Diaw 2005; Cousins 2007; Musole 2009; Akuffo 2009). The collective, allodial or radical title in the land is perpetually vested in the corporate group or community (Elias 1956; Bentsi-Enchill 1964; Okoth-Ogendo 2002). Okoth-Ogendo (2002:2) noted that the radical title “…always was, and remains, in all members of the group past, present and future, constituted as corporate entities”. Inclusion of the past and future group members means that in addition to the social aspect of land relations there is also a spiritual dimension, which presumably serves as a check against the permanent alienation of indigenous land rights outside a social unit.

African collective tenure incorporates individual tenure. Although the allodial or radical title is often vested in the larger group or community, individual members or subgroups can hold possessory titles derived from the allodial title (Bentsi-Enchill 1964; Elias 1956). The possessory title is usually referred to as a usufructuary right, which under Roman law ‘is the right to take the fruits of property belonging to another …with the obligation of eventually returning the property essentially in its original form” (Ng’ong’ola 1992:147). However, the claim of an individual under African indigenous tenure is more than the Roman law interpretation of usufruct. This is because rights allocated to the individual are potentially in perpetuity and holders are generally free to deal with the land under their control (Akuffo 2009). Individuals can pledge or use the land for any productive venture subject to the caveat that they seek the consent of the group and that the use of the land does not infringe the rights of other members (Mair 1948; Elias 1956; Akuffo 2009; Brown 1951). In addition to the freedom to use the land, the rights accruing are inheritable on the death of the holder according to the ordinary rules of succession (Colson 1971; Woodman 1966:457).

The implication of the above is that by virtue of being a member of the group, an individual has a claim that inheres in the land itself (Akuffo 2009:69). However, the extent of access granted to a member is dependent on the status of the individual within the context of the collective group (Berry 1993; Bruce and Migot-Adholla 1994). The status is dependent on whether one is member of a kinship group or subject of a political authority (Mair 1948). Further, status within the same descent group or
community depends on seniority, gender, office holding, among others (Berry 1989). Apart from status of membership, the nature of the use to which land is required to be put also determines the extent of claim or entitlement of an individual. Okoth-Ogendo (2002:3), argued that the “…quantum of access rights depends, in the first instance, on the category of membership each individual or collective holds, and secondly on the specific function for which access to the resources are required.” Where access to land resources is on a permanent basis, such as for residential purposes or perennial crops or trees, the quantum of access rights is greater than temporary access rights for grazing or shifting cultivation.

‘Strangers’, or non-members of a land-owning community or group, may gain access to land through a number of means, such as by joining the group through marriage, assimilation into the group, hospitality, protection or inter-tribal association (Elias 1956; Berry 1989). Even though the ‘outright’ alienation of indigenous land is typically prohibited (Elias 1956; Okoth-Ogendo 2002), non-members of a land owning group may gain access to land through an ‘allocation’ by a member of part of the land under his/her control. However, as noted earlier, in such circumstances the express permission or consent of the authority structures of the group is required.

A possible misconception portrayed in the Nigerian judgement noted earlier relates to the relationship between authority structures and control of resources. The claim is that the chiefs or headmen ‘owned’ the land in trust for the community. However, the use of the concepts ‘trust’ and ‘ownership’ in relation to the nature of indigenous land relations is problematic. The term ‘trust’ implies that the legal title in indigenous land vests in the chief or headman and that the indigenes possess only equitable or usufructuary rights (Ng’ong’ola 1992; Du Plessis 2011). As discussed earlier, the claim of the individual involves more than a usufructuary right. The concept of ‘ownership’ from a Roman law perspective connotes absoluteness, which in the context of African land tenure is generally not the case.

The above misconception is reflected in the description of the collective tenure offered by Simons and Malmgren (2008:256), who stated that “land is dedicated to a tribe, and may be nominally owned by the chief. Tribal members occupy parts of the tribal lands at the pleasure of the chief and have no claim on the property as a whole”
Contrary to the despotic characterisation in the description of indigenous tenure, Cousins and Claassens (2006) argued that the nature of power relations with regard to land control and access was balanced between the leadership and members. The chief or head of the group had equal right of access to land just as any member of the community. The equality of access to land by the chief is further emphasised by Elias (1956:164–165) when he observed that “[t]he African chief or king … enjoys only an administrative right of supervisory oversight of the land for the benefit of the whole community. If he requires a piece of land, he must beg it of the individual holder of it, if the holder has no immediate use of it”.

Based on the above misconceptions, the colonial powers concluded that the collective rights of the social unit vest in the ‘chief’ who had the right to allocate use rights to members of the unit (Joireman 2011). In important ways, this interpretation formed the basis for colonial policies regarding indigenous tenure.

3.1.2.2 Colonial Policies and Changes to Indigenous Tenure Systems

The different approaches adopted by the colonial powers to dominate their colonies provided the framework within which the transformation of the social structure of pre-colonial African society and the nature of its land tenure arrangements occurred. Colonialism had both economic and political objectives. An economic objective was to exploit the natural resources of the colonies in order to supply raw materials for European industrial expansion. The political objective of colonialism, on the other hand, was dominion over indigenous populations and their resources through policies and laws. In order to achieve these objectives, the colonial authorities adopted two main approaches to administer the various colonies under their control, namely indirect or direct rule. Sir Donald Cameron, one of the key architects of the policy of indirect colonial rule, provided an elaborate description of the indirect and direct rule approaches:

…the first in which we endeavour to administer the people through the instrument of their own indigenous institutions where they still exist and still function with the assent of the people. In this field the order is the order of the Chief or the Council, whatever the indigenous institution may be, conveyed to their own people who are willing generally to obey the
authority because they acknowledge its ascendancy. In the second field – the more direct method of administration – the order is the order of the Central Government conveyed through its own officers, European or African, or through boards or councils set up by that government (Cameron 1937:3).

Britain, the predominant colonial power in Africa, relied mainly on the indirect approach to administer its colonies. Hence, colonial policies sought to fulfil the mandate of the colonial authorities through the reliance on existing ‘traditional’ institutional structures (Jua 1995). In effect, ‘traditional’ structures became the local representatives of the colonial power through a process of incorporation into its administrative structures and their complacency in decision-making. The indirect rule policy aimed at interfering as little as possible with the affairs of the indigenes, rather allowing them to be ruled by their own ‘chiefs’ and ‘customs’ (Crowder 1964).

The French, on the other hand, initially followed the direct rule approach to the administration of their colonies. The approach, termed assimilation, aimed at integrating the indigenes into the social and cultural system of France with a focus on centralisation. As a result, French colonial authorities usually ignored or neglected traditional institutions and customs, which were made subordinate to the colonial power (Crowder 1964). For instance, Delville (2000:99) pointed out that “In the French-speaking regions, the urge for centralised authority led the colonial state to seek to break the power of the customary authorities and replace them with state management”. The assimilation approach was subsequently abandoned by the end of the first World War for an indirect approach, which was termed association (Crowder 1964; Irele and Jeyifo 2010).

Colonial authorities in general employed a mix of both the direct and indirect approaches in their respective colonies (Mamdani 1999). The degree of application of the direct or indirect approach in a colony largely depended on the extent to which a colony was settled by non-natives (Lange 2004). The concurrent application of the direct and indirect approaches had varying impacts. In the colonies of east and southern Africa, such as Kenya, Rhodesia and South Africa, where there was significant settlement of Europeans, large tracts of land were acquired for commercial agriculture and mining activities (Bruce 1988). In order to address the concerns of the European
settler communities and to administer the lands expropriated by the authorities, as well as those acquired by settlers, a direct approach was adopted (Njoh and Akiwumi 2012). However, indirect rule was applied to the indigenous native populations, which were moved into ‘native reserves’ or homelands (i.e. areas in which native concentration were restricted) and rural areas of the colonies (Berry 2002). In these areas, ‘traditional authorities’ typically had a range of powers to deal with native affairs using ‘customary’ rules and processes.

In contrast to the settler colonies of east and southern Africa, the colonies in West Africa had relatively few settlers. Hence, there was no massive displacement of indigenous populations, even though ‘Native areas’, especially in the urban areas, were created to provide settlement areas for indigenes who moved into the cities for employment. Similar to the settler colonies, the direct approach applied to Europeans and to land expropriated or acquired by the colonial authorities. The indirect rule applied in the reserves as well as the rural areas.

The significance of the concurrent application of direct and indirect rule in the colonies was an emergent dualism in structures and laws, especially with regard to land tenure. This legacy has persisted in most parts of modern Africa. The following paragraphs discuss the specific effects of the policies and actions of colonial rulers on the authority structures and rules regarding the governance of land relations.

**Effects of Colonialism on Authority Structures**

As noted above, the direct and indirect approaches to colonial rule had different perspectives on the role of indigenous institutions in the governance of the colonies. The indirect approach was inclined towards a focus on indigenous institutions, whilst the direct approach largely ignored them (Crowder 1964). Njoh and Akiwumi (2012:210) highlight the nature of the treatment of indigenous institutions by the indirect and direct approaches:

The former entailed, in large part, politico-administrative decentralization marked by the incorporation of indigenous institutions in the colonial governance process. In contrast, the latter largely involved supplanting all
indigenous institutions with Eurocentric alternatives, and concentrating all decision-making powers in the metropole.

In spite of the differences in attitude towards indigenous institutions, both the direct and indirect approaches had significant impacts on the social structures of pre-colonial African indigenous society. In practice, both approaches adopted similar strategies to achieve their objectives of domination of the indigenous populations (Njoh and Akiwumi 2012).

The similarity in strategy was in respect of the tendency to manipulate the social organisation of the various indigenous societies especially the transformation of ‘chiefless’ or non-centralised societies. In these societies, colonial powers were quick to create ‘chiefs’ to conform to the centralised model of pre-colonial African societies discussed earlier. For instance, Geschiere (1993:151) noted the similarity in strategy when he emphasised that in “…societies where such chiefs were hard to find, the French were as quick as the British to create new chefs coutumiers [chiefs]; for the French as well, the chiefs had to play a key role in the encadrement des paysan [supervision of peasants]”.

The strategies used by the colonial powers to dominate indigenous populations led to transformations in indigenous land relationships with regard to the social and authority structures. A major consequence of the transformation was the emergence of multiple structures under the control of state and ‘traditional’ structures. Colonial authorities manipulated the indigenous authority structures in their quest to rely on ‘traditional’ authorities to implement their policies. Three factors accounted for the transformation, namely (1) the imposition of ‘chiefs’ where they did not exist, (2) the manipulation of appointments and functions of existing chiefs, and (3) the creation and superimposition of a new superstructure (‘Native Authority’ system). These factors are now discussed in turn.

Colonial powers subjected the non-centralised societies to a process of deliberate centralisation. The process of centralisation involved the creation of ‘chiefly’ positions, and often the appointment of traditionally ineligible persons to the posts. Even though non-centralised states did not have ‘chiefs’, as was discussed in Subsection 3.1.1, the
colonial authorities created and imposed ‘chiefs’ on the constituents communities (Crowder 1964; Colson 1971; Pottier 2005). For instance, in Kenya, the British deliberately created ‘chiefs’ for the Kikuyu tribe to facilitate their policy of indirect rule. Tignor (1971) highlighted this fact when he noted that the British “…had collected enough information to realise that the Kikuyu, before colonisation, had had no chiefs but had been governed through councils. None the less [sic], administrative necessity persuaded the British to establish local chiefs and to rule through them” (1971:342).

The imposed ‘chiefs’ (or warrant chiefs) were given roles that traditional leaders in the pre-colonial society did not possess (Noah 1987). Warrant chiefs were given the right to allocate land, even though in pre-colonial Africa there was an apparent separation of the ritual control of land by earth priests and administrative roles by other leaders (Dijk and Rouveroy van Nieuwaal 1999; Colson 1971; ECA 2004). To worsen the situation, the ‘chiefs’ were given powers to impose and collect taxes on behalf of the colonial administration (Jua 1995). In the performance of the roles assigned to them, the chiefs were accused of corruption and use of force (Spear 2003). Consequently, there was tension between the indigenes and their new ‘chiefs’, resulting in conflicts. Some of the ‘chiefs’ lost the respect of the people they are supposed to ‘rule’ and were treated as middlemen between the alien colonial government and local communities (Tignor 1971:341).

It is significant to note that, at the heart of some of the current conflicts between ‘chiefs’ and lineage heads regarding control and authority over land in parts of SSA, the centralisation of formerly non-centralised states is clearly evident (Amanor 2009). Particularly in urban and peri-urban areas, where the demand for land and land values are increasing, the resulting conflict often leads to negative consequences in the land delivery system.

The transformation in authority relationships equally affected centralised states. Although centralised states conformed largely to the normative model that the colonialists preconceived about pre-colonial Africa, colonial policies nonetheless affected the authority structures of these societies. The transformation of the centralised states was reflected in the appointment of individuals to chiefly positions. The appointment of chiefs was premised not on customary rules but rather on loyalty to the
colonial authorities and the ability to carry out colonial duties. In other words, colonial authorities were more interested in the ability of a ‘chief’ to serve administrative functions rather than whether he was eligible to occupy the position (Crowder 1964). Even though the British were more meticulous in ensuring that ‘customary’ processes were followed as far as possible, they were equally guilty in the manipulation of appointments (Crowder 1964). Similar to what was done in the non-centralised societies, demands were made by the colonial administrations for the ‘chiefs’ to perform other functions, such as various forms of taxation, which may include those related to land (Spear 2003; Crowder 1964).

Chiefs, who resisted manipulative tendencies were exiled or replaced, or persons that were more malleable were appointed (Berry 2002). In Ghana, for instance, the British exiled the Asantehene, the king of the Ashanti tribe, to the Seychelles Islands after the conquest of Ashanti in 1901. One implication of the manipulative practices of the colonial authorities to chiefly appointments is the uncertainty it created about the eligibility of occupants of the role of chief, even in cases where they were legitimate (Geschiere 1993). This often lead to chieftaincy disputes regarding succession (Gocking 1994), that have persisted to the present day in some parts of SSA.

In addition to the imposition and manipulation of prevailing indigenous authority structures, a Native Authority System was often established. The native authorities introduced a new system of political administration in African societies that fused judicial, legislative and executive powers into the ‘chiefs’ who were required to maintain law and order within their areas of jurisdiction (Noah 1987). Through the native authorities, the ‘traditional’ institutions that had been created became part of the local and central administrative structures of government (Lord Harlech 1941). An implication of creating a native authority system was that indigenous authority structures were subsumed to the colonial administrative structures. In effect, chief became agents of the British Government, carrying out such judicial and administrative duties as are specifically delegated to them (Lord Harlech 1941).

The significance of the subordination was that the chiefs were no longer recognised by virtue of their status under customary law, but by notice in a government gazette (Leduka 2006:183). Consequently, in carrying out their duties, the chiefs had divided
loyalty between the indigenous population and the colonial administration. More often than not, chiefs were accountable to colonial authorities, contrary to pre-colonial principles that required accountability to their subjects (Amanor 2002; Pottier 2005; Bruce and Knox 2009). That is to say, the imposition of the new authority structures contributed to the erosion of the pre-colonial arrangements that allowed clan and lineage-based groups to control and check the actions of traditionally appointed leaders (Mamdani 1996). In addition to issues of accountability and loyalty, the newly acquired political authority and power of the ‘chiefs’ was often abused through the native authority system. For instance in Ghana, instead of using the Native authorities as a system of political order, the “chiefs” rather used it as an instrument of coercion (Rhodie 1968).

The transformation of the authority structures fundamentally changed African tenure relations regarding access to land. This was partly achieved through the relocation of the radical title in indigenous lands (which was vested in the corporate group) to the newly created ‘traditional’ structures and Native authorities (Joireman 2011; Okoth-Ogendo 2002). Hence, the indigenous systems, which had operated at different levels (family, lineage, clans etc.), and had guaranteed access to land for centuries, was transformed over a relatively short period into centralised systems governed by ‘traditional’ authorities. This meant that natives could no longer access land resources without going through the created authority structures. It is significant to note that this transformed relationship has underpinned subsequent policies (Amanor 2002).

The relocation of the radical title to ‘traditional’ authorities facilitated the expropriation of large tracts of land by the colonial authorities and non-native residents. The colonial authorities declared ‘vacant’ or unoccupied lands as Crown lands since they could not find an appropriate authority in control of such lands (Colson 1971). In addition, because the radical title was vested in ‘chiefs’ they became the conduit for acquisition of indigenous lands by the colonial powers and settlers respectively (Pottier 2005; Peters 2004). However, the use of ‘chiefs’ to secure access to productive land and resources by the colonial powers is questionable because not all ‘chiefs’ possessed rights to alienate customary lands. In some cases, the chiefs were not owners vested in with the right to dispose of land, but rather administrators (Agbosu 2000). Despite this
defect, laws were subsequently passed to legitimise large-scale acquisition of land, especially in the settler colonies in East and Southern Africa (Mortimore 1997).

The increasing alienation and expropriation of land has contributed to a transformation from its previous religious, spiritual and social significance to an economic commodity. One effect of the monetisation of land dealings was that access to land through membership of a social unit, as discussed earlier, was no longer automatic since indigenes had to compete with outsiders for allocation of land. In other words, the ability to pay the economic or market value for land became the deciding factor for gaining access to land. Another effect of the monetisation of land dealings was the abuse of the chief’s role and those of other customary authorities as custodians of the land. Due to the monetary gains that could be realised from the sale of land, ‘traditional’ authorities, the elites and indigenes scrambled to ‘sell’ land. Consequently, there was an increase in conflict and litigation regarding rights to ‘sell’ land. Some authority figures abused their privileged positions and allocated land resources for their personal benefit, while failing to account for revenue accruing from sales of land. This situation persists to the present time in most SSA nations (Ubink 2008c; Amanor 2009; Berry 2013).

Interestingly, the claim that customary law prohibited alienation of ‘communal tenure’ did not appear to have stopped the alienation of land to settlers. Whilst the colonial authorities sought to preserve communal land tenure for Africans, they promoted individual tenure for white settlers (Colson 1971; Amanor 2009). The expropriation of indigenous lands by colonial powers led to dual tenure regimes in SSA and these have formed a substantial part the current inventory of the formal or state property regimes in most SSA countries. To facilitate the management of land in these regimes, new formal structures and rules were introduced by the colonial powers (Kalabamu 2000).

**Effects of Colonialism on ‘Customary law’**

In addition to a shift in authority structures, the colonial period witnessed the adulteration and modification of the indigenous rules that governed social and land relations, in particular the transformation of indigenous rules to ‘customary law’. A combination of factors accounts for this transformation. First, the introduction of a new
legal framework (including judicial structures) based on principles from legislation in the colonising countries resulted in the filtration of indigenous rules through western legal principles and concepts. Second, the process of standardisation and codification of the rules, as well as the interpretations and applications of indigenous rules by native authorities and formal courts also contributed to the transformation. The consequence of these changes and influences is that a pluralistic legal framework now operates in almost every country on the African continent.

The introduction of foreign concepts and legal terms and forms in conveyancing had an immediate effect on the nature of indigenous land rights. The transactions between natives and non-natives were subjected to the newly introduced conveyancing procedures. This meant that the legal terms derived from the introduced laws with respect to rights and obligations were applied to the documentation of land transactions. One implication of the application of the concepts was that the indigenes were denied their customary rights to use lands they previously had access to under indigenous tenure arrangements. For instance, Agbosu (2000) recounted the case of a native chief who granted a mining concession to a company, believing that his subjects retained their rights to use the land. However, when the indigenes went onto the land, the company sued them in court for trespass. Thus, the multiple access rights that existed under the indigenous system were eroded by the western perception of exclusivity of tenure.

Attempts to standardise the diverse indigenous principles and rules applicable to different tribal groupings under ‘customary’ law has contributed to its transformation. Given that indigenous African law embraces over 800 different ethnic/language groups attempts at codification present formidable challenges (Oba 2011). Mamdani (1999:865) asserted that the process of standardisation or codification involved an analysis of custom in its diverse forms in order “…to identify the authoritarian strand so as to sculpt it and build on it, sanctioning the product officially as customary law”. The initial approach of the British involved first, the suppression of indigenous rules that challenged their authority and second the abrogation of those rules that did not meet “British standards of humanity” (Allott 1984:59)
Subsequently, two key criteria were used to filter the application of indigenous rules and customs. First, rules were not to be ‘repugnant to natural justice, equity and good conscience”, and second they should not “expressly conflict with written law, that is, the legislation of the colonial power” (Allott 1984:59; Akuffo 2009; Oba 2011; Akamba and Tufuor 2011). This meant that the principles and values of the laws of the colonial powers served as a filter in deciding whether to admit particular indigenous rules or not. This filtration process was a contributory factor to the emergence of a selective body of rules known as ‘customary law’, which where indigenous rules and practices determined by the colonial judicial authorities not to be repugnant to natural justice, equity and good conscience (Akuffo 2009).

The activities of the native and formal courts also contributed to the transformation of indigenous rules to ‘customary laws’. Native courts, operating under the native authority system, had judicial powers to make, interpret and apply indigenous rules in addition to formal laws enacted by local councils (Elias 1954:647), thereby contributing to the modification of indigenous rules and customs regarding land relations. Moreover, the establishment of formal courts to deal with conflicts such as land litigation arising during the colonial era further ensured the transformation of indigenous rules. In hearing appeals arising from the decisions of the native courts, the formal courts applied principles embedded in the introduced formal legal rules and codes. Importantly, when the ‘repugnance test’ was applied, it meant the inadmissibility of many indigenous rules and customs in the final adjudication (Mwalimu 1988).

There were often challenges in reconciling conflicting cases between English and indigenous principles (Elias 1954). Consequently, through the creative abilities or lack thereof, the judges of the formal court system profoundly contributed to the development of ‘judicial customary law’ (Allott 1984). By recording the proceedings and decisions of native courts under common law, these served as a precedent in the determination of future cases. With specific reference to land issues, Colson (1971:196) asserted that the formal court system “…encouraged the rapid development of fairly comprehensive bodies of customary, though untraditional, law which governed the allocation and use of land”. In effect ‘Customary law’ is distinct from the indigenous rules and customs that existed in the pre-colonial period (Okoth-Ogendo 2002).
One outcome of the transformation of the indigenous rules was that persisting ‘customary law’ was in effect a mixture of laws, including indigenous, colonial and common law, administrative regulations and Christian injunctions (2003). In addition, the validation or codification processes resulted in the hitherto flexible indigenous rules becoming rigid. Hence, they were less suitable for the dynamic changing nature of social relations that are associated with pre-colonial indigenous society (Colson 1971; Berry 1993).

The manipulation and ‘invention’ of indigenous systems and processes was not confined to the colonial authorities. Contrary to initial discussions about African ‘traditions’ being ‘invented’ by the colonial powers (Ranger 1983), recent literature shows that the changes to the indigenous system were the joint efforts of colonial administrators in conjunction with mainly elite African collaborators and some traditional authorities (Amanor 2002; Berry 2002; Spear 2003; Peters 2009). Consequently, Berry (2002:645) concluded that, “[t]raditions were “invented”, by many inventors, and were reworked, discarded, or simply accumulated as colonial rulers and subjects debated their validity or their relevance to the dilemmas of the present”. Amanor (2002) also asserted that in the Gold Coast Colony, now Ghana, in an attempt to oppose the colonial authorities, the intelligentsia ‘invented tradition’ in the role of chiefs, which was capitalised on by the colonial authorities to implement the indirect rule policy. Consequently, Amanor (2009) asserted that the chiefs, with the connivance of the colonial authorities, used their position to redefine custom to suit their personal objectives.

In summary, the discussion of the transformation of the indigenous land tenure systems during the colonial period shows the emergence of a dual system of landholding that varied in extent and form across the countries in SSA and elsewhere on the continent (Kalabamu 2000; Joireman 2011; Bruce 1988). This has produced on the one hand, a formal state regulated system consisting of introduced structures and laws that regulate large tracts of land expropriated by the colonial powers or acquired by settlers and non-natives. On the other hand, there are systems of landholding under the ‘customary’ sector, controlled by the transformed ‘traditional’ authorities and with rules governing these ‘customary’ often being informal and unregulated. Post-colonial
governments inheriting this dualistic legacy have faced a substantial challenge of how to deal with the dual system.

3.1.2.3 Post-Colonial Changes to Customary Land Tenure

Post-colonial governments followed various approaches to address the land tenure situation (Bruce 1988). However, most followed the trajectories that began during the colonial era and introduced policies and laws that sought to weaken further the indigenous system. Many governments neglected indigenous systems and continued to expropriate or nationalise lands (Njoh and Akiwumi 2012; Okoth-Ogendo 2002). Approaches followed can be broadly categorised as being characterised by either replacement or adaptation (Bruce 1988; Arko-Adjei 2011; Bruce and Knox 2009).

The replacement approach sought to collectivise, nationalise or individualise indigenous land tenure systems. The Ujamaa system of Tanzania is a classic example of a collectivised approach to land tenure reform. Amanor (2012:26) described this system in the following terms:

In Tanzania, the ruling party under Nyerere advocated a return to traditional land tenure systems in which farmers were entitled to land so long as they cultivated it. Unconditional freehold title to land was abolished and radical title remained vested in the state as under colonial rule, with the state under independence now adopting the rhetoric of representing the will of the people, as embodied in the principles of “African socialism”.

Even though the Ujamaa concept was based on a notion of return to a ‘traditional’ African system, effectively it was nationalisation of land (Bruce, Freudenberger, and Ngaido 1995). Variations of the collective system were introduced in Ethiopia and Mozambique. In contrast, true nationalisation, with the state taking ownership of the allodial title of land and granting either leases or occupancy rights, was undertaken in the mid to late 1970. Typical examples in this direction include the Ugandan Land reform Decree of 1975 and the Nigerian Land Use Decree of 1978.

The introduction of private individual rights was based purely on the western concept of land tenure (James 1975). The Kenya individualisation program exemplifies
an extreme form of this version of a replacement approach. Under the Kenya programme, which began in the late-colonial period, machinery was put in place to convert systematically all lands into the western-based tenure system. Variations of individualisation in Zambia were diluted by granting long-term leases rather than freehold land, as in the case of Kenya (Bruce 1988).

The adaptation approach relied on indigenous structures in the reforms to land tenure arrangements. According to Bruce et al. (1995:6) the adaptation approach “…recognize[s] the considerable capacity of those systems to evolve to meet new social and economic challenges, and seek to create a supportive legal and institutional environment for that evolution”. Even though changes were introduced, “the elements of kin group or other community control” were retained (Bruce 1988:37). Botswana is an example of the adaptation approach where Land Boards, which incorporated a diluted role of the traditional chiefs, were established. The recent World Bank land policy document on land tenure recognises an adaptation approach to land tenure reforms (World Bank 2003), even though the emphasis of the Bank in developing economies appears to be on the implementation of land titling projects.

From the foregoing discussion, it is apparent that a combination of colonial and post-colonial policies and actions accounts for the complex mix of formal and customary structures and rules that mediate the land delivery systems across different parts of Africa. However, it is significant to note that despite the onslaught of colonial and post-colonial policies, ‘customary’ land tenure systems have proven to be resilient (Berry 1989; Oba 2011). Bruce and Knox (2009:1362) suggested that despite the manipulation of colonial authorities, ‘traditional’ authorities largely survived at independence and are the “only socially rooted governance structures” in both urban and rural areas in most parts of Africa. As explained in Subsection 2.4.3, the customary sector may play an important role in urban land management through the influences of customary authority structures, rules and processes in the land delivery system. Hence, ‘customary’ land tenure arrangements may have important influences on efforts aimed at developing the urban real estate market. Any strategy for the provision of land information in the development of the urban land market must therefore take into consideration the nature of the land tenure systems, especially the customary structures and rules.
3.2 The Nature of the Urban Real Estate Market

Following on from the above discussion on the nature of the land tenure systems in SSA, this section considers the nature of the urban land and real estate market in these countries. Subsection 3.2.1 begins by examining two perspectives of the market, namely the neoclassical and institutional. Subsection 3.2.2 focuses on the concepts of property rights and transaction costs as they relate to understanding the development and operation of land and real estate markets.

3.2.1 Perspectives of the Land and Real Estate Market

3.2.1.1 Neoclassical Perspective

From a neoclassical perspective, land and real estate markets are central to the efficient allocation of resources for economic development. It is perceived to facilitate allocation of land through the price mechanism, which ensure that land is efficiently used (Dowall 1993). The importance of land and real estate to economic development stems from its threefold commodity nature. First, real estate can be regarded as a consumption good, in that it is required for immediate use and enjoyment, such as residential real estate. Second, it can also be considered as a capital good that is used to produce consumption goods. Examples of this interpretation include houses, offices and industrial buildings. Third, real estate can be seen as an asset class, used to generate direct income and, as such, rights to the incomes produced by real estate assets may be traded on the capital market. Importantly, land and real estate is immovable and to some extent durable.

The unique characteristics of real estate, give rise to an assumption that it can be used as a basis for the generation of long term funds, which is often associated with the development of a sound financial sector and economic growth (see Kissick et al. 2006; Galal and Razzaz 2001; Adlington et al. 2000; Hussain and Ebrahim 2005; FitzGerald 2006). This assumption is supported by evidence, mostly from the developed world, where real estate constitutes one of the most important asset classes and wealth holdings of individuals and households, contributing significantly to economic growth (Bardhan and Barua 2004; World Bank 1993). Housing in Britain contributes approximately
US$5.5 trillion relative to the total private wealth of households of US$15 trillion (Collier and Venables 2013:1). In the United States, the total market value of the real estate sector is estimated at $12 trillion, which is larger than the market capitalization of the country’s stock market or its Gross Domestic Product (GDP) (Bardhan and Barua 2004:1). Similarly, in other Organisation for Economic Co-operation and Development (OECD) countries, the total stock of housing is worth between 100% and 150% of GDP (Bardhan and Barua 2004:1).

In contrast, evidence from developing economies suggests that investment in housing ranged from 2% to 8% of GDP and represented between 15% and 30% of fixed capital formation (Kissick et al. 2006:5). This suggestion means that the mere existence of real estate in an economy does not automatically ensure that the land resource will contribute its share to economic development. Whether or not the real estate resources of a society are able to contribute significantly to economic development may depend on the operation of the allocation mechanisms of the land resources. In reality, the theoretical assumption of smooth coordination of the market does not usually persist in most countries in SSA. Hence in order to have a holistic understanding of the operation of the market, an institutional perspective is discussed.

3.2.1.2 Institutional Perspective

This perspective considers the influence of institutional frameworks and the interactions of relevant agents in the property market on outcomes. From an institutional perspective, the land and real estate market can be described as a “…framework in which those seeking land, and those owning or controlling land, are brought into transaction[s] in order to effect access to land by the land seekers” (Kironde 2000:153). Such a framework is defined by an institutional setting within which market participants interact to determine the allocation and exchange of land rights (Keogh and D’Arcy 1999; Needham, Segeren, and Buitelaar 2011; Ball 1998; Mahoney, Peter Dale, and Robin McLaren 2007).

Typically, urban real estate markets require the presence of certain essential institutions to operate effectively (Mahoney et al. 2007). Wehrmann (2008) grouped these institutions into four major institutional categories, namely constitutive,
supportive, regulative and complementing institutions. Table 3.2 shows the basic characteristics of the four institutional groupings required for the functioning of the land market.

Table 3.2 Institutions constituting, supporting, regulating and complementing land markets

<table>
<thead>
<tr>
<th>Type of Institution</th>
<th>Description</th>
<th>Nature</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Formal</td>
</tr>
<tr>
<td>1. Constitutive institutions: Providing legal security</td>
<td>Property rights in land</td>
<td>Formal land tenure system</td>
</tr>
<tr>
<td></td>
<td>Land registration, land information system</td>
<td>Public land administration</td>
</tr>
<tr>
<td></td>
<td>Rule of law</td>
<td></td>
</tr>
<tr>
<td>2. Supportive Institutions</td>
<td>Land valuation</td>
<td>Formal land valuation</td>
</tr>
<tr>
<td>3. Regulative Institutions Providing for sustainable land use</td>
<td>Land management</td>
<td>Land use planning by state authorities</td>
</tr>
<tr>
<td></td>
<td>Ethic principles</td>
<td></td>
</tr>
<tr>
<td>4. Complementary Institutions</td>
<td>Financial instrument (credit, mortgage)</td>
<td></td>
</tr>
</tbody>
</table>

Source: Adapted from (Wehrmann 2008:77)

From Table 3.2, the constitutive institutions consist of the basic requirements for the operation of the land market. These institutions include the nature of the prevailing land tenure system(s) with respect to the clarity of the prevailing land or property rights and the nature of land information infrastructure in terms of land registration, records management and land information systems (Durand-Lasserve 2003; Wehrmann 2008; Williamson et al. 2010). Underpinning constitutive institutions is a legal framework that ensures compliance and enforcement of the rules and processes. These institutions include a strong and fair judiciary and an effective police service.

In addition to constitutive institutions, Table 3.2 shows that the land market requires supportive, regulatory and complementary institutions in order to work effectively. A formal land valuation system is required to support a fair assessment of values of market transactions. In addition, certain regulatory institutions, such as a land management framework for effective planning of land use on a sustainable basis, are also required for an effective land market to operate. The nature of land use planning, particularly in urban areas, can also have important effects on the supply of land to the
market (Mabogunje 1992). Further, the land market requires complementary institutions in terms of a well-functioning financial sector. This is particularly important given that real estate market transactions require huge financial outlay, and the absence of an appropriate mortgage financing system, for example, may adversely affect market operations. The absence or unwillingness of financial institutions, whether formal or informal, to provide funds for credit or borrowing may inhibit the viability of the land market. Consequently, the presence of complementary institutions such as banks is important to ensure macroeconomic instability and availability of long-term financing (Tomlinson 2007).

The reality in most SSA countries is that transactions in land rights often take place in spite of or in the absence of the above formal regulated framework. The urban land market operations are often mediated by customary and other informal means of access to land (see Section 2.4). Hence, the markets are characterised by informality (Mabogunje 1992; Hammond 2006; Colin and Woodhouse 2010; Leaf 1992). An effect of the informality is the general lack of adequate information about market operations, such as volume of transactions, prices, status of parties, and characteristics of properties. This is partly due to the inability of the formal land registration and cadastral systems to capture a significant portion of the transactions taking place in the market. A factor that limits the ability to capture relevant land information is the privileged nature of private property rights over other tenure forms in the current land registration and information systems, discussed under Section 3.3. The focus on formalised private property land rights means that even though transactions in other forms of land tenure take place in the land and real estate market, generating their own form of information, the formal system is restricted by the extent of formalisation that is evident (Fekade 2000).

In order to understand the framework within which land transaction takes place, the following subsections place emphasis on the examination of the nature of property rights systems relative to the development of the land and real estate market in SSA. Subsection 3.2.2 discusses the concept of property rights and their relationship with transaction costs in order to have an understanding of the operation of the real estate market. This is followed, in Section 3.3, with a discussion of key issues regarding formalisation of property rights relative to the development of the urban real estate market.
3.2.2 Property Rights and Transaction Costs

Together, the concepts of property rights and transaction costs are central to understanding the operations of land and real estate markets (Malpezzi 1999). Property rights can be described as the relationships regarding the use of an asset or resources (Weimer 1997a; Besley and Ghatak 2010). They are the claims or expectations that a person makes regarding the potential benefits that derive from an asset (Bromley 1989). Often, the term ‘property’ is used to refer to a ‘thing’ that is owned or claimed. However, Gray et al. (1998:15) noted that ‘property’ “…is not a thing but rather a relationship which one has with a thing”. The ‘thing’ may be either tangible, which may be movable or immovable, or intangible.

Property rights provide incentives for the efficient utilisation of an asset (Pejovich 1995; Barzel 1989; Demsetz 1967). Property right theorists have suggested that the extent to which one person can legally exclude others from interfering in claims (property rights) in a resource determines the degree of tenure security, which in turn influences investment decisions. The ability to exclude others legally affects resource allocation by shaping the incentives of individuals to carry out productive activities (Besley and Ghatak 2010:4526). Due to exclusivity in the utilisation of an asset, the individual feels secure since he/she is in a position to bear the full costs and benefits of decisions regarding its management and is therefore motivated to use the land efficiently (Boudreaux 2005). In addition, efficient utilisation of the resource is enhanced because of the ability to alienate freely or trade in different property rights as well as exclusively appropriate the benefit or income stream from it.

From a legal perspective, property rights in land refer to different bundles of rights or claims in real estate or land (Simpson 1984). These rights are usually socially sanctioned and they define and limit the privileges individual hold in relation to use and transfer of land (Maughan 2004; Boudreaux 2005). The bundles of rights in property can be grouped into (a) the right to use, (b) the right to appropriate the benefits or economic value, and (c) the right to manage, which includes alienation (Barzel 1989; Eggertsson 1990; Besley and Ghatak 2010; Williamson et al. 2010; Ezigbalike and Selebalo 1999). The rights held in land may vary in terms of the number of rights held,
the size of each right and the duration of the right (Simpson 1984). The ‘thicknesses’ of the bundle of rights that an owner has in an asset determines the extent of exclusivity.

The disaggregation of property rights into the three categories provides a means to understand their significance in economic outcomes, since different property right regimes may exist with varying degrees of exclusivity. In other words, the assignment of property rights in a society may affect the level of incentive regarding the management and utilisation of land resources, which in turn has implications for the management and use of land resources. Four categories of property right regimes can be identified, namely (i) open access, (ii) common property regime, (iii) state property regime and (iv) private property regime (Libecap 1986; Bromley 1992; Pejovich 1995).

In an open-access situation, there is no specific assignment of property rights to individuals or groups. Hence, because of the multiple users of an asset or resource with no assigned property rights, there is a tendency for its overuse since users may not consider the negative effects of their actions. Under these circumstances, the lack of clarity may provide an incentive for people to dissipate resources quickly for fear that others will do the same, a situation commonly referred to as the ‘tragedy of the commons’ (Hardin 1968).

With regard to a common or communal property regime, property rights are assigned to a specific group or community, which has the power to exclude non-members from using the resource. Because land rights are not directly assigned to individuals, communal property regimes are often equated with open access (Sjaastad and Bromley 1997). However, from the discussion in Subsection 3.1, even though many of the land tenure systems in SSA are communal in nature, they cannot be equated to open access since there are generally well-defined authority structures that oversee the allocation and control of access to land resources for group members. The level of incentive to utilise the land resources efficiently would largely depend on the management arrangement in terms of the enforcement of rules and processes.

Where the state or its authorised agents control property rights, the regime that exists is referred to as a state regime. State regimes evolved from the powers of eminent domain exercised through compulsory acquisition of land or nationalisation or
collectivisation of land, as discussed earlier. In such cases, the state has the power to allocate the rights to groups, individuals or organisations. Under a private property right regime, rights are assigned exclusively to individuals or cooperative groups. The individual has full control over decision on the utilisation of the resources, subject to limitations imposed by formal and customary rules that may exist (Pejovich 1995). Economists often favour the strengthening of private property rights because this provides the maximum exclusivity of rights to individuals.

From the foregoing discussion, it is apparent that the clarity of property rights is associated with efficient allocation and utilisation of resources, such as land and real estate. The significance of the distinction among the different property rights regimes is that, because in each case there are different levels of exclusivity regarding the use, appropriation of income and alienation decisions, there are corresponding differences in the decisions regarding efficient utilisation of land resources (Musole 2009). When property rights are not well defined or are absent, market failure is likely to occur since it would not be possible to assign costs and benefits appropriately and transaction costs may increase (Maughan 2004; Musole 2009). Consequently, for the land market to operate effectively, property or land rights must be well defined and appropriately allocated.

Defining, allocating and exchanging property rights incur costs. Transaction costs are costs associated with the transfer, capture, defining, allocating and enforcing property rights (Barzel 1989:2). According to North (1992), transaction costs are generally the costs incurred in operating an economic system. Two aspects of transaction costs are relevant for understanding land and real estate market operations. The first aspect relates to costs associated with using the market and the second relates to the delineation, monitoring and enforcement of rights (Allen 1999).

With respect to the first aspect, contrary to the neoclassical assumption of zero transaction costs in determining market efficiency, it is now accepted that there are positive transaction costs in operating an economic system (Coase 1960). For instance, in order to trade safely in property rights associated with real estate, parties may have to incur costs related to the gathering of information in order to ascertain the legal ‘ownership’, the characteristics of the real estate, and certain particulars of the parties to
a transaction (Quigley 2002; Musole 2009). Other costs, which may be official or unofficial, include fees paid for the process of preparing, monitoring and enforcement of contracts, and fees paid to overcome cumbersome procedures in the land acquisition and registration process (North 1990, 1992; Ensminger 1992).

In the above context, market efficiency usually inversely correlates with transaction costs. That is to say, high transaction costs may lead to market inefficiencies, and, conversely, when transaction costs are low the market may be more efficient in allocating resources. Cruz (2008) suggested that high transaction costs in the real estate sector may lead to corrupt practices. He argued specifically that high transaction costs “are correlated with lower transaction volumes and less transparent deals. If transaction costs are excessively high, the market may cease to exist altogether” (2008:138–139).

The second aspect of transaction costs with respect to property rights relates to costs associated with establishing, maintaining and enforcing property rights (Allen 1999). Invariably, there are large economic costs associated with the effective delineation and enforcement of property rights related to the land and real estate sector. Costs include the initial setup of structures for the surveying and demarcation of land boundaries as well as the recording of the associated land rights (Hanstad 1998; Trebilcock and Veel 2008; Dale et al. 2010). In addition to the initial setup costs, there may be significant costs related to the operation and maintenance of the system. The running costs are important because when there is no effective mechanism to ensure that all transactions are appropriately captured and the system updated, uncertainty may be created leading to insecurity of tenure and possible market inefficiencies (Ezigbalike and Selebalo 1999; Trebilcock and Veel 2008).

The above discussion underscores the notion that for real estate markets to operate effectively, the nature of specific property rights must be clarified, usually through the formalisation of land rights (Trebilcock and Veel 2008).
3.3 Formalisation of Property Rights

Formalisation of property rights is defined as the “…process by which informal tenure is integrated into a system recognized by public authorities” (Durand-Lasserve and Selod 2009:105). In this regard, formalisation can be said to be the process of defining, certifying and registering land rights in a public registry (Mitchell 2009:333). It involves the setting up by the state, legal regulations and institutions such as land registration and cadastral systems to delineate, record, enforce, and recognise claims to land rights by groups or individuals. The general premise for formalisation according to Platteau (2000:58) is that “…formal private property rights … emerge in response to a pressing demand expressed by insecure landholders whether directly or indirectly” when land becomes scarce and values increase. In such circumstances, a third party such as the state is called upon to set up mechanisms for the legal regulation and registration of land rights (Ikdahl et al. 2005).

The conceptualisation of exclusive property rights, discussed in the preceding subsection, partly accounts for the misconception that all African land tenure systems are communal and inefficient and, hence, need formalisation. However, as was explained in Subsection 3.1, because of the social embeddedness of tenure relations, African land tenure systems are inclusive and hence the allocation of access rights to land are appropriate in that context. Calls for formalisation of the indigenous processes through the spatial delineation and allocation of land rights are therefore fundamentally a transformation of property rights institutions that entail both economic and social costs (Banner 2002; Trebilcock and Veel 2008). Hence, the process of institutional change, as was discussed in Chapter 2, involves complexities due to context-specific factors that may inhibit or facilitate the process of change.

The next section builds on the discussion by examining the justification and challenges of formalisation of land rights through land registration. Subsection 3.3.2 focuses the examination on conditions necessitating the formal recognition of land rights in the SSA urban context.
3.3.1 Formalisation and Land Registration

A land registration system records and maintains legally recognised land rights. According to Henssen (1995:5), land registration “…is a process of official recording of rights in land through deeds or as title on properties”. This definition highlights the two main types of land registration, namely the deeds and title systems. In Chapter 2, it was indicated that certain principles underlie formal systems such as land registration. Table 3.3 provides an overview of the basic principles of any land registration system, namely the booking, publicity, speciality and consent principles.

<table>
<thead>
<tr>
<th>Principle</th>
<th>Description</th>
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<tbody>
<tr>
<td>1. Booking Principle</td>
<td>A change in real rights on an immovable property, especially by transfer, is not legally effective until the change or the expected right is booked or registered in the land register.</td>
</tr>
<tr>
<td>2. Publicity Principle</td>
<td>The legal registers are open for public inspection and published facts can be upheld as being more or less correct by third parties in good faith, so that law can protect them.</td>
</tr>
<tr>
<td>3. Speciality Principle</td>
<td>In the land registration system the subject and object must be unambiguously identified</td>
</tr>
<tr>
<td>4. Consent Principle</td>
<td>The legal entity booked as holder of the rights described in the register must give consent for any change of the recording in the land register</td>
</tr>
</tbody>
</table>

Source: Adapted from (Zevenbergen 2002:42)

Under the deeds registration system, a public registry keeps an abstract of the contents of documents evidencing transactions (deeds) in order to facilitate the investigation of title. Often, the names of the parties involved in the transaction are used for indexing the abstracts, even though there are increasing numbers of deed systems that use unique parcels identifiers to avoid ambiguities in uniqueness of ownership (often known as ‘improved deeds registration’). Registration may be either compulsory or voluntary and it merely gives priority to a registered document/transaction over one that is unregistered (Simpson 1984; Dale and McLaughlin 1999). Unlike the improved deeds system, which focuses on the owner, title registration focuses on the land (Simpson 1984). Even though there are variations in the nature of title registration systems, the basic features are that a parcel of land is placed in a register as a unit of
property and transactions are made with reference to it. Registration confers validity and mitigates any adverse claims.

The fundamental difference between the title and deed systems is that in the deeds system the mere fact of registration does not solve any defect in the instrument nor does it confer any validity of the transaction (Simpson 1984; Zevenbergen 2002). Thus, there is a need to trace the roots of title to ascertain the legality of ownership. However, in the title system an inspection of the register should provide conclusive evidence of the title to the land (Hanstad 1998; Zevenbergen 2002; Dale and McLaughlin 1999). To be able to achieve this, the title system is based on certain principles as shown in Table 3.4.

Table 3.4 Principles Underlying the Torrens Title Registration System

<table>
<thead>
<tr>
<th>Principle</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Mirror Principle</td>
<td>The register reflects accurately and completely the current state of title, hence there is no need to look elsewhere for proof of title.</td>
</tr>
<tr>
<td>The Curtain Principle</td>
<td>The register is the sole source of title information. In effect a curtain is drawn blocking out all former transactions; there is no need to beyond the current record to review historical documentation.</td>
</tr>
<tr>
<td>The Insurance principle</td>
<td>The state is responsible for the veracity of the register and for providing compensation in the case of errors or omissions, thus providing financial security for the owners.</td>
</tr>
</tbody>
</table>

Source: Adapted form (Dale and McLaughlin 1999:38)

Land registration can have private and public good objectives. In its private function, a land registration system provides a safe means of conveyancing or transferring land rights (Simpson 1984). For instance, Dale (1997:1622) noted that the “function of a land registration system is to provide a safe and certain foundation for the acquisition, enjoyment and disposal of rights in land”. In other words, a private good function of a land registration system is to facilitate the operation of the land market. A broader public function of land registration, on the other hand, is concerned with the provision of an inventory of records of land resources in a country or jurisdiction for fiscal and other development purposes (Simpson 1984). Typically, this is effected through a cadastre or cadastral system, which provides a “…methodically arranged public inventory of data concerning properties within a certain country or district, based on a survey of their boundaries” (Henssen 1995:5). From this perspective, the
information recorded in land registration systems serves both the land market and broader national and land administration purposes.

A well-functioning and accessible land registration system provides opportunity for the protection of land rights as well as being a source of information that contributes to the reduction of transaction costs in the land market (Deininger and Feder 2009a:261–264). A formal land registration system provides information about the property rights and basic characteristics of real estate, which contributes to lowering the transaction costs associated with searches required to ascertain facts about the particulars of properties and parties to a transaction. Because of the public nature of available information in the registry, the registration system contributes to a reduction in information asymmetry since all parties to a transaction can have access to the same information. However, because registration ensures public notice of assignments of rights, it contributes to the reduction in the cost of enforcement of property rights that are otherwise to be borne by an individual.

The conceptual link between secure private property rights and efficient allocation and utilisation of land resources noted earlier in this section provides the primary basis for the calls for formalisation of land rights as a means of enhancing economic advancement in developing economies. Formalising land rights through the granting of title certificates is seen to result in an increase in the degree of land tenure security leading to an increase in investment in land, capital accumulation and ultimately poverty alleviation (Platteau 2000; Mitchell 2009; Deininger and Feder 2009b). A commonly held view is that secure property or land rights promote economic development in terms of the extent of (a) investment made, (b) access to credit and (c) establishing the basis for land market development (Demsetz 1967; North 1990; Weimer 1997b; World Bank 2003; Joireman 2008; Mitchell 2009; Galiani and Schargrodsky 2011). The posited benefits of formalisation are discussed below.

Formalisation of land rights is often associated with opportunities for gaining access to financial credit. Traditionally, an important consideration in the use of an asset as collateral is the possibility of foreclosure and liquidation in the event of default in payment. Due to the secure property rights granted by registration, the titleholder can in theory use the registered land as collateral for credit since financial institutions will be
more likely to grant loans on the secured property rights. The argument advanced is that due to the security of title granted by the issuing of formal titles, formalisation will lead to an increase in investment through three main means (Trebilcock and Veel 2008; Platteau 2000).

The first argument advanced to link formalisation to increase investment is that, security of title will enable individuals to spend more resources to improve property for increased production, partly due to the limited risk of expropriation of assets (Besley and Ghatak 2010). Second, because of the possibility of alienation of an asset, as was noted in Subsection 3.2.2, there may be greater incentives to invest since the gains of the investment can be realised. Third, the possibility of gaining access to credit provides a means to obtain additional capital through the financial system to invest and increase production. Secure land rights are expected to manifest in increases in investments in real estate, industry and commercial activities, leading to economic returns in the form of higher incomes and increased land values (Durand-Lasserve and Selod 2009:154; Cruz 2008).

In the context of the above discussions, De Soto (2000) highlighted the grant of formal title to enable those in whom informal title is vested to use property once registered to secure loans for investment and further wealth creation. In other words, De Soto argues that formalisation will enable the full realisation of the latent wealth in property. However, the appropriateness of formalisation of land rights has been questioned on a number of grounds (Cousins 2005; Bromley 2009, 1989). First, the direct link associated between formalisation and increase in tenure security has been questioned as formalisation on its own does not enhance or diminish tenure security (Benjaminsen et al. 2009; Fitzpatrick 2005; Ezigbaliko and Selebalo 1999). Ultimately, tenure security is no more than a perception that a person has regarding the nature of his/her rights to land in a given situation. Place, Roth, and Hazell (1994:19) argued that land tenure security exists when:

…an individual perceives that he or she has rights to a piece of land on a continuous basis, free from imposition or interference from outside sources, as well as ability to reap the benefits of labor and capital invested in that land, either in use or upon transfer to another holder.
Since tenure insecurity may be due to rival claims by other persons or threats of expropriation by the state, an important consideration should be the source of insecurity (Benjaminsen et al. 2009; Fitzpatrick 2005). Where the perception of insecurity emanates from rival claims by the other individuals or groups, a possible solution may be the formalisation of title to enhance security of right. However, in circumstances where the state is the source of tenure insecurity, for example due to threats of expropriation of land, formalisation is unlikely to be a panacea. What should be of concern is the creation of a sense of security regarding land rights that applies equally to all members of a community. The creation of such an environment is particularly important since other researchers have shown that customary land tenure rights provide necessary security to encourage investments without the need for formalisation of title in a western sense (Durand-Lasserve and Selod 2009; Joireman 2008; Sjaastad and Bromley 1997). Hence, where people have a sense of insecurity of land holdings, any guarantee of tenure security may not be successful if an effective mechanism is not in place to enforce the formalised rights (Bromley 2009).

Second, even though it has been claimed that formalisation does not create or change land rights, but only documents and records existing land rights (Simpson 1984), in reality the process often results in the transformation of customary rights to rights akin to western property rights (Dale and McLaughlin 1999; Ngugi 2003; UN-Habitat 2012). This transformation, as noted earlier, entails certain social costs in addition to the economic costs identified in Subsection 3.2.2. The apparent focus on strengthening private property rights to the exclusion of the multiple land rights exercised by different persons within indigenous land tenure systems may have distributional consequences (Kennedy 2011). For example, even though customary tenure in theory guarantees secure tenure to indigenes, when formalisation strengthens the land rights for a ‘stranger’ the rights of the indigenes become less secure because of new restrictions imposed regarding access to land resources. Hence, formalisation often gives privilege to certain groups in society over others, since rights are given to certain groups or persons against others (Ngugi 2003).

Third, formalisation may also cement existing social differentials in land relations, such as gender differentials regarding access to land resources (Hanstad 1998). The poor, who often hold secondary rights, face additional challenges in the formalisation
process. Due to lack of resources and the significant cost outlay in titling, the poor may not be able to take advantage of registration, making their rights vulnerable to the wealthy in society (Trebilcock and Veel 2008). In cases when they are able to obtain title, they may subsequently lose their land through foreclosures resulting from excessive or unsustainable borrowing or distress sales.

Fourth, evidence has questioned the link between formalisation and access to credit (Abdulai and Hammond 2010; Domeher and Abdulai 2012; Payne et al. 2009). The assumption that banks and other financial institutions will be willing to grant credit because of the certainty granted by formal title is questionable (Durand-Lasserve and Selod 2009). In this case, the granting of loans is dependent on several additional factors, such as income levels, the viability of the intended use of the loan, and the possibilities for liquidating the asset in case of foreclosure. If any of these factors are not favourable, the holding of a title certificate may not necessarily assist in obtaining credit.

Certain social factors, such as spiritual attachment to land and the sense of belonging to a community or social unit, may prevent titleholders taking loans for fear of losing their land in case of default (Platteau 2000). The same factors may also deter formal banks from granting loans since it may be difficult to foreclose in case of default. In this context, Knox (1998:176) pointed out that in Kenya, financial institutions have “… experienced difficulties in foreclosing on unpaid loans overwhelmed by community pressure to protect the holdings of its members”. Given these limitations to credit access, improvements in housing conditions and general poverty alleviation may also be limited (Payne et al. 2009; Durand-Lasserve and Selod 2009).

Fifth, some scholars have argued that the association of strong private property rights with economic development is only ideological (Bromley 1989; Ngugi 2003; Kennedy 2011; Hunter and Mabbs-Zeno 1986; Chang 2010). For instance, Bromley (1989:869) asserted that:

The often passionate interest in privatization of public domain lands requires careful consideration within the development community for the obvious reason that the idea of atomistic control of economic resources is so
Kennedy (2011:7) made a similar point, namely that the “roots for the conviction that “clear and strong” property rights lead inexorably to market efficiency or economic growth lie[s] less in history than in widely shared myths about the nature of markets and the meaning of economic and political liberalism”.

Despite the above shortcomings regarding the formalisation of land tenure in Africa, under certain conditions the formalisation of land rights may be desirable. For instance, Benjaminsen et al.(2006:20) argued that the “alternative: ‘not to formalise’ is not realistic”, and that during a certain stage in the economic development of a country, the need for a formal property right system becomes inevitable (Trebilcock and Veel 2008). When there is a change in the prospects for economic growth and social institutions are ineffective in meeting emerging challenges, the introduction of a formal property rights regime may be justifiable (Blocher 2006; Boudreaux and Aligica 2007).

Other conditions under which formalisation of land rights may be necessary include (i) when a jurisdiction becomes less socially cohesive, and there is a potential for increases in land disputes; (ii) when there are increasing land values and the relative cost of establishing a formal system is low; (iii) where there is early development of a land market (Hanstad 1998:653–655; Trebilcock and Veel 2008:453–454). These conditions, which manifest themselves in varying degrees in all SSA cities, are discussed in detail in the next subsection.

3.3.2 Formalisation and the Urban Context

Even though Africa is the least urbanised continent globally, with 39.6% of its population living in urban areas, this percentage is expected to increase to 47.7% by 2030 and 57.7% by 2050 (United Nations 2012). The urbanisation trend, which is largely the result of natural growth and migration of rural populations towards cities, is increasing at an alarming rate. Table 3.5 shows the total urban population of selected periods between 1950 and 2050 for selected areas of the world. The urban population in Africa grew at a rate of 3% between 2011 and 2030 compared with less than 2% for the
rest of the world. The table estimates that the African urban population of 414 million in 2011 will increase to 744 million and 1.265 billion in 2030 and 2050 respectively, surpassing that of Europe, Latin and North America individually.

A consequence of rapid urbanisation in Africa is the convergence of people from different backgrounds to create a cosmopolitan setting rich with opportunity for commercial dealings in land for various purposes (Dale et al. 2010). The cosmopolitan urban setting may influence in varying degrees, the nature of the structural and cognitive aspects of ‘social capital’ identified and discussed in Chapter 2. One implication is that personal social ties, which formerly facilitated exchanges in close-knit societies, may no longer be effective. Hence, to facilitate increasingly impersonal exchanges there may be a need to formalise market transactions.

<table>
<thead>
<tr>
<th>Urban population</th>
<th>Population (millions)</th>
<th>Average annual Rate of change (percentage)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Africa</td>
<td>33</td>
<td>87</td>
</tr>
<tr>
<td>Asia</td>
<td>245</td>
<td>506</td>
</tr>
<tr>
<td>Europe</td>
<td>281</td>
<td>412</td>
</tr>
<tr>
<td>Latin America and the Caribbean</td>
<td>69</td>
<td>163</td>
</tr>
<tr>
<td>Northern America</td>
<td>110</td>
<td>171</td>
</tr>
<tr>
<td>Oceania</td>
<td>8</td>
<td>14</td>
</tr>
</tbody>
</table>


When social and informal norms are no longer effective in governing relationships, it may be appropriate to formalise land transactions in order to avoid possible conflicts. The increasing demand for land, coupled with a breakdown in social cohesion, may result in attempts to circumvent social norms and values governing land relations (Ubink 2008c; Dickerman 1988; Chimhowu and Woodhouse 2006). For instance, Ikejiofor (2006:147) showed that as a result of urbanisation in Nigeria, instead of village chiefs and clan heads allocating lands, family heads have become the main source of allocation of urban land. This may result in tension leading to social conflicts, such as intra- and inter-lineage land disputes regarding control over land resources. An
implication of the conflict is that parties to real estate market transactions may not be certain about the legal status of land rights, and this may lead, in turn, to efficiencies in the market.

As land and real estate values increase, as they do in most urban areas, it may be economically justifiable to establish formal systems since the increasing real estate values and the associated processing fees and taxes will likely outweigh the cost of establishing the formal structures and processes. In other words, the formal system may generate enough revenue from fees and taxes, such as stamp duties and land transfer taxes, to pay for its establishment and operations (Trebilcock and Veel 2008). Further, as indicated earlier, the increasing value of urban real estate may also imply that to undertake investment will require huge capital, which available micro-finance groups or informal sources cannot meet. Hence, in order to be able to have access to capital from the formal banking sector, the need for a registered title becomes necessary.

Urbanisation is generally associated with the economic development of countries (Boudreaux 2008; Turok 2010; UN-Habitat 2010; CAHF 2011). The UN-Habitat in the ‘State of the World’s Cities’ report for 2010/2011 asserted that the “prosperity of cities usually mirrors the prosperity of countries, as an increase in urbanization generally goes hand in hand with higher GDP per capita…” (2010:26). This assertion may be justified given that the activities that contribute significantly to the economic growth of countries are often related to secondary and tertiary activities, such as manufacturing and service provisions, which are mainly urban-based. Between 1990 and 2003, manufacturing (which includes construction) and service sectors contributed between 60 and 80% of Africa’s GDP growth (Kessides 2006). Between 2000 and 2008, wholesale and retail, transportation, telecommunication and manufacturing contributed approximately 65% to GDP (Leke et al. 2010). The significant contribution of these urban-based economic sectors highlights their important role in stimulating the growth necessary to reduce poverty in SSA countries (Giddings 2007:4).

However, urbanisation in developing economies, especially those in SSA, is generally characterised by informality (Roy 2005; Boudreaux 2008). The rapid urbanisation in Africa is leading to the growth of urban areas beyond the formal administrative boundaries of cities and contributing to unplanned development around
the fringes of cities as well as much higher densities in certain areas of informal settlement within the formal boundaries. In addition to urban sprawl, the inability to provide adequate infrastructure contributes to the spread of slums in most cities in the developing world, including those in Africa (Potsiou 2010:18). It is estimated that over 70% of urban dwellers in SSA live in areas consistent with the characteristics of a slum (WaterAid 2009; Kessides 2006), suggesting that majority of the urban population may not be formally accounted for. Given that the informal sector in Africa contributes 78% of non-agricultural employment, 93% of all new jobs created, and 61% of urban employment (Kessides 2006; Gundogan and Bicerli 2009), there is a need to consider the sector formally in order to consolidate the contribution of cities to economic growth.

Rapid urbanisation in SSA countries presents important conditions that make a strong case for the formal recognition of land rights in order to enhance the development and operations of urban real estate markets. When there are gaps between the officially gathered information generated in the market, there is an increasing possibility of uncertainty leading to increased transaction costs and to market inefficiencies, which in turn may lead to loss of revenue, such as stamp duties, transfer taxes and other fees for public improvements. Hence, to realise the benefits of formal property rights systems, there is a need, even in urban areas, for the establishment of an effective mechanism that will ensure the capturing of all transactions taking place in a jurisdiction.

Clearly, new approaches for the gathering of information are required in the face of the extent of informality in cities in SSA. The UN-Habitat (2008:12) suggested that “…land information and registration systems must be capable of capturing the range of forms of tenure and local land management arrangements”. Similarly, Payne (1997:1) pointed out that “[t]enure and property rights systems are needed which address traditional or customary tenure arrangements, squatter settlements and other non-formal tenure categories”. Other suggestions to address the land information gap in the urban land market typically focus on the technical and administrative aspects of land registration. For instance, Malpezzi and Sa-Aadu (1996:155) suggested that the formalisation of the land delivery process should entail the following five processes:
(1) a detailed cadastral survey of urban property rights; (2) installation of an efficient mechanism for registration of all land transactions indicating the nature of property rights involved and the names of the parties to the transaction; (3) affirming the legality and formalizing the system of user rights or ground leasehold; (4) establishment of better urban land information systems; and (5) establishment of an effective procedure for adjudicating land disputes.

While the above factors are important to consider in ideal circumstances, in reality there are a number of constraints that must be overcome. For example, undertaking detailed cadastral surveys in developing economies is often challenged (Fourie 2001). There is widespread debate about the level of accuracy for undertaking these surveys because the effect it can have on the cost and extent of coverage of mapping (Fourie and Nino-Fluck 2000; Dale et al. 2010). Dale et al. (2010:14) suggested that mapping must to ensure that meets “…its intended purpose and is kept up to date so that the registers mirror the conditions on the ground”. To be able to achieve the currency of land information, the authors further suggested that “each piece of land registered must be identifiable and the location of its boundaries known at least approximately to a level that is economically viable” (2010:14). This approach is supported by other writers who go further to advocate different levels of accuracy for mapping and innovative approaches to capture relevant information (Fourie 2001; Fourie and Nino-Fluck 2000).

Hammond (2006:406) called for the legitimisation of all transactions taking place in the ‘informal’ market by adopting new strategies for information gathering involving a systematic house-to-house recording of property information and relying on transparent processes. Stanley and Törhönen (2013), suggested that where the market is vibrant there may be no need for systematic land registration since the market itself generates the information that it will need. This suggestion presupposes that necessary mechanisms to capture the information are functioning effectively. Zevenbergen (1999) focused on the formal systems and suggested that to make formal land registration systems useful to a society requires streamlining the procedures for land registration in order to eliminate unnecessary requirements and thereby reduce the transaction costs of registration.

To encourage the poor and vulnerable to utilise any formal system and reduce informality it is imperative that measures are put in place that address their particular
needs. As noted earlier, high transaction costs associated with the formal land registration system and rising values of land real estate means that the poor may not be able to take advantage of registration (Fourie 2001). In this context, Durand-Lasserve and Selod (2009:122) rightly point out that “while titling programs have so far focused on improving the efficiency of the land market, there is also a need for appropriate public regulation to provide the poor some protection against market forces”. To generate confidence in the use the formal system, Zevenbergen (1999) suggested the publication of the procedures for registration so that the public understand and accept them.

3.4 Summary

This chapter examined the factors that condition the development of a functional real estate market. It discussed the relationship between land tenure and the urban real estate market in SSA by first examining the nature of its land tenure systems with particular focus on the roles of authority structures and rules regarding control and access to land resources. An important observation was that due to the varying influences of colonial and post-colonial policies and laws, a dualistic land tenure regime consisting of formal and customary structures and rules has emerged that mediates the land delivery processes to varying degree across countries in SSA. Despite attempts to replace it, the indigenous land tenure systems have been resilient and survived, although in modified forms. Hence, any strategy for the provision of land information in the development of the urban land market must take customary structures and rules into consideration.

The examination of the urban real estate market showed that in contrast to the western notion of the market, the operation of the urban land market in most SSA is characterised by informality. Even though the clarity of property rights was shown to be important for the effective operation of land markets, because of the inclusive and socially embedded nature of indigenous land tenure systems in SSA, the clarification of property rights through formalisation entails economic and social costs. Despite these costs, under certain conditions, such as those found in urban areas of SSA countries, it may be necessary for the formal recognition of land rights, if the urban land market is to
be improved. However, because of context-specific social factors that may impede or enhance institutional change in property right regimes, a top-down approach is not sufficient. Rather, conditions at both the state and society levels must be considered for the successful provision of the land information that is needed for the development of a viable land market.

The next chapter presents the empirical setting of the research.
Chapter 4

Empirical Setting of the Research

This chapter places the empirical setting of the research in context by focusing on the customary and formal sectors of the institutional arrangement in Ghana. It outlines important characteristics to contextualise the analysis and discussion reported in Chapters 6 to 8. Section 4.1 outlines the criteria used to select the case study location, and provides background information about Ghana. Section 4.2 then reviews the nature of the formal and customary sectors of the institutional arrangement for land administration in Ghana. Section 4.3 provides an overview of the nature of the urban real estate market and Section 4.4 examines the on-going land administration reforms in the country.

4.1 Criteria for Selecting the Case Studies and Empirical Setting

Chapter 2 conceptually established that to understand the land information challenge in SSA requires the examination of the social context of the institutional arrangement for land administration. Chapter 3 established the important role of different social structures that underpin the land tenure arrangements in the land delivery process. Hence, in selecting the case study to undertake the empirical investigation for this thesis, the strategy followed was purposive, based on prior knowledge of the potential cases and theoretical issues (Ebbinghaus 2003; Runeson and Höst 2009).

The following criteria guided the selection of the country: (a) the prevalence of customary land tenure, (b) the presence of contrasting social structures underpinning the tenure system, (c) the existence of a nation-wide land registration system (deeds and/or title), (d) the potential of the development of a land and real estate market, and (e) familiarity with the terrain. A two-level approach was followed. The first level focuses
on the selection of a country and the second level on specific cases with contrasting social characteristics within the country.

Ghana, a country on the west coast of Africa, presents important characteristics conforming to the requirements for selection for empirical study of the conceptual issues. The country has a prevalence of customary land tenure in its urban land delivery system. In fact, the extent of control and influence of the customary land sector in Ghana stands in contrast to some other SSA countries, which nationalised land ownership after independence (e.g. Nigeria, Cote d’voire, and Tanzania), or where large tracts of land were taken over by colonial settlers (e.g. Kenya, and Zimbabwe) (Gough and Yankson 2000). Customary land tenure constitutes approximately 80% of the land area of Ghana (Larbi 2008) and the position of traditional authorities in Ghana is, if not unique, at least exceptionally strong in comparison to other African countries. (Ubink 2008a:20).

The country is acclaimed to be an emerging economy and recently broke into the ranks of the lower middle-income countries. The World Bank Doing Business, 2007, has touted Ghana as one of the best reforming countries in Africa (World Bank and International Finance Corporation 2006). More importantly, since returning to democratic governance in 1992, it has seen gradual stability in its economy. Following the discovery of oil further prospects have emerged. These factors have started to attract investments into the real estate sector and therefore provide the needed setting to identify and examine the key elements, which are the focus of this study.

In addition, Ghana has operated a national deeds registration system since 1883 and introduced a title-based land registration system in 1986 (discussed further under Subsection 4.2.2). The country is currently implementing comprehensive land administration reforms, which are aimed at injecting effectiveness and efficiency into the land-based economy, provide a context to examine the extent to which it may impact on the development of an appropriate real estate information mechanism. Moreover, the opportunity created by these reforms suggests that the results of the thesis may potentially find their way into actual policy development and thereby make a practical as well as an academic contribution.
At the second level, the selection of the case study cities considered characteristics that allowed for comparative analysis of the issues addressed in the thesis. Two cities within Ghana namely, Accra and Kumasi were chosen for in-depth investigations because they exhibit contrasting social organisational structures regarding their indigenous land tenure arrangements (explained further under Subsection 4.2.1 and Chapters 6 and 7). Further, Kumasi and Accra are the only cities in the country that have operated the deeds registration system and are in the process of converting from the deeds system to a title-based registration system. In addition, as discussed in the next subsection, the two cities are the most prominent urban centres in the country and therefore it was possible to examine empirically the operations and impacts of their respective land registration systems.

4.1.1 Background Information

Ghana covers an area of 238,837 square kilometres and is divided into ten (10) administrative regions as shown in Figure 4.1. These regions include, Greater Accra, Western, Eastern, Volta, Ashanti, Brong Ahafo, Northern, Central, Upper East and Upper West. They are further divided into 216 Metropolitan, Municipal and District Assemblies (MMDAs), which constitute the highest political and planning authority at the local level. Figure 4.1 also shows the location of the two case study cities marked in red, which are the regional capitals of the Greater Accra and Ashanti Regions respectively.

Since gaining independence in 1957, Ghana has rapidly moved from being predominantly rural to urban in terms of population distribution. A combination of natural population growth, rural-urban drift, and the reclassification of rural settlements to urban has contributed to the urbanisation trend (NDPC 2010; GSS 2005). Summary results of the Housing and Population Census conducted in 2010 estimate that the country’s population at the time of the census was 24,657,823, which had increased at an annual rate of 2.4% since the last census in 2000 (GSS 2012a).
The rapid urbanisation in Ghana is evidenced by the rise in the number of urban localities as well as the increase in the proportion of the population living in urban areas. Table 4.1 shows selected characteristics of the trend in urbanisation from 1960 to 2010. The table shows that rate of growth of the urban population is almost twice the growth rate of the national population. For example, whilst the national population grew at 2.4% per annum between 2000 and 2010, the urban population grew by 4.4%. The table also shows that due to the rapid growth in the urban population, the urban share of the total population of the country almost doubled from 23% in 1960 to 44% in 2000.
The current proportion of the urban population which stands at approximately 51%, is expected to increase to 65% by the year 2030 if the current annual rate of urbanisation of 4.4% is maintained (NDPC 2010). Table 4.1 further indicates that the number of urban localities more than doubled from 98 to 203 between 1960 and 1984, and as of the year 2000 stood at 366 localities. The number of urban localities for 2010 has not yet been reported, but preliminary indications are that they have increased.

Table 4.1 Urbanisation Trend in Ghana 1960 to 2010

<table>
<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>National Population</td>
<td>6,726,815</td>
<td>8,559,313</td>
<td>12,296,081</td>
<td>18,912,079</td>
<td>24,658,823</td>
</tr>
<tr>
<td>National Population</td>
<td>-</td>
<td>2.4%</td>
<td>2.6%</td>
<td>2.7%</td>
<td>2.4%</td>
</tr>
<tr>
<td>Urban Population</td>
<td>1,551,174</td>
<td>2,473,641</td>
<td>3,934,746</td>
<td>8,283,491</td>
<td>12,545,643</td>
</tr>
<tr>
<td>Urban Population Growth Rate</td>
<td>-</td>
<td>4.7%</td>
<td>3.3%</td>
<td>4.6%</td>
<td>4.4%</td>
</tr>
<tr>
<td>Proportion Urban</td>
<td>23%</td>
<td>29%</td>
<td>32%</td>
<td>44%</td>
<td>51%</td>
</tr>
<tr>
<td>Number of Urban Localities</td>
<td>98</td>
<td>135</td>
<td>203</td>
<td>366</td>
<td>-</td>
</tr>
</tbody>
</table>

Source: Compiled from Population and Data Analysis Vol. 2 (GSS 2005); 2010 Population and Housing Census – Summary Report of Final Results (GSS 2012) and National Urban Policy Framework (MLGRD 2012)

An important dimension of urbanisation in Ghana is that it is skewed towards a limited number of urban areas, particularly Accra, Kumasi, Tamale and Sekondi-Takoradi (MLGRD 2012). Table 4.2 shows the trend in the contribution of the six (6) major urban areas in the country, whose population exceeded 100,000 based on the census results in 2000. The table shows that the total population of the six cities in 1970, 1984 and 2000 constituted 52%, 49% and 42% respectively of the urban population. The drop in the proportion of the urban population of the six cities over the period may suggest a shift in the prominence of some of these regarding their contribution to the urban population, and the emergence of other cities.
<table>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Population</td>
<td>8,559,313</td>
<td>12,296,081</td>
<td>18,912,079</td>
<td>24,658,823</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Total Urban Population</td>
<td>2,473,641</td>
<td>3,934,746</td>
<td>8,283,491</td>
<td>12,545,643</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Obuasi</td>
<td>31,005</td>
<td>60,617</td>
<td>115,564</td>
<td>-</td>
<td>2.03%</td>
<td>1.26%</td>
<td>-</td>
</tr>
<tr>
<td>Tema</td>
<td>60,767</td>
<td>100,052</td>
<td>141,479</td>
<td>-</td>
<td>2.69%</td>
<td>0.95%</td>
<td>-</td>
</tr>
<tr>
<td>Sekondi-Takoradi</td>
<td>143,982</td>
<td>150,523</td>
<td>194,466</td>
<td>-</td>
<td>0.45%</td>
<td>1.01%</td>
<td>-</td>
</tr>
<tr>
<td>Tamale</td>
<td>83,623</td>
<td>135,952</td>
<td>202,317</td>
<td>-</td>
<td>3.58%</td>
<td>1.53%</td>
<td>-</td>
</tr>
<tr>
<td>Kumasi</td>
<td>346,336</td>
<td>496,628</td>
<td>1,170,270</td>
<td>2,034,824</td>
<td>10.29%</td>
<td>15.49%</td>
<td>20.28%</td>
</tr>
<tr>
<td>Accra</td>
<td>624,091</td>
<td>969,195</td>
<td>1,658,937</td>
<td>1,848,614</td>
<td>23.62%</td>
<td>15.86%</td>
<td>4.45%</td>
</tr>
<tr>
<td>Total Population</td>
<td>1,289,804</td>
<td>1,912,967</td>
<td>3,483,033</td>
<td>3,883,438</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Prop. of Urban Pop</td>
<td>52%</td>
<td>49%</td>
<td>42%</td>
<td>31%</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Sources: Population and Data Analysis Vol. 2 (GSS 2005); 2010 Population and Housing Census – Summary Report of Final Results (GSS 2012)
Significantly, Table 4.2 shows that Accra and Kumasi are the largest cities by population and they dominate the urbanisation trend in the country. The table shows that in 1970 and 2000, the two cities had populations exceeding 100,000 and one million respectively. The table further shows that in the inter-census periods of 1970-1984 and 1984-2000, Accra contributed 23.62% and 15.86% respectively to the urban population, whilst Kumasi’s contribution was 10.29% and 15.46% respectively. The importance of the two cities is further emphasised by the 2010 census data showing that 31% of the urban population lives in the two cities. The apparent reduction in the contribution of Accra to the urban growth between 2000 and 2010, as shown in Table 4.2, is due to the subdivision of portions of its land area to create new local government areas in 2008.

4.2 The Institutional Arrangements for Land Tenure Administration in Ghana

This section examines the nature of the customary and formal land sectors in Ghana. Chapter 2 established that in terms of the relationship between the formal and customary sectors, the nature of the institutional arrangement for land administration has an important influence on the land delivery system and the nature of land information management. A conclusion reached was that if the introduction of formal institutions ignores the local sociocultural environment it can have adverse institutional outcomes (Bromley 2009). The institutional arrangement for land management in Ghana is pluralistic. The arrangement is shaped by various constitutional provisions, statutory laws and policies, judicial decisions, common law principles and customary laws and practices of various ethnic groupings (Larbi 2006; MLF 2003). An elaborate framework has evolved since the colonial period to influence the persisting land administration system.

The customary and formal land sectors of the institutional arrangement in Ghana administer two broad categories of land tenure regimes, namely customary lands and public lands. Generally, customary lands are lands in which the alodial or radical title is held under customary laws in particular groups such as stools, clans, extended families, or lineages (discussed in Subsection 4.2.1). The customary land sector, as noted earlier,
controls approximately 80% of the land area of Ghana. Public lands are defined by Article 257 (2) of the Fourth Republican Constitution of 1992 to include any land “… vested in the Government of Ghana on behalf of, and in trust for, the people of Ghana for the public service of Ghana, and any other land acquired in the public interest, for the purposes of the Government of Ghana…”. Public lands consist of state and vested lands, which together constitute approximately 20% of the land area of the country. State land refers to lands expropriated or compulsorily acquired from customary authorities by the state using appropriate legal instruments. Vested land includes land under a form of split ownership arrangement between customary and State authorities. The State controls the legal interests, which gives it the right to manage the land, whilst the customary authorities retain the beneficial interest. A third tenure regime, namely individual tenure resulting from allocation of common law freehold interest to individuals from customary or public lands, can possibly be included in the land tenure regimes.

Subsection 4.2.1 examines the characteristics of the customary land sector, relative to the underlying social structures. Subsection 4.2.2 discusses the formal land sector in terms of the legal and organisational framework for the management of public lands and regulation of customary lands. Subsection 4.4 concludes the chapter by examining the reforms initiated to address the challenges facing the land administration system in the country.

4.2.1 The Customary Land Sector

Like other countries in SSA, the customary land tenure systems in Ghana are diverse (see Chapter 3). An important characteristic of the customary land sector is that dealings in customary lands are largely unwritten and shaped by customs, traditions and norms of the particular different indigenous group. The customary sector consists of different indigenous groups, such as extended families or lineages, clans, and stools or skins, who, through wars, conquests, and assimilation of the conquered and early settlement, acquired ownership of land (Fiadziagbey, 2006).

Generally, the extended family or lineage constitutes the basic corporate unit of indigenous society, consisting of a group of persons with common blood ties who have
descended lineally either from a common female ancestor (i.e. maternally) or from a male ancestor (i.e. patrilineally) (Bentsi-Enchill 1964). The physical and spiritual symbols of traditional authority of a community or traditional state in Ghana are stools or skins. In the southern parts of the country, a stool, which is a native wooden chair on which the chief or head of the group notionally occupies, is the symbol of traditional authority. In the Northern part of the country, the skin of an animal represents the symbol of authority of the traditional state or community. The general belief is that the stool or skin holds the soul of the ancestors of a family, tribe or community. Usually, the term ‘stool’ refers generally to both stool and skin. In fact, Section 76 of the Chieftaincy Act 2008 (Act 759) provides that a “stool includes a skin”. In all cases, the ‘stool’ is the unifying force of any particular group of people, with distinct identity, upon which their socio-political systems depend.

Even though there are some areas of the country where extended families or lineages and clans also have ‘stools’ to represent authority of leadership, these areas do not necessarily have chiefs (Sarpong 2006; MLF 2003; Agbosu 2000; Larbi 1994). Two broad categories of customary land can be identified in Ghana, namely stool and family lands. An important distinction between the two categories of land is the location of the allodial or radical title within the traditional political system. The allodial title provides the holders with certain rights, such as exclusive possession, use and enjoyment, alienation, and reversionary proprietorship (Centre for Land Studies 2009). Stool lands are lands in traditional areas in Ghana where larger communities, represented by stools or skins, hold the allodial or radical title. The term “family lands”, on the other hand, refers to lands in which sub-groups, such as extended families or lineages, hold the alodial title.

Broadly speaking, stool and family lands respectively reflect centralised and non-centralised states (see Chapter 3 for a full discussion of the centralised and non-centralised states in SSA). The configuration, socio-cultural differences, and attributes of the various indigenous groupings in the country determine whether the traditional political systems that underpin the land tenure arrangement in a particular jurisdiction are centralised or non-centralised. On the one hand, stool land areas are usually associated with highly centralised states, where there is a close link between the land tenure arrangement and the allegiance to chiefs (Larbi 1994). The following statement
of the Ministry of Land and Forestry in Ghana captures the close link between stool lands and centralised states:

With highly centralized states, where unique traditional political structures were in place, land and for that matter its ownership provided a strong unifying force for the organization and the existence of the people as a distinct group...The chief with recognized elders who exercise jurisdictional authority also exercises proprietary authority on behalf of the entire community members or subjects. Land thus provided a strong force for political and social cohesion (MLF 2003:8).

On the other hand, in jurisdictions where extended families or lineages hold the allodial title, the social organisations that underpin the tenure arrangements are not centralised. Even though the lineages may hold allegiance to particular stools or skins, the relationship is only jurisdictional and does not affect the proprietary interest in the land (Bentsi-Enchill 1964). The management of the land is undertaken by the various heads of the extended families along with their respective council of elders, or by religious leaders known as Tindanas (original settlers) (Quan, Ubink, and Antwi 2008).

Figure 4.2 shows the major concentration of the centralised and non-centralised states in Ghana. The figure shows that the Ashanti, Brong Ahafo, Western, Northern and the Central Regions depict the centralised indigenous states, and the Greater Accra, Volta, Upper East and Upper West regions depict non-centralised states. However, some coastal jurisdictions in the Western and Central regions also have non-centralised states. The figure also shows that the case study cities, Accra and Kumasi, fall within the non-centralised and centralised structures respectively. Chapters 6 to 8 discuss the influences of the contrasting social structures on the land delivery systems in the case study cities.

Customary laws require the allodial holders to manage customary lands in a manner that takes into consideration the interest of their subjects or members (Asiama 1980). In this context, the 1992 Constitution of Ghana established the principle that ownership of land imposes an obligation that extends not only to the immediate landowning group but also to the entire population of the country. Article 36 (8) of the Constitution stipulates that the “…managers of public, stool, skin and family lands are fiduciaries charged with the obligation to discharge their functions for the benefit respectively of the people of
Ghana, of the stool, skin, or family concerned and are accountable as fiduciaries in this regard”. Consequently, to ensure the effective management of lands the formal sector has intervened in several aspects of customary land management in order to regulate its operations.

Figure 4.2 Socio-political structures underpinning the customary systems
Source: Based on Larbi (1994:60)
4.2.2 The Formal Land Sector

The formal land sector consists of the statutory legal and organisational arrangements established to manage public lands and regulate customary lands in terms of ownership, use and development. The interventions by colonial and post-colonial authorities, as discussed in Chapter 3, have resulted in significant inroads into the control and regulation of the activities of the customary sector in parts of SSA. This subsection extends the discussion to focus on how some of the main colonial and post-colonial laws have shaped the nature of the existing formal institutional arrangements for land administration in Ghana. The subsection first discusses the legal framework governing land administration, followed by an examination of the organisational arrangements for the implementation of the legal framework.

4.2.2.1 The Legal Framework for Land Administration

Table 4.3 outlines some of the major pieces of legislation that have influenced land administration. They are organised under three thematic intervention areas, namely (1) compulsory acquisition and management of state lands, (2) control and regulation of customary land tenure in terms of the validation of land transactions, collection and disbursement of revenue, and the curtailment of land rights, and (3) documentation, recording, and registration of land rights. The table distinguishes between colonial laws from 1874 to 1959, when the country was under the British Crown, and the post-colonial, republican laws from 1960 to the present.

The effect of the first intervention area in Table 4.3 was the conversion of customary land tenure to State land tenure. The introduction of the Public Lands Ordinance, 1876 (Cap. 134) established the framework to regulate the acquisition of land by the State for public service. The Ordinance enabled the colonial authorities to acquire lands through negotiation with the relevant landowners or outright purchase. When Ghana attained Republican status in 1960, the State Property and Contract Act, 1960 transferred all the lands vested in the Crown to the President, in trust for the people. The Act also made provisions for the compulsory acquisition of land for public purposes. In 1962, the State Lands Act (Act 125) was passed, which is currently the main legal instrument governing compulsory acquisition of land.
Table 4.3 Overview of Legal Instruments for Land Administration in Ghana 1874 to Present

<table>
<thead>
<tr>
<th>INTERVENTION AREAS</th>
<th>COLONIAL LAWS 1874-1959</th>
<th>POST-COLONIAL REPUBLICAN LAWS 1960-Present</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Public Lands (Leasehold) Ordinance, 1950 (Cap. 138)</td>
<td>State Lands Act, 1962 (Act 125)</td>
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<td></td>
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<td>State Land Regulation, 1962 (LI 230)</td>
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<td></td>
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<td>Lands (Statutory Way Leaves) Act, 1963 (Act 186)</td>
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<td></td>
<td></td>
<td>Local Government Act, 1993 (Act 462)</td>
</tr>
<tr>
<td>2. Control and regulation of customary lands -</td>
<td>Administration (Ashanti) Ordinance of 1902 (Cap. 110)</td>
<td>Administration of Lands Act, 1962 (Act 123)</td>
</tr>
<tr>
<td>(Validation or Concurrence of customary grants;</td>
<td>Administration of Northern Territories Ordinance, 1902</td>
<td>Second Republican Constitution, 1969</td>
</tr>
<tr>
<td>Collection and Disbursement of Revenue)</td>
<td>Land and Native Rights Ordinance 1931</td>
<td>Third, Republican Constitution 1979</td>
</tr>
<tr>
<td></td>
<td>Local Government Ordinance, 1952 (Cap. 64)</td>
<td>Fourth Republican Constitution, 1992</td>
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<tr>
<td></td>
<td>Akim Abuakwa (Stool Revenue) Act, 1958</td>
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<td></td>
<td>Ashanti Stool Lands Act, 1958</td>
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<td></td>
<td>Stool Lands Control Act, 1959</td>
<td></td>
</tr>
<tr>
<td>Curtailment of Land Rights</td>
<td>Kumasi Lands Ordinance, 1943</td>
<td>Second and Third Republican Constitutions</td>
</tr>
<tr>
<td>(a) Stool Lands</td>
<td></td>
<td>Fourth Republican Constitution, 1992</td>
</tr>
<tr>
<td>(b) Non-Ghanaians</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Documentation and registration of land</td>
<td>Land Registration Ordinance, 1883</td>
<td>Land Registration Act, 1962 (Act 122)</td>
</tr>
<tr>
<td></td>
<td>Land Registration Ordinance, 1895</td>
<td>Conveyancing Act, 1973 (NRCD 175)</td>
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<tr>
<td></td>
<td>Concession Ordinance, 1900 (Cap. 136)</td>
<td>Statutory Declaration Act, 1971 (Act 389)</td>
</tr>
<tr>
<td></td>
<td>Kumasi Lands Ordinance, 1943</td>
<td>Land Title Registration Act, 1986 (PNDCL 152)</td>
</tr>
</tbody>
</table>

Sources: Compiled from Statutes and historical records

In terms of the control and regulations of customary lands (Table 4.3), the interventions in the customary land sector to consider stool lands to include family lands. This was due to the erroneous perception that all indigenous African societies are hierarchical and have chiefs in control of land. However, as the discussion in Subsection 4.2.1 highlights, some traditional areas in Ghana do not recognise the jurisdiction of
chiefs over land. Justifications advanced for interventions in the customary sector relate to concerns for the protection of inter-generational interests in communal land, streamlining the system of land allocation, and addressing issues regarding transparency and accountability (Bentsi-Enchill 1964:62; Aryeetey et al. 2007). However, some of the actual interventions also sought to protect the economic interest of foreigners (Agbosu 2000), or had political motives (Amanor 2009). In line with the policy of indirect rule, the initial attitude of the British in the southern part of the country was to leave the administration of indigenous lands with ‘traditional’ authorities.

Colonial measures to address the above concerns served as the basis for post-colonial policies in the customary sector. The Local Government Ordinance of 1952 (Cap 64) introduced concurrence (i.e. validation) of stool land transactions and the management of stool land revenue by the State, which has featured in all legislation relating to stool land administration in the country. The Ordinance was an early attempt to introduce a decentralised land administration system at the local level. However, no framework was established at the same time to ensure the systematic recording and registration of land transactions at this level (Bentsi-Enchill 1964; Amanor 2009).

The decentralisation attempt was short-lived, since in 1958 the first post-colonial government introduced two laws that commenced the centralisation of control of the customary sector and defined the direction of post-colonial state interventions (Bentsi-Enchill 1964; Kasanga and Kotey 2001; Amanor 2009). The introduction in 1960, of the Stool Lands Act (Act 27) completed the country-wide centralisation of the State’s control and regulation of stool lands. In 1962, the Administration of Lands Act, 1962 (Act 123) was introduced to consolidate all the previous laws relating to the administration of stool and other lands. Sections 7 and 10 of Act 123 gave the President power to vest stool lands as well as authorise the occupation and use of any land to which the Act applied. The effect of the two sections of the Act was to take away the legal interest from the stools, and, by implication, the management of the land. The Act gave the President the authority to make allocations of such lands without reference to stools. In addition to interventions in the ownership of stool lands, the Administration of Lands Act maintained the requirement for concurrence.
The passage of the 1992 Constitution introduced new dimensions into the role of the State in stool land administration. Although vesting of stool lands is prohibited by the Constitution (Article 267 (1)), the State could compulsorily acquire stool lands. The Constitution, however, retained the validation of stool land allocations by the State, although in a different form. The scope of concurrence provided in the 1992 Constitution is limited compared to provisions in Act 123 and earlier constitutions. Under the current requirements, the grant of stool land must only conform to a development plan for it to receive certification.

One effect of the interventions in the customary land sector has been restriction to land rights. For example, the Kumasi Land Ordinance, 1943 restricted allocation of stool lands in Kumasi to leasehold interest only. Section 12 of the Administration of Lands Act and subsequent amendments introduced further restrictions for specific land uses such as agriculture, mining, and petrol service stations. Article 190 (4) of the 1979 Constitution extended the restrictions to all stool lands in the country. Article 267 (5) of the 1992 Constitution, which repeats the 1979 prohibition, stipulates “Subject to the provisions of this Constitution, no interest in, or right over, any stool land in Ghana shall be created which vests in any person or body of persons a freehold interest howsoever described”. A reason for the restriction according to Larbi (1994) is to guarantee the intergenerational interest of communal land by protecting the reversionary interest in land.

However, an interpretation of the above provision of the Constitution, which until recently appears to dominate, is that the grant of freehold in stool lands to members of a land owning group is prohibited (Rocha and Lodoh 1999). In line with this interpretation, the formal land sector agencies validate only leasehold grants even to subjects of a stool. This interpretation of the Constitutional provision is contrary to the customary principle regarding the inherent rights of a member of a land owning group, as discussed in Chapter 3. An outcome of the implementation of the above interpretation is that a landlord and tenant relationship is created between stools and their subjects even though such a relationship does not exist under customary law. Consequently, there is often tension between stools and their subjects, which is a source of the challenges in the land administration system in urban areas.
A recent re-interpretation of Article 267 (5) of the Constitution suggests that the prohibition of freehold interest does not affect the interest of a member of the landowning group, since the usufruct interest is not created but exists as of right (Gyan 2005). In spite of this re-interpretation, there is currently no operational framework for the documentation and registration of the usufruct interest (Larbi and Kakraba-Ampeh 2013). The implication is that the formal system does not record transactions in the usufruct, contributing to an increase in informality and creating important gaps in the land information regime.

In terms of the documentation and registration of lands (see Table 4.3), Ghana currently operates both deeds and title systems of land registration. Historically, to protect the interest of the foreigners, the colonial authorities introduced the Land Registration Ordinance, 1883, which was subsequently amended by the Land Registration Ordinance 1895 (Agbosu 1990). Registration under the ordinance did not cure any defect in any deed or confer any validity. Hence, the Concession Ordinance, 1900 (Cap. 136) was introduced specifically to regulate the alienation of land from indigenes to non-indigenes (Bentsi-Enchill 1964; Ninsin 1986). The Ordinance required that, for a grant of land to non-indigenes to be valid, it must be in writing and a certificate of validity obtained from the High Court. The Ordinance further provided for the registration of concessions under the Land Registry Ordinance. Ninsin (1986:142) asserted that the provisions of the Ordinance “…conferred rights entirely contradictory to those known under customary law” since it introduced the grant of freehold interest in land to non-indigenes. In addition, the Registration and Concession Ordinances did not consider the documentation and registration of customary land grants, which were largely oral in nature.

The Land Registry Act, 1962, which replaced Registration Ordinance of 1895, essentially repeated the provisions of the Ordinance with certain amendments. Even though registration under the Act is not compulsory, transactions are deemed to have no legal effect until registered. The effect of registration is to serve as notice to the public and give priority against subsequent registration. An attempt to improve upon the 1895 Ordinance by authorising the Registrar to refuse registration on certain grounds failed to materialise (Agbosu 1990). The implication is that the authority of the Registrar to refuse registration based on conflicting claims and other inconsistencies was limited
(Somevi 2001). Even though the Act provided that a plan may be attached to an instrument relating to land, no provision was made for the adjudication of title or the use of accurate cadastral plans (Agbosu 1990; Sittie 2006). Consequently, the register of deeds contains conflicting land information and incomplete information since it also failed to provide for the registration or recording of oral grants.

The Land Title Registration Act, 1986 (PNDCL 152) was introduced to correct the defects of the Land Registration Act. The memorandum attached to the Act summarised the reasons for its introduction:

Systematic land tenure research in Ghana has revealed radical weaknesses in the present system of registration of instruments affecting land under the Land Registry Act, 1962 (Act 122). The chief among them is litigation, the common sources of which are the absence of documentary proof that a man in occupation of land has certain rights in respect of it; the absence of maps and plans of scientific accuracy to enable the identification of parcels and ascertainment of boundaries; and the lack of prescribed forms to be followed in case of dealings affecting land or interests in land.

To address the above issues, the Act introduced a Torrens-based title registration system to replace incrementally and eventually supersede the deeds system. The law provides the mechanism for the adjudication of land rights and the requirements for the use of scientifically accurate cadastral survey plans. Key provisions in the Act include the requirement for the registration of a wide range of land rights, including the allodial, usufruct or customary freehold, common law freehold and leaseholds. The title system currently operates in only two out of the ten regions of the country, namely in the Greater Accra Region (commenced in 1988) and parts of the Ashanti Region (commenced in 2000). In effect, Kumasi and Accra are the main cities in the country that have operated the deeds registration system and at present point are both in the process of converting from the deeds system to a Torrens-based title registration system. Chapters 5 and 6 analyse the performance of the land registration systems in the two case study cities relative to the interventions in the land tenure arrangements.

Two post-colonial republican pieces of legislation, the Conveyancing Act, 1973 (NRCD 175) and the Statutory Declaration Ac, 1971 (Act 371), sought to introduce a mechanism for recording oral customary grants. The Conveyancing Act required that
land transactions, including customary grants, must be in writing by providing simple templates for recording such transactions while attempting to preserve their customary mode of transfer. The significance of the provision was that it afforded an opportunity for the registration of customary grants under the deeds system. However, an opportunity for a local-level registration system did not materialise due to the non-enforcement of provisions requiring the recording of customary land transactions by district courts within the jurisdictions of traditional areas (Woodman 1987).

The Statutory Declaration Act, in relation to the land domain, seeks to facilitate the documentation of claims in customary lands. Claimants of customary land rights may declare the circumstances by which they claim such rights in sworn declarations, capable of registration under the Land Registry Act, to serve as evidence of ownership. However, the application of the Act has led to the registration of large tracts of land based on false declarations, and this has contributed to land disputes in urban areas. This is especially so in Accra, where diverse lineages have used the provisions in the Act to attempt to assert their customary rights through statutory declarations.

4.2.2.2 The Formal Organisational Framework for Land Administration

The organisational framework established to administer the legal framework discussed above consists of three main land sector agencies and various local government structures. Figure 4.3 depicts the various agencies involved in formal land administration and their parent Ministries. The figure shows that the three main land sector agencies are the Lands Commission (LC) and the Office of the Administrator of Stool Lands (OASL) operating under the Ministry of Lands and Natural Resources, and the Town and Country Planning Department (TCPD), operating under the Ministry of Environment, Science, Technology and Innovation. In addition, the Metropolitan, Municipal and District Assemblies (MMDAs) under the Ministry of Local Government and Rural Development play a role in the land administration system in terms of planning and development control. The discussion of the organisational arrangement commences with an historical account of the emergence of the LC followed by the roles of the OASL, TCPD and the MMDAs in the land administration system.
The Lands Commission

The LC is the main land sector agency in Ghana. Its pre-eminence is a direct function of the passage of the Lands Commission Act, 2008 (Act 767), which expanded the mandate and role of the Commission with respect to land administration. The Act integrated the operations of four independent public service land institutions under the Commission in order to secure effective and efficient land administration. As shown Figure 4.3, the Lands Commission comprises four divisions, namely the Survey and Mapping Division (SMD – formerly the Survey Department), the Land Registration Division (LRD – formerly the Land Title Registry), the Public and Vested Land Management Division (PVLMD – previously the Lands Commission Secretariat), and the Land Valuation Division (LVD – formerly the Land Valuation Board).

![Diagram of formal agencies in land administration]

Figure 4.3 Formal Agencies in Land Administration

Table 4.4 outlines the specific functions of each of the Divisions of the LC and the source of their legal authority. The table shows that the Divisions cut across a wide range of land administration functions, such as the surveying and mapping of lands, the
valuation of land and property, the registration of land rights, the management of State lands, and the certification of customary grants.

Table 4.4 Functions of the Divisions of the Lands Commission

<table>
<thead>
<tr>
<th>DIVISION</th>
<th>FUNCTIONS</th>
<th>LEGAL BASIS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Survey and Mapping Division (SMD)</td>
<td><em>(a)</em> supervise, regulate and control the survey and demarcation of land for the purposes of land use and land registration; <em>(b)</em> take custody of and preserve records that relate to the survey of any parcel of land; <em>(c)</em> direct and supervise the conduct of trigonometric, hydrographic, topographic and engineering surveys; <em>(d)</em> coordinate the preparation of plans from the data derived from survey and any amendment of the plans; <em>(e)</em> coordinate the production of photogrammetric surveys including aerial photography, orthophotomapping, and remote sensing; <em>(f)</em> survey, map and maintain the national territorial boundaries including maritime boundaries; <em>(g)</em> supervise and regulate operations that relate to survey of any parcel of land; <em>(h)</em> develop and maintain the national geodetic reference network for the country; <em>(i)</em> supervise, regulate, control and certify the production of maps; and <em>(j)</em> other functions determined by the Commission.</td>
<td>Survey Act 127 of 1962 (as amended by the Lands Commission Act, 2008 (Act 767) Land Title Registration Act, 1986 (PNDC 152) Survey (Supervision and Approval of Plans) Regulations, LI 1444 of 1989</td>
</tr>
<tr>
<td>Land Registration Division (LRD)</td>
<td><em>(a)</em> publication of notices of registration upon receipt of an application for registration; <em>(b)</em> registration of title to land and other interests in land; <em>(c)</em> registration of deeds and other instruments affecting land in areas outside compulsory title registration districts; <em>(d)</em> maintain land registers that contain records of land and other interests in land; and <em>(e)</em> other functions determined by the Commission.</td>
<td>Land Title Registration Law, PNDC 152, 1986 (as amended by the Lands Commission Act, 2008 (Act 767) Land Registration Act, 1962 (Act 122) Conveyancing Act, 1973 (NRCD 175)</td>
</tr>
<tr>
<td>Land Valuation Division (LVD)</td>
<td><em>(a)</em> assess the compensation payable upon acquisition of land by the Government; <em>(b)</em> assessment of stamp duty; <em>(c)</em> determine the values of properties rented,</td>
<td>the Lands Commission Act, 2008 (Act 767) State Lands Act, 1962 (Act 125)</td>
</tr>
<tr>
<td>DIVISION</td>
<td>FUNCTIONS</td>
<td>LEGAL BASIS</td>
</tr>
<tr>
<td>------------------------------</td>
<td>---------------------------------------------------------------------------</td>
<td>--------------------------------------------------------------------------------</td>
</tr>
<tr>
<td></td>
<td>purchased, sold or leased by or to Government;</td>
<td>Administration of Lands Regulations, 1962 (LI 232)</td>
</tr>
<tr>
<td></td>
<td>(d) prepare and maintain of valuation lists for rating purposes;</td>
<td>Stamp Duty Act, 2005 (Act 689)</td>
</tr>
<tr>
<td></td>
<td>(e) valuation of interests in land or land related interests for the general public at a fee;</td>
<td>Immovable Property Rate Regulations, 1975 (L.I 1049)</td>
</tr>
<tr>
<td></td>
<td>(f) valuation of interests in land for the administration of estate duty; and</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(g) other functions determined by the Commission</td>
<td></td>
</tr>
<tr>
<td>Public and Vested Lands Management Division (PVLMD)</td>
<td>(a) facilitate the acquisition of land for Government;</td>
<td>State Lands Act, 1962 (Act 125)</td>
</tr>
<tr>
<td></td>
<td>(b) manage state acquired and vested lands in conformity with approved land use plans; and</td>
<td>State Lands Regulations, 1962 (LI 230)</td>
</tr>
<tr>
<td></td>
<td>(c) other functions determined by the Commission.</td>
<td>Lands (Statutory Way Leaves) Act, 1963 (Act 186)</td>
</tr>
</tbody>
</table>

Sources: Lands Commission Act, 2008 (Act 767) and various Statutes

The mandate of the first Lands Commission specified in Article 163 (5) of the 1969 Constitution, included the management of all land and mineral resources. The Lands Commission Act, 1971 (Act 362) placed the Commission under the Ministry responsible for Lands with the Minister as its Chairperson. The previous Lands Department that was in charge of land issues in the colonial era became the de facto secretariat and technical wing of the Commission. The Third Republican Constitution of 1979 maintained the mandate of the Lands Commission with the Lands Department as the de facto secretariat. However, it introduced some innovations. First, in order to guarantee its independence, the Constitution placed the Commission under the Office of the President and specified that its chairperson must not be a Minister of State. Second, the Constitution provided for the creation of regional branches of the Commission in order to decentralise land administration. Third, the Constitution provided for the establishment of an Office of the Administrator of Stool Lands (OASL) responsible for the creation of stool lands accounts to perform the functions discussed under Subsection 4.2.2.1 regarding stool land revenue management. The Lands Commission Act, 1980 (Act 401), placed the independent OASL under the direction of the Commission.
The 1992 Constitution limited the functions of the Lands. It provided specific functions, which included management of public lands, providing policy direction and advice to the government and customary authorities. To ensure effective operations of the Commission, the Constitution provided for the establishment of Regional Lands Commissions in each of the ten administrative regions of the country. This provision is significant because, prior to the passage of the 1992 Constitution, land transactions in any part of the country that required the action of the Lands Commission had to be referred to Accra for approval, causing considerable delays and inefficiencies in the land delivery system. Although the Constitution retained the concurrence function of the Commission, it provided the establishment of an independent Office for the Administration of Stool Lands to collect and disburse stool land revenue.

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

The Office of the Administrator of Stool Lands Act, 1994 (Act 481) established a separate public land sector agency to operationalise the Constitutional provision. Section 2 of Act 481, outlines the functions of the office to include the establishment of a stool land account for each stool, the collection of rents, dues, royalties, revenues or other payments, and the disbursement of the revenues. Unlike the previous legislation, Act 481 provided the disbursement formula for stool land revenues. Section 8 (1) of Act (481) provided that ten per cent of the revenue should be paid to the OASL to cover administrative expenses and the remaining revenue disbursed in accordance with provisions in the Act.

With the establishment of the OASL, two independent government agencies are now involved in stool land management. The Regional Lands Commissions, as noted above, certifies stool land allocations and the OASL collects and disburses stool land revenue. The Constitution requires that the two offices collaborate in consulting with stools and other customary authorities regarding the development and administration of their land. Further, Article 267 (7) of the Constitution requires both agencies to make available to the stools and customary authorities relevant information and data with respect to the administration and development of land. Again, Article 267 (8) directs both agencies to co-ordinate with all relevant public agencies and traditional authorities and stools in preparing a policy framework for the rational and productive development
and management of stool lands. The significance of the above requirements is that the nature of collaboration between the agencies has important implications for customary land management and hence the land delivery process and the nature of the urban land market.

Town and Country Planning Department and the Local Government Authorities

The Town and Country Planning Department (TCPD) and the Metropolitan, Municipal and District Assemblies (MMDAs) are responsible for land use planning and development in Ghana. The TCPD was established in 1945 following the enactment of the Town Planning Ordinance, 1945 (Cap. 84), which is the prevailing law. The TCPD operates as a centralised government agency with regional and district offices. It is charged with the responsibility of planning and management of growth and development of cities, towns and villages in the country (Hatch 2002).

The Local Government Act, 1993 (Act 462) provides that the MMDAs shall be the planning authority at the local level. The responsibilities for spatial planning are shared several departments in the MMDAs, namely the Physical Planning Department, Planning and Co-ordinating Unit, Works Department, and the Roads Department. The functions of the TCPD are performed at the district level by the Physical Planning Department. In practice, the TCPD serves as the secretariat of the Statutory Planning Committees of the MMDAs, which are responsible for approving planning and development permits (Tipple 2011).

The major challenge regarding all forms of town and country planning in Ghana is the arrangement where the TCPD operates under the Ministry of Environment, Science, Technology and Innovation, and the MMDAs operate under the Ministry of Local Government and Rural Development (see Figure 4.3). A manifestation of the challenge is the uncertainty created regarding the approval process of development and planning schemes (Hatch 2002). Under Cap 84, the Minister of Environment, Science, Technology and Innovation is the final approving authority for planning schemes. However, the MMDAs have been designated the final approving authority under the Local Government Act. The effect of the uncertainty created is often reflected in the
difficulty that emerges in the provision of planning and development schemes, which are important prerequisites in the certification function of the RLC.

To summarise, the discussion of the legal and organisational framework for land administration in Ghana shows the superimposition of a formal state structure onto the customary land sector for the purposes of regulation. The effectiveness of the collaboration and relationships between the agencies, as well as coordination with the customary authorities regarding stool land certification, land registration and management of public lands, have important implications on the land delivery process in a given jurisdiction. Impediments in the process of acquisition, documentation and registration of land rights can have important repercussions in the urban land and housing market, such as the capturing of relevant land information on land transactions taking place especially in the customary sector (discussed in Chapters 6 and 7).

The next section presents an overview of the nature of the urban land and real estate market in Ghana.

4.3 Overview of the Urban Real Estate Market in Ghana

The urban real estate market in Ghana is characterised by distortions and informality. The informality is a clear reflection of the nature of the inadequate institutional arrangement for land administration discussed above. The formal structure imposed on the customary system is not able to capture a significant amount of the transactions that take place due to cumbersome procedures imposed and other inefficiencies of the formal sector, as noted earlier. Consequently, there are difficulties in verifying information about ownership, volume of transactions, the actual prices and pattern of transactions. In addition, the paucity of information on the legal ownership of collateral and borrowers implies that lenders face difficulty in verifying information regarding the legal ownership of collateral and borrowers. Hence, most banks are reluctant to go into mortgage financing due to the high risks involved.

The increasing demand for land for various uses in Ghana’s urban areas has resulted in general inflationary increases in urban land prices, uncertainty in the land delivery
system, a lack of transparency, and distortions in the urban land market (Hatch 2002; Mahama and Antwi 2006; Mahama and Dixon 2006). The period of instability in the mid-1990s to early-2000s, when inflation exceeded 50% and interest rates were equally high, affected the mobilisation of long-term financing needed to sustain the mortgage industry (Quayson 2007; Bank of Ghana 2007). Moreover, because of the low level of income in the country most people could not and cannot afford the conditions for mortgage financing. Hence, the scope of formal mortgage financing is limited only to credit-worthy upper and middle-income households (Bank of Ghana 2007; MWWH 2009).

Consequently, real estate development in Ghana is often self-financed. In a survey of real estate developers in the country, the Bank of Ghana found that “…most housing projects embarked by real estate developers in Ghana were self-financed, representing about 72.7 per cent of the entire finance options available to the developers” (Bank of Ghana 2007:38). The situation is similar for individual developers who have to rely on personal savings and foreign remittances to complete housing development incrementally (Boamah 2010). The cumulative effect of inadequate financing is that the country is only able to supply 25,000 to 40,000 housing units out of an estimated annual requirement of 70,000 to 130,000 units (Karley 2009; Mahama and Antwi 2006). The Bank of Ghana estimated that over 650,000 housing units were needed between 2000 and 2010 in order to meet the national housing demand (Bank of Ghana 2007).

Stakeholders in the urban real estate market include financial institutions, real estate developers (consisting of individual entrepreneurs, homeowners, and companies), and professional bodies that provide services in different aspects of the real estate sector. The Ghana Real Estate Developers Association (GREDA) is a grouping of private real estate developers engaged in residential housing development mainly for the middle-to-upper income class. The Social Security and National Insurance Trust (SSNIT) and the State Housing Company (SHC) are public sector players in the real estate development sector. SSNIT is the main supplier of purpose-built commercial and office buildings in the country. Until recently, Home Finance Company, now a universal commercial bank known as HFC Bank, was the dominant housing finance institution in the country. Currently, the Ghana Home Loans, a private company established in 2006, is the only mortgage finance institution operating as a non-bank financial institution in Ghana.
Only a few commercial banks in Ghana, notably, Fidelity Bank and Prudential Bank offer mortgages, and often their focus is on the high-income earning customers. Four professional bodies are directly involved in the urban real estate sector, namely the Ghana Institution of Surveyors (GhIS), Ghana Institute of Planners (GIP), Ghana Bar Association (GBA) and the Ghana Institute of Architects (GIA).

The government has attempted to improve the lending environment to facilitate housing finance and development. To deal with information asymmetry between lenders and borrowers, the Credit Reporting Act, 2007 (Act 726), provides the framework for the licensing, establishment and operation of credit reference bureaus. Section 24 (1) of the Act requires financial institutions to submit information to a licensed credit bureau regarding the details of all credit agreements entered with their clients. This provision would complement an effective system for the registration of real estate transactions to enhance the development of a viable local urban real estate market. Further, the Home Mortgage Finance Act, 2008 (Act 770) was passed to deal specifically with mortgages relating to the housing sector. Under the original Mortgage Decree 1973 (NRCD 96), the only remedy for a lender in the event of a default by a borrower was to go through a judicial process for the sale of the collateral. However, the new Act waived the judicial requirement, and lenders can now foreclose without going through a judicial process.

On the macroeconomic front, since 2009 the country has witnessed sustained increase in GDP growth, which peaked to approximately 14% in 2011 due to the commencement of crude oil production in 2010 (GSS 2012b). In addition, for the greater part of 2012 the government maintained inflation at a single digit even though this appears not to have resulted in an equal decrease in the lending rate. The general forecasts and expectations are that the above measures will provide the enabling environment for the development of a future viable urban real estate market. However, this remains to be seen.

4.4 Land Administration Reforms

Ghana is currently in a second phase of comprehensive land administration reforms that seek to address some of the challenges noted above. The reforms aim at injecting
effectiveness and efficiency into the land-based economy. The objectives of the first phase of the project, which ended in 2011, sought to implement land policy and institutional changes and other key land administration pilot projects to lay the foundation for a sustainable and decentralized land administration system that is fair, efficient, and cost effective, while ensuring land tenure security (Larbi 2006). Under the first phase, a new Lands Commission was established (discussed under Subsection 4.2.2.2), a decentralised deed registration system was introduced at the regional level, and a new planning model at three levels was piloted. In the customary sector, the primary strategy implemented focused on streamlining the operations of customary land authorities through the introduction of formal structures and processes into their administration in order to improve record keeping. This strategy was piloted through the establishment of thirty-eight Customary Land Secretariats (CLS) attached to different levels of customary authorities to assist in the management of their lands and to serve as an interface with the formal structures at the local level.

Despite the above measures, the first phase faced multiple challenges. Although a new Lands Commission was established with the passage of Act 767, the supporting legislative instrument required to facilitate the smooth operation of the Commission has not yet been passed. Consequently, the amalgamated agencies operate in essentially the same way as before the Act was passed. This situation has the potential of creating uncertainties in the land delivery process since clients are often left confused as to the new and constantly evolving procedures. Further, an attempt to introduce a computerised land information system to link the different land sector agencies electronically in order to facilitate effective land administration system proved unsuccessful. Even though the establishment of the CLS was in the right direction, the initial strategy of the state in taking the initiative of establishments has led to a situation where some traditional authorities perceive the CLS as an appendage of the state rather than integral to the operation of the customary authorities.

The objective of the second phase of the LAP, which commenced in 2011, is to consolidate and strengthen urban and rural land administration and management systems for efficient and transparent land service delivery. To achieve this objective, the project seeks to “concentrate on removing the business process bottlenecks, promoting transparency and addressing the various challenges with the aim of improving
efficiency in the delivery of land services and increasing tenure security” (World Bank 2011:7). The expectation is that the second phase of the land reforms will take into consideration the lessons learnt in the first phase, such as the need for more consultation and engagement with the customary sector, in order to enhance land administration and its role in the development of the urban real estate market.

4.5 Summary

This chapter has examined the characteristics of the empirical settings of the thesis in order to provide contextual understanding of the analysis and findings presented in Chapters 6, 7 and 8. The chapter outlined the criteria for selection of the empirical setting for investigations and examined the institutional arrangement for land administration in Ghana. The discussion revealed a pluralistic institutional arrangement involving diverse indigenous groups with different social structures and an imposed formal land sector consisting of a number of legal provisions and organisational arrangements shaped by historical and contemporary factors. The chapter also presented an overview of the land administration reforms aimed at improving the land economy in the country, and the nature of the urban land market in the country. One effect of the existing institutional arrangement is a dichotomy in the regulation of the customary land sector. Partly because of the nature of the institutional arrangement for land administration, the urban real estate market in the country is characterised by informality.

The next chapter outlines the methodology used in the remainder of the thesis.
Chapter 5

Research Design

This chapter serves as a link between the frameworks discussed in Chapters 2 and 3 and the findings of the empirical work reported in Chapters 6 through 8. It describes the research design, and methodology used to address the thesis goal and objectives. Section 5.1 discusses alternative philosophical underpinnings of research designs. Section 5.2 focuses on the ethnographic research strategy adopted for the thesis by describing the techniques and methods used to collect and analyse the data from the field. Section 5.3 discusses ethical considerations in the research, and Section 5.4 undertakes a reflectivity analysis regarding potential biases in the research process. Section 5.5 summarises the chapter.

5.1 Alternative approaches of viewing and forming knowledge about the world

Underpinning any research process are certain philosophies that defines important assumptions about how the social world is perceived and therefore determines the research approach. The assumptions or claims (ontology) of the real world and how knowledge is gained (epistemology) facilitates the breakdown of complexity of reality (Guba and Lincoln 1994; Wahyuni 2012). In order to understand the context of the choice of the research paradigm adopted in this thesis, two extreme perspectives, namely positivism/objectivism and interpretivism/constructivism are discussed in turn in Subsections 5.1.1 and 5.1.2. Thereafter critical realism is discussed in Subsection 5.1.3. The objective is to facilitate the choice of an appropriate perspective for the current research.
5.1.1 Positivism/Objectivism

The ontological position of positivism is naïve realism and assumes an objective external reality that can be observed and measured (Guba and Lincoln 1994). Positivism therefore seeks to understand social phenomenon through the lens of natural science (Healy and Perry 2000). The epistemology of positivism is dualist and objectivist – the researcher is assumed to be independent from the phenomena under study and does not influence the research process (Johnson and Onwuegbuzie 2004). The research is therefore assumed to be undertaken in a value-free way. The positivists approach to understanding social phenomena is through hypothesis formulation and testing by collecting and analysing facts using quantitative methods such as survey and experiments. The findings of a research are assumed to be generalizable to the population from which the sample of study is derived (Williams and Wynn, Jr. 2008; Wahyuni 2012).

A major criticism of positivism is the notion that the researcher can be separated from the object of research. The expectation that a researcher can observe a phenomenon without taking account the interference of his/her values is arguably impossible (Guba and Lincoln 1994). The distance created between what is researched and the researcher limits the possibilities of gaining insight into the meaning behind the actions of social actors. Given the complex interrelationships between formal and informal rules in land registration and cadastral systems operations, there is a possibility that important influences within the social context can be ignored because of the focus of limited variables within a controlled environment. Hence, an exclusively positivist approach is not appropriate in examining the objectives of the thesis.

5.1.2 Interpretivism/constructivism

Interpretivism, which is at the other extreme of positivism, rejects the objective perspective of reality. It employs a pluralist and relativist ontology of reality (Whittal 2008). Interpretivist researchers believe that reality is subjective and is shaped by the perceptions and understanding of social actors and is therefore a product of human intellect (Roth and Mehta 2002; Guba and Lincoln 1994). Hence, the approach to gaining knowledge (epistemology) is through close interaction between subjects and
researchers in order to derive understanding and meanings. In contrast to the positivist approach that seek generalisation of findings, an interpretivist approach seeks an in-depth understanding from the perspective of the subjects by using narratives to describe specific details of a social phenomenon under study. The findings of interpretivist research are not value-free since they are often laden with the preconceptions and preconditions of the researcher and the context of the research (Johnson and Onwuegbuzie 2004). Even though an interpretivist approach provides opportunity to gain in-depth understanding of issues under research, a major criticism is the possibility of ignoring tangible aspects of a phenomenon.

From the foregoing discussions, it can be concluded that an exclusive positivist or interpretivist approach cannot facilitate a comprehensive understanding of the goal and objectives of the current research as outlined in Chapter 1.

5.1.3 Critical Realism

Critical realism is a blanket term for several alternative paradigms to that of positivism. It emerged to counter the strict natural science approach as applied to social and behavioural sciences. Critical realism proposes a three-tiered stratified ontology: real, actual and empirical (Sayer 2000). The real refers to structures that are believed to exist but cannot be apprehended directly. The actual refers to the properties or mechanisms of structures and the empirical refers to what can be experienced/measured when these powers are activated. Critical realists believes that that our knowledge of reality is a result of social conditioning and thus cannot be understood independently of the social actors involved in the knowledge derivation process.

To gain knowledge of the social world (epistemology) requires a holistic understanding of the dynamic interrelationship between social actors, their setting and social structures. Some features of this dynamic interrelationships can be empirically observed, whilst others may only be discernible through the lived experience of the social actors within particular settings. Hence, comprehensive knowledge about the social world can be achieved through empirical observation, as well as through interpretation of the perceptions of social actors regarding their mutual influences. Consequently, the research process is not completely objective and value-free.
Critical realism provides a better framework for comprehensive examination of the thesis goal and objectives. This is because, the phenomena under study, interactions between formal and customary institutions in land registration system operations, does not exist independently from the context in which they occur. Since, the beliefs and experiences of the researcher and other social actors can influence the research process the approach to gaining knowledge must necessarily consider objective and subjective aspects. Critical realism relies on a realistic approach to problems and acknowledges that both positivist and interpretivist approaches to research contribute to understanding of reality and therefore neither should be favoured but rather combined (Whittal 2008). It is relatively tolerant with respect to the use of wide range of research methods. The particular combination of methods is dependent on the nature of the object of study and expected outcome of the research (Sayer 2000). Importantly, critical realism has been used as a frame to examine cadastral reforms in other studies (Whittal 2008; Whittal and Susan Jones 2010; Çağdaş and Stubkjær 2011).

5.2 Ethnographic Research Strategy

Following from the adoption of critical realism as the ontological and epistemological perspective for this thesis, an ethnographic research methodology is deemed appropriate. The research strategy facilitates understanding how a particular organisation, culture or people (cases) are socially ordered. Ethnography focuses on three main aspects, namely (1) shared meanings, actions and interactions, (2) symbols, rituals and ceremonies that order social practice, and (3) prevailing social structures, rules and organised practices (Brewer 2000). In other words ethnographic research strategy seeks to assess social meanings, observe behavior and work closely with informants in their natural setting or the field. Hence, the focus of ethnography is on understanding a phenomenon through description rather than theory generation. Consequently, when undertaking research, the ethnographer must be constantly self-critical and reflexive to ensure an analytical description and interpretation of the case. Section 5.4 discusses the reflexivity analysis undertaken in the current research.

Even though ethnography has often been associated with qualitative research, it can also employ a combination of qualitative and quantitative methods (Brewer 2000). It
allows for multiple sources of evidence to be used, and it is flexible as to the number of stakeholders that can be examined. In effect, an ethnographer can adapt and use a mix of methods appropriate to a situation. The methods, discussed under Subsection 5.2.1 include participant observation, field notes, semi-structured interviews, surveys, and documentary analysis.

In order to examine the influence of context-specific factors on institutional outcomes in different settings, a comparative approach is followed. The comparative approach allows for in-depth analysis of selected case study data and facilitates the systematic cross-case analysis of a particular phenomenon under different conditions (Darke, Shanks, and Broadbent 1998; Kaarbo and Beasley 1999; Hesse-Biber and Leavy 2011). The approach, depicted in Figure 5.1, provides for three broad phases namely, (i) definition and design phase; (ii) data collection and analysis phase; and (iii) the comparative analysis and conclusion phase.

Under the definition and design phase, the conceptual framework for the thesis was presented in Chapters 1, 2 and 3. These chapters provided the research background, goal and objectives, and the conceptual framework for the research. The findings and conclusions from these chapters formed the basis for the identification of the criteria for the selection of the case study areas for empirical investigations, discussed in Chapter 4. Sections 5.2.1 and 5.2.2 discuss the methods followed for the collection and analysis of evidence to address the thesis goal and objectives. Chapters 6 and 7 present the findings of the analysis of the data from the two case study cities. In Chapter 8, a cross case analysis is undertaken, and Chapter 9 presents the conclusions and recommendations of the thesis.
Figure 5.1 Comparative Approach to data collection and Analysis
5.2.1 Data Characteristics and Data Collection Methods

The analytical framework presented and discussed in Subsection 2.4 identified a number of specific questions related to its different components that must be examined within an empirical setting in order to understand observed institutional and market outcomes in the quest to address the overarching thesis goal. Research questions give clarity, focus, direction and coherence to the study during the course of the empirical investigation by pointing to the type of evidence needed to address the research goal (Onwuegbuzie and Leech 2006; Maxwell 2009). Table 5.1, presents an overview of the link between the questions identified in Chapter 2, Subsection 2.4 and the specific thesis objectives indicated in Subsection 1.4 of Chapter 1.

Table 5.1 Linking research objectives to specific questions

<table>
<thead>
<tr>
<th>THESIS OBJECTIVES</th>
<th>SPECIFIC RESEARCH QUESTIONS IDENTIFIED</th>
</tr>
</thead>
</table>
| 1. To identify and examine, in two purposively chosen study areas, relevant historical and contemporary socio-cultural factors relative to their impact on the prevailing land tenure systems and operation of land registration systems. | • How have historical and contemporary factors shaped the socio-political organisational structures that underpin the land tenure arrangements?  
• Which social characteristics persist relative to the administration of land?  
• What negative externalities exist relative to customary land administration?  
• What is the nature of the legal, institutional and policy framework for land administration in a given jurisdiction?  
• How do existing socio-political organisational structures facilitate or impede land administration?  
• What mechanisms are available for interaction between the formal and customary sectors?  
• What are the prospects for and constraints against institutional linkages for effective management of land information?  
• What factors account for the nature of operation and performance of formal institutions, where present, involved in land information management in general and land registration in particular? |
| 2. To compare the nature and characteristics of the local urban real estate markets in the study areas, with a view to identifying similarities and differences, the information | • What are the information needs of the participants in the urban real estate market in the case study cities, and how are these currently met?  
• What are the main sources of financing land |
requirements of the market participants, and the opportunities and constraints in meeting these requirements.

3. To identify the conditions required for the development of a responsive and locally relevant land information framework based on the outcome of the preceding objectives.

- How do the urban real estate market operations shape customary land management practices and vice versa?
- What are the relevant elements required for an appropriate urban real estate information management framework?

Table 5.2 summarises the identified areas of the components of the analytical framework and links them with the type of required data needed to address the research objectives. The table shows that both qualitative and quantitative data are required to address the issues with respect to the different components of the framework.

**Table 5.2 Links between Empirical Investigation and Type of Data Required**

<table>
<thead>
<tr>
<th>Component of the Analytical Framework</th>
<th>Focus of Empirical Investigation</th>
<th>Data Required</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Institutional Arrangements</td>
<td>The nature of inter-organisational relationships among formal and customary organisations</td>
<td>Qualitative and Quantitative data regarding (a) the nature of the legal and policy environment (b) the processes of interactions among the agencies, formal and customary (c) perception of performance (d) performance of operations</td>
</tr>
<tr>
<td></td>
<td>The internal interactions between the institutional rules and organisational structures of the formal and customary structures</td>
<td></td>
</tr>
<tr>
<td>2. Institutional Outcomes</td>
<td>Land allocation, acquisition and transfers processes</td>
<td>Qualitative and Quantitative data on the processes regarding time spent, cost and steps</td>
</tr>
<tr>
<td></td>
<td>Land documentation and registration processes</td>
<td></td>
</tr>
<tr>
<td>3. Market Processes</td>
<td>Information access</td>
<td>Qualitative data on the perception of processes and the information requirements of stakeholders</td>
</tr>
<tr>
<td>4. Market Outcomes</td>
<td>Market performance</td>
<td>Qualitative and Quantitative data on the volume and value of transactions</td>
</tr>
</tbody>
</table>
The fieldwork to collect data was undertaken in Ghana between December 2011 and July 2012. During this period, historical and contemporary data were collected from primary and secondary sources using mixed methods. The research relied on interviews, archival records, documentary evidence, and participant as well as direct observations to collect the evidence needed to address the research questions. The primary data sources included relevant agencies and institutions involved in land administration and real estate, customary land authorities, and property owners within the case study cities. Secondary sources included published and unpublished documents and records from the databases of relevant agencies.

The following subsections, explain in detail how each of the specific methods and procedures were employed to collect data from the various sources.

5.2.1.1 Semi-structured interviews

Semi-structured interviews were conducted with key informants to collect mainly qualitative information in order to gain an in-depth understanding of events and key issues from the perception of the informants. Kumar, Stern, and Anderson (1993:1634) suggested that key informants must be selected “…because they are supposedly knowledgeable about the issues being researched and because they are able and willing to communicate about them to the researcher”. Hence, the selection of the participants for the semi-structured interviews followed a purposive sampling approach based on three criteria. The first criterion used was the knowledge of the key informants on issues relating to the real estate market, land management and registration and customary land tenure. The second criterion was the level of the key informants’ involvement in their respective organisations and groupings. The final criterion was the willingness and availability of the key informants to participate in the study.

The key informants were recruited by following the official administrative procedures of the organisations in each city. Specifically, the designated representatives of the organisation were contacted personally and a copy of the information sheet (see Appendix 1) was provided, which outlined the nature of the research, the issues to be discussed, and the participants required. Based on the criteria outlined earlier, potential participants in the organisation were identified to be interviewed. Since the reliability
and veracity of the key informants is crucial for ethnography research, every observation made by key informants was triangulated with inputs from others in order to assess accuracy.

Table 5.3 shows the distribution of the key informants and the agencies they represent in the two cities. The table shows that the key informants interviewed represented the public land sector, the financial sector, the customary sector local government, other professionals and academics. The majority of the informants were from Kumasi, and the land sector agencies from Kumasi dominated in the number of participants. The dominance of the informants from Kumasi was due to the subsequent referrals by the first key informants interviewed.

Table 5.3 Distribution of Informants across Organisations

<table>
<thead>
<tr>
<th>Description</th>
<th>Accra</th>
<th>Kumasi</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land Sector Agencies</td>
<td>4</td>
<td>8</td>
<td>12</td>
</tr>
<tr>
<td>Financial Institutions</td>
<td>2</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>Customary Tenure Institutions</td>
<td>2</td>
<td>3</td>
<td>5</td>
</tr>
<tr>
<td>Ministries</td>
<td>2</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Metropolitan Authority</td>
<td>1</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Land and Property Market Professional</td>
<td>2</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>Academic</td>
<td>0</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>13 (43%)</td>
<td>17 (57%)</td>
<td>30</td>
</tr>
</tbody>
</table>

Source: Fieldwork 2012

The interviews took place at the time and convenience of the informants and generally, the interviews took place in their offices and lasted not more than one hour. With the permission of the key informants, the interviews were audio-recorded. In addition, notes of most important issues were taken to facilitate follow up questions.

Broadly speaking, interviews sought to understand the different aspects of the thesis objectives from the perspective of the key informants, and particularly to identify the prospects, constraints and challenges with respect to effective land management and the
local urban real estate market processes. The informal nature of the semi-structured interviews provided an environment conducive to the key informants’ contributing freely to the discussion and steering the dialogue to include issues not initially envisaged. The approach also offered sufficient flexibility for the same issues to be covered with different key informants, making it possible to corroborate the same fact from different perspectives. An interview guide facilitated the interviews for each of the broad categories of key informants (see Appendix 4A to 4E).

5.2.1.2 Structured Questionnaire

To complement the qualitative data gathered from the semi-structured interviews, structured questionnaires were administered to selected property owners within the case study cities. The main purpose for the administration of structured questionnaires, which contained both open-ended and closed questions (see Appendix 3), was to obtain data about the views of property owners regarding the processes involved in accessing, documenting and registering land. Questionnaires also sought information to facilitate the assessment of the nature of the land delivery process in terms of the time spent, cost and number of steps involved. In addition, questionnaires sought information about the perceptions of property owners on the roles of formal and customary institutions in property transactions.

Questionnaires were targeted at persons who had actually gone through the process of acquiring, documenting and registering properties. Originally, respondents were to be selected through a multi-stage sampling strategy using a combination of purposive and cluster random sampling techniques. The first stage of the sampling involved the use of cluster (area) sampling relying on the sub-metropolitan subdivision of Accra and Kumasi as the sampling frame. In each of the cities, two sub-metropolitan areas were to be purposively selected based on their level of physical development. This criterion was designed in order to increase the likelihood of differences in the perceptions of the respondents, as well as diversity in the likely maturity of the respective real estate markets. In the second stage, persons who had acquired and/or registered property within the selected sub-metropolitan areas were to have been identified and interviewed randomly relying on the profiles of registered properties in the Land Registry in the case study cities as the sampling frame.
However, the above approach to the selection of the respondents was not used in the end since the full details of the owners were not made available due to confidentiality issues. An alternative strategy of randomly selecting properties within the pre-selected areas also failed to yield sufficient responses for two main reasons. First, the owners of some of the identified properties were not willing to participate in the study despite assurances of confidentiality. Second, in other cases tenants or persons who did not have the necessary information to complete the questionnaires occupied the properties.

In the light of the challenges, a new strategy was devised to improve the response rate. Specifically, administration of the questionnaire was expanded to selected property owners randomly throughout the two cities. Research assistants engaged for the exercise were instructed to record the particular location of the respondents in terms of their house numbers to facilitate mapping their whereabouts within the different parts of the city. Following the above strategy, three hundred (300) useful responses, equally split between Accra and Kumasi were collected for the questionnaire. Table 5.4 shows the distribution of the respondents according to their location in the different parts of the two case study cities. The Table shows that the initial criterion of ensuring a mix of developed and developing neighbourhoods was achieved.

Table 5.4 Location of Respondents to Questionnaires – Accra and Kumasi

<table>
<thead>
<tr>
<th>Case Study City</th>
<th>Neighbourhood</th>
<th>No. of Respondents</th>
<th>Characteristics of Neighbourhood</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACCRA</td>
<td>Dansoman</td>
<td>16</td>
<td>Developed</td>
</tr>
<tr>
<td></td>
<td>Kaneshie</td>
<td>13</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Achimota</td>
<td>30</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Gbawe</td>
<td>41</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Haatso</td>
<td>20</td>
<td>Developing</td>
</tr>
<tr>
<td></td>
<td>Kwahienman</td>
<td>30</td>
<td></td>
</tr>
<tr>
<td>KUMASI</td>
<td>Asokwa</td>
<td>26</td>
<td>Developed</td>
</tr>
<tr>
<td></td>
<td>Ahinsan Estate</td>
<td>30</td>
<td>Developed</td>
</tr>
<tr>
<td></td>
<td>Kwadaso</td>
<td>33</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Kotei</td>
<td>29</td>
<td>Developing</td>
</tr>
<tr>
<td></td>
<td>Pankrono</td>
<td>32</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>300</strong></td>
<td></td>
</tr>
</tbody>
</table>

Source: Fieldwork 2012
Figure 5.2 and Figure 5.3 show the spatial distribution of the neighbourhoods from which the respondents were drawn relative to the sub-metropolitan areas of the two cities.

Figure 5.2 Location of Respondents to Questionnaire – Accra

Figure 5.3 Location of Respondents to Questionnaire - Kumasi
The respondents from Accra are located in the following sub-metropolitan areas, Okai Koi South, Ablekuma South, Ablekuma North and the Ga South Municipality. Even though Ga South Municipality is not part of the administrative boundary of the city of Accra, functionally, it is linked to the city in terms of provision residential land for persons who work within the city. The respondents from Kumasi are located in four sub-metropolitan areas, namely, Tafo, Asokwa, Kwadaso and Oforikrom.

Table 5.5, shows the gender distribution of the respondents in the two case study cities. In Accra, 77.3% (116) were male and 22.7% (34) female respectively, whilst in Kumasi, the male respondents were 62.7% (94) and females were 37.3% (56). In total, 70% of the respondents from Accra and Kumasi were male and 30% female. Given that the national gender ratio 95 of males to 100 females (GSS 2012a), the figures are clearly biased towards males.

Table 5.5 Gender Distribution of Respondents

<table>
<thead>
<tr>
<th>City</th>
<th>Male</th>
<th>%</th>
<th>Female</th>
<th>%</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accra</td>
<td>116</td>
<td>77</td>
<td>34</td>
<td>23</td>
<td>150</td>
</tr>
<tr>
<td>Kumasi</td>
<td>94</td>
<td>63</td>
<td>56</td>
<td>37</td>
<td>150</td>
</tr>
<tr>
<td>Total</td>
<td>210</td>
<td>70</td>
<td>90</td>
<td>30</td>
<td>300</td>
</tr>
</tbody>
</table>

Source: Fieldwork 2012

In terms of age distribution, Table 5.6 shows that majority of the respondents in both Accra and Kumasi were within the economically active age bracket of between 21 to 60 years. It is also apparent that the respondents from Kumasi were young relative to those in Accra.

Table 5.6 Age Distribution of Respondents

<table>
<thead>
<tr>
<th>City</th>
<th>21-30</th>
<th>31-40</th>
<th>41-50</th>
<th>51-60</th>
<th>60-70</th>
<th>70+</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accra</td>
<td>4</td>
<td>27</td>
<td>52</td>
<td>32</td>
<td>32</td>
<td>4</td>
<td>150</td>
</tr>
<tr>
<td></td>
<td>3%</td>
<td>18%</td>
<td>35%</td>
<td>21%</td>
<td>21%</td>
<td>3%</td>
<td>100%</td>
</tr>
<tr>
<td>Kumasi</td>
<td>6</td>
<td>68</td>
<td>27</td>
<td>26</td>
<td>16</td>
<td>7</td>
<td>150</td>
</tr>
<tr>
<td></td>
<td>4%</td>
<td>45%</td>
<td>18%</td>
<td>17%</td>
<td>11%</td>
<td>5%</td>
<td>100%</td>
</tr>
</tbody>
</table>

Source: Fieldwork 2012
5.2.1.3 Documentary Evidence

A very important source of information to address the research goal was obtained from documentary evidence. The documentary evidence obtained during the fieldwork provided both qualitative and quantitative data. The documents were both published and unpublished, including anthropological reports on the case study areas, policy and project documents, and publications in the media, annual reports and budgets of the relevant land sector agencies as well as some of the customary land institutions. Other documents included operational manuals and relevant legislation relating to the functions of the land agencies as well as the entire machinery of land administration in the country. In some instances, court judgments were obtained relating to specific issues regarding land tenure and its administration in the country.

5.2.1.4 Field Observations

Direct observations of events and processes is an important source of contextual information in case study research (Tellis 1997). Due to the researcher’s privileged role and position as a staff member of the Lands Commission, as well as being a key player in the Land Administration Project, the opportunity was afforded to participate in a number of meetings and activities, which involved interactions with customary authorities. During these interactions, observations of important facts that enhanced understanding and other issues relevant to the research were recorded. For example, the processes regarding land transactions from the customary sector through to their documentation and registration in the formal sector were documented using a field notebook and a digital camera.

The information gathered through the field observations served as a basis for framing specific questions appropriately during interactions with the key informants. In addition to these interactions, the researcher had the opportunity to participate actively in re-engineering the business processes of the Lands Commission during the fieldwork period in 2012. Through this participation, he was able to gain further understanding of the challenges and difficulties in the land documentation and registration process.
5.2.2 Data Analysis

The strategy employed in the analysis of the data broadly followed the comparative approach shown in Figure 4.7. The data collected from each of the case study cities were first analysed separately and the findings reported in Chapters 6 and 7. Subsequently a cross-case analysis, reported in Chapter 8, was undertaken to compare and contrast the key findings to identify similarities and differences. In order to analyse case study data appropriately, an analytical strategy is required that corresponds to the research conceptual framework, which allows the key factors, the variables and presumed relationships amongst them to be highlighted (Creswell 1998; Yin 2003a, 2003b, 2011; Perry 1998; Rowley 2002).

The analytical framework presented and discussed in Chapter 2, Subsection 2.4, and summarised in Table 5.2 served as the primary basis for organising and analysing the qualitative and quantitative data collected in each of the case study cities. The framework suggests that the nature of the institutional arrangements in a particular jurisdiction influences both institutional outcomes and market processes and outcomes. A combination of qualitative and quantitative methods (discussed in detail under Subsections 5.2.2.2 and 5.2.2.3), guided by the specific thesis goal and objectives and associated research questions was employed to analyse the qualitative and quantitative data.

5.2.2.1 Focus of Analysis

The first level of the analysis, which was mainly qualitative, focused on the examination of the nature of the social context within which the institutional arrangement of land tenure administration occurs in Accra and Kumasi. The analysis examined the characteristics of the socio-political organisation structures that underpin the land tenure arrangement in the case study cities in order to identify contextual factors that facilitate understanding of observed institutional and market outcomes. The data obtained from key informants, observational and field notes, secondary sources, such as, anthropological, historical documents were qualitative analysed to understand how historical and contemporary factors have shaped the socio-political organisational structures, identify persisting social characteristics and any negative aspects.
The second stage of the analysis, which was both qualitative and quantitative, sought to understand how the nature of the socio-political organisational structure impede or facilitate land administration in general and land registration in particular in the Accra and Kumasi. In this regard, the clarity of the land delivery system in the two cities was examined in terms of the characteristics of two related processes, namely land acquisition and transfer, and land documentation and registration relying on responses to selected questions in the structured questionnaire. The quantitative analysis of the responses was integrated with relevant responses of the key informants and other data obtained from field observations, the land sector agencies and relevant documents. The mechanisms for interaction between the formal and customary sectors were examined in order to identify prospects and constraints that account for the nature of the operations of agencies involved in land administration.

The third stage of the analysis focused on the nature of the urban land market. The analysis sought to identify the information requirements of the market participants and assess the opportunities and constraints in meeting these requirements. In addition, the analysis focused on characterising the real estate market in terms of the nature of the land rights that are exchanged, the mode of financing real estate transactions and the mutual influences of customary and formal processes on market processes and outcomes. To this end, relevant sections of the structured questionnaire, semi-structured interviews with informants as well as the documentary evidence relating to the operation of the land market in the case study cities were analysed.

The details of the mixed methods of analysis applied at each stage are discussed in turn below.

5.2.2.2 Qualitative Analytical Technique

The semi-structured key informant interviews, the documentary evidence relating to the legal and policy framework, operational manuals of the agencies, and field notes from observations were analysed qualitatively. The qualitative approach to the analysis enabled contextual and holistic understanding of socio-cultural factors that enhance or impede the effectiveness of the land tenure arrangements in the case study cities with
respect to processes and procedures relating to acquisition and registration of land rights.

The qualitative analysis involved the selection, abstraction, and transformation of the raw data in order to facilitate data reduction, display and interpretation or drawing conclusions (Miles and Huberman 1994; Marshall 1999; McNabb 2010). The audio-recorded semi-structured interviews with the key informants were transcribed to facilitate content and thematic analysis. The content analysis generally involved the identification of recurring words and phrases in the text, and thematic analysis went further to focus on the identification and description of both implicit and explicit ideas associated with the text (Namey et al. 2008:138). A preliminary set of codes was established based on key thematic issues and topics extracted from the conceptual and analytical framework, the research goal, objectives and research questions. The broad thematic issues, which served as categories, included the nature of institutional arrangement for land administration, the institutional outcome and market processes and outcomes. Sub-categories were identified, which focused on issues such as inter-organisational relationships, land acquisition and registration processes and market performance.

The content of the transcripts of interviews and associated notes and the other documents were analysed systematically through iterative and repeated reading in order to be familiar with the text and the issues and facilitate the identification and assignment of the pre-coded themes. During the critical reading, important recurring themes or issues in the texts were highlighted and appropriate codes assigned. In situations when the predefined codes were not applicable, a new category or code was created and integrated into the overall framework of analysis. Throughout the process, the preliminary set of codes were revised and refined to reflect new issues and ideas identified, and regrouping of categories was undertaken to reduce the number of overlaps and redundancies. Matrices with relevant headings reflecting the thematic areas were created, into which the issues identified during the critical reading of the texts were entered. Through the iterative process, it was possible to establish links and contradictions within and across interviews and the other documents regarding contextual factors.
The qualitative analysis of the semi-structured interviews revealed the perspective of key informants regarding the relative influences of customary and market processes on each other with respect to processes regarding access to land information. This made it possible to gain an increasingly useful insight from the perspective of the informants regarding changes to the land tenure arrangements and their impacts on development of local urban real estate market activity and value. The qualitative analysis of the policy and project documents, annual reports and budgets, operational manuals, and legislation provided useful information that facilitated understanding of the mandates, rules and regulations governing processes of both the formal and customary institutions and their interrelationships.

In addition, the analysis of the evidence and data from some of the documentary sources contributed to the wider examination of background information, as well as conceptual and theoretical insights into the issues reported earlier. In particular, the anthropological reports provided a greater understanding of how historical factors have shaped contemporary land management practices in the case study cities. Moreover, the information gathered from these documents was used to crosscheck information obtained from the interviews and field observations. Chapters 5 and 6 present the findings respectively for Accra and Kumasi.

5.2.2.3 Quantitative Analysis

For the quantitative analysis, the responses to the structured questionnaire were coded and entered into the statistical software package, Statistical Programme for Social Sciences (SPSS v. 20). The analysis generated descriptive statistics on such themes as sources of land, the effectiveness and satisfaction level of the process of land acquisition, and the quality of services with respect to land registration. The level of satisfaction of the land acquisition and registration processes was assessed based on analysis of responses to Likert-type questions. With respect to the acquisition process, the questions sought to assess the level of satisfaction of the respondents in terms of (1) the number of steps in the process, (2) time taken to complete an acquisition, (3) the cost of the acquisition, (4) perception of security of tenure and (5) the transparency in the process. For the registration process, the assessment was with respect to (1) the number of steps, (2) time spent, (3) cost and (4) accessibility of the service. The

The proportion response frequencies to the questions are presented in bar charts in Chapters 6 and 7. Green bar charts are used to highlight positive responses (very satisfied and somewhat satisfied), red bar charts for negative responses (very dissatisfied and somewhat dissatisfied), and neutral responses are indicated in grey. The responses to the questionnaire contributed to the assessment and comparison of institutional and market outcomes in terms of the effectiveness of the land delivery systems in the case study cities.

In order to gain better understanding of the nature of the observed institutional and market outcomes in the case study cities, the response frequencies of the structured questionnaire were cross-tabulated. To facilitate the contingency table analysis, the earlier categorisation of the sampled property owners according to the characteristics of their physical location (developed and developing) and gender was used (see Table 5.4 and Table 5.5). In addition to the two categorisations, the sources of land acquisition indicated by the respondents were categorised into primary and secondary sources to facilitate the analysis. On the one hand, primary sources comprised all acquisitions of land rights directly from customary authority structures, such as extended families or stools. Secondary sources, on the other hand, include all other sources other than those obtained from customary authorities, such as from a private ‘owner’ who had originally been allocated the land right by a customary authority. Table 5.7 shows the distribution of the respondents in terms of the identified categories in the two case study cities.

**Statistical Tests Employed**

To facilitate the determination of any significant differences in the response frequencies within each of the categories (primary versus secondary, developed versus developing or male versus female), two statistical tests namely, the Mann-Whitney U Test and the Pearson’s Chi-square Test of Independence ($\chi^2$), were utilised and the results reported in Chapters 6 and 7. The two tests were also used to compare the overall response frequencies between the sampled property owners in Accra and Kumasi and the result reported in Chapter 8.
Table 5.7 Categorisation of Respondents to Structured Questionnaire

<table>
<thead>
<tr>
<th>Category of Analysis</th>
<th>City</th>
<th>Total</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Accra</td>
<td>Kumasi</td>
<td></td>
</tr>
<tr>
<td>Sources of Acquisition</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Primary</td>
<td>34</td>
<td>59</td>
<td>93</td>
</tr>
<tr>
<td></td>
<td>37%</td>
<td>64%</td>
<td>100%</td>
</tr>
<tr>
<td>Secondary</td>
<td>95</td>
<td>91</td>
<td>186</td>
</tr>
<tr>
<td></td>
<td>51%</td>
<td>49%</td>
<td>100%</td>
</tr>
<tr>
<td>Inherited</td>
<td>21</td>
<td>0</td>
<td>21</td>
</tr>
<tr>
<td></td>
<td>100%</td>
<td>0.0%</td>
<td>100%</td>
</tr>
<tr>
<td>Neighbourhood Characteristics</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Developed</td>
<td>59</td>
<td>89</td>
<td>148</td>
</tr>
<tr>
<td></td>
<td>40%</td>
<td>60%</td>
<td>100%</td>
</tr>
<tr>
<td>Developing</td>
<td>91</td>
<td>61</td>
<td>152</td>
</tr>
<tr>
<td></td>
<td>60%</td>
<td>40%</td>
<td>100%</td>
</tr>
<tr>
<td>Gender</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Male</td>
<td>116</td>
<td>94</td>
<td>210</td>
</tr>
<tr>
<td></td>
<td>55%</td>
<td>45%</td>
<td>100%</td>
</tr>
<tr>
<td>Female</td>
<td>34</td>
<td>56</td>
<td>90</td>
</tr>
<tr>
<td></td>
<td>38%</td>
<td>62%</td>
<td>100%</td>
</tr>
</tbody>
</table>

The response frequencies to the Likert-type questions by the respondents in the different categories were ranked in ascending order and a Mann-Whitney U test employed. The test was used to determine whether there were significant differences in the overall response frequencies in each of the categories with respect to the level of satisfaction of the different aspects of the land delivery system. The Mann-Whitney U test is the nonparametric version of the Student's t-test (Gravetter and Wallnau 2008; Siegel and Castellan 1988). Although both tests may yield the same result, the Mann-Whitney U test is suitable when the assumptions relating to level of measurement, sample size, normality or equality of variance are not valid (de Winter and Dodou 2010). It is therefore suitable when data are measured on an ordinal scale (Butler 1985:98).

In order to detect significant differences between the responses regarding other selected questions measured on nominal scale, a Pearson’s Chi-square of Independence ($X^2$) was performed. Chi-square is used to examine the relationship between two or more categorical variables to determine if they are independent (Saunders 2007; Alreck and Settle 1995). It is essentially concerned with the differences between the frequencies that are obtained from the sample survey and those that could be expected.
to be obtained if there were no differences among the categories of the variables (Rea and Parker 1997:167; Saunders 2007).

In applying the above tests, a probability value or confidence level of $p \leq 0.05$ was used to detect significant differences and reject the likelihood of independence, and $p > 0.05$ was used to accept the likelihood of independence or no differences. In reporting the results of the analysis, where the differences were not statistically significant, the combined responses of the sampled property owners were examined without taking into consideration the differences within the categories. However, where significant statistical differences were identified the response frequencies within each category were examined in order to compare the differences.

5.2.2.4 Other Techniques

Microsoft Visio (2013) software was used to develop process maps, which depicted the various processes and interactions, involved in the land delivery systems in the two cities. The diagrams were used to display the essential inter-relationships and interdependences between stakeholders involved in land acquisition, registration and market processes. They were therefore useful in the identification of the nature of mechanisms available for the interaction between the formal and customary sectors and the assessment of the prospects for and constraints against inter-organisational linkages regarding general land administration and land information management in particular.

5.2.3 Limitation

The initial intention to undertake GIS analysis in order to gain further insights into the thesis objectives could not be accomplished. It had been envisaged that part of the data to be collected from relevant institutions would be spatially referenced and thus facilitate their link with other data. Through this link, all data could be organised in a GIS to provide a geographical context to examine trends, patterns and relationships, which would have further enhanced understanding. Unfortunately, up-to-date spatial data cover the title registration district decided on for Kumasi could not be obtained. Unlike Accra, where Registry Maps have been prepared for almost the entire city, in Kumasi the Survey and Mapping Division of the Lands Commission mainly undertakes
sporadic individual surveys as and when an application for title registration is made. The only comprehensive digital sectional map available was restricted to two areas in Kumasi, namely Danyame/Ridge and Patasi/Suntresu, which had benefited from a systematic land titling exercise under the World Bank funded Land Administration Project. These areas are both State acquired lands.

The results obtained from the application of the above techniques are presented under the three thematic components of the analytical framework in Chapters 6 and 7.

5.3 Ethics

Undertaking a research project involving human participants involves consideration of ethical issues (Creswell 1998; Yin 2011:46). Accordingly, the University of Otago Human Ethics Committee per its letter referenced 11/243 and dated 26th September 2011 sanctioned the research in this thesis. The fieldwork strictly complied with the standards spelled out by the Committee. The study recruited only adult participants over 21 years of age who were willing to participate in the field survey. The participants were given copies of the Information Sheet, which provided an overview of the project and the expectations of the participants (Appendix 1). It further assured participants of the confidentiality of the data to be collected and the security measures designed to safeguard the data. Particularly, the information sheet emphasised that the data were for academic purposes only and no information would be kept in Ghana. Finally, the information sheet clearly stated that the participant could withdraw at any time in the process and provided contact details for the researcher and supervisors.

A voluntary informed consent was obtained from participants by having them sign, though for some interviews the consent was verbal, (Consent Forms copies attached at Appendix 2). At all times care was taken to ensure that the participants were not brought to any harm or risk (physical, psychological, social, economic, legal, and dignitary harm). The participants were also informed that they could request copies of the transcript of the interviews if they so wished and that summary of the findings of the study would be made available to them at the end of the study upon request. None of the
participants opted to have copies of the transcript or summary of the findings of the study.

5.4 Reflections

Reflexivity analysis is the process “through which researchers recognize, examine, and understand how their own social background and assumptions can intervene in the research process” (Hesse-Biber and Leavy 2011:120). Two potential threats identified are discussed in the following subsections.

5.4.1 The Effects of an Insider Researcher

One advantage of an insider researcher is that there is greater opportunity to gain easier access to sources of information that are not normally available to an outsider. This is the result of being familiar with the local culture and customs and having already established personal and professional relationships within the setting of the case study. Another advantage is that the possibility of probing deeper into pertinent and relevant issues is enhanced because of the level of knowledge, insights and experience of the issues being investigated. There is, therefore, a greater possibility of obtaining rich data to address the research objectives.

In spite of the above advantages, being an insider researcher has two potential shortcomings relative to the current research. The first shortcoming relates to the researcher’s relationship with the participants, especially the property owners and the key informants from the public land sector agencies. With respect to the property owners, the threat related to the possibility of some of them being reluctant or outright refusing to disclose sensitive information because of the researcher’s position as an official of one of the State land sector agencies. In order to minimise any negative impacts that his role as a public servant might have on the behaviour of the respondents, he did not take part in the actual administration of the questionnaires. Instead, two research assistants were recruited and trained to administer the questionnaires in each of the two cities. Before the interview process commenced, the researcher requested the
research assistants to take the respondent through the information sheet and assure them of the confidentiality of the information that would be provided.

Three issues were identified with respect to the interviews with the key informants from the land sector agencies. The first was that some of them may have felt compelled to participate in the study and this may have adversely affected their responses. Second, the key informants may have been uncomfortable and/or unwilling to discuss or disclose sensitive information that may have been detrimental either to themselves or to their organisation. Third, there was the possibility that because of the relationship that the researcher had with some of the key informants, some of the questions may have seemed uncomfortable or controversial.

To address the above issues, as indicated earlier, in recruiting the key informants the established administrative structures of the respective organisations were relied upon in order to ensure that a comfortable distance was kept between the participants and the researcher. In addition, an advance copy of the information sheet was provided, which outlined the nature of the research and the key issues to be discussed. Before the commencement of an interview, any issues regarding the information sheet were clarified. The researcher’s credentials as a Doctoral student were articulated and distinguished from his role as a public servant.

The second shortcoming resulting from being an insider researcher relates to the tacit knowledge that the researcher has about the issues under investigations. The knowledge may result in the researcher making certain assumptions that can, on the one hand, prevent him/her from addressing or probing important emerging issues and, on the other hand, lead to misinterpretation of information. To address this threat, during the interviews with the key informants, it was ensured that issues that the informants might consider to be already known to the researcher were probed further for clarification. In addition to audio recording of the interviews, (with the permission of the participant) notes were also taken of key issues to facilitate follow-ups.

Notwithstanding the elaborate steps taken to limit any negative impact of the effects of an insider researcher, it became evident that some participants of the semi-structured interviews were still reluctant to express themselves openly. A classical case occurred.
during the interview with a senior officer of one of the public land sector agencies in Kumasi. It became apparent that the officer was reluctant to express freely opinions on certain controversial issues relating to the land documentation and registration process in the city. The officer indicated that, as a senior officer of the Lands Commission, the researcher should be aware of the issues, and therefore the officer did not understand why such questions were being asked. After explanation that obtaining the officer’s views was the objective of the interview, it proceeded without problem. With regard to the administration of questionnaires, as indicated in Subsection 5.2.1, there was an initial low response due to the unwillingness of some potential respondents to take part in the study. However, a change in strategy, as discussed in Subsection 5.2.1.2, the response rate increased appreciably.

5.4.2 Cultural Differences in the Case Study Areas

The second threat identified related to the differences in language and customs in the two cities. The dominant ethnic group and custodian of the land in Accra is the Ga tribe. The researcher is from the Ga tribe, and was born and brought up in Accra, can speak the Ga language fluently and is familiar with the customary practices of the community. In addition, he has worked in the city for over 10 years. With regard to Kumasi, the dominant ethnic group and custodian of the land is the Asante tribe. Fortunately, because of the researcher’s close association with people from that tribe during his formative years, he can speak fluently and understand fully the Akan language of the Asante. The Akan language is widely spoken in all parts of the country because of the high rate of interaction among the various tribes. In addition, the researcher has had a long association with Kumasi. He undertook his undergraduate studies in the city and, as a key participant in the Land Administration Project he interacts often with several traditional authorities in the city. As a result, he is familiar with the cultural setting and practices in the city. Finally, he is fully aware that land issues can sometimes stir up emotions, and therefore probed the issues in a sensitive manner to avoid conflict.
5.5 Summary

This chapter discussed the methodology followed in addressing the research goal. The philosophical and practical justification for the choice of an ethnographic study methodology was outlined and discussed. The discussion outlined the comparative approach that was applied to address the thesis goal and objectives. In particular, the quantitative and qualitative techniques used for the collection and analysis of data from the two case study cities were discussed. In addition, the ethical considerations and potential biases relative to the thesis were identified and discussed. The contextual understanding of the empirical setting discussed in Chapter 4 and the methodological approach presented in this chapter forms the basis for the analysis with respect to Accra and Kumasi discussed in Chapter 6 and 7, and the comparative discussions of the findings presented in Chapter 8.
Chapter 6

Case Study Results - Accra

This chapter presents the first part of the results of the data analysis from the two case study cities. In order to articulate the main research findings, each chapter presents the results under the thematic headings related to the analytical framework discussed in Chapter 2, namely the social context of land administration, the characteristics of the land delivery system, and the nature of urban land market activity.

The chapter is organised in five sections. Section 6.1 presents the results of the examination of the socio-political organisational structures governing the customary land tenure arrangements in Accra. Section 6.2 then presents the results of the assessment of the land delivery system regarding the land allocation, documentation and registration processes as they pertain in the city. Section 6.3 focuses on the nature of urban land market activities with respect to land information requirements and sources, market financing, and customary influences. Section 6.4 outlines some of the land administration reforms in the area of land information management relative to the formal and customary sectors in the city, and Section 6.5 summarises the findings, relative to the thesis goal and objectives.

6.1 The Social Context of Land Administration

This section presents the results of the examination of historical and contemporary socio-cultural factors that have shaped the land tenure arrangement in Accra. The results are based on the analyses of the responses of key informants, document analysis and field observations.
6.1.1 Background Information

Accra is both the administrative capital of Ghana and the regional capital of the Greater Accra region. The city is located on the coast of the Gulf of Guinea and covers an area of 201 square kilometres with a population density of 9,197 persons per square kilometre, the highest in the country (GSS 2012a). Table 6.1 shows the trend in the proportion of the population of the Greater Accra Region residing in the city from 1970 to 2010. The table shows that, over the period 1970 to 2010, the majority of the regional population resided in the Accra Metropolitan Area. The apparent drop from 78% in 1984 to 46% in 2010, as indicated earlier, was due to a redefinition of the city’s boundary.

Table 6.1 Proportion of Regional Population residing in Accra (1970-2010)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Greater Accra Region</td>
<td>903,447</td>
<td>1,240,066</td>
<td>2,905,726</td>
<td>4,010,054</td>
</tr>
<tr>
<td>Accra Metropolitan Area</td>
<td>343,336</td>
<td>969,195</td>
<td>1,658,937</td>
<td>1,848,614</td>
</tr>
<tr>
<td>Share of Regional Population</td>
<td>38%</td>
<td>78%</td>
<td>57%</td>
<td>46%</td>
</tr>
</tbody>
</table>

Sources: Population and Data Analysis Vol. 2 (GSS 2005); 2010 Population and Housing Census – Summary Report of Final Results (GSS 2012)

Administratively, the city is divided into eleven (11) sub-metropolitan areas as shown in Figure 6.1. The sub-metropolitan areas include Ablekuma Central, Ablekuma South, Ablekuma North, Ashiedu Keteke, Ayawaso East, Ayawaso Central, Ayawaso West, La, Okai Koi South, Okai Koi North and Osu Klottey.

6.1.2 The Socio-political Structure

Accra was originally founded by the Ga tribe around the 16th century (Odotei 1991), and the migration of the people settling in Accra occurred at different times, leading to the establishment of more or less independent indigenous settlements of Ga Mashie (central Accra), Osu, La, Teshie, Nungua and Tema. Indigenous Ga society is composed of independent groups of closely related lineage or extended family (weku).
who migrated and settled among the aboriginals who inhabited the coastal areas of the current boundary of Accra (Manoukian 1950).

Historically, the basic unit of social organisation was the *weku*, which was headed by a priest (*wulomo* plural *wulomei*) who was assisted by senior male elders of the family, who were usually hunters. Reindorf (1895) likened the governance structure of the Ga tribe to that of the Jews in biblical times. He pointed out that the form of government “…somewhat resembles that of the ancient Jews. The priest might be also a prophet, and at the same time a judge, as we see with Samuel. When the Israelites asked for a king, and Saul was appointed, the three offices became separated” (1895:114). In the same way, the political organisation of the Ga society was originally a theocracy. However, the socio-political organisation of the society has changed.

The transformation of the social structure of the society began with the formation of towns. The groups of independent settlements were compelled to come together to form towns (*manjii* singular, *man*) in order to protect themselves against military threat from neighbouring tribes (Field 1961; Kimble 1963). As a result, six traditional towns were
formed, each consisting of quarters (akutsei singular akutso) predominantly inhabited by independent lineages. The first towns, Ga Mashie and Osu, were formed around the end of the 17th Century, whilst the other towns, La, Teshie, Nungua and Tema were formed over a century later (Field 1940; Odotei 1991). The number of quarters in the towns differed. For instance, Ga Mashie, La and Teshie consisted of seven quarters each, Osu and Tema comprised four quarters each and Nungua had two quarters. Figure 6.2 depicts the structure of a typical Ga town and its relations to quarters and lineages.

![Figure 6.2 Illustration of indigenous social structure of Ga Society](Source: Field data, 2012)

Following the formation of the towns, the high priests of the gods in each town became both the religious and secular leaders. Manoukian (1950:81) notes that the “…priest-leaders remained the heads of civil affairs, and in each town one of the priests became the head priest, his lineage god, usually a lagoon god of the aborigines, becoming the acknowledged god of the whole town”. In order to assist the priests in the management of the towns and lessen their increasing responsibility, the wulomei had to delegate some of their secular duties, such as negotiations with outsiders, to lesser wulomei (Parker 1995). Over a period, there was a gradual process of separation of the sacred and secular roles of the priests, which led to the emergence of a mantse (town father often equated to a ‘chief’) in the various traditional towns at different times (Odotei 1991).

Consequently, each of the traditional towns had a mantse with the exception of Ga Mashie town, where six out of its seven quarters each had a mantse. However,
following the directives of gods that the mantse of the Abola quarter of Ga Mashie should lead the people to war, he was acknowledged as the head of all the mantsemei of Ga Mashie (Field 1940). Despite the separation of the secular and sacred roles, the high priests continued to be the acknowledged leaders of the towns. The role of the mantse was generally limited to negotiations and to imbuing confidence and bravery in soldiers in times of war through magical powers associated with their position (Manoukian 1950; Field 1940).

For various reasons, the established towns accepted and integrated groups from tribes such as the Akan into their fold and they were settled in different quarters of the town. Even though the integrated groups acknowledged the protection of the leadership of the town, they often maintained their own customs that gradually influenced the customs of the indigenous tribe (Field 1940). In addition, the transfer in 1877 of the capital of the then Gold Coast Colony from Cape Coast to Accra resulted in the influx of migrants from far and near (Firmin-Sellers 1996; Odotei 1991; Field 1940). These migrants came with their own cultural values that also gradually influenced those of the indigenous people, and the 2010 population census revealed that the indigenous people of the Greater Accra region, the Ga-Dangme people, constituted only 27% of the population (GSS 2012a). The influx of people into Accra, has contributed to the erosion of some of the social values of the people regarding land ownership.

Following the defeat and domination of the territories of the Ga people by three Akan tribes (Akwamu, Akyem and Ashanti) at various times between 1680 and 1820, the military and chieftaincy mode of governance of the Akan tribe was adopted (Parker 1995; Odotei 1991). Important aspects of the adaptation were the introduction of the stool and a new perspective of the role and position of the chief in the indigenous society. It is significant to note that the role of a stool in Ga society was originally for military purposes, rather than as a symbol of political power as pertained in the Akan society from where it was adapted.

The contact of the people of Accra with European traders (around the late 16th century), who later became their colonial masters, also contributed to the formal centralisation of the social organisation of Ga indigenous society. The role of the mantse as a negotiator on behalf of the town was misconstrued to mean he was the
leader of the people, and accordingly given the status of a ‘chief’ and incorporated into the implementation of the concept of indirect rule. Subsequently, with the passage of the Native Jurisdiction Ordinance in 1878, the independent traditional towns were transformed into a rigid centralised state and the Ga Mashie mantse was made the head. The mantsemei of the other traditional towns and the six quarters of Ga Mashie town were made divisional chiefs under the Ga State Council, which was renamed the Ga Traditional Council (GTC) after independence. Figure 6.3 shows the traditional authority structure following the centralisation.

![Figure 6.3 The Political Structure of Ga State](source: Field Notes, 2012)

Although the position of a paramount chief was created, he did not have much authority and power over the mantsemei of the other independent towns. The elevation of the Ga Mashie mantse was based on a misconception by the colonial authorities that a centralised traditional state, similar to that of the Akan states (presented in Chapter 7), also existed in Ga society. The prominence given to the Ga Mashie mantse was also partly due to the prominent role that the Ga Mashie town played in the increasing commercial trade with Europeans in the colonial era. In addition, due to the similarity in the name of the town Ga Mashie, the tribe Ga and the name of the common Ga language, there may have been some confusion in associating the mantse of the Ga Mashie as the overlord (Field 1940; Manoukian 1950).

However, even though each town appears to be socially homogenous due to the fact that residents speak the same language and have some homogeneity of customs, such as the Homowo festival (hoot at hunger), each town is politically autonomous. As pointed out by Field (1940:72):
The Ga (or strictly, the Ga-speaking people) are not one people either in origin or organization. Each of the six coastal towns is in an independent republic with its own territory and its own unique set of customs. There has never been any political association between the towns and they have never had a paramount chief – nor indeed any chiefs at all in the sense that the word usually conveys.

During the fieldwork for this thesis, it was found that the National House of Chiefs NHC had sanctioned the elevation of five of the traditional towns and one of the quarters of Ga Mashie town to paramount status. The reason assigned for the elevation was to halt the spate of chieftaincy disputes. For instance, the persisting trend in almost all the traditional towns in the city is that there are two or more contestants to the position of mantse. In all cases, different quarters and lineages of the towns claim rights to nominate a chief. Consequently, the current traditional political authority structure of Accra comprises seven independent traditional areas, namely Ga Mashie, Osu, La, Teshie, Nungua, Tema and Nglesh Alata, each of which has jurisdictional control over several localities within the boundary of the city and beyond.

It can be observed from the foregoing discussion that the socio-political organisation structure of the indigenous society is non-centralised and power and authority is vested in independent social units. The non-centralised socio-political structure described above has influenced the nature of the land tenure arrangement in the city, as will be seen in the subsequent subsection.

### 6.1.3 Indigenous Land Ownership Arrangement

Land is believed to be owned by the lagoon Gods, the Korley and Sakumo, as well as the god of the sea Nai, and the priests of the lineages were the custodians. The priests were assisted by the town elders to ensure equitable access to land by all indigenes. Two broad forms of land ownership arrangements existed, depending on whether the land was within or outside the boundary of the traditional towns. Depending on the traditions of a particular town, the allodial title to the town lands was vested in either the town or the quarter that originally settled on it. For instance, in Ga Mashie and Tema, the town lands were controlled by the individual quarters, whilst in the rest of the traditional towns all the quarters controlled these lands. To exemplify the importance of these traditions, in a Privy Council judgement in the case Ange Akwei v Mantse
Kojo Ababio, (No.101) of 1924, it was found that “...by the custom of the Ga tribe, land which had been exclusively used by inhabitants of a particular quarter belonged exclusively to that quarter” [as cited in Appeal Court Judgement Suit No H1/158/10 dated 26th May 2011, Edward Doku Nettey v Lartey].

The ownership and control of the lands that existed outside the town boundary are confusing. These lands, known as kosei (rural lands), which form the bulk of the current extent of the city, were originally discovered through hunting expeditions by members of the lineages in the traditional towns. The founder of an area of rural land subsequently established villages (aklowai singular aklowa), inhabited by his close relations from the original lineage. For instance, a key informant from one of the customary institutions gave the following account of how his family came to own its land:

Nii Gbawe, that is, Nii Osiakwan is the founder of Gbawe. I say founder because he left his siblings and the family in Accra came to the bush in search of meat. The whole place was virgin. So, as and when he arrives at a point he leaves a mark by indicating something on a big tree where he lived for a day or two to indicate that somebody has occupied this spot or somebody has been here because the whole place was virgin and did not belong to anybody. So he did this throughout the stretch of the 9,836 acres before he passed on. He put marks on the trees sometime by the hunt he marks with the blood on the trees and sometimes the fire he used served as a sign around the tree that somebody has been here together with some pots and whatever he used. So all these put together are marks that show clearly that somebody has been here or somebody has acquired this point [AC7].

The nature of the discovery and settlement of the rural lands coupled with the non-centralised nature of the social organisation of the indigenous society has contributed to a mosaic pattern of settlements. Within a jurisdiction, it is possible to find different settlements owing allegiance to quarters in different traditional towns that has created multiple conflicting claims of ownership of land. Due to the expansion of the city, increasing demand for land and associated increases in land values, conflicts have emerged over the rightful traditional authority structures vested with the allodial interest over the kosie lands. This situation has a bearing on the nature of tenure administration in the city.
In the past, in order to gain access to land located within a town, indigenes and strangers had to approach the male elders of the land owning group. With regard to rural lands, group members or strangers had to obtain permission from the leadership of the extended family that originally established the village. Land was allocated after the performance of customary rites involving the provision of alcoholic drinks for the pouring of libation to the gods and ancestors, the payment of a token fee, and the slaughter of a sheep (Quarcoopome 1992).

Evidence obtained during the fieldwork from the Greater Accra Regional office of the Office of the Administrator of Stool Lands (OASL) indicated the office has formal agreement to collect ground rent on behalf of over 120 extended families throughout the region. In addition, several other land owning groups have fashioned out their own arrangements for collecting ground rents. Some of the families claim allodial title to land by swearing a statutory declaration using the Statutory Declaration Act, 1971 (Act 371), whilst others base their claim on formal court judgements. In some cases, the claims by families conflict with those of stools in the city. The cause of disagreement is often whether the rural lands are under the proprietary control of the leadership of the traditional town of the founder or are controlled independently by the leadership of the village (aklowa).

Conflicting judgments by the formal courts on the issue have added to the confusion. Judgements given by the courts at different levels have vested the allodial interest in either the stool or the family. Table 6.2 provides a list of some major court judgements that have determined the location of the allodial title in customary lands in Accra. For instance, in the case of C. B. Owusu v Mantse of La (1932), the plaintiff had claimed that the land was ‘family land’ since his ancestors, who were subjects of the La stool, were the founders of the Nkwantanang rural lands. As a result, the family, and not the stool, was entitled to the payment of compensation for acquisition of part of the land by the government. The Supreme Court of the Gold Coast ruled that the allodial title of the rural lands was vested in the La Stool, which was therefore entitled to the payment of compensation. Despite this ruling, in other cases involving La rural lands (e.g. Frafraha (1988) and Ogbojo (2012) cases), the Supreme Court of Ghana judged that the allodial interest vested in the extended families in the villages concerned.
Table 6.2 List of some major judgement affecting the location of the allodial title in customary land in parts of Accra

<table>
<thead>
<tr>
<th>Suit No.</th>
<th>Parties</th>
<th>Level of Decision</th>
<th>Location of Land</th>
<th>Judgement</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. 23/32</td>
<td>C. B. Owusu v Mantse of La</td>
<td>Supreme Court of Gold Coast</td>
<td>Nkwantanang (La Rural Land)</td>
<td>Allodial interest vested in La stool</td>
<td></td>
</tr>
<tr>
<td>2. 64/47</td>
<td>Nii Abossey Okai II &amp; Ano. V Nii Ayikai II</td>
<td>Privy Council Appeal</td>
<td>Abossey Okai Akiumajay stool owns allodial interest</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. 1/52</td>
<td>J. K. Q. Aryeh &amp; Ors. V V. R. A. Ankrah</td>
<td>Privy Council Appeal</td>
<td>Awudome Mantse Ankrah family owns allodial interest</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. 31/59</td>
<td>Nikoi Olai stool family v Asere stool</td>
<td>Privy Council Appeal</td>
<td>Mukose (Bubisahie) Nikki Olai family owns allodial interest in 7/8 of the disputed land while the Asere stool owns 1/8</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5. L. 107/1961</td>
<td>Q. A. O Papafio v Gbawe Kwatei family &amp; ano.</td>
<td>High Court of Ghana</td>
<td>Gbawe Gbawe Kwatei family owns the allodial interest</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6. 50/66</td>
<td>Alata stool v Sempe stool</td>
<td>Appeal Court of Ghana</td>
<td>Abossey Okai/Odorkor Alodial interest resides in Sempe stool</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7. SC 19/5/88</td>
<td>Nartey v Mechanical Lloyd Assembly Plant Ltd.</td>
<td>Supreme Court of Ghana</td>
<td>Frafraha (La Rural Land) Abgawe family of Frafraha are the owners of the land</td>
<td>Conflicts with 1 above.</td>
<td></td>
</tr>
<tr>
<td>8. 2012</td>
<td>Nii Kpobi Tettey Tsuru III v Nii Ago Sai (Per Joseph Nii Torgbor Obodai II) &amp; Others</td>
<td>Supreme Court of Ghana</td>
<td>Ogbojo (La Rural Lands) Anahor and Dzirase families of Ogbojo declared allodial owners</td>
<td>Conflicts with 1 above</td>
<td></td>
</tr>
</tbody>
</table>

Source: Compiled from records of Land Commission. 1 from Judicial Service Training Centre
Figure 6.4 shows a typical situation of conflicting boundaries involving different families and stools in the western part of Accra. The map, for example, shows that the Gbawe Kwatei family has a boundary dispute with the Nikoi Olai Stool family on its north and north-eastern boundaries. In addition, its eastern part shows a chaotic situation involving boundary overlaps between the Sempe stool, Akumaje stool, and the Ablor Mills family.

One implication of the conflicting claims is the difficulty in identifying the rightful authority structure with respect to land allocation in the city. Consequently, the possibility of multiple allocations of the same parcel of land and the payment of money to multiple claimants is common. During fieldwork, a real estate consultant confirmed that it is a normal occurrence for a prospective purchaser of land to make multiple payments in order to have peace of mind.

Another consequence of the conflicting ownership situation is the emergence of the use of ‘land guards’ to protect land interest and developments. ‘Land guards’ are armed civilians who are engaged by factions in a land dispute to protect their grantees against...
rival claimants. As an example of the menace, in a high profile case reported in the Ghanaian Chronicle newspaper, dated 21st June 2001, land guards gruesomely killed and buried beneath newly constructed buildings two police officers in Ablekuma, a suburb of Accra. A senior police officer described the land guard phenomenon as follows in the 25th June 2009 edition of the Daily Graphic, a leading national newspaper:

[Assistant Superintendent of Police] ASP Afari said the phenomenon usually arose when landowners sold a portion of land to more than one buyer, and to help one of the buyers to secure that sold land, the buyer had to contract guards to protect it for him or her. He also pointed out that in some other cases, some chiefs and community leaders deliberately got involved in the double sale of lands and turned to land guards, purposely to scare one of the buyers away.

In the same issue of the Daily Graphic, it was reported that:

The police are soon to declare war on land guards who have been terrorising property owners and tenants in some parts of Accra. Speaking to the Daily Graphic in Accra, the Regional Police Commander, Deputy Commissioner of Police (DCOP), Rose Bio-Atinga, issued a strong warning, but also advised people who operated as land guards within the region to put immediate stop to it, saying “the police will soon get hard on them”. She said within the next few weeks, a strong team with special orders would be deployed to deal with the situation. She, therefore, appealed to chiefs and other opinion leaders in communities where the guards operated to advise them, but should not wait till the suspects were arrested before they come to beg for their release. (Daily Graphic 25th June 2009)

The menace of the land guard phenomenon was also highlighted by the then Greater Accra Regional Minster, Sheikh I. C. Quaye, when he inaugurated a reconstituted Regional Lands Commission in 2007. His views were captured by the Ghana News Agency as follows:

The minister noted that the land problem had been compounded with engagement of land guards, which was the recruitment and arming of persons with violent disposition by chiefs, families and land owners to harass and intimidate and sometimes kill prospective developers in some parts of the country, especially in the Greater Accra Region. (GNA 2007)
Field observations in Accra as well as interviews with some of the key informants confirmed the pervasiveness of engagement of ‘land guards’. Hence, the phenomenon of ‘land guards’, which emerges from the chaotic land tenure arrangement in the city, has a direct impact on access to and control of land in the city. As discussed later in this chapter, the chaotic land tenure arrangement in the city contributes to the perception of tenure security. To some extent, the uncertainty in the land tenure system can be associated with the impacts of the historical and colonial factors on the nature of the socio-political organisational structure that underpins the land tenure arrangement. It is within the above social context that the land delivery system operates in the city.

6.2 Characteristics of the Land Delivery System in Accra

This section examines how the persisting social context of land administration in Accra has shaped the local land delivery system in the city. In the analytical framework presented and discussed in Chapter 2 the importance of the clarity of land delivery was emphasised in determining the quality of land information management. In the following discussions the structured survey of property owners, document analysis, responses from key informants, and field notes are used to assess the performance of and interactions between the formal and customary land management systems. As was shown in of Chapter 5, sampled property owners were categorised based on their sources of land acquisition (primary or secondary), characteristics of the neighbourhoods they live in (developed and developing), and gender. Primary sources relate to the acquisition of land rights directly from customary land authorities, such as extended families and stools. Secondary sources relate to other land right acquisitions such as from someone who originally acquired the rights from primary sources.

As was discussed in Chapter 5, Section 5.2.2.3, two statistical tests, namely Pearson’s Chi-square Test of independence ($\chi^2$) and the Mann-Whitney $U$ test, were employed in the analysis to determine the statistical significant of differences in response frequencies. The results of the examination of the land delivery system are presented in two subsections. Subsection 6.2.1 focuses on the land acquisition process and subsection 6.2.2 focuses on the land registration process.
6.2.1 The Land Acquisition Phase

Currently, land acquisition in Accra mainly involves interactions between a prospective purchaser of land and the prospective grantor. The land acquisition process, shown in Figure 6.5, involves the identification of and negotiations with an accredited owner of a parcel of land, the payment of an agreed value for the land, and the preparation of the land document by either the grantor or grantee. The process commences with a prospective grantee identifying a suitable parcel of land and details about the grantor. The results of the analysis of the sources of land acquisition by the sampled property owners in the city show that most (63%; n=95) acquired their land from secondary sources, followed by primary sources (23%; n=34) and those who inherited their properties (14%, n=21). The evidence that the majority of respondents acquired their land from secondary sources suggests the existence of an active secondary land market.

After the identification of the rightful grantor, either the location of the parcel of land under consideration is ascertained on a planning scheme for the locality if available, or a surveyor undertakes a physical identification. In order to ascertain the authenticity of the land and the grantor, and given the uncertainties surrounding land ownership, the prospective grantee often obtains an extract of the plan of the land to enable him/her to undertake a records search from the formal land sector. This finding highlights the point made in Chapter 3 Subsection 3.1.1 that the nature of the interdependencies among different social groups involved in indigenous land tenure management may have an important influence on access to land resources. In the non-centralised states, the dispersed nature of authority to sub-units or lineages creates challenges in dealing with the various lineages in a jurisdiction (Swallow and Bromley 1995; Lavigne Delville 2000). When satisfied with the status of the land, negotiation over the price is concluded based on the current market value of the land. The increasing reliance on the payment of money is clearly at variance with the ‘customary” practice of acceptance of drinks under “custom”, as was discussed in Chapter 3.

According to the provisions of Legislative Instrument 1444, Survey (Supervision and Approval of Plans) Regulations 1989, the Director of the Survey and Mapping Division (SMD) of the Lands Commission (LC) must approve plans attached to a land
document for registration. It is the responsibility of the grantor’s surveyor to ensure that the necessary approval of the plan is obtained. After the preparation and approval of the plan, some of the customary authorities have retained lawyers, who prepare land documents on their behalf, whilst others allow the grantees to prepare the documents for its execution.

An important outcome of the land acquisition phase is the level of land documentation because it eventually has an impact on the status of land registration in a jurisdiction. Overall, the majority (85%) of the respondents indicated that they have some form of documentation as proof of their ownership of land. The 15% who did not
have any document indicated that the development of the land, recognition by neighbours and the landowning group was proof of their ownership. When the types of documentation are disaggregated, Figure 6.6 shows that large proportion (87%) of the respondents had indentures, which are the formal legally recognised documents required for land registration, as the main type of land documents. A high percentage (88%) of those who acquired their land from primary sources had indentures suggesting a high prevalence of formal practices in the land acquisition process.

6.2.1.1 Assessment of the Land Acquisition Process

To facilitate the assessment of the clarity of the land acquisition process in the city, the sampled property owners were asked to rate their level of satisfaction of the number of steps, time spent, costs incurred, security of tenure, and transparency of the land acquisition process based on a five-scale Likert-type questions. The 129 responses to the questions were analysed using a Mann-Whitney U test to ascertain any significant statistical differences in the response frequencies of the identified category of respondents. The responses were disaggregated into primary sources (n=34), secondary sources (n=95), developed neighbourhoods (n=50), developing neighbourhoods (n=79), males (n=100) and females (n=29).

When asked how long it took them to complete the land acquisition process, over a quarter (27%) of the respondents indicated that it took over one year to complete the acquisition process; another (23%) suggested it took six months to one year. Roughly, a
quarter (26%) reported it took less than three months to complete the process (Figure 6.7).

Table 6.3, which compares the completion time of the categories of respondents shows that the majority (79%) of acquisitions from the primary sources took over 6 months to complete, compared with 40% with respect to those from the secondary sources. A Pearson’s Chi-square test of Independence shows that the completion times were statistically significant, $\chi^2 (1, N = 129) = 15.56$, $p < 0.001$. The table also shows that most (58%) respondents from developing neighbourhoods took more than six months to complete their acquisition, compared with 36% of those from the developed neighbourhoods, $\chi^2 (1, N = 129) = 6.05$, $p < 0.05$. Fifty percent of the male respondents took over six months to complete the acquisition process compared with 64% of female respondents, $\chi^2 (1, N = 129) = 4.21$, $p < 0.05$.

The above results suggest that respondents who acquired their land from primary sources, who were located in developing localities or who were female are likely to spend longer period in completing the land acquisition process. The longer times for completion of the acquisition process are associated the several legal and physical checks that prospective purchasers have to go through in order to ascertain land ownership. The checks are particularly important because of the unclear nature of the land tenure regime in the city, as was discussed in subsection 6.1.3.
Table 6.3 Time Taken to Complete Land Acquisition – Accra

<table>
<thead>
<tr>
<th>Source of Acquisition</th>
<th>Less than 6 month</th>
<th>Over 6 months</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Primary</td>
<td>7</td>
<td>27</td>
<td>34</td>
</tr>
<tr>
<td></td>
<td>21%</td>
<td>79%</td>
<td>100%</td>
</tr>
<tr>
<td>Secondary</td>
<td>57</td>
<td>38</td>
<td>95</td>
</tr>
<tr>
<td></td>
<td>60%</td>
<td>40%</td>
<td>100%</td>
</tr>
</tbody>
</table>

Neighbourhood Characteristics

<table>
<thead>
<tr>
<th>Characteristics</th>
<th>Less than 6 month</th>
<th>Over 6 months</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Developed</td>
<td>32</td>
<td>18</td>
<td>50</td>
</tr>
<tr>
<td></td>
<td>64%</td>
<td>36%</td>
<td>100%</td>
</tr>
<tr>
<td>Developing</td>
<td>33</td>
<td>46</td>
<td>79</td>
</tr>
<tr>
<td></td>
<td>42%</td>
<td>58%</td>
<td>100%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Gender</th>
<th>Less than 6 month</th>
<th>Over 6 months</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Male</td>
<td>50</td>
<td>50</td>
<td>100</td>
</tr>
<tr>
<td></td>
<td>50%</td>
<td>50%</td>
<td>100%</td>
</tr>
<tr>
<td>Female</td>
<td>14</td>
<td>25</td>
<td>39</td>
</tr>
<tr>
<td></td>
<td>36%</td>
<td>64%</td>
<td>100%</td>
</tr>
</tbody>
</table>

Overall, the sampled property owners were dissatisfied with the land acquisition process. Most expressed dissatisfaction with the number of steps and time spent during the acquisition process. Figure 6.8, which presents the results of the analysis of the Likert-type questions shows that 54% and 50% of the respondents were either very or somewhat dissatisfied with the number of steps and the time spent.

In terms of the categories, Figure 6.9 shows that the vast majority (80%) of primary source land acquirers were dissatisfied compared to 45% of those who acquired land
from secondary sources, $U = 1242, Z = -3.66, p < 0.001$. Similarly, Figure 6.10 shows that the majority of the respondents who acquired their land from primary sources (68%) were dissatisfied with the time spent compared to 45% of those from secondary sources, $U = 1360, Z = -3.11, p < 0.05$. These results tend to confirm the earlier finding that most acquisitions from primary sources generally took more than one year to complete due to the unclear land ownership regime in the city. The analysis did not yield any significant statistical difference in the level of dissatisfaction regarding respondents in the neighbourhood and gender categories, suggesting that respondents in these categories are likely to have similar dissatisfaction levels. Interviews with some key informants suggest that prospective purchasers have to go through elaborate legal and physical checks in order to avoid being duped, (AC 12 and AC13).

![Figure 6.9](image1.png)

Figure 6.9 Assessment of the number of steps in land acquisition – primary and secondary sources

![Figure 6.10](image2.png)

Figure 6.10 Assessment of time spent in Land acquisition – primary and secondary sources

High transaction costs can be an important impediment in the land delivery system (see Chapter 3, Subsection 3.2.2). Figure 6.11 shows that half (50%) of the respondents
expressed dissatisfaction. The analysis did not reveal any significant statistical difference in the level of dissatisfaction in terms of the sources of acquisition, neighbourhood characteristics, and gender. The result of general dissatisfaction can be attributed to the pervasiveness of the phenomenon of multiple payments associated with the conflicting land ownership regime in the city. For instance, discussion with some key informants revealed that due to unclear ownership arrangement, some land acquirers often had to pay money to different categories of persons claiming an interest in the land, in order to ensure guaranteed occupation of a parcel of land (AC1, AC6 and AC12).

The perception of tenure security is an important indicator of the success of a land tenure system. Figure 6.12 shows that the majority (63%) of the respondents were dissatisfied with their tenure security. A disaggregation of the result shows that the majority (89%) of those who acquired their land from primary sources were dissatisfied with the level of security of tenure compared to those who acquired their land from secondary sources (53%). A Mann-Whitney U test indicated there was a statistically significant difference in the levels of dissatisfaction, \( U = 1364, Z = -3.30, p = 0.001 \). However, the analysis did not reveal any significant statistical differences in the levels of dissatisfaction with tenure security with respect to neighbourhoods and gender.

![Figure 6.11 Assessment of cost incurred in the land acquisition process](image-url)
The finding of high levels of dissatisfaction with the perception of tenure security can be attributed in part to the phenomenon of multiple allocations of land rights resulting from conflicts between and within stools and lineages over ownership rights, discussed in Subsection 6.1.3. A real estate consultant corroborated this point:

…because of the insecurity arising from the determination of rightful owners in Accra due to multiple claims by families and stools and within the stools there are families also claiming and all that, the insecurity necessitate registration of formalise title [AC13].

In some cases, property owners engage ‘land guards’, in order to protect their interest. The analysis showed that 35% of the respondents who acquired their land from primary sources indicated they have been involved in some form of litigation. Most of the disputes were with respect to boundary location and title involving stools, families and neighbours. These results may suggest that primary sales are more likely to be contentious than secondary sales.

Figure 6.13 shows that most (60%) of the respondents were generally dissatisfied with the level of transparency in the land acquisition process. A high proportion (83%) of the respondents who acquired their land from primary sources was dissatisfied, compared to 52% from secondary sources, U = 1294, Z = -3.55, p < 0.001. Most of the respondents from developing localities (71%) were dissatisfied compared to (44%) of those from developed localities, U = 1710, Z = -3.60, p = 0.001. With respect to gender, a higher proportion (65%) of female respondents were dissatisfied compared to their male counterparts (59%), U = 1406, Z = -2.02, p = 0.044.
The results of the land delivery process discussed above suggest that the land acquisition phase involves minimal interaction between the customary and formal land sector institutions. Overall, the sampled property owners were dissatisfied with the number of steps, time spent, costs incurred, security of tenure, and transparency of the process, suggesting the poor functioning of the market. An important observation was that despite the evident general dissatisfaction with the land acquisition process, most of the sampled property owners had in their possession the legally recognised documents required for land registration, suggesting a possible relationship with the unclear nature of the land tenure arrangement. The result of high levels of indenture among the sampled property owners should generally have a positive effect on the level of land registration.

6.2.2 The Land Registration Phase

The land registration phase of the land delivery system in Ghana involves two stages, namely concurrence and consent, and actual land registration. As was discussed in Chapter 4, transactions emanating from stools must obtain the concurrence or certification of the Lands Commission (LC) before they can be registered. In addition, any transfer of stool or state land must receive the consent of the Commission before registration. The concurrence and consent process, and the land registration process are described in turn followed by an assessment of the process from the perspective of the
sampled property owners and key informants. The processes in the concurrence and consent phase are depicted in Figure 6.14.

The figure shows that after the completion of the land acquisition process described earlier, the land document is submitted to the Land Valuation Division (LVD) of the LC
for the assessment and payment of stamp duty. If the subject matter of the transaction is family or private land, the stamped document is presented to the Land Registration Division (LRD) of the LC for land registration to commence. However, if the subject matter of the acquisition is stool land, it must first receive the statutory concurrence of the LC before submission for land registration.

The concurrence process involves the transaction being checked for conformity with the provisions in the Conveyancing Act (NRCD 175), 1973. Legal checks include the capacity of the parties to the contract (especially the stool) and the term of the lease. The transaction is also checked to ascertain whether it affects any encumbrances, such as State lands, previously recorded stool land transactions, and court judgments. According to a key informant official of the LC, it is often difficult to determine the status of chiefs since in most of the traditional areas chieftaincy disputes are rampant [AC4]. Further, because of conflicting judgments or statutory declarations, it is often difficult to ascertain ownership of the alodial interest.

The land use indicated in the deed is checked for conformity with the planning scheme for the area. If a copy of the relevant scheme is not held in records, a request is made to the planning authority for their consideration. A key informant officer of the Public and Vested Land Management Division (PVLMD) of the LC indicated that even though the Town and Country Planning Department (TCPD) is required by law to make available approved planning schemes to the Commission, this is often not complied with [AC1]. The officer pointed out that, because responses to requests for planning clearance often take a long time, there are often delays in the concurrence process. The subject parcel is in some cases inspected to check its conformity with any planning scheme and the state of development among other things. It was observed that in most cases inspections were not coordinated, resulting in most of the land sector agencies undertaking repeated inspections on the same parcel at different times. In order to safeguard the interest of the beneficial owners of the land, the consideration (i.e. the ground rent) is re-assessed to reflect its economic value.

When all the checks have been undertaken, a concurrence certificate is prepared for the execution of the Chairman of the Regional Lands Commission (RLC). Subsequently, the Commission indexes and plots the certified document in its records.
Details of the transaction are forwarded to the Office of the Administrator of Stool Lands (OASL) for the collection of the ground rent. The applicant collects the certified document to commence the land registration process.

The consent process, shown in Figure 6.14, commences with the submission of an application with a draft copy of the transfer document to the PVLMD. The draft document is legally vetted, the position of rent is checked, the site is inspected and a records search is undertaken. If the transaction is in respect of part of a larger parcel of land, TCPD approval is required for the subdivision. After the payment of the consent fee, the consent certificate is prepared for the execution of the Chairman of the RLC. The signed certificate is inserted the final transfer document, indexed and plotted before the applicant collects it for stamping and land registration.

The land registration phase, shown in Figure 6.15, requires the close collaboration of three divisions of the LC namely the LRD, SMD and PVLMD. The process commences with an applicant buying and completing an appropriate application form, attaching all relevant supporting documents and submitting it to the LRD. On receipt, an acknowledgement card, popularly known as ‘Yellow Card’ is issued. The LRD then makes a request to the SMD to prepare a title plan for the preparation of the land title certificate. The application is put on hold by the LRD until the parcel or cadastral plan is received from the SMD.

Two forms of title plans exist. The first, known as the parcel plan, is prepared from an extract of a digital surveyed section of a Registry Map. The second, the cadastral plan, is prepared where surveyed sectional plans do not exist. A cadastral plan is prepared after a detailed field survey of the subject land has been undertaken. It is the responsibility of the applicant to pay the statutory fees and arrange for site inspections. In most cases, the SMD ignores any earlier approval given to site plans during the land acquisition process. Hence, applicants are required to go through another approval process at extra cost to them.
It was observed during fieldwork that preparations of title plans are often hampered by “multiple requests”. ‘Multiple requests’ occur when a request made by the LRD to the SMD for the preparation of a parcel/cadastral plan is found to conflict with an earlier request or recording. Discussions with some of the key informants suggest that ‘multiple requests’ arise for two main reasons [AC2, AC3]. First, in addition to the recording of the official requests from the LRD, the SMD also undertakes other surveys, which they record. The non-title based recordings frequently conflict with the title-
based ones contributing to multiple requests. Secondly, there is no effective mechanism ensuring that the records of the two divisions are reconciled with respect to title plans for which title has been issued or not. In the absence of any means of knowing whether a prepared title plan has been registered or not, the SMD continues to maintain the recording. This situation has important implications for the efficient management of land information.

When the title plan is received, the LRD uses it to prepare a records request form to enable the PVLMD to ascertain the ‘ownership’ status of the land. It is the responsibility of the applicant to pay for the fees and follow-up on the completion of the search. The PVLMD has custody of information on State land acquisitions and allocations, stool land transactions, and other land transactions registered under the previous Deeds registration system. Due to the poor quality of the plans previously used to plot earlier transactions, there is often conflicting information when the title plan, which is prepared under higher standards, is superimposed on the recorded transaction. A typical conflict arising from an overlap in the boundary of the title plans and recorded transactions is shown in Figure 6.16. The figure shows that the parcels in the sectional plan (shown in red) overlap with recorded transactions (hatched in blue within the black edged box). An important implication of this situation is that it impedes easy access to land information.

During fieldwork, it was found that when the LRD receives an unfavourable report, it usually undertakes a site inspection to ascertain the situation on the ground before taking a decision whether to continue with the registration process or not. Applications with favourable responses are compiled for publication. The practice of the office has been to publish notifications in a national weekly newspaper, the “Weekly Spectator” for 14 days. The description of the land in question is very technical, making it difficult to determine the particular land referred to in the publication. Most of the key informants interviewed expressed their worry about the mode of publication of the intention to register.
If an objection is received within 14 days of the publication, the Registrar first attempts to resolve it, otherwise it is supposed to be referred to the Adjudication Committee set up under the law. Information gathered during fieldwork indicated that the Adjudication Committee had not been functional for over ten years, compelling most objections to be directed to the formal courts for adjudication. A key informant from the LRD pointed out that most objections related to land ownership boundary disputes between stools or families, and multiple sales of the same parcel of land [AC2]. The informant gave an instance where a chief constantly raised an objection to all transactions within his traditional area that did not emanate from the stool. This finding is a reflection of the confusing state of land tenure arrangements in the city that result from conflicting claims of land rights by different authority structures.

Depending on the outcome of the adjudication or arbitration process depicted in Figure 6.15, the registration process may be terminated or the application may be amended as directed, and the land registration process continues. When no objection to the publication is made or when an objection is resolved, the title certificate is prepared, signed, and entered into the Land Register. Thereafter the certificate is plotted on the appropriate Registry Map, after which the applicant collects it and takes formal possession of the land.
6.2.2.1 Status of Land Registration

Analysis of the status of registration of the 150 sampled property owners in the city showed that 41% (62) had completed the registration process, 12% (18) were in the process of registration, and a significant proportion 47% (70) had not formally registered their title (Figure 6.17).

![Figure 6.17 Status of Registration - Accra](image)

The proportion of respondents who had not registered their title from the developed neighbourhoods (53%) was significantly different from those from developing neighbourhoods (36%), $\chi^2 (2, N = 150) = 6.92, p < 0.05$. However, similar proportions (47%) of respondents in the categories of sources of acquisition and gender had not registered their title to land. The main reasons given by respondents who had not registered their title provides an indication for the apparent differences in the levels of non-registration. Overall, the length of the process (43%), the cost of registration (40%) and the perception of security without registration (17%) constituted the main reasons. Specifically with respect to neighbourhood characteristics, the analysis showed that 52% of respondents from developed neighbourhoods as against 39% of those from developing neighbourhoods indicated the length of the process as the reasons for non-registration. Further, 23% and 15% of respondents respectively from the developed and developing neighbourhoods gave security of tenure as reasons for non-registration.

For the respondents who had completed or were in the process of registration, Table 6.4 shows that the predominant reasons included protection of money spent in
developing the land, 70% (55) and protection against litigation, 51% (41). The two least common reasons for registration were that registration was required for the grant of a Bank loan, 2% (2) and the raising of a bank loan in the future, 22% (18).

Table 6.4 Multiple Reasons for Registration of Land

<table>
<thead>
<tr>
<th>Reasons</th>
<th>Responses</th>
<th>Percent of Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. To protect money spent in developing the land</td>
<td>55</td>
<td>70%</td>
</tr>
<tr>
<td>2. To protect against litigation</td>
<td>41</td>
<td>51%</td>
</tr>
<tr>
<td>3. Better to have registered title</td>
<td>37</td>
<td>47%</td>
</tr>
<tr>
<td>4. Registration is compulsory</td>
<td>27</td>
<td>33%</td>
</tr>
<tr>
<td>5. To have peace of mind</td>
<td>25</td>
<td>31%</td>
</tr>
<tr>
<td>6. To raise bank loan in future</td>
<td>18</td>
<td>22%</td>
</tr>
<tr>
<td>7. Requirement for loan for my business</td>
<td>2</td>
<td>2%</td>
</tr>
<tr>
<td>Total</td>
<td>205</td>
<td>256%</td>
</tr>
</tbody>
</table>

Table 6.5 shows that, despite the increasing number of applications, the number of certificates issued has never exceeded 4,000 a year. This means that the yearly backlog of applications has been increasing steadily and, at an average completion rate of 29% over the period 2005 to 2011, the cumulative backlog of unregistered applications as at the end of 2011 was more than 47,000. A key informant official of the LRD explained that the huge backlog might be due to the non-differentiation between actual applications lodged for title registration and supplementary lodgements made in support of an earlier application. However, the completion rate of applications suggests that other factors may account for the increasing backlog. These are discussed in Chapter 8.

Even though the title registration system commenced in Accra in 1988, it has operated alongside the deeds registration system, resulting in few applications for title. However, in 2006 the Ministry of Lands and Natural Resources directed the cessation of deed registration in Accra this saw a doubling in the number of applications for titles from approximately 3,400 in 2005 to 6,300 in 2006 (see Table 6.5). The table also shows that there was another jump in the number of applications from approximately 9,600 in 2010 to almost 19,000 in 2011. The jump can be attributed to the declaration of additional registration districts in the region as well as possible effects of the LAP.
Table 6.5 Status of Land Registration in Greater Accra Region – 2005 - 2011

<table>
<thead>
<tr>
<th>Year</th>
<th>Applications Lodged</th>
<th>Certificates Issued</th>
<th>% Completion</th>
<th>Yearly Backlog</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005</td>
<td>3,443</td>
<td>1,264</td>
<td>37%</td>
<td>2,179</td>
</tr>
<tr>
<td>2006</td>
<td>6,306</td>
<td>1,994</td>
<td>32%</td>
<td>4,312</td>
</tr>
<tr>
<td>2007</td>
<td>9,305</td>
<td>2,518</td>
<td>27%</td>
<td>6,787</td>
</tr>
<tr>
<td>2008</td>
<td>9,604</td>
<td>3,227</td>
<td>34%</td>
<td>6,377</td>
</tr>
<tr>
<td>2009</td>
<td>9,480</td>
<td>3,658</td>
<td>39%</td>
<td>5,822</td>
</tr>
<tr>
<td>2010</td>
<td>9,676</td>
<td>3,575</td>
<td>37%</td>
<td>6,101</td>
</tr>
<tr>
<td>2011</td>
<td>18,927</td>
<td>3,299</td>
<td>17%</td>
<td>15,628</td>
</tr>
<tr>
<td>Total</td>
<td>66,741</td>
<td>19,535</td>
<td>29%</td>
<td>47,206</td>
</tr>
</tbody>
</table>

Source: Compiled from records of the Lands Commission and Land Administration Project Unit

From the analysis in Table 6.5 a contributory factor to the level of non-registration of title observed in Figure 6.17 is the low rate of completion of land registration in the city.

6.2.2.2 Assessment of the land Formalisation Process

The effectiveness of the formalisation process is assessed based on the responses to the Likert-type questions that sought to assess the level of satisfaction of the respondents who had completed or were in the process of completing formal land registration. The 80 responses to the questions were analysed using a Mann-Whitney U test to ascertain any significant statistical differences in the response frequencies of the categories of respondents. The disaggregation of the responses per category is as follows: primary sources (n=18), secondary sources (n=62), developed neighbourhoods (n=38), developing neighbourhoods (n=42), males (n=62) and females (n=18).

It generally takes over one year to complete the land formalisation process in Accra. Figure 6.18 shows that 15% of respondents who had completed the registration process took over one year to complete, and the majority (53%) took between one year and three years. Only 9% took less than six months to achieve registration, suggesting that time required for this process is lengthy.
The analysis shows that significantly more (87%) female respondents took between one year and over three years to complete the registration process compared to 61% of male counterparts, $\chi^2 (4, N = 62) = 10.07, p < 0.05$. There were no significant statistical differences in the time taken to complete the land registration process regarding the sources of acquisition and neighbourhood characteristics.

Most of the respondents were dissatisfied with the number of steps (74%) and the time spent (78%) in the registration process (Figure 6.19). The analysis did not yield significant statistical differences in the levels of dissatisfaction with respect to sources of acquisition, neighbourhood categories, and gender. This result suggests that all categories of respondents were unhappy, underscoring the earlier finding that most of the respondents took between one year and over three years to complete the registration process. It also goes to confirm the reasons given by those who had not registered their title, to the effect that the land registration process is excessively time consuming.
The majority of respondents were dissatisfied with the costs incurred in the land formalisation process. When asked to rate the costs incurred, Figure 6.20 shows that majority (60%) of respondents expressed their dissatisfaction. Significantly, more (71%) male property owners were dissatisfied with the cost of registration, compared to female respondents (22%), $U = 320$, $Z = -4.21$, $p < 0.001$. However, there were no significant statistical differences in the level of dissatisfaction between the sampled owners who acquired their land from primary or secondary sources and those located in either developed or developing neighbourhoods.

![Figure 6.20 Assessment of cost incurred in the land registration process](image)

The dissatisfaction with the cost incurred in the land registration process can partly be due to the multiple payments (official and unofficial) that applicants often have to make at each stage of the registration process. For instance, applicants are required to arrange for transportation for inspections and at times hire equipment based on claims of inadequate logistics by the formal sector agencies. Information gathered from filed observations and informal discussions with key informants revealed that these unofficial payments can amount to between Gh¢ 300.00 and 600.00. Further, discussion with some of the key informants revealed that site plans that had been approved during the land acquisition phase were often ignored during the land registration phase. Consequently, applicants often have to pay new fees and go through another process of plan preparation and approval.

The effect of the above payments is that most applicants often pay more than their family income. Table 6.6 presents a comparison of the cost of land registration and level of family income of respondents that most of the respondents paid more than their monthly family income. All the respondents who earn between Gh¢ 300.00-500.00 paid
more than their monthly income. Similarly, 75% (30) of those who earn Gh¢ 500.00-80.00 paid more than the income range. Overall, the table shows that only 14% (12) of respondents paid less than Gh¢ 500.00.

Table 6.6 Comparison between Family Income and Cost of Land Registration

<table>
<thead>
<tr>
<th>Family Income Range (Gh¢)</th>
<th>0-500 %</th>
<th>501-1000 %</th>
<th>&gt;1000 %</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>300-500</td>
<td>0 0%</td>
<td>10 71%</td>
<td>4 29%</td>
<td>14</td>
</tr>
<tr>
<td>500-800</td>
<td>10 25%</td>
<td>14 35%</td>
<td>16 40%</td>
<td>40</td>
</tr>
<tr>
<td>800-1000</td>
<td>2 12%</td>
<td>4 25%</td>
<td>10 63%</td>
<td>16</td>
</tr>
<tr>
<td>&gt;1000</td>
<td>0 0%</td>
<td>6 60%</td>
<td>4 40%</td>
<td>10</td>
</tr>
<tr>
<td>Total</td>
<td>12 14%</td>
<td>34 43%</td>
<td>34 43%</td>
<td>80</td>
</tr>
</tbody>
</table>

Assessment of the accessibility of the land registration processes shows that most of the respondents (52%) were dissatisfied (Figure 6.21).

![Figure 6.21 Assessment of the accessibility of land registration services](image)

It was found that in most cases, applicants in the registration process are not certain about which agency to approach for a particular service in the land registration process. Even when the appropriate agency is located, the accessibility of particular services and processes that have to be followed are in most cases not clear. Consequently, applicants are forced to rely on ‘agents’ within the land sector agencies to follow up on a service. There was no significant statistical difference in the levels of dissatisfaction across the categories, suggesting general difficulty in accessing land delivery services.
When the sampled property owners were asked to rate the performance of the formal land sector agencies they dealt with during the registration process, Figure 6.22 shows that, with the exception of the LVD, most of respondents were dissatisfied with the performance of the other divisions of the Commission. This result is a reflection of the general dissatisfaction with the land formalisation process that is dominated by the formal land sector agencies.

The examination of the land registration phase of the land delivery system in Accra showed that, similar to the land acquisition phase, the sampled property owners were mostly dissatisfied. Difficulties in ascertaining the status of traditional authority figures during the concurrence and registration process was found to have a negative effect on the process. Other contributory factors include ineffective collaboration among the formal land sector agencies regarding information sharing, as well as technical issues with respect to the quality of site plans and records management. The effect of the technical and organisational difficulties is evident in the increasing backlog of applications submitted for title registration. One implication of the backlog is the inability to capture relevant land information for participants in the urban land market.
6.3 Urban Land Market Processes and Outcomes

This subsection focuses on the nature and characteristics of the urban real estate market process and outcomes. An objective of this thesis is to ascertain the characteristics of the urban land market, given the nature of the social context within which institutional arrangement or real estate information management function. In order to estimate the extent of recent market activity, the period when the respondents acquired their land was analysed with respect to the sources of acquisition. As explained earlier, primary sources of acquisition relate to transactions directly from leasehold customary institutions, whilst other sources of land transaction are classified as secondary sources. Table 6.7 shows that most (61%) of respondents acquired their land over five years ago. However, a higher proportion (42%) of respondents who acquired their land from secondary sources did so within the last five years, compared to 26% of transactions from the primary sources. This result suggests more active secondary land market transactions among the survey respondents.

<table>
<thead>
<tr>
<th>Sources of Acquisition</th>
<th>Time of Acquisition</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Between 6 months and 1 year</td>
<td>Between 1 year and 3 years</td>
</tr>
<tr>
<td>Primary</td>
<td>2 (6%)</td>
<td>2 (6%)</td>
</tr>
<tr>
<td>Secondary</td>
<td>3 (3%)</td>
<td>18 (15%)</td>
</tr>
<tr>
<td>Total</td>
<td>5 (3%)</td>
<td>20 (13%)</td>
</tr>
</tbody>
</table>

Two main types of interest formed the basis of land transactions, namely freehold interest (54%) and leasehold interest (46%), which includes assignments of unexpired term of leasehold interests.

6.3.1 Source of Financing for Market Transactions

The main sources of financing for market transactions by the respondents were cash through domestic savings (67%) and bank loans (23%) (Figure 6.23). Other sources of
finance included foreign remittances (10%) and family loans (3%). This result suggests less reliance on formal means of financing urban land transactions than on informal sources.

A disaggregation of the results, shown in Table 6.8, indicates that 24% of respondents from secondary sources relied on bank loans, $\chi^2 (4, N = 129) = 12.02, p < 0.05$. Further, a higher proportion (42%) of respondents located in developed neighbourhoods relied on bank loans, $\chi^2 (4, N = 129) = 43.90, p < 0.001$. One reason for the reliance on bank loans for financing transactions by respondents from these categories can be attributed to higher land values, which often necessitate the need to seek additional funding from formal sources. As was discussed in Chapter 3 Section 3.3.2, increasing value of urban real estate requires huge capital to undertake investment not obtainable from micro-finance groups or informal sources. The analysis shows that 61% of bank loans was used to fund acquisition of land/property estimated to cost over Gh¢ 100,000.00. A further 26% of bank loans was used to fund values ranging between Gh¢ 50,000.00 and 100,000.00.
Table 6.8 Source of Funding Market Transactions per different categories

<table>
<thead>
<tr>
<th>Source of Acquisition</th>
<th>How did you pay for the land?</th>
<th>Bank loan</th>
<th>Employer Schemes</th>
<th>Foreign remittances</th>
<th>Cash by domestic Savings</th>
<th>Family gift/Loans</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Primary</td>
<td></td>
<td>0%</td>
<td>0%</td>
<td>12%</td>
<td>82%</td>
<td>6%</td>
<td>100%</td>
</tr>
<tr>
<td>Secondary</td>
<td></td>
<td>24%</td>
<td>2%</td>
<td>9%</td>
<td>62%</td>
<td>2%</td>
<td>100%</td>
</tr>
<tr>
<td>Neighbourhood Characteristics</td>
<td></td>
<td>21%</td>
<td>2%</td>
<td>7%</td>
<td>20%</td>
<td>0%</td>
<td>50%</td>
</tr>
<tr>
<td>Developed</td>
<td></td>
<td>42%</td>
<td>4%</td>
<td>14%</td>
<td>40%</td>
<td>0%</td>
<td>100%</td>
</tr>
<tr>
<td>Developing</td>
<td></td>
<td>3%</td>
<td>0%</td>
<td>8%</td>
<td>85%</td>
<td>5%</td>
<td>100%</td>
</tr>
<tr>
<td>Gender</td>
<td></td>
<td>21%</td>
<td>2%</td>
<td>11%</td>
<td>62%</td>
<td>4%</td>
<td>100%</td>
</tr>
<tr>
<td>Male</td>
<td></td>
<td>21%</td>
<td>2%</td>
<td>11%</td>
<td>62%</td>
<td>4%</td>
<td>100%</td>
</tr>
<tr>
<td>Female</td>
<td></td>
<td>7%</td>
<td>0%</td>
<td>7%</td>
<td>86%</td>
<td>0%</td>
<td>100%</td>
</tr>
</tbody>
</table>

Further analysis indicates that even though only 15% (9) of the 62 respondents who had completed land registration indicated they had used it for mortgage purposes. Respondents who acquired their land from secondary sources accounted for all 9 mortgage cases. In addition, respondents from developed neighbourhoods accounted for 7 out of the 9 cases. Reasons given by the surveyed property owners who have not used their land title for a loan were either that they did not need one (67%), the high interest rate associated with loans was a disincentive (16%), or the practice of mortgaging was not good (17%). These reasons add support to the earlier finding that the future use of registered title was the least common reason given by the sampled property owners for embarking on formal land registration.

6.3.2 Land Information Requirements and Sources

An important aspect of this research is to ascertain the land information requirements of the participants in the urban real estate market, and how these requirements are met. To this end, the respondents were asked to indicate the types and sources of information they relied. The analysis of the 375 multiple responses from 61 respondents shows that land ownership constituted the most valued information (32%),
followed by litigation status (29%), physical land development (16%), value/price (13%) and location (10%) (see Figure 6.24).

Table 6.9, which summarises the land information requirements of the respondents and their sources, shows that the LC, comprising four divisions, was the main source (45%) consulted, followed by the TCPD (17%), family and friends (16%) and customary institutions (12%). Local government and the formal courts played only a minimal role in the supply of land information, with each contributing 4%. The importance of the LC is emphasised by the evidence that it was the main source consulted for information on land values (63%), ownership (57%), location/accessibility (50%) and litigation status (44%).

As expected, the main source consulted for information about the level of physical development was the TCPD (75%) and the local government authority (19%). Table 6.9 highlights the important role that informal sources such as friends, family and customary institutions respectively play in the supply of information on litigation status (30%) and land ownership (38%). An impediment to achieving good land information flow is that the indexing of records by the formal land agencies makes it difficult to retrieve and access land information. Under the former Deeds registration system, a search of the records of the PVLMD, which was responsible for Deeds registration, did not necessarily relate to the information in the Deeds Register. This is because not all transactions plotted by the PVLMD were registered.
Table 6.9 Sources of land Information Requirements - Accra

| Information Requirements | Stool/Family TCPD Lands Commission OASL Friends/Family Local Gov’t Courts Total |
|--------------------------|-----------------------------------------|--------------------------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|
| Ownership                | 34                                      | 0                               | 69                                      | 0              | 14                                      | 2              | 2              | 121                                        |
|                          | 28%                                     | 0%                              | 57%                                     | 0%             | 12%                                     | 2%             | 2%             | 100%                                        |
| Physical Development     | 0                                       | 44                              | 0                                       | 0              | 4                                       | 11             | 0              | 59                                         |
|                          | 0%                                      | 75%                             | 0%                                      | 0%             | 7%                                      | 19%            | 0%             | 100%                                        |
| Location/Accessibility   | 0                                       | 16                              | 18                                      | 0              | 2                                       | 0              | 0              | 36                                         |
|                          | 0%                                      | 44%                             | 50%                                     | 0%             | 6%                                      | 0%             | 0%             | 100%                                        |
| Litigation Status        | 7                                       | 0                               | 48                                      | 7              | 32                                      | 2              | 12             | 108                                        |
|                          | 6%                                      | 0%                              | 44%                                     | 6%             | 30%                                     | 2%             | 11%            | 100%                                        |
| Land Value               | 5                                       | 2                               | 32                                      | 5              | 7                                       | 0              | 0              | 51                                         |
|                          | 10%                                     | 4%                              | 63%                                     | 10%            | 14%                                     | 0%             | 0%             | 100%                                        |
| TOTAL                    | 46                                      | 62                              | 167                                     | 12             | 59                                      | 15             | 14             | 375                                        |
|                          | 12%                                     | 17%                             | 45%                                     | 3%             | 16%                                     | 4%             | 4%             | 100%                                        |

Even when a plotted transaction was eventually registered, the Land Registry assigned registration numbers serially to Deeds as and when they were received in a particular year without reference to the plotting numbers assigned by the PVLMD. Hence, accessibility and retrieval of information with respect to particular parcels is today a major challenge, as there is no easy means with which parcels can be identified by a unique spatial reference.

Under the current title registration system, certificates issued are plotted on Registry Maps using the title certificate numbers as the reference link. However, the number is not unique because it changes any time a new certificate is issued as a transfer of title takes place. One implication of the lack of uniqueness and stability in the reference number is that information retrieval is often cumbersome, since a number of manual processes need to be completed before identifying the particulars of registration as contained in the Land Register.

It was further observed during the fieldwork that, due to the lack of a centralised database of records, the agencies involved in the continuum of land registration are
compelled to assign their own identification numbers to documents, and these numbers are not linked to each other. Moreover, records management is largely manual, and due to suboptimal storage conditions, the records are deteriorating. Figure 6.25 shows the manual nature of record keeping and the poor state of some of the records.

Figure 6.25 The nature of land records management in the formal land sector
Source: Fieldwork, Records of PVLMD, Accra

In the light of the state of land information management described above, to obtain comprehensive information about a parcel of land, an applicant often has to undertake a search in each of the divisions. The frustrating aspect of the situation, according to a key informant real estate consultant interviewed, was that often the reports provided are conflicting, even within the same division of the LC. In other cases, there may be long delays before information is transmitted officially to an applicant. Hence, prospective purchasers of land are often compelled to rely on friends and family, and customary institutions for information, especially on ownership and litigation status.
An assessment of the level of satisfaction with the sources of information by the property owners shows higher levels of satisfaction with informal sources than with formal sources. On the one hand, Figure 6.26 shows that even though most of the respondents who obtained their information from the TCPD (50%) and the OASL (42%) were satisfied, the majority (49%) who consulted the LC, the main supplier of land information, were dissatisfied. In addition, the majority of those who contacted the local government (65%) and the formal courts (50%) were dissatisfied.

![Figure 6.26 Assessment of Formal Sources of Land Information - Accra](image)

On the other hand, Figure 6.27 shows that most of the respondents who obtained information from customary authorities (59%), friends, family or neighbours (86%) were satisfied.

![Figure 6.27 Assessment of Informal Sources of Land Information](image)

This result suggests a preference for informal sources of land information. However, observations made during field visits show that the records management of
some of the customary authorities is minimalistic, involving ledgers into which some particulars of grantees are entered. In response to a question as to whether transactions are actually recorded as required, 58% (20) of the respondents who acquired their property from primary sources indicated that the transaction was recorded.

6.3.3 Customary Influences

The results presented above suggest a minimal reliance on customary practices in urban land transactions in the city. For instance, as discussed earlier, a requirement often associated with customary land transactions is the performance of certain rites, such as providing alcoholic drinks for the pouring of libation to the gods. However, as shown in Table 6.10, even though all the 14 respondents who indicated that there were some customary obligations under the terms of the transaction acquired their land from primary sources, the majority (20), did not perform any customary rites.

Table 6.10 The extent of customary obligations on market transactions

<table>
<thead>
<tr>
<th>Source of Acquisition</th>
<th>Are there any customary obligations under the terms of the acquisition?</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Primary</td>
<td>14</td>
<td>20</td>
</tr>
<tr>
<td></td>
<td>41%</td>
<td>59%</td>
</tr>
<tr>
<td>Secondary</td>
<td>0</td>
<td>95</td>
</tr>
<tr>
<td></td>
<td>0%</td>
<td>100%</td>
</tr>
<tr>
<td>Total</td>
<td>14</td>
<td>115</td>
</tr>
<tr>
<td></td>
<td>11%</td>
<td>89%</td>
</tr>
</tbody>
</table>

Furthermore, only 12 out of the 95 respondents who acquired their land from secondary sources indicated they also dealt with a customary authority. Given that, this number constitutes 40% of the possible 30 transactions that required consent suggests that higher proportions of participants do not comply with the requirement of seeking the consent of allodial owners for transfer of leasehold interest in land. These results are consistent with conclusions reached from the discussion in Chapter 3 Section 3.3.2 regarding declining influences of customary practices as urbanisation increase. A consequence of rapid urbanisation is the convergence of people from different
backgrounds to create a cosmopolitan setting, which limits the reliance on customary processes.

Formal practices also influence customary processes. The evidence from Table 6.11 indicates that a significant proportion (88%) of respondents who acquired their land from primary sources have legally prepared a land document as evidence of their ownership. This suggests the prevalence of formal land documentation in customary land transactions, which are often oral in nature.

Table 6.11 Extent of Documentation per different sources of land acquisition

<table>
<thead>
<tr>
<th>Source of Acquisition</th>
<th>Type of document</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Receipt</td>
<td>Site plan</td>
</tr>
<tr>
<td>Primary</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>6%</td>
<td>6%</td>
</tr>
<tr>
<td>Secondary</td>
<td>9</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>10%</td>
<td>4%</td>
</tr>
<tr>
<td>Total</td>
<td>11</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td>9%</td>
<td>5%</td>
</tr>
</tbody>
</table>

6.4 Land Administration Reforms

Following the merging of the independent land sector agencies into divisions of the LC, a team based in Accra has been working on re-engineering the land registration process. This team has developed a draft re-engineered process that is undergoing a nationwide consultative process before piloting in Accra and other selected districts. The objectives of the re-engineering include (1) reducing the turn-around time for registration, (2) reducing customer frustrations, (3) simplifying payment of fees, and (4) eliminating/reducing duplication of activities/functions among the agencies. Ultimately, the aim is to automate the processes of land registration.

SwedeSurvey AB in collaboration with the Ministry of Local Government and the Accra Metropolitan Assembly has developed an Urban Management Land Information System (UMLIS) that is being piloted in one sub-metropolitan area in Accra. The objective of UMLIS is to contribute to a more efficient collection of various municipal fees and enhance the exchange of information. Data on fields such as parcel, building,
use, owner, rateable value and address are stored in digital format in UMLIS. The system calculates property rates and other fees for the owners, and prints out bills. Up-to-date and reliable addresses in the system facilitate delivery of bills to the customers.

With respect to the customary land sector, under the LAP 1, four Customary Land Secretariats (CLS) were established in the Greater Accra region and one was strengthened. The newly established secretariats were for the Sempe stool, La stool, Nii Iddrisu Ayaa family of Haatso, and Amamule. The LAP provided the newly established CLS with equipment such as computers and accessories, and other office equipment. In addition, some of the staff of the CLS were trained. The objective of the CLS is to facilitate prudent land management at the local level through improvement of records management, transparency and accountability, and serve as interface between the customary and formal sectors of land administration.

The Gbawe Kwatei Family land secretariat, which existed prior to the commencement of the LAP was strengthened. The records management of the Gbawe CLS was assisted by the project through the duplication of the 10,000 land records held by the Regional Lands Commission. The land documents were scanned and their particulars entered into a database created in Microsoft Access. According to the PRO of the Gbawe CLS, on their own, the secretariat has generated over 5,000 records. They have further procured computers, scanners and other equipment to facilitate the work of the CLS. The family has a professional licensed surveyor in charge of the demarcation of allocations made by the family, and documents are prepared by a retained solicitor. However, efforts made by the LAP to assist the Gbawe CLS to demarcate and register its boundary were not successful due to overlapping landownership boundaries, as was shown in Figure 6.4.

6.5 Summary

This chapter has presented the findings from the analysis of the data obtained from the case study of Accra. It was found that the land tenure arrangement is faced with challenges such as difficulties identifying the rightful authority structure to deal with. The results of the examination of the social context of land administration in the city
revealed a diffused land tenure arrangement involving different social units at different levels. The status of the city as the national capital appeared to have contributed to conflicting claims to land by extended families, quarters and stools within the socio-political organisational structure of the city. An implication of the conflicting claims is the increasing use of ‘land guards’ to protect land rights, which in turn has resulted in an increase in tenure insecurity. Not surprisingly, most of the sampled property owners were dissatisfied with the land delivery system.

The land delivery system in the city is characterised by a number of constraints. The assessment of the land acquisition and formalisation phases of the land delivery process showed that the majority of property owners were dissatisfied with the number of steps, time spent, costs incurred, security of tenure, transparency and accessibility. The dissatisfaction with the security of tenure suggests challenges in the land tenure arrangement in the city. The land formalisation phase of the land delivery system in the city was also found to be faced with a number of technical and organisational challenges that limit effective performance of the formal land sector agencies. As a result, the backlog of applications for title registration has been on a steady increase.

With respect to market processes and outcomes, it was found that the main land information requirements of participants included ownership information, litigation status and physical development, which are mainly obtained from the formal land sector. However, because of the challenges encountered in accessing such information, some actors rely on the customary and informal sources. It was also found that even though reliance on formal sources, such as mortgages, to finance market transactions was low, secondary land transactions and transactions form developed localities relied more on formal sources.

The next chapter presents the results of the analysis of the data from the Kumasi case study.
Chapter 7

Case Study Results - Kumasi

This chapter presents the second part of the results, focusing on the findings from the Kumasi case study. The chapter follows the same general outline used in presenting the results for the Accra case study, and is organised in five sections. Section 7.1 presents results for the social context of land administration in Kumasi in terms of the socio-political organisational structure of the city and its effect on the land tenure arrangements. Section 7.2 presents the results for the land delivery system in terms of land allocation, its documentation and the registration process in the city. Section 7.3 outlines the nature of urban land market activities with respect to market financing information requirements and sources, and customary influences. Section 7.4 considers some land administration reforms being undertaken in the formal and customary sectors relative to the improvement of land information management in Kumasi. Finally, section 7.5 summarises the chapter.

7.1 Social Context of Land Administration

This section presents the results of the analysis of the social context of land administration in Kumasi. It relies on the responses of the key informants, document analysis and field observations to determine the operation of socio-political organisational structure that governs the land tenure arrangement. The objective is to understand the social context within which land administration takes place and its impacts on the land-based economy in the city.

7.1.1 Background

Kumasi is located in the transitional forest zone, about 270 km north of the national capital, Accra. Because of its centralised location, the city serves as the hub of trading
activities and the main link between the northern and southern parts of Ghana. Kumasi is the administrative capital of the Ashanti region. In 2012 it covered a total land area of 254 square kilometres, with a population density of 8,011 persons per square kilometre (GSS 2012a). Table 7.1 shows the proportion of the population of the Ashanti Region residing in the city from 1970 to 2010. The table shows that the majority of the population in the region resides in Kumasi. The indigenous tribe in the city is the Asante, who also dominate the whole region. Available statistics show that the Akans, of whom the Asantes are part, constitute 74% of the regional population (GSS 2012a).

| Table 7.1 Proportion of Regional Population residing in Kumasi (1970-2010) |
|-----------------|-----------------|-----------------|-----------------|-----------------|
| Ashanti Region  | 1,481,698       | 2,089,683       | 3,612,950       | 4,780,380       |
| Kumasi Metropolitan Area | 343,336 | 969,195 | 1,658,937 | 1,848,614 |
| Share of Regional Population | 23% | 46% | 46% | 39% |


In order to administer the city effectively, it is divided into ten (10) sub-metropolitan areas. Figure 7.1 shows the sub-metropolitan areas, namely Asawasi, Asokwa, Bantama, Kwaadaso, Manhyia, Nhyiayeso, Oforikrom, Suame, Subin and Tafo.

7.1.2 The socio-political organisational structure

The socio-political organisation of the Akan-speaking tribes, of which the Ashanti form a significant part, is centred on a limited number of exogamous, matrilineal clans. The basic social unit of a typical Akan society is based on the extended matrilineal family (*abusua*) headed by a family head (*abusuapanyin*). Each lineage has a stool, which serves as a symbol of unity between the living and ancestors and is under the control of the lineage head. Clans or group of lineages trace their descent to a common female ancestor counting back some ten to twelve generations, and often live together in ‘quarters’ within a village (*nkura*) (Manoukian 1950; Basehart 1961).
The village forms the basic political unit of the society under the leadership of a headman (odikro) elected from among one of the lineages forming the village. The odikro is assisted in the management of the village by a council of elders who are also chosen from among each of the constituent lineages of the village. The traditional political structure depicted in Figure 7.2 is founded on the logical hierarchy beginning from the village head (odikro) and passing through sub or divisional chiefs to the paramount chief. At the top of the hierarchy, as noted earlier, is the paramount chief (Omanhene) who presides over the entire state. Divisional chiefs are in charge of a group of villages of the traditional state or oman.

There is a devolution of authority from the paramount chief to the divisional chiefs and finally to the headmen who, together with the council of elders, make decisions regarding the political, economic and ritual affairs of the lineage, as well as settling internal disputes (Apter 1963).
The social organisational structure of Kumasi does not strictly follow the indigenous structure. Kumasi was established and declared the capital of the Asante kingdom in the late 17th century after the defeat of the Denkyiras by Asantehene Osei Tutu, 1. Through conquest, surrender, or peace pacts, the small communities such as Anananko, Ananta, Apromso, Bantama, Tafo, Amakom and Nsuase amalgamated and became part of Kumasi (Korboe and Tipple 1995:267). Instead of lineage heads, there were military units or companies (fekuo), composed of people of different clans placed under Captains (Safohene). According to Manoukian (1950:43):

The Civil Administration of the Kumasi Division was based on the military organization. The company heads became the Asantehene's councillors. They were not only military leaders and civil advisers but were also responsible for the administration of the areas and people placed under them. A peculiar feature of this Division is that the Captains were appointed not only over groups and villages near Kumasi, where they lived, but also over distant villages.

The Asantehene, who is the head of the larger Asanteman Council, was made the paramount chief of Kumasi in 1926. Hence, the Asantehene is the president of the Kumasi Traditional Council (KTC), which is composed of divisions such as Krontire, Akwamu, Adonten, Benkum, Gyaase, Ankobia, Kyidom, Oyoko, Mawere and Nkosuo. The KTC has jurisdictional and proprietary control over the whole of the land area of the Kumasi Metropolitan Assembly and other areas in the Ashanti and Brong Ahafo regions of the country.
The city has a rich cultural and traditional history, which influences various aspects of the society. The traditional society also affords a high reverence for customs and the belief that the spirits and the dead ancestors are still active and superintending over the activities of their living relatives (Konadu-Agyemang 1991:144).

7.1.3 The Nature of Land Ownership Structure in the City

In Ashanti custom, the earth is believed to be a female spirit (Assase Yaa), which can be helpful if appropriately pacified but destructive if neglected (Manoukian 1950; Busia 1968; Konadu-Agyemang 1991). Land is also regarded as belonging to the ancestors, from whom the living derive their right to enjoy its fruits and are obliged to hold it for future generations. The stool, as discussed in Chapter 4, serves as the symbol of the link between the living and the ancestors and therefore, even though the departed ancestors owned the land, the chief who occupies the stool is the custodian. Because of the position of the chief and his link to the ancestors, there is much respect for the chieftaincy institution.

A functional relationship exists between the land tenure arrangement and the traditional socio-political organisation structure of the society. Three levels of interest in land can be recognised in Ashanti custom, namely the absolute or allodial title, the sub-allodial title, and the usufruct. These interests are diffused into the hierarchical socio-political structure depicted in Figure 7.2. The paramount or absolute title is vested in the paramount stool. Below the paramount allodial title are the sub-allodial titles vested in the divisional chiefs, and the usufructuary or possessory rights are vested in the members of the various lineages associated with the stool. At each level of the socio-political hierarchy, the various authority structures take important decisions regarding the alienation and management of land rights. The chief has certain responsibilities and rights, as custodian of the land. He ensures the defence of the land physically, spiritually, and legally. Even though he has the same rights to the land as members of the lineage, the chief is also entitled to tributes from and services by his subjects (Meek 1949; Busia 1968).

Customarily, to gain access to land, a subject of a stool or a ‘stranger’ approaches caretaker chiefs and their council of elders. A stranger in this context is a person who does
not belong to the land owning group. The allocation of land is preceded by a traditional ceremony involving the cutting of a string of cowry shells held at both ends by two boys who represent the parties to the transaction. The ceremony, known as the cutting of guaha is concluded with the grantee offering drinks, a sheep and at times a token amount to the grantor as thanksgiving (aseda). According to a key informant from the customary institution [KS11], the drink offered is used to pour a libation to the ancestors and gods. It signifies among other things (1) recognition of the stool as the owner of the land, (2) communication with the ancestors, (3) expression of belonging or fellowship, (4) the exchange of the land being witnessed, and (5) consideration for the granting of the land.

By custom, allocations made by the sub-chiefs must be ratified by the overlord, who is also entitled to a third of the proceeds. In a court of appeal judgement, Gyeabour II and Others v Ababio, that was reported in the Ghana Law Report (1991:420) regarding the ownership of Kaase stool lands, it was held that the Kaase Stool, a sub-stool in Kumasi, was vested with possessory title and that:

The customary practice of the paramount stool ratifying or confirming a grant by the sub-stool was because of the political jurisdiction which the occupant of the paramount stool exercised in the area in order to ensure uniformity of action in relation to stool lands; to establish good records in all dealings with stool lands and to prevent unnecessary litigation.

The Asantehene as the Omanhene of the Kumasi Traditional Area is vested with the allodial title and control of the lands within the city. The sub-chiefs and headmen within the traditional socio-political hierarchy assist the Asantehene in the day-to-day management of the land within the traditional area. As the overlord of the traditional state and administrator of the land, all actions relating to the settlement of ownership and boundary disputes with adjoining sub-stools fall within the Asantehene's jurisdictional functions (Baryeh 1997). One of the key informants from the customary sector pointed out that that in cases of boundary disputes the Traditional Council, headed by the Asantehene, uses its authority and persuasive power to resolve the issue [KS11]. As a result, even though land disputes exist, boundary disputes among the caretaker chiefs in Kumasi are minimal, compared to what pertained in Accra.
The Asantehene holds power and control over his sub-chiefs in the performance of their land administrative functions. In a case of encroachment on a land allocated to a school in Kumasi, the Asantehene is reported (in the 6th June 2011 edition of a private newspaper “The Ghanaian Chronicle”) to have warned his sub-chiefs that he would deal decisively with any of them who engaged in the illegal sale of land. He was quoted to have said:

I will not entertain any indiscipline in my palace here; I will not countenance any act by any of my sub-chiefs that has the tendency to dent the image of the Ashanti stool. The Busumuruhene would be summoned before me next week to explain himself, and if it is found that he sold those lands to the encroachers, he would taste the wrath of Asanteman.

The passage of the Kumasi Lands Ordinance (Cap. 145) in 1945 introduced important innovations in the land administration system in the city. The ordinance was enacted in order to return the Part One lands to the Asantehene. As was discussed in Chapter 4, the Part One land was originally vested in the colonial authorities after the annexation of the Ashanti colony in 1901. The Liaison Officer of the ALS provided the following perspective:

…the genesis of the whole thing is that in 1902 after the defeat of the Ashantis in the Yaa Asantewa War, the colonial government placed its hand on all Ashanti lands. Because at that time Otumfuo Prempeh I had been exiled to Seychelles, therefore there was no King, so they passed the Ashanti Lands Ordinance of 1902 to administer all Ashanti lands. Prempeh I was brought back in 1924. He came back as a private citizen. It was in 1926 that they installed him as Kumasihene not Asantehene and he died in 1931. So his successor, Prempeh II who came to power in 1932 and it was in 1935 that they restored the Confederation, in fact it was 75 years on 31st January 2011. Therefore, after the restoration, the new King started negotiating with the colonial government. It was in 1943 that they returned the Asantehene’s land to him, because he then became Asantehene. So they revoked the Ashanti Land Ordinance and returned everything to the Golden Stool. Then, in 1958 Kwame Nkrumah alleged that the Asantehene was using his money in politics [KS11].

The Ordinance required that the Stool could grant only leasehold interests to any person or organisation. However, leases granted to natives of Kumasi were to be at a peppercorn rent. The ordinance further required that leases granted must conform to an approved planning scheme, copies of which must be deposited with the ALS and the
Lands Department. In addition, the Ordinance required that all leases granted must be registered with the public land registry to make them legally effective (Bentsi-Enchill 1964).

To accomplish the above functions, the Ordinance provided for the setting up of an office to facilitate the recording of all land transactions with respect to the land divested to the Golden Stool. Subsequently a Lands Office, now known as the Asantehene Lands Secretariat (ALS), was established and attached to the Asantehene’s palace. Even though the introduction of the Ashanti Stool Lands Act of 1958 re-vested the lands in the State (see Chapter 4) and the records held in the Asantehene’s Lands Office were transferred to the Lands Department, the Asantehene continued to maintain his lands office. The ALS plays a central role in the land delivery system in the city. It facilitates the administration of all the lands under the KTC. On the one hand, it coordinates the activities of the various caretaker chiefs under the jurisdiction of the Asantehene and, on the other hand, it serves as the link between the customary authorities and formal land sector agencies, especially the Lands Commission (LC). In addition, the Liaison Officer, who is the head of the secretariat, serves on the Statutory Planning Committee of the Kumasi Metropolitan Assembly as the representative of the Asantehene.

7.2 Characteristics of the Land Delivery System in Kumasi

This section presents the results of the analysis of the land delivery system in Kumasi, focusing on the land acquisition and formalisation processes. The results presented are based on the responses to relevant portions of the structured questionnaire completed by the sampled property owners in the city. Their responses were integrated with those of key informants, documentary analysis and observational information. Subsection 7.2.1 examines the three stages of the land acquisition process in the city and the number of steps, time taken, costs incurred, security of tenure, and transparency. Subsection 7.2.2 focuses on the status of land formalisation in the city and the associated processes.
Similar to the Accra case study, Mann-Whitney $U$ and Pearson’s Chi-square ($\chi^2$) statistical tests are employed to ascertain the significance of differences in response frequencies at an alpha level of 0.05 (95% confidence).

### 7.2.1 Land Acquisition Process

The land acquisition process involves three integrated phases, namely (1) the allocation of land by the caretaker or sub-stools, (2) approval by the Asantehene as the overlord and (3) preparation of the lease document within the formal sector. At each phase, there is active collaboration between customary and formal sector institutions. Transfer of customary allocation of land also involves the collaboration between customary and formal sector institutions.

**Land Allocation Phase**

According to the Liaison Officer of the ALS, before the commencement of allocation of land, the caretaker stools liaise with the formal planning authorities for the preparation of planning schemes, after which the Asantehene is informed through the ALS. Copies of the approved layouts are deposited with the LC and the ALS to facilitate the land acquisition and documentation process. A key informant highlighted the authoritative role that the Asantehene plays in ensuring compliance with the preparation of planning schemes:

Some [caretaker chiefs] do demarcate the layout on the ground but others just prepare their layout. But what Asantehene did was, if you prepare the layout and it is not approved by Town and Country Planning and someone buys land from you and he wants to register, when the person take it to the Secretariat, they will call the chief and ask, why haven’t you approved the layout before selling? Then the chief has a problem. So they always try to do it and that solves the problem [KS8].

The land allocation phase, depicted in Figure 7.3, commences with the identification of a potential land parcel and contact with the appropriate land owning authority.
Following the identification of the appropriate caretaker stool, a surveyor usually attached to the stool identifies the potential land on the planning scheme and demarcates it on the ground. Thereafter, the surveyor seeks the approval of the Survey and Mapping Division (SMD) of the LC. After successful negotiation with the caretaker chief and his elders, the prospective allottee pays “drink money”, which is currently the equivalent of the market value of the land. The Liaison Officer of the ALS pointed out that for large parcels of land (approximately one acre and above), or land required for purposes other
than for residential, the negotiation and payment is undertaken directly by the secretariat.

The evidence of a successful negotiation is the issuance of an allocation note, a copy of which is shown in Figure 7.4. An allocation note is essentially an offer letter specifying the basic terms of the agreement and usually includes a condition that the land must be developed within a specified period otherwise it can be re-entered by the stool. The issuing of the allocation note, signed by the caretaker chief and his elders as well as the allottee, marks the end of the first phase of the land acquisition process.

Figure 7.4 Sample of Allocation Note
Source: Asantehene Lands Secretariat
Approval of Land Allocation Phase

The second phase of the land acquisition process relates to the endorsement or approval of an allocation by the Asantehene. The process, depicted in Figure 7.5, involves interactions between the ALS and the Public and Vested Land Management Division (PVLMD) of the Lands Commission. When the grantee submits the allocation note to the ALS, an enquiry letter is forwarded to the PVLMD to ascertain the status of the allocated plot. If the checks reveal any encumbrance, the ALS is informed. Otherwise, before the ALS is informed, a case file is opened and a notation of the transaction is made in the records of the PVLMD. If a favourable response is received, the ALS invites the grantee to pay one-third of the drink money, earlier paid to the caretaker stool, as the Asantehene’s share of the revenue from the allocation.

The practice of asking the grantee to pay the one-third portion of the drink money was found to be contentious since the grantee had already paid the full amount to the caretaker stool. A key informant official of one of the formal land sector agencies pointed out that:

Traditionally the caretaker chief is supposed to go and render account of whatever he has taken from you to his overlord. But in practice, it doesn’t work. So when he has taken his 100% and ‘chopped’ it, when you go to the Asantehene Land Secretariat, it is then that the traditional council is going to assess the Asantehene’s portion of the amount [KS1].

Another key informant from the ALS expressed a similar view:

Normally, the caretaker chief is required to bring one-third of the drink money paid to the secretariat, but they don’t do so. The drink money that you have paid to the caretaker stool is taken as two-thirds of the drink money [KS12]

It is only after the payment of the one-third of the drink money that the allocation note is forwarded to the Asantehene for his endorsement. Interviews with most of the key informants suggested that the inability of allottees to pay promptly the one-third is a source of delay in the land acquisition process.
### Approval of Allocations

<table>
<thead>
<tr>
<th>Asantehene Land Secretariat</th>
<th>Lands Commission</th>
</tr>
</thead>
<tbody>
<tr>
<td>Presentation of allocation note to the Asantehene Lands Secretariat (ALS)</td>
<td>Enquiry Letter received</td>
</tr>
<tr>
<td>Enquiry Letter to check on the status of the land</td>
<td>Check records of previous allocation and state of lands</td>
</tr>
<tr>
<td>Status Report Received</td>
<td>Status</td>
</tr>
<tr>
<td>Applicant informed</td>
<td>Not OK</td>
</tr>
<tr>
<td>No</td>
<td>OK</td>
</tr>
<tr>
<td>Grantee invited to pay 1/3 of drink money</td>
<td>OK</td>
</tr>
<tr>
<td>After Payment allocation note sent to Asantehene for endorsement</td>
<td>Note proposal of proposed allocation</td>
</tr>
<tr>
<td>Endorsed Allocation Note</td>
<td>Response to enquiry letter</td>
</tr>
</tbody>
</table>

**Figure 7.5 Approval of Land Allocation by the Asantehene**

*Source: Fieldwork, 2012*

For instance, a key informant from the LC, explaining why a randomly picked case file showed that an application received in 1990 had still not been completed, had this to say:
…but listen, the person is not following up, do you get it? We take the document to Manhyia [the Asantehene Lands Secretariat] for the applicant to go and pay one-third of the drink money there. So if the person has not gotten the money to go and pay the drink money, it will be halted, until the person gets the money to go and pay. So we are talking about people who don’t have the money.

If we [Lands Commission] ask you to come for inspection and it takes you 10 years for you to respond, obviously that one it will delay. But we are talking about the reasonable man who is following his document and everything being in order, then within 6 months he should be able to get the document through.

I know that some do take 20 years, some do take 10 years, and some do take 15 years. You see sometimes people have the notion, that after all, a file has been opened for me, and there is a noted proposal for me. So, they don’t actually follow up with the document, until maybe these days that loan thing has come that people have seen that you can actually trade with your document and for that matter they follow it up. [KS1]

The above explanation, to some extent, agrees with the conclusion in Chapter 3 Subsection 3.1.1 that a downside of the centralised organisational structure is the complex bureaucracy that makes access to services cumbersome for ordinary citizens or residents in a jurisdiction. The finding also suggests that some allottees abandon the process, probably because of the notion that, since the LC had recorded the proposal of an allocation, it guarantees some level of security of tenure. Consequently, as shown below, a significant number of property owners in the city only have an allocation note as evidence of their ownership of land.

**Land Documentation Phase**

The processes leading to the preparation of the land document constitute the third phase of the land acquisition process. The land documentation phase, shown in Figure 7.6, commences when the endorsed allocation note is received by the PVLMD. The endorsed allocation note is placed on the case file that was opened when the ALS made the initial enquiry about the plot, and the allottee is invited to make payment for the lease preparation. When the lease has been prepared, the allottee is invited to execute the lease, after which it is forwarded to the ALS for execution by the customary authorities. The caretaker stool signs as the grantor/lessor and the Asantehene endorse the document as the Confirming Party. It was observed during fieldwork that the execution of the lease by the customary authorities sometimes causes delay since the
allottee has to arrange for the caretaker chief and his accredited elders to be present at the ALS. The absence of the Asantehene can also cause a delay.

**Figure 7.6 Land Documentation Phase in the Land Delivery process**

Source: Fieldwork, 2012
The overwhelming majority (97%) of the sampled property owners in Kumasi city had some form of documentation as evidence of their interest in land. However, a breakdown of the types of documentation reveals that the majority (40%) of landowners only had allocation notes (shown in Figure 7.7).

Table 7.2 shows that allocation notes (75%) constitute the bulk of evidence of land documentation regarding acquisitions from primary sources, compared to secondary sources (19%). A Pearson’s chi-square test revealed a statistically significant difference in the distribution of allocation notes, $\chi^2 (3, N = 150) = 59.97$, $p < 0.001$. Further, the majority of respondents in developing neighbourhoods had allocation notes (66%), compared to 23% of those in developed localities, $\chi^2 (3, N = 150) = 37.02$, $p < 0.001$. Even though male respondents had more indentures (60%) than their female counterparts (48%), the difference in the distribution of this type of land document was not statistically significant, $\chi^2 (3, N = 150) = 3.60$, $p > 0.05$.

The evidence in Table 7.2 that 19% of acquisitions from secondary sources were undertaken with allocation notes, suggests the prevalent use of incomplete land documentation as a basis for secondary land market transactions, which is further discussed under the examination of the urban land market processes and outcomes.
### Table 7.2 Types of Document per source of acquisition, neighbourhood characteristics and gender

<table>
<thead>
<tr>
<th>Source of Acquisition</th>
<th>Receipt</th>
<th>Site plan</th>
<th>Indenture</th>
<th>Allocation Note</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Primary</td>
<td>0</td>
<td>4</td>
<td>10</td>
<td>42</td>
<td>56</td>
</tr>
<tr>
<td></td>
<td>0%</td>
<td>7%</td>
<td>18%</td>
<td>75%</td>
<td>100%</td>
</tr>
<tr>
<td>Secondary</td>
<td>2</td>
<td>0</td>
<td>71</td>
<td>17</td>
<td>90</td>
</tr>
<tr>
<td></td>
<td>2%</td>
<td>%</td>
<td>79%</td>
<td>19%</td>
<td>100%</td>
</tr>
<tr>
<td>Neighbourhood Characteristics</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Developed</td>
<td>2</td>
<td>0</td>
<td>65</td>
<td>20</td>
<td>87</td>
</tr>
<tr>
<td></td>
<td>2%</td>
<td>%</td>
<td>75%</td>
<td>23%</td>
<td>100%</td>
</tr>
<tr>
<td>Developing</td>
<td>0</td>
<td>4</td>
<td>16</td>
<td>39</td>
<td>59</td>
</tr>
<tr>
<td></td>
<td>%</td>
<td>7%</td>
<td>27%</td>
<td>66%</td>
<td>100%</td>
</tr>
<tr>
<td>Gender</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Male</td>
<td>2</td>
<td>3</td>
<td>55</td>
<td>32</td>
<td>92</td>
</tr>
<tr>
<td></td>
<td>2%</td>
<td>3%</td>
<td>60%</td>
<td>35%</td>
<td>100%</td>
</tr>
<tr>
<td>Female</td>
<td>0</td>
<td>1</td>
<td>26</td>
<td>27</td>
<td>54</td>
</tr>
<tr>
<td></td>
<td>%</td>
<td>2%</td>
<td>48%</td>
<td>50%</td>
<td>100%</td>
</tr>
</tbody>
</table>

#### 7.2.1.1 Assessment of the Land Acquisition Process

Responses to five-point Likert-type questions were used to assess the land acquisition process (see Appendix 3). The questions sought to elicit information on the number of steps in the acquisition process, the time spent, costs incurred, security of tenure, and the transparency of the process. The 150 responses to the questions were analysed using a Mann-Whitney $U$ test to ascertain any statistically significant differences in the response frequencies. The disaggregation of the responses by category is as follows: primary sources ($n=59$), secondary sources ($n=91$), developed neighbourhoods ($n=89$), developing neighbourhoods ($n=61$), males ($n=94$) and females ($n=56$).

When asked how long it took to complete the acquisition process, Figure 7.8 shows that most (50%) of the respondents took over one year to complete the acquisition process, and a further 24% took between six months and one year. Only 6% of the respondents indicated that they completed the process in less than three months. This result suggests that land buyers face many challenges, and this may have been a reason why the Asantehene initiated measures to address the land allocation system in the city (to be discussed under subsection 7.4).
Table 7.3 shows that although an approximately similar proportion of respondents acquiring their land from primary (51%) and secondary (49%) sources took over one year to complete the process, a significantly greater proportion (32%) of those from primary sources took between six months and one year, \( \chi^2 (3, N = 150) = 9.03, p < 0.05 \).

Table 7.3 Time taken to complete acquisition - Kumasi

<table>
<thead>
<tr>
<th>Source of Acquisition</th>
<th>Time Taken to Acquire Land</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1 month - 3 months</td>
<td>3 months - 6 months</td>
</tr>
<tr>
<td>Primary</td>
<td>0%</td>
<td>10%</td>
</tr>
<tr>
<td>Secondary</td>
<td>9%</td>
<td>20%</td>
</tr>
<tr>
<td>Neighbourhood Characteristics</td>
<td>6%</td>
<td>20%</td>
</tr>
<tr>
<td>Developed</td>
<td>7%</td>
<td>22%</td>
</tr>
<tr>
<td>Developing</td>
<td>5%</td>
<td>16%</td>
</tr>
<tr>
<td>Gender</td>
<td>Male</td>
<td>10%</td>
</tr>
<tr>
<td></td>
<td>Female</td>
<td>0%</td>
</tr>
</tbody>
</table>
The table further shows that even though 10% of male respondents completed the acquisition process in less than three months, a higher proportion (52%) took more than one year, compared to 46% for their female counterparts, $\chi^2 (3, N = 150) = 8.90, p < 0$. These results suggest land acquisition from customary sources in general takes longer to complete than secondary sources.

The majority of respondents expressed their dissatisfaction with the number of steps required to acquire land (70%) and the time spent during the process (60%). A Mann-Whitney $U$ test did not show any significant statistical difference in the level of dissatisfaction of respondents in terms of the sources of acquisition, neighbourhood characteristics, and gender, suggesting a general unhappiness across all categories of sampled property owners. This result was expected, given the high proportion of respondents who indicated they took over one year to complete the acquisition process, and it further confirms the cumbersome nature of the land acquisition process in Kumasi.

Figure 7.9 Assessment of the land acquisition process – Number of steps and Time Spent

In terms of the cost incurred in the land acquisition process, Figure 7.10 shows that most of the respondents (52%) expressed dissatisfaction. Again, a Mann-Whitney $U$ test of the response frequencies did not show any significant statistical differences in the level of dissatisfaction across the categories. In all cases approximately similar proportion of respondents were dissatisfied with the costs they incurred. This result underscores the concerns and complaints about the double payment of drink money to the caretaker stool as well as the Asantehene.
In spite of the high levels of dissatisfaction with the number of steps, time spent and cost, most (73%) of respondents were satisfied with their level of tenure security (Figure 7.11). The high levels of satisfaction with security of tenure were not significantly different with respect to the sources of acquisition, neighbourhood characteristics, and gender, suggesting that all categories of respondents were likely to equally secure in their tenure.

The high perception of tenure security may be attributed in part to the well-organised nature of the indigenous land tenure arrangement, which provides certainty in land ownership. For instance, when respondents were asked whether someone could
claim ownership of their land, the overwhelming majority (98%) indicated that no other person could claim ownership. In addition, none of the sampled property owners indicated they had been involved in any land dispute. One of the key informants had this to say about the perception of security of tenure:

In Kumasi, what I have come to observe is that until people need title for particular reasons nobody really cares. So persons going to buy property have a way of convincing themselves that this is the property, I can buy and possess it and nobody will worry me. Therefore, it hasn’t been that people are careful to ensure that the property they are buying, I mean the title as it were, is very formal. No matter how informal it is, they will buy. People go to buy land and they don’t care whether they can really process the lease or not. The bottom line is that if they have the confidence that the person giving the land to them is the rightful owner and if the stool in-charge can always be identified since there is always only one chief. Sometimes there are disputes and people would cross over other peoples existing boundary, however, more often people have confidence in the fact that once they have dealt with the village chief or if it is one of the suburbs in Kumasi that, they’ve gone to see the caretaker chief, there is often no doubts so they will take the land [KS15].

However, some key informants noted that some caretaker chiefs undertake improper re-entry of land and make double allocations, which often lead to disputes. For instance, a key informant from one of the formal land sector agencies pointed out that:

Between stools, dispute is not very rampant. But between individuals it often arises because of double allocation as a result of their inability to keep proper records, and sometimes it is deliberate. The chief sells the land to you at say GHC2,000, and he realise that land values have gone up and somebody is offering a very high price, he will sell it to the person. When you confront the chief, he will decide to refund your money. Since you may have already been allocated the plot, you will not agree and this may lead to litigation [KS1].

The above point suggests that despite the apparently well-organised nature of the land tenure arrangement in the city, the possibility exists of negative outcomes.

Figure 7.12 shows that 51% of the respondents expressed their dissatisfaction with the level of transparency in the process. A higher proportion (78%) of primary sourced land respondents were dissatisfied with the level of transparency when compared to those who acquired land from secondary sources (36%), \( U = 641, Z = -4.64, p < 0.001 \)
Whereas most (72%) respondents from the developing localities were dissatisfied, the majority (53%) of respondents from developed neighbourhoods were satisfied, $U = 815$, $Z = -3.45$, $p < 0.05$. There was however no statistically significant difference in the level of dissatisfaction between male and female respondents. A key informant from the ALS indicated that until recently, receipts were not issued for money paid to the ALS for the Asantehene’s portion of the drink money [K12]. The evidence that all the 32 respondents to the questionnaire who were not given receipts for the full amount paid during the acquisition process for land from primary sources confirms this result.

![Figure 7.12 Assessment of the level of transparency in the land acquisition process](image)

Importantly, there was an evidential high perception of land tenure security across all categories in the land acquisition process. Examination of the process revealed that the organisation of the land tenure arrangement in the city facilitates close collaboration between the formal and customary land institutions. In this context, the Asantehene, acting through the ALS plays important role in the land administration system in the city. Despite this, the sampled property owners were dissatisfied with other aspects of the process, pointing to difficulties such as double payment of drink money in the current acquisition process. Allocation notes dominated as the evidence of land ownership for property owners who acquired their land from customary sources.
7.2.2 The Land Formalisation Process

The land formalisation process commences when all parties have executed the prepared lease. Since all lands in Kumasi are stool lands, land allocations made by customary authorities must receive the concurrence of the LC before they can be registered. In addition, transfers of such allocations need the consent of the Commission. Hence, two phases of the formalisation process pertain, namely the concurrence and consent phase and the land registration phase.

7.2.2.1 The Concurrence and Consent Phase

The concurrence process commences after the assessment of stamp duty by the LVD and payment by the grantee. The PVLMD checks the stamped document for conformity with the approved planning scheme held in its records. In situations where a copy of the planning scheme is not available, a reference is made to the TCPD for clearance. When required, the site is inspected, after which a concurrence certificate is prepared and signed by the Chairman of the RLC. The document is indexed and plotted, and details of the certified document are forwarded to the Office of Administrator of Stool Lands (OASL) to enable staff to collect the ground rent. The certified document is released to the lessee with a letter advising the commencement of the land registration phase.

The legal transfer of stool land allocations requires the consent of both the LC and the customary authorities. The process, as shown in Figure 7.13, commences with submission of an application with a draft copy of the transfer document to the PVLMD. The draft document is legally vetted, the position of rent checked, the site inspected and a records search undertaken. If the application for consent is in respect of stool land, a consent certificate is prepared for the execution of the appropriate caretaker stool and the Asantehene. Before the Asantehene grants his consent, the applicant pays a consent fee based on the transaction value. After the customary authorities have granted their consent, another consent certificate is prepared for the execution of the Chairman of the RLC.
The grant of consent by the LC also requires a fee of 2.5% of the value of the property. In effect, an application for stool land transfer attracts double payment of the consent fee, which raises a number of concerns as reflected in part by the level of dissatisfaction in the cost of land acquisition (see Subsection 7.2.2.4). This issue was emphasised by one of the key informants:
So I have been arguing; I haven’t gotten the right platform to advance the argument, but I have been arguing that it makes processing of second transactions of stool lands expensive because the Lands Commission will also want to take consent fee of 2.5%, and then the caretaker chief takes consent fees. It makes it expensive in the sense that if the land is State land I only go to LC for consent.

In Kumasi we have typical examples if you go to Ahwodwo [a suburb of Kumasi] we have State land abutting stool land. Moreover, there are even instances that the layout cut across a plot and you have one plot where a small segment is State land the rest is stool land but if you want to assign that property, for the State land portion you just go to the LC and pay one fee and get your consent. However, for the stool land, you go to the caretaker chief and then you go to the LC. So my argument is that the State is not the grantor and if the State is not the grantor, it has no basis for giving consent. Even if the State has to give consent because concurrence has been given, then it must be a matter of course [KS15].

After payment, the Chairman of the LC signs the prepared consent certificate. The applicant inserts the certificate into the final transfer document and submits it to the LVD for the assessment and payment of appropriate stamp duty. Thereafter, the PVLMD indexes and plots the stamped document before the applicant collects it to continue with land registration.

7.2.2.2 The Land Registration Phase

The land registration process shown in Figure 7.14 commences with the applicant buying, completing and attaching the necessary documents. On receipt of the application, the LRD issues a receipt of acknowledgment (“yellow card”) and a request letter to the SMD to prepare title plans. At the same time, the LRD prepares a request form with a photocopy of the old site plan in the lease document to the PVLMD for a search report on the parcel. It is the responsibility of the applicant to ensure that expedited responses to the request are received from the SMD and the PVLMD.

There is often a delay in the preparation of title plans. Although the title registration area within the Ashanti Region is geographically large, encompassing the Kumasi Metropolitan area and surrounding districts, line maps used for the preparation of parcel plans cover only part of the city. Hence, most of the requests for the preparation of plans require a physical survey and demarcation.
Other causes of delay include the timely response to requests for records searches from the PVLMD. According to a key informant from the LRD, one of the causes of delays in the registration process is the response time of the other agencies:

…the problems emanate from our sister agencies. If you send a request for a records search, and you want the search report from the Commission and it doesn’t come, definitely it will affect you. We have addressed all those problems, and I will put the matter before the Commission [KS5].

When the LRD receives the title plan and the records search, it compiles a list of applications, typically ranging between 30 and 35 for publication in a locally circulating newspaper, “The Pioneer”. An officer of the LRD pointed out that because it takes on
average three months to get the required number, applicants who want their application completed quickly usually opt for private publication at their own expense. The fact that it takes about three months to compile the list suggests a low rate of application for registration.

If an objection is received within 14 days of the publication being made, it is subjected to adjudication, even though an official Adjudication Committee has not been established since the commencement of title registration in Kumasi. However, a key informant official of the LRD pointed out that objections are a rare occurrence in the city [KS6]. The officer could not recollect the last time an objection was received by the office. This finding, whilst it could point to a high level of security of tenure, might also be due to the limited coverage of the mode of publications of applications.

If there is no objection to an application, a land title certificate is prepared, entries made into the Land Register and the certificate forwarded for execution. It was found that until 2011, it was only the Chief Registrar of Lands located in Accra who signed all land title certificates for Kumasi. However, the NLC directed that the Chairman of the RLC and the head of the LRD in Kumasi must jointly sign the certificate.

7.2.2.3 Status of Land Registration

Analysis of data regarding the number of applications registered in the city from 2006 to 2011 shows a reduction in the number of applications in the land documentation and registration process. Table 7.4 shows that between 2006 and 2011, out of the 4,781 applications that were completed by the PVLMD, only 25% (1,194) of them were submitted for title registration. This suggests that most applicants do not pursue title registration after going through the documentation and concurrence/consent processes.

Some of the key informants observed that until someone needs a loan or there is litigation, the land registration process is often not pursued [KS1, KS8, & KS 15]. The table also shows that more than half (59%) of applications received between the period 2006 and 2011 have been completed. Even though the completion rate of issuing titles is higher, the low number of applications received suggests challenges in the land formalisation process.

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Table 7.4 Status of Land Title Registration – 2006 - 2011

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of Applications Completed by PVLMD</th>
<th>No. of Applications submitted for Title Registration</th>
<th>% submitted for Title</th>
<th>No. of Titles registered</th>
<th>% Registered</th>
</tr>
</thead>
<tbody>
<tr>
<td>2006</td>
<td>730</td>
<td>267</td>
<td>37%</td>
<td>170</td>
<td>64%</td>
</tr>
<tr>
<td>2007</td>
<td>696</td>
<td>242</td>
<td>35%</td>
<td>144</td>
<td>60%</td>
</tr>
<tr>
<td>2008</td>
<td>696</td>
<td>209</td>
<td>30%</td>
<td>140</td>
<td>67%</td>
</tr>
<tr>
<td>2009</td>
<td>787</td>
<td>220</td>
<td>28%</td>
<td>134</td>
<td>61%</td>
</tr>
<tr>
<td>2010</td>
<td>1343</td>
<td>170</td>
<td>13%</td>
<td>91</td>
<td>54%</td>
</tr>
<tr>
<td>2011</td>
<td>529</td>
<td>86</td>
<td>16%</td>
<td>24</td>
<td>28%</td>
</tr>
<tr>
<td>Total</td>
<td><strong>4781</strong></td>
<td><strong>1194</strong></td>
<td><strong>25%</strong></td>
<td><strong>703</strong></td>
<td><strong>59%</strong></td>
</tr>
</tbody>
</table>

Source: Compiled from the records of the Lands Commission and LAPU

Half of the property owners surveyed had not registered their title, 45% had completed the registration process, and 5% were in the process of registration (Figure 7.15), suggesting the prevalence of allocation notes as evidence of land ownership as a contributory factor.

Figure 7.15 Status of Land Registration - Kumasi

Table 7.5 shows that majority of the respondents who have not registered their title were mainly from the developing neighbourhoods (77%) as opposed to 32% from developed localities, \( \chi^2 \) (2, \( N = 150 \)) = 28.51, \( p < 0.001 \). In addition, the majority of female respondents (63%) compared to male respondents (43%) had not registered, \( \chi^2 \)
(2, N = 150) = 6.21, p < 0.05. In terms of the sources of land acquisition, significantly more (85%) respondents who acquired their land from primary sources had not registered their title relative to those from the secondary sources (27%). \( \chi^2 (2, N = 150) = 50.05, p < 0.001 \). This means that only 9 out of the 59 respondents from primary source acquisition category had registered or were in the process of land registration. This result underscores the earlier finding that most allottees of stool land do not complete land documentation and registration process; hence, most respondents have only allocation notes as evidence of land ownership.

Table 7.5 Status of Land Registration per Source of Acquisition, Neighbourhood Characteristics and Gender - Kumasi

<table>
<thead>
<tr>
<th>Status of Registration</th>
<th>Yes</th>
<th>No</th>
<th>On-going</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Source of Land Acquisition</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Primary</td>
<td>6</td>
<td>50</td>
<td>3</td>
<td>59</td>
</tr>
<tr>
<td></td>
<td>10%</td>
<td>85%</td>
<td>5%</td>
<td>100%</td>
</tr>
<tr>
<td>Secondary</td>
<td>62</td>
<td>25</td>
<td>1</td>
<td>91</td>
</tr>
<tr>
<td></td>
<td>68%</td>
<td>27%</td>
<td>4%</td>
<td>100%</td>
</tr>
<tr>
<td>Neighbourhood Characteristics</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Developed</td>
<td>55</td>
<td>29</td>
<td>6</td>
<td>90</td>
</tr>
<tr>
<td></td>
<td>61%</td>
<td>32%</td>
<td>7%</td>
<td>100%</td>
</tr>
<tr>
<td>Developing</td>
<td>13</td>
<td>46</td>
<td>1</td>
<td>60</td>
</tr>
<tr>
<td></td>
<td>22%</td>
<td>77%</td>
<td>2%</td>
<td>100%</td>
</tr>
<tr>
<td>Gender</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Male</td>
<td>48</td>
<td>40</td>
<td>6</td>
<td>94</td>
</tr>
<tr>
<td></td>
<td>51%</td>
<td>43%</td>
<td>6%</td>
<td>100%</td>
</tr>
<tr>
<td>Female</td>
<td>20</td>
<td>35</td>
<td>1</td>
<td>56</td>
</tr>
<tr>
<td></td>
<td>36%</td>
<td>63%</td>
<td>2%</td>
<td>100%</td>
</tr>
</tbody>
</table>

The main reasons given by the respondents who had not registered their title were that they were secured or registration was not necessary (69%). Other reasons given for non-registration related to the length (19%) and cost (12%) of the registration process. This suggests that the high perception of security of tenure observed during the examination of the land acquisition phase may be a contributory factor for the low level of registration in the city. For those who had registered or were in the process of doing so, the multiple reasons they assigned included it was better to register (82%), protection against litigation (76%), and to raise a bank loan in the future (54%). It is significant to note the prominence of future use of registered title for a bank loan.
Figure 7.16 shows that the majority (49%) of respondents who had registered their title took over three years to complete the land registration process and a further 26% took between one and three years to complete. A comparative analysis shows that a higher proportion of respondents who acquired land from primary sources (60%) took more than three years to complete. Similarly, 58% of the respondents from the developing neighbourhoods took over three years to complete the process, compared with 47% for those from developed localities. A chi-square test did not show significant statistical differences in the completion times, suggesting that longer completion times for the registration process cuts across all categories of respondents in the city.

The apparently lengthy completion period for land registration suggests impediments in the process. As shown earlier (Subsection 7.2.1), the land allocation, approval and documentation phases of the land acquisition system in the city are interlinked. Thus, since the land registration phase of the land delivery system is at the conclusion of the system, it is likely that some respondents may have indicated the extreme completion time because of difficulties in differentiating between the stages.

7.2.2.4 Assessment of the Land Formalisation Process

The effectiveness of the land formalisation process in Kumasi was assessed based on the responses to Likert-type questions that sought to assess the level of satisfaction of respondents who had completed or were in the process of land registration. The
assessment was with respect to the number of steps, time taken, costs incurred, and accessibility. The 75 responses to the questions were analysed using a Mann-Whitney \( U \) test to ascertain any significant statistical differences in the response frequencies of the identified category of respondents. The disaggregations of the responses per category are as follows: primary sources (n=9), secondary sources (n=66), developed neighbourhoods (n=61), developing neighbourhoods (n=14), males (n=54) and females (n=21).

Figure 7.17 shows that most of the respondents were dissatisfied with the number of steps (73%) and the time spent (71%) in the registration process. A Mann-Whitney \( U \) test did not show any significant statistical difference in the levels of dissatisfaction with the number of steps and time spent in terms of the sources of land acquisition, neighbourhood characteristics, and gender. Approximately the same proportions of respondents were dissatisfied with the number of steps and time spent across categories.

![Pie chart showing assessment of steps and time spent](image)

**Figure 7.17** Assessment of the number of steps and time spent in the land registration process

The above result is not surprising given the earlier finding that a high proportion of respondents took more than three years to complete the land registration process. Some of the key informants did not understand why the land registration phase is not integrated into the land documentation and concurrence processes, and why applicants are required to commence title registration afresh [KS10, KS15, KS17].
Figure 7.18 shows that 67% of the respondents were generally dissatisfied with the costs incurred in land registration. This trend persists in terms of the sources of land acquisition, neighbourhood characteristics and gender, and the analysis did not find any significant statistical differences.

![Figure 7.18 Assessment of cost incurred in the land registration process](image)

Even though the LC is no longer preparing stool land leases on behalf of the ALS, the processing fees appear to be the same. A key informant complained that:

> With the current changes, the fees have now increased at the LC. For instance, lease preparation fees was GHC155, now that it is not coming to them, they have found a way to maintain it. That is unlawful. Because the ALS is also charging for the same fees [KS10].

In addition, as noted earlier, a key informant real estate professional had pointed out that the situation where applicants have to pay consent fees to the customary authorities as well as the LC results in an increase the transaction cost of transferring stool lands within the city [KS15]. Table 7.6 shows that most of the respondents paid more than their family income to register their land. At least two-thirds of the respondents earning less than Gh¢ 300.00 paid more their income.
Table 7.6 Comparison of Family Income to Levels of Transaction Costs - Kumasi

<table>
<thead>
<tr>
<th>Family Income Range</th>
<th>Cost of Land Registration (Gh¢)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>0-500</td>
</tr>
<tr>
<td>&lt;300</td>
<td>3</td>
</tr>
<tr>
<td>300-500</td>
<td>9</td>
</tr>
<tr>
<td>500-800</td>
<td>7</td>
</tr>
<tr>
<td>800-1000</td>
<td>0</td>
</tr>
<tr>
<td>&gt;1000</td>
<td>0</td>
</tr>
<tr>
<td>Total</td>
<td>19</td>
</tr>
</tbody>
</table>

In terms of accessibility to the land registration service, Figure 7.19 shows that most (68%) of the respondents were dissatisfied. A Mann-Whitney U test did not reveal any statistically significant differences in the responses with regard to the sources of acquisition, neighbourhood characteristics and gender. This suggests that all categories of respondents were equally dissatisfied with the accessibility of the land registration services.

![Figure 7.19 Assessment of the accessibility of land registration services](image)

Most of the respondents who had completed or attempted land registration were dissatisfied with the PVLMD (71%) and more than half were dissatisfied with the SMD (53%). However, they were satisfied with the services of the LVD (51%) and LRD (53%). This result suggests that the concurrence and consent stages, which are the mandate of the PVLMD, are contributory sources to the frustrations in the land registration process.
Similar to the land acquisition phase, the examination of the land rights formalisation process revealed an active collaboration between the formal and customary land sectors. Even though there is generally a high completion rate of applications for title, the evidence shows that the number of applications received for registration were only a quarter of those expected. It was found that a reason for the low rate of registration was the prevalence of allocation notes. Moreover, the high perception of tenure security appears to be one reason for the low rate of formalisation in the city. Other constraints facing the formalisation process include inadequate logistics, such as line maps to facilitate the preparation of title plans. The publication notice of intention to register title was also found to be limited to a locally circulating newspaper, suggesting that wider opportunity to make an objection is limited.

An important observation from the above analysis of the land formalisation process is that, apparently because of the perception of land tenure security, the extent of land rights formalisation is low in the city. However, the generally high dissatisfaction with all the aspects of the process examined suggests that the frustrations encountered by property owners may be a contributory factor to the low formalisation rate. One implication of the above deficiencies in the land delivery system is its effect on the efficient functioning of urban land market processes.
7.3 Urban Land Market Processes and Outcomes

In order to estimate the extent of market activity, period during which the respondents acquired their land was analysed. Table 7.7 shows that most (67%) transactions took place over five years ago, whilst 33% occurred within the last five years. However, a higher proportion of transactions from secondary sources (35%) occurred within the last five years compared to 29% from primary sources, suggesting relatively recent secondary market transactions among the sampled property owners.

The results show that only leasehold interests are exchanged in the urban land market. Table 7.8 shows that all the land rights allocated to respondents who acquired their land from primary sources were leasehold (the term of years granted ranged between 25 and 99 years), whilst the rights obtained by those who acquired their land from secondary sources were through assignment of leasehold right. This result was expected in light of the fact that the allodial interest in Kumasi is vested in the stool, and the constitution prohibits the grant of freehold interest.

Table 7.7 Time of Land Acquisition

<table>
<thead>
<tr>
<th>Source of Acquisition</th>
<th>Between 6 months and 1 year</th>
<th>Between 1 year and 3 years</th>
<th>Between 3 years and 5 years</th>
<th>Over 5 years ago</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Primary</td>
<td>3</td>
<td>3</td>
<td>11</td>
<td>42</td>
<td>59</td>
</tr>
<tr>
<td></td>
<td>5%</td>
<td>5%</td>
<td>19%</td>
<td>71%</td>
<td>100%</td>
</tr>
<tr>
<td>Secondary</td>
<td>6</td>
<td>10</td>
<td>16</td>
<td>59</td>
<td>91</td>
</tr>
<tr>
<td></td>
<td>7%</td>
<td>11%</td>
<td>18%</td>
<td>65%</td>
<td>100%</td>
</tr>
<tr>
<td>Total</td>
<td>6%</td>
<td>9%</td>
<td>18%</td>
<td>67%</td>
<td>100%</td>
</tr>
</tbody>
</table>

Table 7.8 also shows that a higher proportion of respondents from the developed neighbourhoods (84%) indicated they acquired their land through assignments, whilst the majority (71%) from developing neighbourhoods acquired their land through leases, $\chi^2 (1, N = 150) = 44.50, p < 0.001$. 

248
Table 7.8 Type of interest acquired per source of Acquisition, Neighbourhood Characteristics and Gender

<table>
<thead>
<tr>
<th>Source of Acquisition</th>
<th>Type of Interest</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Leasehold</td>
<td>Assignment</td>
</tr>
<tr>
<td>Primary</td>
<td>56</td>
<td>0</td>
</tr>
<tr>
<td>100%</td>
<td>0%</td>
<td>100%</td>
</tr>
<tr>
<td>Secondary</td>
<td>0%</td>
<td>100%</td>
</tr>
<tr>
<td></td>
<td>89</td>
<td></td>
</tr>
<tr>
<td>Neighbourhood Characteristics</td>
<td>Type of Interest</td>
<td>Total</td>
</tr>
<tr>
<td>Developed</td>
<td>14</td>
<td>72</td>
</tr>
<tr>
<td>16%</td>
<td>84%</td>
<td>100%</td>
</tr>
<tr>
<td>Developing</td>
<td>42</td>
<td>17</td>
</tr>
<tr>
<td>71%</td>
<td>29%</td>
<td>100%</td>
</tr>
<tr>
<td>Gender</td>
<td>Type of Interest</td>
<td>Total</td>
</tr>
<tr>
<td>Male</td>
<td>29</td>
<td>62</td>
</tr>
<tr>
<td>32%</td>
<td>68%</td>
<td>100%</td>
</tr>
<tr>
<td>Female</td>
<td>27</td>
<td>27</td>
</tr>
<tr>
<td>50%</td>
<td>50%</td>
<td>100%</td>
</tr>
</tbody>
</table>

Further, the table shows that more male respondents (68%) acquired their land through assignments, whilst an equal proportion of females had assignments and leases, $\chi^2 (1, N=150) =4.7, p < 0.05$. The evidence of a higher proportion of assignments of leasehold interests suggests an active transfer of property rights in the Kumasi land market.

The finding reported earlier (in Table 7.2) that 19% (17) of the transactions from secondary sources had only allocation notes, suggests the use of informal means of transferring land rights. Discussions with some of the key informants highlighted the transfer of rights in land without their complete formalisation of land rights [KS1, KS9, KS19 &KS15]. For instance, one key informant stated that:

If somebody has a property with an allocation note but without a lease and he sells it, all that the person does is prepare a declaration attached to it his allocation note, which proves the title that the chief has granted him the land. He has prepared a statutory declaration and you are comfortable with it because he is in possession [KS10].

Further, one of the key informant real estate consultants interviewed also pointed out that:
People do business in the informal sector so it doesn’t make so much difference whether you are dealing with formalised title or informal title because the bottom line is whether people are still willing to take property without title. In Kumasi, if one has a plot, and he has an allocation note from the stool, he will just go and make Statutory Declaration and transfer it.

Once he gives you that statutory declaration you can then go back to the chief who gave it to him or take that Statutory Declaration to LC or to Manhyia and Manhyia will process it and get you a lease. Informally they are doing all kinds of things and it is not good [KS15].

### 7.3.1 Source of Financing Market Transactions

Informal sources of funding for urban land transactions dominate the land market activity. The main source of financing market transactions by the sampled property owners in Kumasi (74%) was through cash from domestic savings (Figure 7.22). Other major sources of financing land transactions were foreign remittances (14%) and loans or gifts from family (7%). Comparative analysis in terms of the different sources of acquisition, neighbourhood characteristics, and gender did not reveal any significant statistical differences, suggesting the prevalence of informal means of financing urban land transactions and further highlighting the informality of the urban land market.

The low level of utilisation of formal sources of financing market transactions was confirmed by the analysis of responses to the question of whether or not respondents had used their registered title as collateral. The overwhelming majority (85%)
responded in the negative. The main reasons given by those who have not mortgaged their registered title was that they did not have any need for a loan (42%), the high cost of mortgaging (37%), and the fact that that mortgaging was not a good practice (21%). These reasons suggest social and economic factors are at work, impeding the utilisation of formal sources of financing.

Interviews with some of the key informants revealed that there are situations where formal financial institutions accept unregistered transactions as collateral [KS9, KS15]. For instance, a real estate consultant working in the city gave the following account:

Some financial institutions do accept unregistered leases. You may get about 10-15% of that. The reason is that the person has [an] allocation note and, I mean the motivating factor for creating loans is the business turnover and not necessarily the collateral. So the collateral is just a double check kind of thing that they [financial institutions] use but they look at your business turnover. Since they have been doing business with you and they know that everything is okay [KS15].

Another key informant stated that “…some rural banks accept properties with only allocation notes, and ask for the preparation of statutory declarations which they hold on to and grant loans.” [KS10]. A key informant official of one of the formal financial institutions in Kumasi confirmed the acceptance of an allocation note as collateral [KS9]. The informant explained that the bank accepts allocation notes after it has been ascertained from the LC that the allocation note had been noted in their records. Immediately as a records search confirms that the allocation note had been recorded, the bank advances the credit facility while it takes steps to regularise the transaction.

7.3.2 Land Information Requirements and Sources

An important objective of this thesis is to understand the nature of the information needs of landholders transacting in land and how these are being met. In this context, the respondents were asked to indicate the types of information they used during the land acquisition process as well as its sources in order to assess their information requirements. Analysis of the 666 multiple responses from the 145 property owners shows that land ownership information was the main type of information used (39%), followed by litigation status (27%) and development status of the locality (15%) (see
The ranking of the information requirements of respondents is similar to those from Accra, discussed in Chapter 6.

Table 7.9 shows that the LC was the main source used (43%), followed by the TCPD (21%), family and friends (13%) and customary authorities (12%). The table shows that the LC and its divisions were the main source of land information related to value (88%), ownership (63%) and litigation status (45%). The TCPD, as expected, was the main source consulted for information on the level of development (82%) and location/accessibility (69%). Significantly, family and friends contributed 24% each as the source of information on status of litigation and location/accessibility, and customary authorities provided 22% of ownership information.

It was observed during fieldwork that the system of indexing land transactions by the PVLMD facilitated land information management and access. The previous deed registration system that operated in the city only required the indexing of transactions serially, as and when they were received in any given year, (as was explained in Chapter 6). However, with respect to the improved deeds system that operated in the city, in addition to the land serial number, a unique ‘Title or Deed Number’ is assigned to transactions registered and this is linked to the specific parcels in an approved planning scheme. Hence, the Title or Deed Number provides a direct link to the Deeds Register and facilitates the easy retrieval of information with respect to all transactions pertaining to a particular plot of land.
Table 7.9 Sources of land Information Requirements – Kumasi

<table>
<thead>
<tr>
<th>Information Requirements</th>
<th>Stool/Family</th>
<th>TCPD</th>
<th>LC</th>
<th>OASL</th>
<th>Friends/Family</th>
<th>Local Gov’t</th>
<th>Courts</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ownership</td>
<td>58</td>
<td>0</td>
<td>165</td>
<td>13</td>
<td>26</td>
<td>0</td>
<td>0</td>
<td>262</td>
</tr>
<tr>
<td></td>
<td>22%</td>
<td>0%</td>
<td>63%</td>
<td>5%</td>
<td>10%</td>
<td>0%</td>
<td>0%</td>
<td>100%</td>
</tr>
<tr>
<td>Level of Dev’t</td>
<td>0</td>
<td>80</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>17</td>
<td>0</td>
<td>97</td>
</tr>
<tr>
<td></td>
<td>0%</td>
<td>82%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>18%</td>
<td>0%</td>
<td>100%</td>
</tr>
<tr>
<td>Location</td>
<td>0</td>
<td>58</td>
<td>6</td>
<td>0</td>
<td>20</td>
<td>0</td>
<td>0</td>
<td>84</td>
</tr>
<tr>
<td></td>
<td>0%</td>
<td>69%</td>
<td>7%</td>
<td>0%</td>
<td>24%</td>
<td>0%</td>
<td>0%</td>
<td>100%</td>
</tr>
<tr>
<td>Litigation Status</td>
<td>20</td>
<td>0</td>
<td>82</td>
<td>10</td>
<td>43</td>
<td>4</td>
<td>23</td>
<td>182</td>
</tr>
<tr>
<td></td>
<td>11%</td>
<td>0%</td>
<td>45%</td>
<td>5%</td>
<td>24%</td>
<td>2%</td>
<td>13%</td>
<td>100%</td>
</tr>
<tr>
<td>Value</td>
<td>5</td>
<td>0</td>
<td>36</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>41</td>
</tr>
<tr>
<td></td>
<td>12%</td>
<td>0%</td>
<td>88%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>100%</td>
</tr>
<tr>
<td>Total</td>
<td>83</td>
<td>138</td>
<td>289</td>
<td>23</td>
<td>89</td>
<td>21</td>
<td>23</td>
<td>666</td>
</tr>
<tr>
<td></td>
<td>12%</td>
<td>21%</td>
<td>43%</td>
<td>3%</td>
<td>13%</td>
<td>3%</td>
<td>3%</td>
<td>100%</td>
</tr>
</tbody>
</table>

A key informant official of the PVLMD indicated that to conduct a records search, the plot number as indicated on the planning scheme (which is also the House number, especially in older parts of the city), and a copy of the site plan is used to identify the ‘Title Number’ on the map sheet [KS8]. The use of Title Numbers facilitates the identification of details of the registration in the Deeds Register. An important finding is that the system of indexing in Kumasi was adopted under the LAP and replicated in all the Deeds registries established under the project.

However, a similar indexing system appears not to prevail under land title registration. As was noted in Chapter 6 for the Accra case study, certificates issued are plotted using the land title certificate numbers, which are not unique. It was also observed that, due to the non-availability of adequate Registry Maps covering the entire land title registration area in the city, the LRD is forced to project map sheets on which it plots, individually, the cadastral plans of any parcels it receives from the SMD.

During the fieldwork, it was observed that the condition under which land records are kept is not optimal. Figure 7.24 shows a copy of a worn-out map sheet used for
recording land market transactions, and Figure 7.25 shows the deteriorating state of an associated ledger used for recording textual details of transactions.

The mode of records keeping at the division continues to be a problem as a lot of data is stored manually. This is coupled with staff shortages and lack of space. Accounts and rent ledgers, correspondence and title files and various registers are all getting bulky and worn-out. The data has grown vast and difficult to handle efficiently. Again many records sheets require revision and digitization. The cartographers also need training in modern methods of records management.

Despite the issues noted above, the sampled property owners were generally satisfied with both formal and informal sources of land information. Figure 7.26 shows that 61% of the respondents who contacted the TCPD for information about accessibility and physical development were satisfied. Similarly, most of the respondents who consulted the LC (50%) and OASL (57%) for land ownership and litigation information were satisfied.
Figure 7.25 Assessment of Formal Sources of Land Information

Figure 7.26 further shows that a higher proportion (44%) of the respondents who contacted the local government authority revealed their dissatisfaction. Respondents were equally split regarding their satisfaction and dissatisfaction with the courts as source for ascertaining litigation status. However, a higher proportion (44%) of the respondents who contacted the local government authority revealed their dissatisfaction. Respondents were equally split regarding their satisfaction and dissatisfaction with the courts as source for ascertaining litigation status. With respect to the informal sector, Figure 7.27 shows that whilst 55% of the respondents who consulted the customary authorities were satisfied, a slightly higher proportion (66%) of those who consulted friends and family were satisfied. This finding is similar to that found in Accra, where the majority of the respondents were satisfied with informal sources of information.

Figure 7.26 Assessment of Informal Sources of Information
The above examination of the urban land market shows a high rate of informality in terms of sources of funding land transactions and the prevalence of the use of allocation notes in land transactions. An interesting finding in the context is the acceptance of allocation notes as a basis for granting loans by some formal banks in the city. Even though formal sources were the dominant source consulted by participants, respondents appeared also to be satisfied with informal sources.

7.3.3 Customary Influences on Land Transactions

As pointed out in Subsection 7.2.2, customary authorities play an important role in the transfer of land transactions through the granting of consents. Analysis of the questionnaire responses shows that 41% of the 89 respondents who acquired their land from secondary sources indicated that they also dealt with customary institutions. Apart from the fees paid for granting consent, some of the respondents indicated they had to provide alcoholic drinks for the pouring of libations. Most of the respondents (81%) who had to perform customary obligations were located in developed neighbourhoods, underscoring the pervasive influence of customary processes in urban land transactions.

7.4 Land Administration Reforms

It was found that certain initiatives have been undertaken by both the formal and customary sectors to improve the land administration system in Kumasi. On the part of the formal sector, the PVLMD of the LC has networked its offices and developed an in-house computerised file tracking system, which also has functionality for recording plotted transactions. Screen shots of the user interface of the software are shown in Figure 7.28. However, this system is not available to the other divisions of the Commission, whose offices are located in different buildings in the city. The LAP has provided the records office of the PVLMD with computers and scanners to facilitate the scanning of plotted transactions.
The Ashanti Regional Coordinating Council (ARCC), and the TCPD in collaboration with the Japan International Cooperation Association (JICA) commenced a project to develop a Comprehensive Urban Development Plan for the Greater Kumasi Metropolitan Area (GKMA). The GKMA consists of the city of Kumasi and the adjoining seven municipalities/districts. The project aims to produce a comprehensive urban development plan, which consists of a Spatial Development Framework (SDF), Structure Plan for Greater Kumasi Conurbation, and Sector Plans/Programmes, based on a new spatial planning system developed under LAP I. Successful completion of this project would enhance the spatial information management in the city and enhance land information access.

Following numerous complaints and allegations of corruption and unnecessary delays, the Asantehene in the latter part of 2011 ordered the closure of the Asantehene Land Secretariat. Subsequently, certain measures have been taken to transform its operations. It was observed during fieldwork that a new file storage room, shown in Figure 7.29, has been created, and the Archives Section of the palace was in the process of reorganising the old records to facilitate easy information storage and retrieval. A consultant has been engaged to commence the computerisation of the records of the secretariat and he was undertaking preliminary work at the time of fieldwork for this thesis in 2012.
Measures introduced by the Asantehene to streamline the land allocation and documentation process in the city seek to address complaints about cumbersome procedures and the payment of drink money. Specifically with respect to the double payment of drink money, a key informant consultant involved in the reforms stated that:

We are reversing those things. It has not come to full effect, so that is why I am reluctant to talk about the changes because it is a process and we have not gotten to the end of it. What we are advocating is that because of the revenue sharing between the stool and Asantehene there must be one collection point. So if the stool is taking the money [i.e. drink money], it is taking it on behalf of the stool and the Golden Stool.

So we have developed a form that will be a standard allocation note and we are saying that if I [prospective buyer] come to buy land from you as the caretaker chief, you have to take the allocation note to Asantehene for endorsement and not the prospective buyer, because the allocation is not complete until the Asantehene has endorsed it. So you [Caretaker Chief] have the responsibility to take it there. So when you have given it to me and I have paid the money, if you have anything to give to your overlord for him to certify the allocation, go and pay that one so that I am cut out so that you give me time so that by this date I should go to ALS and get my lease. [KS15]

Further, the Liaison Officer of the ALS pointed out that to improve transparency, a website has been created and fees and charges for the range of services offered have been published [http://otumfuolands.com/1.html]. In addition, although previously a receipt was not given for the payment of the Asantehene’s share of the drink money, under the current reforms measures have been put in place to correct this:
Right now, there is a Bank in the secretariat and all monies are paid there. But previously we were not giving receipts. You know that [for] what the chiefs receives there is no accountability. What is paid to the Asantehene is recorded. However, right now you pay at the bank and receive receipt and recorded on the file [KS12].

Part of the new measures introduced include the redefinition of the relationship between the ALS and LC with regard to the preparation of stool land leases. The new procedure has eliminated the preparation of stool land leases by the PVLMD. Thus, after the Asantehene’s endorsement of the allocation note, the ALS prepares the lease document, and facilitates its execution by all the parties before referring it to the LC for concurrence. The objective of the new procedure, according to the consultant, is to streamline the process and reduce the time taken:

Now the leases are being prepared at Manhyia. So you take the allocation note there and they will do an enquiry at LC if the plot is free … once they do the search and the plot is free, the lease is prepared at Manhyia – they add the allocation note and Otumfuo signs once and then the allottee can pick it up. So now if the search comes within a matter of 4-6 weeks the lease will be done to be returned to LC. We haven’t done it for a long time so I don’t want to say that is the time for completion [KS15].

The consultant further indicated that a proposal has been made to the Asantehene to consider granting a grace period within which grantees of land without leases in the city could obtain a lease at minimal cost. Media reports indicate that in November 2012, the Asantehene launched a special project aimed at ensuring the proper documentation of properties in the city:

The Asantehene Lands Secretariat has launched a lease documentation Project to grant three months moratorium to all persons, groups and institutions who need to obtain leases on their lands within the Kumasi Traditional Area to have them done at highly reduced cost. All persons or institutions in possession of Allocation Notes on lands within the Kumasi traditional area should submit them to the Asantehene Lands Secretariat for the acquisition of a lease to their lands. This is to make land documentation affordable and remove processes that delay documentation. (Mohammed-Nurudeen 2012)
The ALS has engaged professional staff to augment its human resources to improve land administration in the city, which it hopes will address some of the identified bottlenecks in the prevailing land delivery system.

7.5 Summary

This chapter has presented the results of the analysis of the data obtained from the Kumasi case study. The examination of the social context of land administration in the city showed a strong influence of the socio-political organisational structure in the land tenure arrangement in the city. Analysis of the land delivery system revealed that even though there is a close working relationship between the formal and customary sectors, there appears to be certain impediments that have frustrated some property owners. Consequently, there is general dissatisfaction with various aspects of the system. Interestingly, despite the high levels of dissatisfaction with the time taken, number of steps, transparency and accessibility, most of the sampled property owners indicated they are satisfied with the level of security of tenure. One probable effect of the high perception of land tenure security is the prevalence of allocation notes as the main evidence of land documentation.

The level of security of tenure appears to be reflected in the tendency to carry out market transactions without formal land documents. The assessment of the urban land market activities revealed the use of allocation notes as a basis for land transactions. Informal sources are the dominant source of financing land transaction and the use of registered title among surveyed property owners is low. Interestingly, it was found that some financial institutions accept allocation notes as evidence of land ownership to advance loans. The main information requirements of participants, ownership and litigation status, are met by the formal land sector agencies. To address some of the challenges in the land delivery system, the customary and formal sectors have initiated certain measures to improve their performance.

The next chapter undertakes a cross-case analysis and discussion of the findings from the case study cities presented in Chapter 6 for Accra and in this chapter for Kumasi.
Chapter 8

Comparative Case Analysis and Evaluation

This chapter presents a comparative analysis and evaluation of the results of the two case studies presented in Chapters 6 and 7. The objective is to identify common factors and variations between the cases and highlight aspects likely to create barriers to the effective provision of relevant land information management of the sort required for the development of viable local urban real estate markets. The chapter contains 6 sections. Section 8.1 provides an overview of the comparative analysis and evaluation. Section 8.2 compares the social context in the two cities and Section 8.3 discusses the characteristics and outcomes of the land delivery systems. Section 8.4 compares the nature and characteristics of the local urban land markets in the light of the observed institutional outcomes. Section 8.5 brings together the discussions in the preceding sections to highlight barriers to effective provision of relevant land information. Section 8.6 summarises the chapter.

8.1 Overview of the Comparative Analysis and Evaluation

An important objective of this thesis is to identify and examine how different characteristics of the social context impacts on the outcomes of land registration systems. In order to address this objective, the chapter compares and evaluates the outcomes of the two urban land delivery systems relative to the characteristics of the social contexts. The analysis and evaluation of the results are undertaken in four stages. The first stage compares the effects of historical and socio-cultural factors on the indigenous socio-political organisational structures that underpin the land tenure arrangements. The second stage of the process compares features of the social context of the case study cities relative to the observed characteristics of the land delivery systems in order to identify elements and factors that explain the observed outcomes. The legal framework for land registration is also evaluated with respect to the extent to
which it accommodates customary land tenure and how it had been implemented. The third stage compares and evaluates the nature of the local urban land markets in order to determine how characteristics of the urban land delivery systems and the social context had shaped their operations. The fourth stage evaluates the findings of the comparative analysis within the context of the conceptual discussions presented in Chapter 2 and 3.

8.2 Comparative Analysis of the Social Context

The social context of indigenous land tenure arrangement, in line with other SSA countries (see Chapter 3), has been shaped differently by the influences, of historical and contemporary, and the social organisation of society. Socio-cultural, historical and contemporary factors have shaped differently the respective indigenous organisational arrangements of Accra and Kumasi. Factors influencing the social structure of Accra include:

- The assimilation of various tribes with different socio-cultural values during the formation of traditional towns;
- The extended domination of different Akan tribes;
- The influx of migrants from all over the country as a result of the status of the city as the capital of the then Gold Coast and later Ghana; and
- Influence of foreign culture due to long contact with Europeans before colonisation.

Another factor that transformed the social organisation of Accra was the introduction of the colonial policy of indirect rule. As was discussed in Chapter 3, Subsection 3.1.2.1 the underlying conceptualisation of the policy was that the indigenous society of SSA was centralised. Hence, the implementation of the policy resulted in the forced centralisation of a historically non-centralised society, impacting negatively on the customary tenure arrangement.

External influences have had less influence on Kumasi than Accra. For instance, even though the Denkyiras initially dominated the Ashanti tribe, there was minimal
cultural influence, since both ethnic groups were part of the larger Akan tribe. Further, unlike the residents of Accra, who had a long history of contact with Europeans before they were colonized, the people of Kumasi waged a series of wars with the British before they were finally defeated in 1901. Moreover, because the indigenous society of Kumasi was already centralised, the impact of the introduction of the colonial policy of indirect rule was not pronounced. For instance, even though there was interference on the part of colonial authorities into the traditional organisation, such as the exile of the then Asantehene to the Seychelles Island, it did not significantly change the social organisational structure.

One effect of the above influences on the social organisation of the respective societies was on the adherence to social values and respect for traditional authority (see Figure 8.11). In the case of Kumasi, due to fewer external influences, the indigenous society was more cohesive and well organised, with a strong belief in social values and great respect for traditional authority structures, especially the authority and power of the Asantehene. The cohesiveness of the society today is aided by the fact that the population of the Ashanti region, of which the majority resides in Kumasi, is homogenous and predominantly made up of the indigenous Akan tribe (77%) (GSS 2012a).

With respect to Accra, the cumulative effect of the influences was evident in a breakdown in social cohesion, with fewer adherences to traditional social values and lack of respect for traditional authority structures. For instance, a paramount chief of one of the traditional towns in Accra, Nii Kojo Ababio V, was reported to have lamented that, unlike the Ashantis, the indigenous people of Accra, “…do not appreciate their system of political organisation, resulting in a disrespect for Mantsemei [chiefs]” (Yeboah 2008:442). A contributory factor to the diminishing social cohesion in Accra was the influx of migrants due to its status as the national capital. Consequently, the population of the city, which is cosmopolitan, consists of approximately only 27% of the indigenous Ga people (GSS 2012a).

In Kumasi, the multiple customary land rights vested in different social units are logically related to different levels of authority in the socio-political hierarchy. The Asantehene, who sits at the top of the hierarchy of the socio-political structure, has
greater control and authority over the caretaker stools, who undertake day-to-day administration of the land. Consequently, this structure automatically facilitates a functional link with the customary land tenure arrangement in the city. The net effect is that there seems to be order and certainty in the prevailing land ownership arrangement.

In Accra, the non-centralised nature of the socio-political organisation structure in the city has meant that the location of the alodial title is vested in different independent social units. The diffused traditional authority structures regarding the management of customary land have come under increasing pressure. This pressure is mainly the result of increasing demand for land by the state and private actors for development purposes. Consequently, there is often conflict among the different social units who compete for control and for the authority to alienate land. The net effect is that there seems to be uncertainty in the prevailing land ownership arrangement.

Table 8.1 provides a summary of the characteristics of the respective social context of Accra and Kumasi. The table shows that the persisting characteristics of the social structure of the case study cities have shaped the respective land tenure regimes.

<table>
<thead>
<tr>
<th>SOCIAL CONTEXT</th>
<th>ACCRA</th>
<th>KUMASI</th>
</tr>
</thead>
<tbody>
<tr>
<td>Socio-political structure</td>
<td>Non-centralised traditional structure</td>
<td>Centralised traditional structure</td>
</tr>
<tr>
<td></td>
<td>Less adherence to traditional authority structure system and Social value</td>
<td>Relatively greater respect for traditional authority structure and values</td>
</tr>
<tr>
<td>Land tenure arrangement</td>
<td>Diffused land ownership arrangement with disparate traditional authority structures</td>
<td>Well organised land tenure arrangement</td>
</tr>
<tr>
<td></td>
<td>Uncertainty in land tenure arrangement</td>
<td>Uniformity in the land tenure arrangement</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Certainty in the land tenure arrangement</td>
</tr>
</tbody>
</table>

Given the different characteristics of the social context of the two cities, especially the outcome regarding the extent of certainty, the next section focuses on the characteristics of the land delivery system and observed outcomes.
8.3 Comparative Analysis of the Land Delivery System

In this section, the extent of interactions within the land delivery system and an assessment of the clarity of processes are examined in order to draw out similarities and differences. The observed similarities and differences are linked to the respective social contexts examined in the preceding subsection. To facilitate the comparison of the land delivery systems, and market processes and outcomes, two statistical tests, namely Pearson’s Chi test \((\chi^2)\) of independence and the Mann-Whitney \(U\) test were employed. In applying the tests, a probability value or confidence level of \(p \leq 0.05\) was used to detect significant differences and reject the likelihood of independence.

8.3.1 Land Acquisition Phase

This subsection comparatively assesses the characteristics of the land delivery system in terms of the examined aspects, namely number of steps and time spent, cost, transparency and security of tenure. In Kumasi, the acquisition process consists of three integrated stages, namely land allocation, approval of allocation, and land documentation. Each stage involves different levels of interactions between the customary and formal land agencies.

Figure 8.1 shows that a prospective allottee interacts with the customary sector at two levels, namely with caretaker stools and the Asantehene Land Secretariat (ALS). In addition to the customary land sector, the prospective allottee interacts with the formal land sector for the verification of ownership status, approval of site plans, and documentation of the land transaction. An important aspect of the interactions between the formal and customary sectors is the recording of particulars of an allocation note prior to the preparation of a lease document. This finding is a contributory factor to the status of land formalisation in Kumasi.
In Accra, the land acquisition phase, summarised in Figure 8.2, involves the direct interaction between a prospective purchaser of land and an appropriate customary authority structure or a private owner. Unlike the situation in Kumasi, the role of the formal land sector is minimal.

Between the formal and customary sectors, the interaction in Accra during land transaction usually involves a customary land authority making a request for a record search to ascertain the status of a parcel. Because of the unclear land tenure arrangement a prospective purchaser of land has to ascertain the validity of different authority structures to avoid litigation in the process (discussed in Chapter 6, Subsection 6.2.1.1). The validation often includes a records search within the formal land sector. In addition,
formal sector functionaries also must approve the site plans used in the preparation of land documents.

The comparative assessment of the time taken to complete the land acquisition phase suggests that it takes significantly longer to complete the process in Kumasi than in Accra. The results, shown in Figure 8.3, indicate that half (50%) of the sampled property owners in Kumasi took more than one year to complete the land acquisition process, compared to approximately a quarter (27%) of those from Accra. A chi-square test revealed a statistically significant difference in the completion times between Accra and Kumasi, $\chi^2 (4, N = 279) = 29.72, p < 0.001$.

![Figure 8.3 Comparison of Time taken to Complete Land Acquisition process – Accra and Kumasi](image)

Due to the longer time taken to complete the acquisition of land, the majority of respondents from Kumasi were dissatisfied with the number of steps and time spent. A Mann-Whitney $U$ test showed significant differences in the response frequency classes between respondents from Accra ($n = 129$) and Kumasi ($n = 150$). With respect to the number of steps, the majority (70%) of respondents from Kumasi expressed their dissatisfaction, compared to those from Accra (53%), $U = 6179, Z = -2.51, p < 0.05$. Similarly, the majority (60%) of respondents in Kumasi were not happy with the time spent, as against 51% from Accra, $U = 6335, Z = -2.17, p < 0.05$.

The above finding of significantly longer completion times as well as higher levels of dissatisfaction in the acquisition process in Kumasi, suggests that the processes and interactions involved in the land acquisition phase is faced with challenges. Although the analysis revealed less dissatisfaction expressed by respondents from Accra, the fact
that more than half of the sampled property owners were still dissatisfied suggests profound challenges also exist in Accra's land acquisition processes. A factor for this could be the extra time and steps that prospective purchasers have to endure to ascertain the status of a prospective grantor of land due to uncertainties in the land tenure regime (Subsection 6.2.1). This finding highlights the point made in Chapter 3 (Subsection 3.1.1) that the nature of the interdependencies among different social groups involved in indigenous land tenure management may have an important influence on access to land resources.

The literature on transaction costs discussed earlier in the thesis (see Chapter 3, Subsection 3.2.2) suggested that high transaction costs can affect the volume of transactions, and can lead to less transparent exchanges in the market (Cruz 2008). A cross-case analysis indicated there was no significant statistical difference in the response frequencies regarding the costs incurred and the levels of transparency in the acquisition process. In both cases, the sampled property owners were equally dissatisfied. For respondents in Accra, the cost challenges relate to the tendency to make multiple payments for the same parcel of land due to the uncertainties in the land tenure arrangement (Chapter 6, Subsection 6.2.1.1). Whereas, in Kumasi, cost issues emanate mostly from paying double for drink money because inadequate mechanism exists to ensure that caretaker chiefs account for revenue collected for the Asantehene (Chapter 7, Subsection 7.2.1). The lack of transparency in both cities is often exhibited by the non-issuance of receipts for the full amounts paid for land. The analysis shows that approximately equal proportions of respondents in Accra (18%) and Kumasi (22%) indicated they were not given receipts. These results point to negative aspects of customary land tenure management stemming from the increasing monetisation of land allocation.

One important observation in analysing the questionnaire returns was that, despite the evident dissatisfaction in both cities with the number of steps, time spent, costs incurred and transparency, respondents from Kumasi were highly satisfied with the security of tenure granted by the land acquisition process. Figure 8.4 shows that most (73%) respondents from Kumasi were satisfied with the security of tenure granted, compared to those from Accra (34%), $U = 3340, Z = -7.93 p < 0.001$. 

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The above finding highlights how the characteristics of social organisation that underpin land tenure arrangements can have negative or positive effects (see Chapter 2, Subsection 2.3.3). In Kumasi, the multiple customary land rights vested in different social units are logically related to different levels of authority in the socio-political hierarchy. The Asantehene, who sits at the top of the hierarchy of the socio-political structure, has greater control and authority over the caretaker stools, who undertake day-to-day administration of the land. Consequently, this structure automatically facilitates a functional link with the customary land tenure arrangement in the city. The net effect is that there seems to be order and certainty in the prevailing land ownership arrangement. In Accra, the non-centralised nature of the socio-political organisation structure in the city has meant that the location of the allodial title is vested in different independent social units. The diffused traditional authority structures regarding the management of customary land have come under increasing pressure. This pressure is mainly the result of increasing demand for land by the state and private actors for development purposes. Consequently, there is often conflict among the different social units who compete for control and for the authority to alienate land. The net effect is that there seems to be uncertainty in the prevailing land ownership arrangement. These results have important implications regarding the nature of land rights registration, and, hence, for land information management in the cities in particular and in Ghana in general.

An important determinant of the degree of land rights registration in a jurisdiction is the quantity and types of land documentation. The analysis shows that there were significant differences in the types and quantities of land documentation in the case study cities. Most of the sampled property owners from Accra (87%) had indentures...
(the legally acceptable document for land registration), compared to those from Kumasi (56%) (Figure 8.5), \( \chi^2 (3, N = 272) = 71.25, p < 0.001 \). Figure 7.9 also shows that 41% of respondents from Kumasi only had allocation notes (which are offer letters) as evidence of their ownership of land. This result suggests the dominance of the legally required document for land registration in Accra, whilst offer letters were dominant in Kumasi.

![Figure 8.5 Comparison of Status of Land Documentation – Accra and Kumasi](image)

Given the significant differences in the types of land documentation in Accra and Kumasi, it is reasonable to expect that this would be reflected in the status of land registration. Despite the above expectation, a comparative analysis of Accra and Kumasi showed a similarly low rate of land registration. As was observed in Table 7.4 in Chapter 7, between the period 2006 and 2011 the number of applications for title was only 25% of the expected applications, suggesting a low level of land registration. Similarly, even though the findings reported in Table 6.5 in Chapter 6 showed an increasing number of applications for land registration between the period 2006 and 2011, the completion rate was only 29%, suggesting a relatively low rate of land registration.

The reasons given by owners of surveyed property who had not registered their title in Accra and Kumasi, suggest that the nature of the land tenure arrangements and the operation of the land registration systems were the primary causes of the low rate of formalisation. Figure 8.6 shows that the majority (69%) of the owners from Kumasi indicated either that they were secure without formalisation or that registration was unnecessary. In contrast, most respondents in Accra indicated the length (43%) and cost
(40%) of the land registration process were the main reasons for their non-compliance with land registration. The analysis shows statistically significant differences in the responses given, \( \chi^2 (4, N = 143) = 55.94, p < 0.001 \). This suggests that the perception of high tenure security in Kumasi and challenges in the land registration system in Accra accounted for the low rates of land registration.

![Figure 8.6 Reasons given for non-registration - Accra and Kumasi](image)

**Figure 8.6 Reasons given for non-registration - Accra and Kumasi**

The land registration phase of the land delivery system is examined because it is at this stage that the formal land sector captures the legally relevant information about land transactions.

### 8.3.2 Land Registration Phase

An important observation in Section 3.3.1 was that a well-functioning and accessible land registration system provides opportunity for the protection of land rights as well as being a source of information that contributes to the reduction of transaction costs in the land market (Deininger and Feder 2009a). Hence, any impediments in the registration process can have important repercussions for the management of land information.

Similar formal organisational arrangements for land registration govern the land delivery systems in Accra and Kumasi. The formal administration involves interactions among a number of land sector agencies, as was established in Chapter 4. These agencies include the four divisions of the Lands Commission (LC), namely the Public and Vested Lands Management Division (PVLMD), the Land Valuation Board (LVD),
the Survey and Mapping Division (SMD), and the Land Registration Division (LRD). Others include the Office of the Administrator of Stool Lands (OASL), and the Town and Country Planning Department (TCPD). These agencies enforce, to varying extents, the legal framework that governs the land registration system in the two cities, that is, the Land Title Registration Law (PNDC Law, 152) of 1986, which is evaluated in Subsection 8.3.3. Figure 8.7 depicts the general interactions among the formal land agencies in the land registration process.

The four divisions of the LC rely on each other for information to accomplish various tasks. Particularly, the SMD and the LRD interact with respect to the preparation of title plans during the registration stage. The LRD relies on the PVLMD to ascertain the status of land ownership during the examination of claims for title. During the concurrence stage, the PVLMD and TCPD interact with respect to verification of land use. The PVLMD also interacts with the OASL during the concurrence and consent stage with respect to rent payment. The dotted lines in Figure 8.7 indicate minimal interactions.

An important conclusion reached in Chapter 2 was that the nature of interaction of formal and customary land sectors can have important effect on institutional outcomes (see Chapter 2, Section 2.4 and Figure 2.3). Figure 8.8 provides an overview of the
nature of interactions between the formal and customary land authorities during the land registration phase in Kumasi. Even though land registration is primarily a formal land sector activity, the pattern of results in this thesis showed greater interactions with the customary land sector in Kumasi than in Accra. In fact, there appeared to be no clear distinction between the land acquisition and land registration phases in Kumasi (see Chapter 7, Section 7.2). For instance, the preparation of a lease document, which is part of the land acquisition process, is integrated with the granting of concurrence and consent, which form part of the land registration phase. In addition, because the allodial title is vested in the stool, the consent of customary authorities is required to transfer registered title, and this process involves interactions between the formal and customary land sectors.

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**Figure 8.8 Interactions in the Land Registration Phase – Kumasi**

In contrast to what pertains in Kumasi, the land registration phase in Accra does not involve the active interaction between the formal and customary land sectors (discussed in Chapter 6, Section 6.2). Figure 8.9 shows that even though an applicant deals with the various formal land sector agencies, the interaction with the customary sector is not particularly strong, as indicated by the broken lines.
For instance, even though the consent of customary land authorities is required to transfer registered titles, it was often not obtained, and where it was obtained, the formal sector was not involved. To some extent, the finding of comparatively less established mechanisms of interaction between the formal and informal sectors in Accra can be attributed to the multiplicity of customary authority structures, which are mostly not well organised.

Similar to the land acquisition phase, the assessment of the processes of land registration revealed that it takes longer to complete this phase of the land delivery system in Kumasi than in Accra. The comparative analysis of the time taken, shown in Figure 8.10, show that the majority (49%) of respondents from Kumasi took more than three years, compared to 14% of respondents from Accra, \( \chi^2 (4, N = 130) = 21.32, p < 0.001 \).
The result that it took significantly longer to complete the process in Kumasi than in Accra was unexpected, since the uniform property rights allocated by the land delivery system give rise to the expectation of a simpler formalisation process. Further, because of the comparatively well-structured customary land tenure arrangement in Kumasi and its active interaction with the formal land sector, the expectation was that the completion times would have been shorter. However, a reason for the longer completion times can be attributed to the difficulty in distinguishing the different phases of the land delivery process in the city (see Chapter 7). Consequently, some of the sampled property owners may have chosen the extreme option given for the completion of the land registration phase, as provided in the questionnaire.

Despite the significant differences in the time taken to complete the formalisation process, the sampled property owners in both cities were equally dissatisfied with the number of steps, the time spent, costs incurred, and accessibility of the process. A Mann-Whitney U test did not reveal any significant statistical differences in the response frequencies. In fact, the completion times for land registration in both cities exceeded the benchmark of seven months indicated by the Monitoring and Evaluation Unit of the Ghana Land Administration Project Unit (Phase 1) (M&E-LAP 2009).

Table 8.2 summarises the main characteristics of the land delivery systems in Accra and Kumasi. The positive and negative aspects of the systems are represented respectively by the plus and minus signs. All aspects of the land delivery systems are negative in each city with exception of the security of tenure, which is likely linked with the active interaction between the customary and formal sectors in Kumasi.
### Table 8.2 Summary of Findings – Comparative Analysis of the Characteristics of the Land delivery System

<table>
<thead>
<tr>
<th>SOCIAL CONTEXT</th>
<th>ACCRA</th>
<th>KUMASI</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Inter-organisational relationship</strong></td>
<td>Minimal interaction between formal and customary sectors</td>
<td>Active interaction between customary and formal land sectors</td>
</tr>
<tr>
<td><strong>Land Delivery System</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Time Taken</strong></td>
<td>Shorter</td>
<td>Longer</td>
</tr>
<tr>
<td><strong>Number of Steps</strong></td>
<td>Dissatisfied (−)</td>
<td>Dissatisfied (−)</td>
</tr>
<tr>
<td><strong>Time Spent</strong></td>
<td>Dissatisfied (−)</td>
<td>Dissatisfied (−)</td>
</tr>
<tr>
<td><strong>Cost incurred</strong></td>
<td>Dissatisfied (−)</td>
<td>Dissatisfied (−)</td>
</tr>
<tr>
<td><strong>Transparency</strong></td>
<td>Dissatisfied (−)</td>
<td>Dissatisfied (−)</td>
</tr>
<tr>
<td><strong>Accessibility</strong></td>
<td>Dissatisfied (−)</td>
<td>Dissatisfied (−)</td>
</tr>
<tr>
<td><strong>Security of Tenure</strong></td>
<td>Dissatisfied (−) Linked to uncertainty in the land tenure arrangement</td>
<td>Satisfied (+) Linked to certainty in the land tenure arrangement</td>
</tr>
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### 8.3.3 The Nature of the Legal Framework for Land Registration

A conceptual conclusion reached in this thesis was that the nature of institutional rules or principles underpinning organisations may affect outcomes of formal land administration systems (Chapter 2, Subsection 2.4.2.2). This is because the outcomes of institutions can differ from their stated objectives if new institutional rules or legal frameworks are not implemented appropriately by organisations (Portes 2006; Chang 2006) or do not conform to persisting informal or customary rules (Chang 2006; Pessali 2011b; Evans 2004). Consequently, the prevailing legal framework for land registration, namely the Land Title Registration Law (PNDCL 152), 1986 (LTRL), is now analysed with respect to how it accommodates customary rules and practices and how the principles and provisions have been implemented with particular reference to its land information management aspects.

The legal framework for land registration in Ghana largely contains provisions that comply with the three principles of title registration identified in Chapter 3, Subsection 3.3.1, namely the mirror, curtain and insurance principles. For example, in addressing
the curtain principle, the procedure for adjudication and first registration of title was envisaged to be systematic to ensure that once all rights within a declared district had been successfully registered, the land register became the only reference for ascertainment of validity of titles. The systematic approach involves the declaration of an area as a title registration district and the publication of a notice of intention to register all parcels within a specified timeframe, as provided for in Sections 5, 6, 7 and 11 of the law. With respect to the insurance principle of title registration, Section 123 (1) provides for a fund to be established to compensate persons who suffer loss because of mistakes in the land registration process. The third principle, that is the mirror principle, is discussed in subsection 8.3.3.1 in conjunction with the extent of accommodation of the law to customary land tenure.

8.3.3.1 Accommodation of Customary Land Tenure

For a land registration system to be effective, it must take account of all existing land rights (Chapter 3). In other words, the land register must mirror the statement of all land rights in a jurisdiction. However, one criticism in the literature that is often levelled against the formalisation of customary land rights, is the inability to take into adequate consideration the peculiarities of customary land tenure, such as the concurrent existence of multiple land rights (Platteau 2000; Fourie and Nino-Fluck 2000; Toulmin et al. 2002; Hammond 2006). Fortunately, the legal framework for land registration in Ghana sufficiently accommodates some of these aspects of customary land tenure. For instance, in addition to formal land rights, Section 19 of the law provides for the registration of customary land rights, such as allodial title and usufruct. Further, the systematic strategy envisaged by the law provides a means to adjudicate logically and register multiple land rights (often associated with customary tenure) within a declared registration district, commencing with the alodial title.

In addition to providing for the registration of customary land rights, the law acknowledges customary land rights as overriding interests that affect registered titles. Section 46 states (in part) as follows (author’s emphasis in italics):

Unless the contrary is recorded in the land register any land or interest in land registered under this law shall be subject to such of the following
overriding interests whether or not they are entered in the land register as may for the time being subsist and affect that land or interest:

a. Such rights of way, rights of water, profits, or rights customarily exercised and enjoyed in relation to the parcel not being recognized interests in land under customarily law, as were subsisting at the time of first registration under this law;

b. Customary rights which were subsisting at the time of first registration in respect of concessions granted under the Concessions Ordinance (Cap. 136);

c. Natural rights of water and support;

d. Rights of compulsory acquisition, resumption, entry, search and user conferred by any other enactment;

e. Leases for terms of less than two years and not capable of extension to terms of two years or more by the exercise of enforceable options for renewal;

f. Rights, whether acquired by customarily law or otherwise, of every person in actual occupation of the land save where enquiry is made of such person and the rights are not disclosed.

Together, the above provisions ensure that customary land rights are adequately protected, and provide an opportunity to ensure that the land register is truly the conclusive evidence of title, as provided by Section 18 of the law. In other words, the current legal framework considers important aspects of customary land tenure and therefore provides sufficient land information to facilitate the development of a functional local land market.

However, the mere existence of the provisions in the law does not guarantee that they will actually be implemented (Portes 2006; Chang 2006). The extent to which the legal framework is implemented affects the effective capturing of, and access to, relevant land information. Consequently, the following subsection analysis the nature of implementation of the legal framework for land registration and its effect on land information management.

8.3.3.2 Implementation of the Legal Framework

Contrary to the systematic approach envisaged by the LTRL (Law 152), this thesis has found that implementation of the legal framework is sporadic and generally
inadequate. The implementation of the legal framework is examined relative to how it influences effective land information under the following headings:

1. The Registration of Customary Land Rights;
2. The Conversion of Deeds to Title;
3. Survey, Demarcation and Preparation of Title plans;
4. The Examination, Adjudication and Publication of Intention to Register; and
5. The Recordings of Land Rights in the Land Register.

**Registration of Customary Rights**

The evaluation of the LTRL (Law 152) in this study reveals that the requirements for the registration of customary land rights have not been fully implemented in the case study cities. One factor that accounts for the inability to register customary land rights adequately is the sporadic approach to the implementation of the law. This approach does not permit the systematic registration of the different levels of customary land rights. Also, there is currently no operational framework for the documentation and registration of the usufructuary interest (discussed in Chapter 4). The National House of Chiefs (NHC) resisted an attempt made under the LAP 1 to develop a template to capture the usufruct right, in order to facilitate its registration. The NHC argued that the registration of the usufruct would lead to a challenge of the allodial title vested in stools and skins. The implication is that it has not been possible to capture customary land rights fully.

Further, as was explained in Chapter 4, the Constitutional provision that prohibits the grant of freehold interest in stool lands has been misinterpreted. This has resulted in the conversion of land rights to leasehold interests before they can be formally registered. The injustice inherent in the conversion of the usufruct interest is captured in the following sentiments expressed by a key informant from Kumasi:

There is available evidence that customarily, nobody questions the term of years granted. So long as you have survivors to inherit you, the land is held ad infinitum. Therefore, when someone is trying to formalise his land and the Lands Commissions reduces the term to 50 years or 99 years is
questionable. I am therefore saying that this form of formalisation is inimical to the existing system of land owning rights [KS10].

The potential curtailment of land rights can be a contributing factor that deters some property owners from having formal title.

Finally, another factor contributing to the difficulty in registering customary land rights is that the prescribed form for the effective capturing of the details of multiple land rights is not implemented (this is discussed further under the recording of land rights in this section).

The overall effect of the inability to register customary land rights is that the land register is often incomplete, since it does not reflect accurately the situation on the ground. This contributes to uncertainty and conflict in some jurisdictions where the land tenure arrangements are not homogenous, such as in Accra.

Conversion of Deeds to Titles

Section 13 of the LTRL (Law 152) requires the land registrar to compile a list of all lands registered under the former Deeds system in a declared district, and to take steps to convert them to titles before considering the registration of other interests. This requirement ensures that the land register is the conclusive reference of land ownership information in a jurisdiction. Unfortunately, due to inter-organisational challenges and technical reasons the requirement has not been followed in any of the declared title districts in Accra and Kumasi.

The introduction of title registration resulted in inter-organisational dispute, or turf war, between the former LC, which had oversight responsibility for Deeds registration, and the newly-established Land Title Registry (now LRD). Consequently, title registration processes operated in Accra for many years without access to the records in the deeds system. Further, the nature of indexing registered deeds, as was discussed in Chapter 6, did not allow easy retrieval of information to facilitate the conversion process. Additionally, the low standards of quality assurance and control used to prepare plans attached to land documents registered under the Deeds system made it
difficult to relate registered deeds to particular parcels. Even though, in Kumasi, the nature of indexing of the Deeds records, as was discussed in Chapter 7, facilitates easy retrieval of information, the lack of effective cooperation between the LRD and the PVLMD (which currently oversees the operations of the Deeds records) posed challenges to information sharing. These issues underscore some of the inter-organisational challenges encountered in the land registration phase.

One implication of the inability to implement the conversion scheme provided by Section 13 of the LTRL (Law 152) is that transactions under the Deeds system continue to be valid in declared title registration areas. In fact, as was indicated in Chapter 6, it was not until 2006 that a directive was given in Accra to stop the registration of transactions under the Deeds system. Consequently, instead of the land register becoming the conclusive reference for land ownership information in a declared district, parallel sources of information exist. The existence of parallel sources of information results in challenges in reconciling conflicting information. Hence, access to reliable and comprehensive land information continues to be characterised by numerous challenges.

*Survey, Demarcation and Preparation of Title Plans*

Well-defined parcel boundaries are required for the effective recording of land information. An important aspect of title registration is therefore the unambiguous identification of the boundary of the land to which land rights are associated. To this end, Section 6 of Law 152 requires the Director of the LRD to collaborate with the Director of Surveys (now the Director of the SMD) to systematically survey and demarcate parcels within a declared registration district. The purpose of the survey and demarcation is to prepare sectional or registry maps for the preparation of title plans and recording of registered titles.

Section 24 of Law 152 requires a surveyor to serve specific notices on all adjoining owners or occupiers of land. Owners or occupiers should be present and provide information for the identification of the boundaries of the land. However, as was reported in Chapters 6 and 7, because of too few surveyed and demarcated registry maps, the preparation of title plans in Accra and Kumasi are only undertaken
sporadically. The current practice in the preparation of title plans the surveyor relies mostly on information provided by the applicant for title, ignoring adjoining land owners/occupiers (Field Observation Notes).

The sporadic approach to the preparation of plans has important implications with respect to constraints in the land registration process. First, the non-involvement of adjoining landowners in the demarcation and surveying of adjacent and subject parcels triggers conflicts, especially when parcel boundaries are extended onto adjoining lands. Indeed, this is said to be a major contributory factor underlying the phenomenon of ‘multiple requests’ in Accra (see Chapter 6). Second, the sporadic approach also contributes to high transaction costs due to repeated surveys, which causes delays in the land registration process. For instance, as was discussed earlier (Chapters 6 and 7), one of the primary concerns of property owners during the land registration phase was the tendency to ignore earlier approved plans, resulting in double payment of the preparation of title plans.

Examination, Adjudication and Publication of Land Rights

Effective examination and adjudication of land rights are fundamental requirements of any land registration system because they ensure the indefeasibility of registered title. Sections 22 to 33 of Law 152 provide elaborate procedures for the systematic examination and adjudication land rights claims and objections. To facilitate the process, adjudication committees were to have been established for each of the declared title districts. However, only one adjudication committee was ever established for the whole of the Greater Accra Region, which comprises nine registration districts. Even this committee, as was pointed out in Chapter 6, is currently not functional.

In the case of Kumasi, no adjudication committee has been established since the commencement of title registration in 2000. Because of the absence of the required number of adjudication committees, officials of the LRD, especially in Accra, are often inundated with numerous disputes, which they cannot adequately handle. The effect has been that disputes emerging during the registration process are often referred to the formal courts for resolution. Delays on the part of the courts to deal with such disputes
have an effect on the completion time for title registration, and this further deters property buyers from using the formal registration process.

The mode of examination of claims is also found to be a contributory factor to the ineffectiveness of the land title registration process since the examination is not comprehensive. The current approach, as was explained in Chapter 6, Section 6.2.2 and Chapter 7, Section 7.2.2, involves enquiries at the PVLMD regarding the status of previous transactions. However, it is only when there are conflicting reports that the LRD undertakes field inspection to verify the situation on the ground. As was indicated earlier, Section 46 (1) (f) of the law provides that the customary land rights “…of every person in actual occupation of the land save where enquiry is made of such person and the rights are not disclosed”, constitutes overriding interests that affect a registered title. Hence, the need to ascertain actual occupation must be an important part of the adjudication process, especially if the indefeasibility of registered title is to be upheld.

The importance of actual occupation was confirmed in a recent Court of Appeal judgment, Edward Doku Nettey v Lartey (Suit No: H1/158/10 dated 26th May 2011). In this instance, it was ruled that a title certificate issued without taking into consideration the actual occupation of the defendant was obtained fraudulently. Part of the ruling stated that:

The plaintiff has not denied that he once lived in an adjoining house owned by one of defendant’s father’s grantees. This means he has been aware of the defendant’s family’s occupation of the plots of land in the area including the one in dispute prior to the time he executed the 1989 lease agreement with the Sempe Stool. The execution of the said lease can safely be said to be tainted with fraud.

Although this ruling seemed to put the burden of proof on the plaintiff, it can be argued that, had the examination and adjudication of the claim by the plaintiff followed the procedures in the law, the actual occupation of the defendant would have been discovered. Obviously, the survey and demarcation stage of the formalisation process, as outlined earlier, could provide a good opportunity to ascertain actual occupation or possession.
An integral part the examination and adjudication process is the publication of examined claims. In line with its systematic objective, Section 28 of Law 152 requires that a record of all examined claims within a registration district should be prepared and published. The details of the adjudication records to be published include the description of the land, the name of the person(s) to be registered and particulars of their entitlements. Importantly, the law requires that the notice of publication must include the details of the place(s) where the public can inspect the adjudication records and associated demarcation or land registry map. The requirement for physical inspection of the records is important because it provides a good opportunity for interested parties to raise effective objections within the specified period stated in the prescribed notification.

Despite the importance of the requirements for publication, the prevailing approaches followed in both cities do not conform to the requirements. For example, the details of application for title are couched in technical language making it impossible to identify the subject matter of a publication. In addition, opportunity for physical inspection of applications is not provided in the notice of intent to register. In particular, the opportunity for broader scrutiny of applications is limited in Kumasi, because publication is limited to a local newspaper. Further, the sporadic compilation of claims for publication contributes to delays in the registration process.

Non-compliance with the examination and adjudication procedures provided by Law 152 means that the integrity of the records is questionable. Hence, the reliability and conclusiveness of the land information captured is often in doubt since the particulars do not allow informed decisions to be made. Consequently, the indefeasibility of title as promised by the law is often not attained.

**Recording of Land Rights in the Land Register**

The details of how land transactions are recorded in the land register has important implications for the effective access to, and retrieval of, land information. Section 33 of Law 152 requires that the registrar take steps to enter relevant details of a claim into the land register after the adjudication record becomes final. Based on current practice, if no
objection is received after 14 days from the date of publication, registration is considered to be final.

To facilitate the recording of land rights, the form of the land register, which contains three sections, namely property, proprietorship, and rights and encumbrance, provides a means to capture comprehensive information about registered titles. Section 16 (1) of the law states that the land register shall comprise a folio in respect of each parcel in every registration district, and each folio shall comprise:

(a) an entry of the description of the parcel with reference to the registry map and a plan approved by the Director of Surveys under sections 15 and 34;

(b) an entry in respect of every proprietor of the parcel, stating the name of the proprietor and the nature of the proprietorship [joint ownership or ownership in common, absolute or provisional]; and

(c) an entry in respect of every interest held [allodial, usufruct, freehold, leasehold, etc.] in the parcel by a person, stating the name of the proprietor of the interest and the nature of the interest.

The land register accommodates the recording of details of multiple land rights usually associated with customary land tenure. Particularly, sub-clause (c) above, provides that the particulars of multiple interest held in a parcel must be recorded in its associated folio or page in the land register in order to allow for easy retrieval of complete information. However, the current form of the register only allows for the recording of one type of land right per folio. Field observations revealed that a new folio in the land register is opened to record the details of a leasehold interest derived from a freehold right in the same parcel of land, instead of entering the particulars in the same folio as the freehold interest. The absence of an effective link between the records entered in the different folios makes it difficult to obtain complete information about all interests related to a registered parcel.

To compound the above difficulties associated with the recording of land rights and access to land information, there is no direct link between the parcel on the registry map and the land register that contains legal ownership information about a subject parcel. Whilst the register is identified by a combination of volume and folio, parcels are identified by a combination of the Region, District, Section, Block and Parcel Number.
For example, a parcel in Section 18 of District 03 in the Greater Accra Registration Region will have GA/03/18/2/21 as its registration parcel identifier, whilst its register will be ‘uniquely’ identified by 9/345 (vol/fol). Obviously, GA/03/18/2/21 and 9/345 are not directly related. Hence, to identify the land register associated with a parcel, an officer has to use a manual index sheet to identify the volume of the whole registration section. To locate the folio that contains title information about that parcel, the officer must either flip through the whole volume or rely on other records. Consequently, accessibility and retrieval of comprehensive information with respect to particular parcels is limited to manual searches. The task of automation is even more difficult without the construction of a complex indexing and cross-referencing lookup table.

The implication is that, the mode of recording land rights under the title registration system has made land information management difficult in terms of capture and retrieval. Consequently, this affects the ability to capture effectively relevant information about urban land transactions in general and customary land rights in particular. In effect, even though the legal framework accommodates customary practices and provides elaborate mechanisms for adequately capture land information, the actual implementation is fraught with challenges.

8.4 Comparative Analysis and Evaluation of Urban Market Processes and Outcomes

The constraints and prospects associated with the land delivery process discussed earlier are equally applicable to the local urban land markets processes. The overall finding of a low level of formalisation due to the nature of the institutional arrangement of land registration, underscores the informality of the local urban land markets in the case study cities. This finding is consistent with those of other studies, which have highlighted the informality of urban land markets in other parts of SSA (Mabogunje 1992; Hammond 2006; Colin and Woodhouse 2010; Roy 2005; Boudreaux 2008). In addition to the direct impact of the low rate of formalisation on market processes and outcomes, the land tenure arrangements and the operation of the formal land sector affect aspects of the market operations, such as access to land information and financing of land transactions.
In the following discussion, the results of the nature of the local urban land market operations in Accra and Kumasi are compared in the light of observed low rates of land registration. In particular, the discussion focuses on the characteristics of urban market activities in terms of land information requirements and access, sources of financing land transactions, and the extent of customary influences.

8.4.1 Land Information Requirements and Access

For the urban land market to operate effectively, it requires accurate, up to date, and accessible land information. The ease with which participants are able to meet their land information needs is therefore an important criterion to determine the effectiveness of market operations. Given the low rate of formalisation, an expectation is that the nature of access to land information will be similar in the case study cities.

The predominant land information requirements of the sampled property owners are similar and include the status of land ownership, litigation and physical development level. The results of the comparative analysis showed that 72% of property owners in Accra and 75% in Kumasi used formal sources of information formal. This finding appears to be in disagreement with findings from other studies in Ghana and other SSA countries that suggest that 70% to 90% of people rely on informal sources for land information (Antwi 2000; Nkurunziza 2008; Knight 2010).

Despite the dominance of formal sources, the majority of sampled owners from Accra (86%) and Kumasi (66%) were satisfied with informal sources such as family, friends, and neighbours, compared to lower satisfaction with formal sources of 34% and 50% respectively. A reasonable inference from the above results is that the sampled property owners preferred informal sources of land information, especially in Accra due to the difficulties associated with the management of land information by the formal sector.

The finding that a greater percentage (50%) of respondents from Kumasi were satisfied with formal sources, compared to (34%) from Accra, suggests that there are particularly better prospects for land information management and access in Kumasi than Accra. One reason for the differences in perception could be attributed to the
finding of better indexing of land records in Kumasi under the Deeds system, which facilitates easier access to, and retrieval of land information. As noted in Chapter 7, because of the effectiveness of the indexing approach in Kumasi it was replicated in other parts of the country, under the LAP. The better indexing in Kumasi can be attributed the homogeneity in the land tenure arrangement. Further, the indexing may have been due to the innovative measures introduced by the Kumasi Lands Ordinance during the colonial era.

In the case of Accra, the nature of indexing of the Deeds records, as indicated in Chapter 6 and discussed earlier, has made retrieval of information difficult. An obvious reason for this challenge can be linked to the diffused land ownership regime in the city. Another reason for the differences in perception can be attributed to the earlier finding of frequent shifts in the position of title plans relative to the plans used to undertake earlier recordings under the Deeds system. The net effect of these changes is that, in addition to contributing to delays in the retrieving land information, the accuracy of information has been adversely affected.

8.4.2 Mode of Financing Urban Land Transactions

One of the prerequisites for the development of a viable local urban real estate market is the presence of a formal mortgage market to facilitate the funding of land market transactions (Chapter 3). The thesis has found a low level of reliance on mortgages to fund urban land transactions. For instance, equally high proportions of sampled property owners from Accra (86%) and Kumasi (85%) indicated they had not used their registered title as collateral. The comparative analysis revealed an overwhelming reliance on informal sources of financing in urban land transactions in the case study cities. The majority of respondents from Accra (73%) and Kumasi (89%) relied on other sources, such as cash from domestic savings and foreign remittances to finance land acquisitions.

The reliance on informal sources of funding, which is consistent with other studies from Ghana that found that land transactions and development were often undertaken from personal resources (Bank of Ghana 2007; Boamah 2010), highlights the state of informality in the local urban land market. Informality has been identified by several
studies to be one of the main obstacles to the development of a viable formal mortgage industry in SSA (Butler, Kravkova, and Safavian 2009; Sacerdoti 2005). One reason for this is that the paucity of information on legal ownership of land and the low status of formalisation has often deterred some chartered banks from granting mortgages.

The reasons given by the sampled property owners for not using their registered title for mortgages suggest that both social and economic factors are at play. The comparative analysis, shown in Figure 8.11 indicates that in both cities, the sampled property owners indicated they did not need a loan, the interest rate was too high, or that mortgaging was not perceived as a good practice. The statistical analysis did not reveal and significant statistical difference, $\chi^2 (3, N = 113) = 7.67, p > 0.05$.

![Figure 8.11 Reasons for non-utilisation of mortgage](image)

Certain social factors, such as spiritual attachment to land and the sense of belonging to a community or social unit, have been identified in the literature as preventing titleholders from taking loans for fear of losing their land in case of default (Platteau 2000). The findings from this thesis suggest that these factors, which to some extent were found to characterise the social context of Kumasi, may account for the high percentage of sampled property owners who had not used their registered title for a mortgage. The study also found that some formal financial institutions in Kumasi did accept allocation notes (offer letters) as a basis for granting loans. This finding appears to be inconsistent with suggestions that the strong social ties existing in some societies in SSA prevent formal banks from granting loans due to difficulties in foreclosing in case of default (Knox 1998). Admittedly, the sample size in this study may not be large
enough to arrive at definitive conclusion. However, an explanation of the apparent inconsistency may be that the high perception of tenure security granted by the land tenure arrangement in Kumasi provides the necessary assurance to the formal banks to risk granting loans.

The results from the Accra case study showed that, despite the dominance of informal sources of financing land transactions, a statistically significant proportion (20%) of respondents from Accra relied on formal sources such as banks and employer schemes to finance land transactions, compared to only 5% from Kumasi, $\chi^2 (4, N = 279) = 28.38, p < 0.001$. This result can be attributed to the willingness of the formal sector to grants loans because of the status of Accra and the relative vibrancy of its economy. It is also important to note that the transactions financed by the formal sources were, as was shown in Chapter 6, related to secondary land acquisitions and those located in developed neighbourhoods. These transactions usually require a substantial capital outlay that cannot be obtained from informal sources. The findings from Accra suggest that if the general and local economic outlook is conducive, formal banks are likely to grant long terms loans.

### 8.4.3 Influences of the Customary and Formal Land Sectors

In Chapter 3, it was shown that the nature of the land tenure systems within a jurisdiction can have important implications for the development of the local land market. This is because the land tenure system defines the nature of property or land rights that form the core of all land market functions (Ensminger 1992; Platteau 2000). A distinguishing characteristic of the local urban real estate markets in the case study cities is the nature of property the rights that are exchanged. The cross-analysis shows that the only form of land right allocated in Kumasi (100%) is leasehold, whilst freehold rights constitute a significant proportion (54%) of property rights allocated in Accra, $\chi^2 (2, N = 274) =107.26, p < 0.001$ (see Figure 8.12. The allocation of only leasehold rights in Kumasi stems from the fact that, because the allodial title is vested in the stool, the Constitution of Ghana as well as customary practice prohibits the grant of freehold rights to ‘strangers’. However, because the allodial title in Accra is vested in a mixture of stools and families, some families grant freehold rights.
Because of the differences in the land rights allocated, the two cities exhibit different extents of influence of customary practices in their urban market operations. The analysis showed that the proportion of respondents who acquired their land from secondary sources and also had to deal with a customary institution was significantly more (41%) in Kumasi than in Accra (13%), $\chi^2 (1, N = 182) =18.54, p < 0.001$. This result, which suggests greater influence of the customary land sector in Kumasi, stemmed from the earlier finding that the allodial title was vested in the stool. Consequently, the consent of customary authorities was required for subsequent transactions of land rights.

However, in the case of Accra, because a mixture of stools and families control the alodial title, when a family grants a freehold interest, the link with the customary land sector is broken. Further analysis revealed that significantly more respondents from Kumasi (19%) compared to those from Accra (4%) indicated they were required to perform some form of customary rites as part of the acquisition process. The analysis results, $\chi^2 (1, N = 278) =15.31, p < 0.001$, underscores the finding of greater influence of the customary land sector in urban land market activities in Kumasi. One implication of the above finding is that the extent of influence of the customary land sector is not determined only by the extent of land area controlled, but more importantly by the nature of the land rights that are allocated.

It must, however, be noted that there can be negative consequences of customary influences on urban market development. For instance, as was lamented by a key
informant from Kumasi, the payment of consent fee was, until recently, determined arbitrary by the ALS [KS9]. Another aspect of the extent of influence of the customary land sector in Kumasi was the use of allocation notes as a basis for land transactions. Because the transactions were often outside the formal system, the relevant information required for property owners is not generally captured.

In line with the conclusions reached in Chapter 3, Subsection 3.3.2, formal practices also influence customary land practices in the two cities. One important effect of the influences of formal factors is on changes to the customary mode of access to land from membership of social groups to market systems and exchange mechanisms. Typically, allocation of land rights under customary rules is not documented or based on monetary value. The results of the case studies showed high levels of land documentation underpinning urban land transactions in both cities. The analysis further showed that the overwhelming majority of respondents in Accra and Kumasi had some form of documentation as evidence of their ownership of land. Further, instead of the usual provision of drinks as a sign of acknowledgement for the permission to use customary land, as was explained earlier, the current practice is the payment of the open market value of land as drink money.

8.5 Factors that Create Barriers to Effective Land Information Management

This section brings together the discussions and findings in the preceding sections. The objective is to highlight aspects of the institutional arrangement likely to create barriers to the effective provision of relevant land information of the sort required for the development of viable urban real estate markets. The findings are evaluated within the context of the analytical and conceptual frameworks developed for the study and presented in Chapter 2 and 3. Figure 8.13 which is based on the analytical framework presented in Chapter 2 (Figure 2.3), shows the identified elements within the social context of the two cities and their linkages to observed outcomes at the institutional and market levels. The broken and solid edged shaded boxes at the institutional and market outcome levels depict negative and positive influences on the land delivery processes and market outcomes. The broken arrows depict minimal interactions or influences.
Broadly speaking, the figure shows that the nature of the land tenure arrangements, interactions between formal and customary sectors, and the operation of the land registration system are all involved in determining outcomes. The identified elements and linkages form the basis of the discussion in the following subsections.
8.5.1 Nature of the Land tenure arrangement

The characteristics of the social organisation that give form, meaning and relevance to a land tenure system may influence the control over and access to land resources for all members of the broader social group (Chapter 2 and 3). The comparative analysis in Section 8.2 has shown that the different characteristics of the social organisation that govern the land tenure arrangements in Accra and Kumasi have apparently contributed to the differences in the level of certainty in land ownership. The hierarchical socio-political structure in Kumasi had functional links to the multiple land rights associated with customary land tenure, facilitating well-organised arrangements that showed greater adherence than Accra to social values and respect for traditional authority. This has created confidence and certainty in the land ownership regime. In contrast, the effects of external influences on Accra, and the cosmopolitan nature of its population due to its status as the national capital, have contributed to a reduction in adherence to social values and respect for traditional authority. The disparate social groups vested with allodial titles in Accra have created a dispersed land tenure arrangement, which has contributed to land boundary disputes and general uncertainties in land ownership.

The findings further show that the perception of tenure security, created by the level of certainty in the land tenure arrangements in a jurisdiction, significantly influences the demand for land right registration. Consequently, it is observed from Figure 8.13 that because of the general insecurity of tenure in Accra, prospective land purchasers pursue the preparation of legally recognised land documents for land registration (evidenced by the high level of and documentation), in order to obtain a legally secured title (evidenced by the high demand of land formalisation). In the case of Kumasi, Figure 8.13 shows that the perceived high tenure security is a reason for some property owners not to pursue the preparation of legally required documentation for land registration (discussed in Chapter 7, Subsection 7.2.1). It is also possible that the formal recognition of allocation notes, prior to the completion of land acquisition, provides additional security to already secure customary land tenure and may have been deemed sufficient, causing some property owners to terminate the process (see Subsection 8.3.1).

The above finding of differences in demand for land right registration is consistent with the literature that suggest an inverse relationship between the perception of land
tenure security in a jurisdiction and the necessity to formalise land rights (Platteau 2000; Sjaastad and Bromley 1997; Joireman 2008; Durand-Lasserve and Selod 2009).

Further, Figure 8.13 shows that the differing influences of the nature of the land tenure arrangement in the two jurisdictions contribute negatively or positively to aspects of the local urban market operations. The centralised social organisational structure of Kumasi contributes to the dominance of the customary land institutions and practices in urban market activities, namely land information management and sources of financing land transactions. In terms of land information management practice, the homogeneity in the land tenure arrangement in Kumasi, coupled with the active interaction between the formal and customary and sectors in all phases of the land delivery process contributed positively to the indexing of land records, and hence access to land information. In contrast, the disparate land ownership arrangement, coupled with the inappropriate indexing mechanism by the formal sector negatively affected management and access to land information.

In terms of the operation of the local urban land markets, the differences in the nature of the land tenure arrangement play important role. The analysis in Subsection 8.4.2 show that the different characteristics of the social organisation of the two case study cities had important influences with regard to the sources of funding land transactions. The certainty in the land ownership arrangement, and the adherence to social values played important roles in the sources of funding land transactions in Kumasi. The evidence in the case study reports in Chapter 6, Subsections 6.2 and Chapter 7, 7.2 of double payments for land transactions and inadequate records suggests poor functioning of the market.]

8.5.2 Organisational and Operational Challenges of Formal Land Registration System

It can be observed from Figure 8.13 that in spite of the significant differences in the demand for land right formalisation, both cities exhibited similar low rate of formalisation. This observation negates the expected differences in the levels of land right formalisation, and suggests challenges in the operation of the land registration systems in the case study cities as contributing factors. For instance, despite the merger
of the previously autonomous agencies under the LC (discussed in Chapter 4), they did not act as a corporate whole, contributing to the frustrations and high transaction costs observed in the case study analysis in Chapters 6 and 7.

A Ministry of Lands and Natural Resources report on emerging land tenure issues in Ghana outlined a number of challenges that confront the institutional arrangements for land administration, which in turn affect the effectiveness of the land delivery process (MLF 2003). The challenges identified in the report include a weak land administration system resulting from numerous but inadequate legal frameworks and the overlapping mandates of land sector agencies. The effect of these challenges is the emergence and persistence of cumbersome procedures for the registration of land, approval of development permits, provision of infrastructure, multiple sales of land, and corruption, which all contribute to inefficiencies in the urban land market (Mahama and Antwi 2006:7; Hatch 2002; MLF 1999).

For instance, it was observed that there was often duplication of processes across the divisions, and multiple fees were sometimes paid for similar services due to a lack of proper coordination. In some instances, site plans that had already been approved by the SMD during the land acquisition phase were ignored when the LRD made a request for title plans during the registration phase. This suggests that the applicant for title essentially had to make another payment to go through the same process again. In addition, the PVLMD, LVD, SMD, and the LRD undertake field visits at different stages in the land registration process with respect to the same application. This causes further delays and additional frustration for applicants.

The above organisational and operational challenges are similar to those reported in other studies. For instance, high levels of bureaucracy, rent-seeking behaviour of officials, and the imposition of administrative requirements during the registration process are identified as factors that frustrate and prevent the majority of urban populations from gaining access to the services of the formal system (UN-Habitat 1990; Antwi and Adams 2003; Lavigne Delville et al. 2010; Zevenbergen 1999).
8.5.3 Implementation Challenges of Legal Framework

A conceptual conclusion reached in this thesis is that the nature of institutional rules or principles underpinning organisations may affect outcomes of formal land administration systems (Chapter 2). One reason is that the outcomes of institutions can differ from their stated objectives if new institutional rules or legal frameworks are not implemented appropriately by organisations (Portes 2006; Chang 2006).

The examination of relevant aspects of the Land Title Registration Law in Section 8.3.3 reveals a divergence between the provisions in the law and its implementation. The divergence can be attributed to a number of factors. For instance, discussions with some of the key informants (KS5, KS15 and AC2) suggested that the lack of understanding about the title registration system was a significant contributory factor to the operational difficulties that are evident in system dysfunction. Further, a report prepared as part of an Organisational, Management and Operations (OMO) study under the institutional reforms of LAP 1, suggested that most (56%) of the staff of the LC did not meet the academic and professional qualifications for the positions they occupy (Innovative Services 2009). The inadequacy in qualification was particularly acute in the case of the Land Registration Division of the LC where, until recently, staff other than the land registrars (lawyers) lacked the requisite qualifications. The officers who handle the critical day-to-day aspects of the registration process are likely to lack adequate appreciation of the law, which can be a major contributor to the ineffective operation of the system.

In addition to a lack of understanding, evidence from the case studies reported in Chapters 6 and 7 points to inadequate logistical capacity and inter-organisational difficulties as contributory factors to the ineffective implementation of the law. It was established in Chapter 3 that the formalisation of land rights is costly. The survey and demarcation of land boundaries, the adjudication, and examination of land rights, and on-going maintenance or sustainability of the system requires budgetary resources. The lack of adequate resources contributes to the sporadic implementation of formal processes rather than the envisaged systematic approach. However, the systematic provisions in the law were not repealed, contributing to an anomaly. Further, lack of
effective inter-agency collaboration and other challenges in the implementation of the law is also a cause of delays.

8.5.4 Interactions between formal and customary land sectors

The findings of the current research confirm to some extent the predicted conceptual outcomes of interactions between formal and informal institutions (Helmke and Levitsky 2004, Chapter 2, Subsection 2.2.1). For instance, Figure 8.13 shows that with respect to Kumasi, the active interactions between the customary and formal land sectors contribute to the low levels of land documentation, which impacts on demand for land right formalisation. The formal recognition of allocation notes, prior to the completion of land acquisition, provides additional security to already secure customary land tenure and may have been deemed sufficient, causing some property owners to terminate the process. Additionally, the frustration encountered by the sampled respondents due to the cumbersome interaction between the formal and customary land institutions contributes to some respondent not completing the process. In Accra, the finding of uncertainty in the land ownership arrangement and the inability of the formal land registration system to effectively guarantee title security contributes to the prevalence of engagement of “land guards” to provide the necessary security of tenure. In other words, the outcome of the competition between informal practices and the ineffective land registration system worsens an already uncertain land tenure arrangement in Accra.

8.5.5 Conditions for effective Formalisation of Land Rights

An important conclusion reached from the discussions on institutions in Chapter 2 is that in terms of their formal and informal aspects, the nature of the implicit informal aspects are important. Hence, if introduction of institutions does not adequately consider local implicit informal institutions, it may have adverse effect on outcomes (Chang 2006; Pessali 2011b; Evans 2004). The findings of the current study suggests that for urban land registration systems to capture effectively relevant information needed for market development, the approach to land rights formalisation must be context-specific, responding appropriately to the particular conditions that persist in a jurisdiction. In other words, although the literature suggests that urbanisation carries conditions that
require formalisation of land rights (see Chapter 3, Subsection 3.3.2), there should be differentiated strategies that respond appropriately to the conditions of a social context, since a “one-size fit all” approach is not appropriate in all cases.

At one extreme, it is clear from the findings that in jurisdictions where there is perception of high land tenure security, a cohesive society, and high adherence to social values, the establishment of an elaborate titling system may not be required since property owners are secure in their land rights. For instance, the study found that the simple act of recording and recognising allocation notes by the formal sector served as an added incentive for some property owners not to pursue land registration (Chapter 7, Subsection 7.2.1). In this case, an appropriate mechanism to capture land information could be targeted at strengthening the customary land institutions through the introduction of formal measures aimed at enhancing records capturing and storage capabilities at an early stage of the land acquisition process. In this context, the strategy of encouraging the establishment of Customary Land Secretariats under the Ghana Land Administration Project (Phase 1) should be strengthened further.

At the other extreme, in jurisdictions where social institutions underpinning urban land tenure arrangements are weak, ineffective and unable to cope with increasing urbanisation, as in the case of Accra, it may be appropriate to introduce formal systems for the recognition of land rights. However, such formalisation must be appropriate to the local context. In the case of Accra, negative outcomes (for example, the engagement of ‘land guards’) point to an inability of the formal system to provide adequate title security and suggest that the approach to implement the system was inappropriate. Since the demand for title registration may be in response to insecurity of tenure, a pragmatic approach would be to improve the effectiveness of the formal land registration system. Hence, where land and property values are high and the physical control of landholdings has crystallised, such as in well-developed and commercialised areas, a systematic approach targeted at particular parcels of land may be an appropriate approach to ensure effective capture of relevant land information. In newly developing areas, an approach for improving the land information condition should be targeted at systematically capturing relevant information such as the alodial title of larger social units including families and stools.
8.6 Summary

This chapter presented the comparative analysis and evaluation of the case study results reported in Chapters 6 and 7. This analysis was organised around the analytical framework presented in Chapter 2 and the conceptual discussions in Chapter 3, and was carried out in three stages. First, the respective social contexts within which the land delivery system operates were compared in order to identify the effects of historical and socio-cultural factors on the persisting land tenure systems. Second, the characteristics of the land delivery systems in the case study cities were compared, relying on the assessment of the sampled property owners on aspects of the system. The third and fourth stages focused on understanding the impacts of the different characteristics of the social contexts on observed institutional and market outcomes. In order to achieve this understanding, the third stage related identified characteristics of the land tenure systems and the land delivery systems within the context of the analytical framework for the study. The fourth stage compared the local urban land market in order to assess the extent of influence of the respective social contexts.

The comparative analysis shows that the differences in the socio-political aspects of the organisational structures that govern the land tenure arrangement in the case study cities has a direct impact on the outcome of land registration system (see Figure 8.13). Historical and socio-cultural factors have had differing effects on the centralised and non-centralised socio-political organisational structures. The impact on the non-centralised indigenous socio-political organisational structure of Accra was reduced adherence to social values and respect for traditional authority. Because of the allodial title is vested in disparate social groups, uncertainties have regarding the rightful authority structures with respect to the control and management of land. The centralised socio-political organisational structure in Kumasi appears to have been less affected by historical and socio-cultural factors. Consequently, there is greater respect for traditional authority and adherence to social values. The functional relationship between the hierarchical socio-political structure and the land tenure arrangement facilitates a well-organised land tenure arrangement, which creates certainty in the land ownership regime.
In addition to historical and socio-cultural factors, the analysis shows that inter-organisational challenges and a divergence in the principles and implementation of the legal framework are major contributory factors to deficiencies in the land information regime in the case study cities. Contrary to criticism that title registration does not usually take into account the peculiarities of customary tenure, in Ghana, the law largely accommodates such rights. However, the implementation and operation of the land registration system is not responding appropriately to the particular characteristics of the social contexts of Accra and Kumasi.

The deviations in the implementation of the law have important land information implications. First, the ineffectiveness of the registration system is a major source of impediment and frustration to property owners, as was expressed by the general dissatisfaction with the process in both cities. Second, because of the frustrations, the vast majority of land transactions in the declared districts in Accra and Kumasi remain unregistered, contributing to the low rate of formalisation. One important effect of the low level of formalisation is the gaps that emerge in the land information regime, which contributes significantly to the existing land information deficiencies. Hence, there is the need to be cautious when embarking on land rights formalisation activities, since unintended outcomes can occur given the peculiarities of the social context of a jurisdiction.

An important finding is the different extent to which the customary land sector influences urban market process and outcomes in Accra and Kumasi. There is greater influence of the customary land sector in urban land market activities with respect to the centralised social organisational structure of Kumasi than on non-centralised indigenous social structures of Accra.

The next chapter provides a summary of the conclusions that can be drawn from the results of this thesis. The research goal and objectives are revisited, and the responses to each of the objectives summarised. This is followed by a summary of the contributions made to the fields of land tenure and real estate studies, with a focus on SSA. Finally, recommendations are made for future research.
Chapter 9

Conclusions and Recommendations

The goal of this thesis was to explore the impact of institutions and socio-cultural differences underlying land tenure systems in Ghana on the operations of its urban land registration systems. Three specific objectives were established to guide achievement of the thesis goal, namely:

1. To identify and examine, in two purposively chosen study areas, relevant historical and contemporary socio-cultural factors relative to their impact on the prevailing land tenure systems and operations of land registration systems.

2. To compare the nature and characteristics of the local urban real estate markets in the study areas, with a view to identifying similarities and differences, the information requirements of the market participants, and the opportunities and constraints in meeting these requirements.

3. To identify the conditions required for the development of a responsive and locally relevant land information framework based on the outcome of the preceding objectives.

To achieve these objectives, the thesis argued that in order to address land information deficiencies, there is a need first to identify and understand the complex interactions between formal and informal institutions with respect to the nature and the operations of historical and prevailing land tenure systems. Consequently, a conceptual and analytic framework was extended and adopted in Chapter 2 to satisfy this need. The framework, based on a conceptual discussion of the link between institutions and the organisation of a society, identified elements within the social context of a jurisdiction that could create barriers to the effective provision of relevant
land information management by urban land registration systems. Chapter 3 built on this framework by identifying the factors that have conditioned the development of viable urban real estate markets within SSA. The chapter also identified the characteristics of social organisational structures that circumscribe indigenous land tenure arrangements. Chapter 4 detailed the context of the empirical setting of the research by focusing on the formal and customary setting of land administration in Ghana, and the nature of operation of its urban land market.

In Chapter 5, a comparative approach using an ethnographic research methodology was presented that employed multiple methods of data collection and sources on information to examine empirically the conditions within two distinct jurisdictions in Ghana. The jurisdictions depicted different socio-political organisational structures and processes that underpin their land tenure arrangements and land markets. The thesis results presented in Chapters 6 and 7 illustrate the differences between the examined non-centralised and centralised social structures. Chapter 8 presented and re-evaluated the results using a comparative analysis within the context of the analytical framework presented in Chapter 2 and the conceptual discussions in Chapter 3.

The thesis is concluded in this chapter by reviewing the research objectives as outlined above and prescriptive measures that can be used to address the land information challenge. The chapter also presents the contributions to knowledge and makes suggestions for future research.

9.1 Review of Thesis Objectives and Outcomes

The following subsections review the thesis objectives outlined in the preceding section and assess the extent to which the objectives were successfully achieved.
9.1.1 Effects of Historical and Contemporary Factors on Land Tenure Systems and Land Registration Systems

The first objective of the thesis was to identify and examine, in the two selected case study areas, the effect of historical and contemporary socio-cultural factors on the prevailing land tenure and land registration systems. This objective was achieved by reviewing the nature of land tenure systems as they relate generally to SSA in Chapter 3. Based on this review, the effects of the colonial and post-colonial factors on indigenous socio-political organisational structures governing customary land tenure systems were examined with respect to Ghana in Chapter 4. Second, Chapters 6 and 7 respectively assessed how the identified factors specifically influenced the persisting non-centralised tenure arrangements in Accra and the centralised arrangements in Kumasi. The comparative effects of the factors identified were reported in a cross-case analysis and evaluation in Chapter 8.

9.1.1.1 Historical and Socio-cultural Influences

The results of the analysis established that historical and socio-cultural factors have indeed influenced the centralised and non-centralised socio-political organisational structures that govern the land tenure arrangements in Kumasi and Accra (see Chapter 8, Section 8.2). The overall effect of the historical and socio-cultural factors has created different extents of uncertainty in the land tenure arrangements (Chapter 8, Subsection 8.5.1), which were consistent with the review of the literature (see Chapter 3, Subsection 3.1.2.2). It was found that the influence of colonial factors on the centralised social organisational structure was minimal, compared to the non-centralised structure. Conversely, Chapter 8, Subsection 8.4.3 showed that formal processes and practices have also influenced customary practices.

The comparative analysis and evaluation established that certainty in the land tenure arrangements resulting from socio-political organisational structures influenced the demand for land rights formalisation in the centralised and non-centralised structures (see Figure 8.13 and Chapter 8, Subsection 8.5.1). This finding was found to be consistent with the literature that established an inverse relationship between the perception of tenure security and the desire to formalise land rights (Platteau 2000;
Further, the comparative analysis and evaluation established that there was a dominant influence of customary practices and processes in the centralised states on urban land delivery, which contributed to the level of informality in the local urban market operations (Chapter 8, Section 8.4).

9.1.1.2 Factors Affecting Operation of Local Land Registration Systems

In addition to the outcome of the structure of the land tenure arrangements noted above, the research found that other complicating factors contributed to the observed outcomes of the land registration systems. The application of the analytical framework facilitated the identification and explanation of how the interactions of complex elements within the social context of each jurisdiction have contributed to the observed low rate of land rights formalisation (see Chapter 8, Figure 8.13). These factors include (1) challenges in the operation of the land registration systems, (2) nature of interactions between formal and customary land sectors, and (3) the nature of implementation of the legal framework for land registration.

One factor that influenced institutional outcomes was the operational and logistical challenges facing the land registration system in both cities (Chapter 8, Section 8.5.2). Similar to other studies, high levels of bureaucracy, rent-seeking behaviour of officials, and the imposition of administrative requirements during the registration process were identified as factors that frustrate and prevent some respondents from gaining access to the services of the formal system (UN-Habitat 1990; Antwi and Adams 2003; Lavigne Delville et al. 2010; Zevenbergen 1999).

The research found that the nature of the inter-organisational relationships between ineffective formal land registration systems and the customary land sectors had major influences on the observed institutional outcomes (Chapter 8, Section 8.5.4). To some extent, this finding underscores the conclusions from the conceptual discussion in Chapter 2, Subsection 2.2.1 that divergent or convergent outcomes might occur when explicit formal institutional rules do not conform to, or at best, only accommodate persisting informal or customary rules (Chang 2006; Pessali 2011b;
Evans 2004; Helmke and Levitsky 2004). For instance, the interactions between the formal and customary land sectors in Kumasi were associated with a low rate of land documentation, which in turn affected the demand for land rights formalisation with some respondents not completing the land formalisation process.

A common contributory factor found to have influenced the nature of the land registration systems operations in the two case study cities was the implementation of the legal framework (Chapter 8, Subsections 8.3.3 and 8.5.3). It was established that even though the legal frameworks contained provisions for accommodating customary principles in managing land information, the nature of their implementation had important implications for the operations and outcomes of title registration. The inability to implement adequately a systematic approach to title registration had effects on the capturing, storing, and retrieval of information required for urban land market development. This finding agrees with the conclusions reached in Chapter 2, Section 2.4 that the outcomes of institutions can differ from their stated objectives if new institutional rules or legal frameworks are not implemented appropriately by organisations (Portes 2006; Chang 2006).

An important conclusion from the above finding is that it is not enough for formal laws to accommodate or conform to customary principles. How the provisions in the law are implemented through appropriate adaptation to the particular social context of a jurisdiction is a critical consideration if the objective of improving the quality and currency of land information is to be achieved.

9.1.2 The nature and characteristics of the local urban real estate markets

The second objective of the thesis was to compare the nature and characteristics of the local urban real estate markets in the study areas. This objective sought to identify similarities and differences in market processes in terms of information requirements of the market participants, and opportunities and constraints in meeting these requirements. The objective was achieved in Chapter 8, Section 8.4 by comparing the respective characteristics of the local urban land markets in Accra and Kumasi (reported in Chapter 6, Section 6.3 and Chapter 7, Section 7.3), in terms of
land information requirements, modes of financing land transactions and extent of
influence of customary land sector.

The research established that, in common with other urban land markets in SSA,
the local urban land markets in Accra and Kumasi are generally informal (Chapter 8,
Subsections 8.4). The degree of this informality was found to be linked to the extent
of land registration and the influence of the social context of each city (see Chapter 8,
Figure 8.11). Even though informal sources dominated the funding for urban land
transactions, especially in Kumasi, the level of adherence to social values was found
to influence the dependence on formal sources of funding for urban land transactions
(Chapter 8, Subsection 8.4.2). In addition, although formal channels were the main
source of land information used by property owners in both cities, property owners
appeared to prefer information from informal sources (Chapter 8, Subsection 8.4.1).

A distinctive characteristic of the local urban market in the two cities was the
extent of influence in market activities of the customary land sector (Chapter 8,
Subsection 8.5.4). For instance, in Kumasi, the customary land sector had a greater
influence in urban land market activities than in Accra because the allodial interest is
vested in centralised socio-organisational structures, and only leasehold rights are
allocated. Further, the high perception of tenure security, coupled with frustrations in
the land formalisation process, was linked to prevalence of informal transactions,
indicating informality in urban land market processes.

The findings of the thesis, particularly as related to Kumasi, suggest that the
creation of an environment that facilitates tenure security is important for the
development of the local urban land market. The above findings suggest that, in
addition to registered title, other factors are equally important in fulfilling the
hypothesised link between land registration and access to credit (De Soto 2000).
Formal banks usually base their decision to grant loans more on the economic
viability of the intended project than just on the nature of the collateral (Domeher and
Abdulai 2012). Hence, the general economic environment of the jurisdiction may also
have impacts on the reliance of formal sources to provide financial loans for land
purchases. Another factor that influences the extent of utilisation of formal financial
sources is the socio-economic background of the people, which will affect their willingness to take advantage of such formal sources in the first place.

9.1.3 Conditions for the development of a responsive and locally relevant land administration system

The fourth objective of the thesis was to identify the conditions required for the development of a responsive and locally relevant land information framework. This objective was achieved in Chapter 8, Section 8.5, which identified factors that created barriers to effective land information management. Particularly, Chapter 8, Subsection 8.5.5 outlined the conditions that should be considered for effective formalisation of land rights, which can provide a means for effective harnessing of information. The factors identified underscored the assertion that ‘getting institutions right’ goes beyond simply transplanting the formal rules and regulations of countries that are seen to be operating effectively in some contexts (Johnson 2009).

The findings of the current study highlight the importance of social organisation that gives form, meaning and relevance to a land tenure system. These factors contribute to the creation of certainty in land tenure. Hence, in order to address the land information challenge there is a need to take cognisance of the structure and management of indigenous land tenure systems. Further, the findings of duality in formal law and practice, which are consistent with the experiences of others (Chapter 2), adversely affect the operation of institutions and subsequently their outcomes (Portes 2006). Hence, there is a need for effective implementation of well-crafted and functional legal frameworks for land registration, to ensure that the principles and operations of land registration are locally relevant and sensitive. There is a need to explore new technologies and approaches to address the challenges in the implementation of the elaborate mechanisms in the legal framework for capturing customary land rights. In this regard, the Social Tenure Domain Model offers potential advantages (Lemmen et al. 2007; Lemmen 2010; Lemmen and van Oosterom 2013). Any challenges posed by limitations of the STDM can be adequately addressed through the application of the systematic and analytical approach presented.
in this thesis to investigate fully both the positive and negative aspects of the operations of social structures that underpin the customary land tenure arrangements.

The lack of organisational capacity also contributes to institutional outcomes. Therefore, there is a need to improve the capacity of the human resource base of the officials of the formal land administration sector. Further, there is a need for the procedure for land registration to be streamlined in order to eliminate unnecessary requirements and thereby reduce the transaction costs of registration. In this regard, the on-going efforts at re-engineering the business process of land registration by the Ghana Lands Commission are moving in the right direction.

9.2 Research Contributions

Through satisfying the above objectives, the thesis has made several conceptual, methodological, and substantive contributions to the field of land information management and real estate market studies, with specific reference to Ghana. One major conceptual contribution is the novelty of using existing theory on institutions as a lens through which to interrogate the effects of history, culture, and formality/informality on land administration in urban Ghana, and hence on land development and transactions. The thesis adopted an analytical framework that linked characteristics of the social context of an institutional arrangement and its outcomes with market processes and outcomes in order to address land information deficiencies and their impacts on the development of functional urban real estate markets.

The thesis has responded to some of the calls by researchers such as Cao (2012) for systematic examination how informal institutions influence formal institutions. The mechanisms have been revealed by which informal institutions, such as custom, steadily influence the operations and performance of formal institutions (Chapter 2, Section 2.3). Although the literature on the concept of social capital is not conclusive with respect to its role in influencing institutional outcomes, the current study has illuminated the roles of various aspects of the concept. In particular, the conceptual distinction of social life into material and symbolic realms (Chapter 2, Figure 2.2)
facilitates understanding the interrelationships among the diverse elements of social capital (see Chapter 2, Subsection 2.3.3.1).

The incorporation of the conceptual distinction of social life in the thesis enhanced understanding of the interactions of structural and cognitive elements of the concept in influencing institutional outcomes. Particularly, the thesis highlights in clearer terms how informal institutions, such as norms and customs, influence formal institutions, such as the operation of the law. It contributes to understanding the conflict between formal (and statutory) registration systems and informal (and customary) systems, which can provide some lessons for promoters of land tenure reforms in developing economies. Hence, the thesis has helped to understand better why similar institutional forms, such as formal land registration systems, may produce different outcomes in different societies.

Based on the systematic analysis of the interdependence between institutions and the social organisation of societies in Chapter 2, Subsection 2.3.3, the term institution was conceptualised as the symbolic blueprint of any social organisation that provides the set of rules, either formal or informal, that guide social life. In this respect, the thesis feeds into efforts by governments and international development agencies such as the World Bank to address deficiencies in the operations and outcomes of land registration systems in general and urban land registration systems in particular. Clearly, because of the causal influences of the context-specific factors within the social context of a jurisdiction, their inadequate consideration during the introduction of formal land registration systems can result in poor performance and outcomes.

The thesis has also contributed to the debate regarding the relevance of customary land tenure and its institutions in economic development. The findings of the research show how historical factors have shaped the nature of social-political organisational structures to influence the land tenure outcomes (Chapter 3, Subsection 3.1.2 and Chapter 8, Subsection 8.5.1). The values and practices of particular social units are shown either to constrain or facilitate the allocation of and access to land resources. Consequently, the nature of the socio-political organisational structure that underpins customary land tenure influences the operation of the formal land registration and
cadastral systems, since only the property rights allocated within a land tenure regime are recorded in the formal system. Within the context of Ghana, the study has contributed to understanding the different characteristics of the socio-political organisational structures that underpin land tenure arrangements in terms of impeding or facilitating institutional and market outcomes (Chapters 6 and 7).

The research also furthers the efforts under the second phase of the World Bank funded Ghana Land Administration Project to improve the land registration system as well as to establish an effective land information framework. The comparative approach undertaken to examine the social context of a jurisdiction provides a comprehensive analysis of context-specific issues capable of enhancing or impeding efforts to improve the land information conditions. The context-specific elements include the nature of socio-political organisational structures, the nature of interactions between formal and informal institutions, the level of tenure security, and the nature of implementation of the legal framework.

Even though the current study largely confirmed the suggestion in the literature of a possible inverse relationship between the perception of tenure security and the desire to formalise land rights, it extends knowledge by identifying additional complex factors that contribute to outcomes (Chapter 8, Subsection 8.5). The nature of inter-organisational relationships and the implementation of the legal framework are shown to be contributing factors to institutional outcomes. The application of the analytical framework established that, depending on the nature of the interactions between formal and informal institutions, divergent or convergent outcomes might occur. For instance, the findings of the research show that with respect to Accra, the outcome of the interaction between an ineffective formal land registration system and an equally ineffective customary land sector contributed to negative outcomes such as the reliance of ‘land guards’ as alternative means of ensuring security of tenure. The analytical framework provides a means to assess the relative strengths and weaknesses of the formal and customary structures and rules that are in practical use, and to access their impacts on the management of land information in a particular jurisdiction.
9.3 Recommendations for Future Research

Although the thesis elaborates extensively on the effect of socio-political organisational structure on institutional and market outcomes, there was limited emphasis on certain aspects that are equally important and require further investigation. First, the scope of the current study was limited to two variations of the centralised and non-centralised socio-political organisational structures. However, wide ranges of socio-political organisational structures circumscribe the indigenous customary land tenure systems across SSA countries, and these have been shaped differently by context-specific historical and socio-cultural factors. Hence, it would be prudent for future studies to examine other cases within different contexts in order to overcome the limited generalisability of the findings to other cases. To this end, there is the need to replicate the current research in other major urban areas in Ghana and elsewhere in order to determine the robustness and utility of the analytical framework.

Second, following Keog and D’Arcy (1999) and Kihato (2010), the current study took an institutional perspective of urban market processes and outcomes in order to identify the relative influences of social processes on market operations as well as to establish how the market shapes customary land management practices. The market analysis was therefore limited to the nature of access to information, sources of funding transactions and influences of customary land sector. Hence, to understand fully the impact of the observed differences in institutional outcomes on urban real estate market processes and outcomes there is the need to extend the market analysis to cover the effect on land and real estate values and the nature and operation of the mortgage markets. To this end, it would be prudent to extend the research to cover a wider sampled population.

Given the levels of informality and rapid urbanization it would be useful to extend future research to address issues of affordability and access for the poor to the urban real estate market. In order to have deeper insights, future research could explore relationships between different tenure types, stool membership and perception of the different levels of (dis)satisfaction of time, costs, transparency and security of
tenure. The market analysis could also investigate changes in perception of tenure security over time, such as, in recently developed areas.

To conclude, the overall finding that complex elements within a social context of a jurisdiction contribute in various ways to shape institutional and market outcomes highlights the need for caution when embarking on formalisation of land rights even within the same country. Consequently, in considering strategies to introduce or improve the operations of formal land registration systems, a thorough understanding of the social context should be an important factor that must be considered. Given the context-specific issues affecting institutional change, identified and discussed in this thesis, it is apparent that a top down approach that disregards persisting local practices and processes will more than likely be insufficient. Particularly, given the flexibility and adaptability of customs and norms, it is advisable to take into consideration local processes in the formalisation of land rights.

Clearly, where persisting indigenous social structures of a society have influence on contemporary land tenure arrangement and processes, it is prudent to incorporate their structures and processes in the overall strategy aimed at introducing or improving formal land registration systems in order to address land information deficiencies. The extension and application of the framework presented in this thesis makes it possible to investigate fully both the positive and negative aspects of the operations of social structures that underpin the customary land tenure arrangements in SSA countries, especially in the face of rapid urbanisation. Moreover, the approach provides a means for the examination of the linkages between the customary and the formal sectors, thus facilitating an understanding of the impacts of customary processes on the outcomes of the formal system and vice versa. By viewing the market from an institutional perspective, the approach provides the opportunity for prospects and constraints to be examined by analysing market processes, the relative influences of social processes on the market’s operation, as well as how the market is best able to accommodate customary land management.
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Thank you for showing an interest in this project. Please read this information sheet carefully before deciding whether or not to participate. Alternatively, the researcher or a person acceptable to you can read this information sheet and explain the project to you. If you decide to participate we thank you. If you decide not to take part there will be no disadvantage to you of any kind and we thank you for considering our request.

Goal of the project
This project is being undertaken as part of the requirements for the award of a PhD at the National School of Surveying, University of Otago in New Zealand. The goal of the project is to understand how different formal and communal land tenure management arrangements in urban areas shape the operations of the real estate component of land registration systems and the land market. Specifically, the study seeks to compare and contrast the social structures and key processes underpinning land tenure arrangements in selected areas of Accra and Kumasi and to examine their impacts on the operations and outcome of the land registration system in terms of assisting with the development and functioning of the urban real estate market. It is the expectation that by gaining an improved understanding of these issues, a new framework for assessing the impact of formal land tenure on property transactions can be developed.

Required participants
The study requires persons knowledgeable in issues relating to the real estate market, land management and registration and customary land tenure. Between 30 and 50 key informants knowledgeable in the operations of their respective organisation and willing to participate in the study will be interviewed.

There are no material benefits for agreeing to participate in this study. However, your participation may contribute to improving the management of real estate information in Ghana and other countries.

What will you be asked to do?
Should you agree to take part in this project, you will be asked to take part in a semi-structured interview at a time and place of your convenience. The interview will last for approximately 45 minutes.

Please be aware that you may decide not to take part in the project without any disadvantage to yourself of any kind.

Information to be collected and use of the information
During the interview, you will be asked to answer questions or provide information on the land management and registration process, the real estate market, and communal land tenure and management, from a personal or professional perspective (as appropriate). The interview will be guided by a set of initial questions with follow-up questions. The precise nature of the follow-up questions which will be asked have not been determined in advance, but will depend on the way in which the interview develops. Consequently, although
the University of Otago Human Ethics Committee is aware of the general areas to be explored in the interview, the Committee has not been able to review the precise questions to be used.

In the event that the line of questioning does develop in such a way that you feel hesitant or uncomfortable you are reminded of your right to decline to answer any particular question(s) and also that you may withdraw from the project at any stage without any disadvantage to yourself of any kind.

The data collected will be securely stored in such a way that only those mentioned below will be able to gain access to the content. Data obtained as a result of the research will be retained for at least 5 years at the University of Otago in New Zealand in secure storage. No information provided will be retained in Ghana. Any personal information held on the participants, such as contact details and audio tapes, after they have been transcribed, will be destroyed at the completion of the research even though the data derived from the research will, in most cases, be kept for a longer period.

The results of the project may be presented at conferences and/or published in academic journals. Some of the information obtained during this study may be published in my final PhD thesis, which will be available in the University of Otago Library (Dunedin, New Zealand). However, every attempt will be made to preserve your anonymity.

You are most welcome to request for a summary of the findings of the project should you wish.

If you have any questions about our project, either now or in the future, please feel free to contact any of the following:

Benjamin Armah Quaye  
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9054 Dunedin, New Zealand  
Tel: 64 3 479 9208  
benjamin.quaye@otago.ac.nz

SUPERVISORS:

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University of Otago  
P. O. Box 56  
9054 Dunedin, New Zealand  
Tel: 64 3 479 6540  
david.goodwin@otago.ac.nz

Prof. G. Brent Hall  
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Tel: 64 3 479 7613  
brent.hall@otago.ac.nz

This study has been approved by the University of Otago Human Ethics Committee. If you have any concerns about the ethical conduct of the research you may contact the Committee through the Human Ethics Committee Administrator (ph 03 479 8256). Any issues you raise will be treated in confidence and investigated and you will be informed of the outcome.
LAND INFORMATION DEFICIENCY AND THE DEVELOPMENT OF REAL ESTATE MARKET IN DEVELOPING ECONOMIES

INFORMATION SHEET FOR PROPERTY OWNERS AND USERS

Thank you for showing an interest in this project. Please read this information sheet carefully before deciding whether or not to participate. Alternatively, the researcher or a person acceptable to you can read this information sheet and explain the project to you. If you decide to participate we thank you. If you decide not to take part there will be no disadvantage to you of any kind and we thank you for considering our request.

Goal of the project
This project is being undertaken as part of the requirements for the award of a PhD at the National School of Surveying, University of Otago in New Zealand. The goal of the project is to understand how different formal and communal land tenure management arrangements in urban areas shape the operations of the real estate component of land registration systems and the land market. Specifically, the study seeks to compare and contrast the social structures and key processes underpinning land tenure arrangements in selected areas of Accra and Kumasi and to examine their impacts on the operations and outcome of the land registration system in terms of assisting with the development and functioning of the urban real estate market. It is the expectation that by gaining an improved understanding of these issues, a new framework for assessing the impact of formal land tenure on property transactions can be developed.

Required participants
The required participants for the study are persons over 21 years who own or use property within the cities of Accra and Kumasi. Between 150 and 200 participants will be selected randomly from a purposively selected sample of localities in the case study cities.

There are no material benefits for agreeing to participate in this study. However, your participation may contribute to improving the management of real estate information in Ghana and other countries.

What will you be asked to do?
Should you agree to take part in this project, you will be asked to respond to a structured questionnaire to be administered by a Research Assistant who will visit your house at a time of your convenience. This will take approximately one hour.

Please be aware that you may decide not to take part in the project without any disadvantage to yourself of any kind.

Information to be collected and use of the information
Generally, the structured questionnaire seeks information about how property owners access land and the challenges and constraints in the process of documenting and registering the land. The questionnaire also seeks to obtain information about the perception of the property owners on the real estate market processes and outcomes as well as their views and relationships with customary and formal land institutions. Specifically, the following information and data will be collected:
Your gender, age-bracket, occupation, educational level, income range and contact details

Information on your property – interest in the property, the year of purchase, where you bought the property, how much you paid, source of money for the purchase, whether you have registered it, loan or mortgage information.

In addition to the above, information about your land will be obtained from the records of the Lands Commission (Land Registration Division). The information will be used for research purposes only.

The data collected will be securely stored in such a way that only those mentioned below will be able to gain access to the content. Data obtained as a result of the research will be retained for at least 5 years at the University of Otago in New Zealand in secure storage. No information provided will be retained in Ghana. Any personal information held on the participants, such as contact details and audio tapes, after they have been transcribed, will be destroyed at the completion of the research even though the data derived from the research will, in most cases, be kept for a longer period.

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You are most welcome to request for a summary of the findings of the project should you wish.

You may withdraw from participation in the project at any time and without any disadvantage to yourself of any kind.

If you have any questions about our project, either now or in the future, please feel free to contact any of the following:

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APPENDIX 2 - Consent Forms for Key Informants and Property Owners

Ref. No. 11/243 Date____________

LAND INFORMATION DEFICIENCY AND THE DEVELOPMENT OF REAL ESTATE MARKET IN DEVELOPING ECONOMIES

CONSENT FORM FOR KEY INFORMANTS

I have read the Information Sheet concerning this project and understand what it is about. All my questions have been answered to my satisfaction. I understand that I am free to request further information at any stage.

I know that:-

1. My participation in the project is entirely voluntary;
2. I am free to withdraw from the project at any time without any disadvantage;
3. Personal identifying information such as audio-tapes will be destroyed at the conclusion of the project but any raw data on which the results of the project depend will be retained in secure storage at the University of Otago in New Zealand for at least five years. No raw data will be retained in Ghana.
4. The project involves semi-structured interview approach which will be guided by a set of initial questions with follow-up questions on the real estate market, land management and registration, and communal land tenure and management. The precise nature of the follow-up questions which will be asked have not been determined in advance, but will depend on the way in which the interview develops and that in the event that the line of questioning develops in such a way that I feel hesitant or uncomfortable I may decline to answer any particular question(s) and/or may withdraw from the project without any disadvantage of any kind.
5. I am aware that there will not be any discomfort for me during the course of this interview session.
6. I am aware that there are no direct benefits from this study for me, and that only long term policy benefits may accrue.
7. The results of the project may be published and will be available in the University of Otago Library (Dunedin, New Zealand) but every attempt will be made to preserve my anonymity should I choose to remain anonymous.

I agree to take part in this project.

...........................................................    ...........................................................
(Signature of participant)       (Date)

This study has been approved by the University of Otago Human Ethics Committee. If you have any concerns about the ethical conduct of the research you may contact the Committee through the Human Ethics Committee Administrator (ph 03 479 8256). Any issues you raise will be treated in confidence and investigated and you will be informed of the outcome.
LAND INFORMATION DEFICIENCY AND THE DEVELOPMENT OF REAL ESTATE MARKET IN DEVELOPING ECONOMIES

CONSENT FORM FOR PROPERTY OWNERS AND USERS

I have read the Information Sheet concerning this project and understand what it is about. All my questions have been answered to my satisfaction. I understand that I am free to request further information at any stage.

I know that:-

1. My participation in the project is entirely voluntary;
2. I am free to withdraw from the project at any time without any disadvantage;
3. Personal identifying information such as completed questionnaires and the data to be obtained from the Lands Commission (Land Registry) will be destroyed at the conclusion of the project but any raw data on which the results of the project depend will be retained in secure storage for at least five years. No raw data provided will be retained in Ghana.
4. I am aware that there will not be any discomfort for me during the course of this interview session.
5. I am aware that there are no direct benefits from this study for me, and that only long term policy benefits may accrue.
6. The results of the project may be published and will be available in the University of Otago Library (Dunedin, New Zealand) but every attempt will be made to preserve my anonymity should I choose to remain anonymous.

I agree to take part in this project.

.......................................................... ................................
(Signature of participant) (Date)

This study has been approved by the University of Otago Human Ethics Committee. If you have any concerns about the ethical conduct of the research you may contact the Committee through the Human Ethics Committee Administrator (ph 03 479 8256). Any issues you raise will be treated in confidence and investigated and you will be informed of the outcome.
APPENDIX 3 - Structured Questionnaires – property owners/users

1. Respondent’s Gender:
   □ Male
   □ Female

2. Are you a member of the landowning stool/family?
   □ Yes
   □ No

3. How long have you been living in the city?
   □ Less than 6 months
   □ Between 6 months and 1 year
   □ 1 year to 3 years
   □ 3 years to 5 years
   □ Over 5 years

SECTION A: The Property

A1. Physical Location of Property

A2. Brief Description of Property

A3. Area of Land _________________

A4. What is the current primary use of the property?
   □ Residential
   □ Commercial
   □ Mixed Use
   □ Industrial
   □ Other _______________________

SECTION B: Land Acquisition Process

B1. When did you get this land?
   □ Less than 6 months ago
   □ Between 6 months and 1 year
   □ Between 1 year and 3 years
   □ Between 3 years and 5 years
   □ Over 5 years ago

B2. From whom did you acquire the land?
   □ A family/stool (specify) ________________
   □ Current owner
   □ Government
   □ Inherited [If Inherited Go to Section E]
   □ Other (please specify) ________________

B3. [If from Government or current owner] Did you also deal with a customary land institution?
   □ Yes [Also ask B7]
   □ No

B4. [If from a Family/Stool] Whom did you deal with?
   □ Head of Family Alone
   □ Head of Family and Elders
   □ Chief Alone
   □ Chief and elders
   □ Land Allocation Committee
   □ Customary Land Secretariat
   □ Others _______________________

B5. How did you know this land was available?
   □ Approached by owner
   □ Through a professional attached to the stool/family
   □ Through a land agent
   □ Through officers at government land agencies
   □ Direct inquiry
   □ Through advertisement
   □ Other __________________________

B6. Why did you decide to acquire land in this area? [Select all Applicable]
   □ Price level
   □ No history of land disputes
   □ Location of land
   □ Level of development
   □ Availability of Infrastructure (roads, water etc.)
   □ Good lay out
   □ Other ________________
B7. Were you required to perform any customary rites as part of the acquisition process?
   □ Yes
   □ No □ [If No, Go to B9]

B8. If Yes, Please briefly describe the customary rites:

B9. What type of interest do you have in the land?
   □ Freehold
   □ Leasehold [Indicate Years] ________
   □ Licence [Indicate Period] ________
   □ Other (please specify) ________

B10. Are there any customary obligations under the terms of the acquisition?
   □ Yes
   □ No □ [If No, Continue at B12]

B11. If Yes, please describe the customary obligations:

B12. Do you have any document to show your “ownership” of the land?
   □ Yes □ [If No, Go to B14]
   □ No

B13. If No, how can you show that you own the land?
   □ I have developed the land
   □ I am known by the neighbours
   □ Generally understood that my family owns it
   □ Other ____________________
   [Continue at B15]

B14. If Yes, what type of document?
   □ Receipt
   □ Site plan
   □ Indenture
   □ Allocation Note
   □ Others ____________________

B15. [If acquired from Family/Stool] Was the transaction recorded?
   □ Yes
   □ No

B16. Can someone else claim ownership of the land?
   □ Yes
   □ No

B17. If Yes, who can claim ownership?
   □ The family/Stool
   □ Rival Family/Stool
   □ Rival claimant
   □ Neighbour
   □ Other ____________________

B18. How long did it take you to acquire the land (that is, from the time you made the first contact till the time you were granted access to the land)?
   □ Less than 1 month
   □ 1 month – 3 months
   □ 3 months – 6 year
   □ 6 months – 1 year
   □ Over 1 year

B19. How much did you pay for the land? ________________
   [If possible breakdown the amount] Date___________

B20. Were you given a receipt for the full amount paid?
   □ Yes
   □ No, why not? ________________

B21. How did you pay for the land?
   □ Bank loan
   □ Employer Schemes
   □ Foreign remittances
   □ Cash by domestic Savings
   □ Family gift or Loans
   □ Other ____________________

B22. Please circle the appropriate level of satisfaction of the acquisition process?

<table>
<thead>
<tr>
<th></th>
<th>Ver</th>
<th>Somewhat Dissatisfied</th>
<th>Neutral</th>
<th>Somewhat Satisfied</th>
<th>Very Satisfied</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of Steps</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Time spent</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Cost</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Security of Tenure</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Transparency of the process</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
</tbody>
</table>

B23. In what ways can the land acquisition process be improved?
SECTION C: Key Information Requirements and Access to Information

C1. Did you use some form of information to assist you make a decision during the acquisition of the land?
   □ Yes            [If Yes, Go to C3]
   □ No

C2. If No, Why not,

[If No, Go to Section D]

C3. If Yes, Please place a [X] in the appropriate box to show the type of information and its source

<table>
<thead>
<tr>
<th>Ownership</th>
<th>Land Use</th>
<th>Accessibility</th>
<th>Infrastructure</th>
<th>Litigation Status</th>
<th>Value</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stool/Family</td>
<td>TCPD</td>
<td>PVLMD</td>
<td>LVD</td>
<td>SMD</td>
<td>OASL</td>
<td>LRD</td>
</tr>
</tbody>
</table>

TCPD – Town and Country Planning Dept.; PVLMD – Public and Vested land Management Division; LVD – Land Valuation Division; SMD – Survey and Mapping Division; OASL – Office of Administrator of Stool Lands; LRD – Land Registration division

C4. Please indicate the level of importance of the information to your decision making during the acquisition process? [PLEASE CIRCLE APPROPRIATELY]

<table>
<thead>
<tr>
<th>Source</th>
<th>Completely Unimportant</th>
<th>Of Little Importance</th>
<th>Neutral</th>
<th>Important</th>
<th>Very Important</th>
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<tr>
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</tr>
<tr>
<td>2. Land use</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>3. Accessibility/Location</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>4. Infrastructure</td>
<td>1</td>
<td>2</td>
<td>3</td>
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<td>5</td>
</tr>
<tr>
<td>5. Litigation status</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>6. Value</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>7. Other (specify)</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
</tbody>
</table>
C5. How do you rate your satisfaction with the sources of the information you used? [Please circle appropriately]

<table>
<thead>
<tr>
<th>Source</th>
<th>Very Dissatisfied</th>
<th>Somewhat Dissatisfied</th>
<th>Neutral</th>
<th>Somewhat Satisfied</th>
<th>Very Satisfied</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stool/Family</td>
<td>1</td>
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<td>4</td>
<td>5</td>
</tr>
<tr>
<td>TCPD</td>
<td>1</td>
<td>2</td>
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<td>4</td>
<td>5</td>
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<tr>
<td>PVLMD</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>LVD</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>SMD</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>OASL</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>LRD</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Friends/Family/Neigbours</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Local Government</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Courts</td>
<td>1</td>
<td>2</td>
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<td>4</td>
<td>5</td>
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<tr>
<td>Others (specify)</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
</tbody>
</table>

SECTION D: Land Registration

D1. Have you registered your interest in the land at either the Deeds Registry or the Land Title Registry?
   □ Yes [Go to D3]
   □ No [Go to D2]
   □ Registration ongoing [Go to D5]

D2. If No, Why?
   □ Unnecessary
   □ Feel secured
   □ The Process is too long
   □ Too Expensive
   □ Other __________________________

D3. If Yes, What was the main reason(s) for registering the land? [Select all applicable]
   □ To protect money spent in developing the land
   □ Requirement for loan for building the house
   □ Requirement for loan for my business
   □ To raise bank loan in future
   □ To protect against litigation
   □ To have peace of mind
   □ Better to have registered title
   □ Registration is compulsory.
   □ To increase the value of the land
   □ Other ________________________

D4. Approximately how long did it take you to register the land?
   □ Less than 3 months
   □ 3 months – 6 months
   □ 6 months – 1 year
   □ 1 year – 2 years
   □ Over 3 years

D5. If the registration is still ongoing, at what stage is the registration? [Please also indicate the agency]

D6. How long has it been in progress?
   □ Less than 3 months
   □ 3 months – 6 months
   □ 6 months – 1 year
   □ Over 1 year

D7. How much did you pay for the registration? [If possible break down the amount]
D8. For the following agencies involved in the registration process, please indicate your satisfaction with their performance.

<table>
<thead>
<tr>
<th>NAME OF AGENCY</th>
<th>RATING</th>
<th>REASONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public and Vested Land Management</td>
<td>1 2 3 4 5</td>
<td></td>
</tr>
<tr>
<td>Land Valuation</td>
<td>1 2 3 4 5</td>
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</tr>
<tr>
<td>Survey and Mapping</td>
<td>1 2 3 4 5</td>
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</tr>
<tr>
<td>Land Title Registry</td>
<td>1 2 3 4 5</td>
<td></td>
</tr>
<tr>
<td>Office of Administrator of Stool Lands</td>
<td>1 2 3 4 5</td>
<td></td>
</tr>
<tr>
<td>Deeds Registry</td>
<td>1 2 3 4 5</td>
<td></td>
</tr>
<tr>
<td>Town and Country Planning Department</td>
<td>1 2 3 4 5</td>
<td></td>
</tr>
<tr>
<td>Other ______________________________</td>
<td>1 2 3 4 5</td>
<td></td>
</tr>
</tbody>
</table>

D9. What is your overall satisfaction level of the registration process in terms of…? [PLEASE CIRCLE APPROPRIATELY]
<table>
<thead>
<tr>
<th></th>
<th>Very Dissatisfied</th>
<th>Some what Dissatisfied</th>
<th>Neutral</th>
<th>Some what Satisfied</th>
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<td>Cost</td>
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<td>4</td>
<td>5</td>
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<tr>
<td>Accessibility of the service</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
</tbody>
</table>
SECTION E: Reliance on Professionals

E1 Did you use the services of a professional to assist you in the process?
☐ Yes  [If Yes, Go to E2]
☐ If
[If No, Go to Section F]

E2 If Yes, Which of the following professionals? [Select all Applicable]
☐ Solicitor (Lawyer)
☐ Licensed Surveyor
☐ Valuer
☐ Real Estate Agent
☐ Other ________________

E3 Please indicate your level of satisfaction of the performance of the selected professional(s)?

<table>
<thead>
<tr>
<th>Professional</th>
<th>Very Dissatisfied</th>
<th>Somewhat Dissatisfied</th>
<th>Neutral</th>
<th>Somewhat Satisfied</th>
<th>Very Satisfied</th>
</tr>
</thead>
<tbody>
<tr>
<td>Solicitor (Lawyer)</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Licensed Surveyor</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Valuer</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Real Estate Agent</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Others</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
</tbody>
</table>

SECTION F: Mortgage information

F1 Have you used your land registration document to get a loan?
☐ Yes  [If Yes, Go to F3]
☐ No

F2 If No, Why Not? [If No, Go to Section G]

F3 If Yes, When did you obtain the loan?
☐ Less than 6 months ago
☐ 6 months – 1 year
☐ 1 year – 2 years
☐ Over 2 years ago

F4 Where did you get the loan?
☐ Bank (Name ________________)
☐ Credit Union
☐ Non-Bank Financial Institution (Name ________)
☐ Other ______________________

F5 What was the value of the loan? ________
What were the terms of the loan?

What was the purpose of the loan?
- For building
- For buying property/land
- For Home improvement/completion
- Business
- Personal Use
- Other __________________________

SECTION G: Litigation and Conflict

G1. Have you been involved in any dispute with respect to your land since it was acquired?
- Yes
- No  [If No, Go to Section H]

G2. If Yes, What was the nature of the conflict?
- Title
- Boundary
- Both boundary and Title
- Others __________________________

G3. Who was the other party in the dispute?
- Stool or Family (Specify) __________
- Neighbour
- Rival Claimant
- Others __________________________

G4. Whom did you first report the dispute to?
- The Traditional Authority
- Stool or Family
- Land Sector Agency (Specify) ______
- Formal Court
- Others __________________________

Why?

G5. Has the dispute been resolved?
- Yes
- No  [If No Go to G8]

G6. If Yes, where was the dispute resolved?
- Traditional Authority
- Stool/Family
G7. How long did it take to resolve the dispute?
- Less than 3 months
- 3 months – 6 months
- 6 months – 1 year
- Over 1 year
- Not resolved

G8. Please indicate your level of satisfaction of the dispute resolution process in terms of…?

<table>
<thead>
<tr>
<th>Time spent</th>
<th>Very Dissatisfied</th>
<th>Somewhat Dissatisfied</th>
<th>Neutral</th>
<th>Somewhat Satisfied</th>
<th>Very Satisfied</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transparency of the process</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cost</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accessibility of the service</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The final decision</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

SECTION H: Land Administration Reforms

H1. Are you aware that the Government is undertaking reforms in the land administration system?
- Yes
- No [If No, Go to Section I]

H2. If Yes, Which aspect of the land administration system should be prioritised?
- Land registration
- Land use planning
- Survey and mapping

SECTION I: Property Owner’s Information

I1. What is your occupation:
- Self Employed
- Government Employed
- Private sector Employed
- Unemployed
- Other: _______________________

I2. Please what is your age? _________________________

I3. Educational status:
- No Formal Education
- Primary
- Secondary
APPENDIX 4A Interview Guide – Customary Land Tenure Institutions

This Interview is targeted at key informants within the traditional and customary institutions in the case study areas. They will mainly be chiefs, heads of families, principal or senior members of the family/stool. However, in areas where there are established formal establishments, accredited officers working within the Traditional Councils and Customary Land Secretariats will be interviewed as well. The information sought is in respect of the land controlled/owned by the customary authority and not the informants per se.

Background
1. Stool/Family/Traditional Authority: ______________________________________
2. Position/Role: _________________________________________________________
3. Level of Education Completed:
   □ No Formal Education (1)
   □ Primary (2)
   □ Secondary (3)
   □ Tertiary (4)
4. Age:
   □ 21-30 (1)
   □ 31-40 (2)
   □ 41-55 (3)
   □ 56 > (4)
5. Gender:
   □ Female (1)
   □ Male (2)
6. Location of Interview:

SECTION A: Legal Rights/Interests in Land and Registration

A1. How many pieces of land does this family/stool/authority control in the city? What are the sizes of each of the lands? [State the number, locations and land sizes in acres] [Identify land(s) on map]

   [The following questions will be in respect of a representative types of lands identified in A1]

A2. How did the stool/family get the land(s)? When was that?

A3. How does the family/stool know the boundary of the lands it controls?

A4. What document do you have over the land(s)? Have the land(s) been registered?
   a. If Yes, When? [Will also probe to know why they decided to register and when they registered]
b. If No, Why not?

A5. How do you protect your lands from being encroached upon?

SECTION B: Land Management - Allocation of Land

B1. For a parcel of land given out by the family/stool in the past six (6) months, which persons in the family/stool took part in the decision?

B2. What happens to member(s) of the family/stool occupying part of the land which is to be given out?

B3. How do members of the family/stool take part in decisions about the allocation or use of land?

B4. How do the following categories of persons get land from the family/stool? [identify the criteria for allocating land to members and non-members]

1. A member of the family/stool
2. A person who is not a member of the family/stool

B5. What changes have taken place in the past 50 years [approximately since independence], about the way land is given out to these persons (members and non-members)? [Identify changes to the rules for land allocation over the years]

B6. For a typical building plot given out within the past six (6) months, how much money was paid? [price range for typical plot sizes]

a. Do members and non-members of the family/stool pay the same amount? If Yes (1), Why? If No (2) Why not?

b. What factors are considered before arriving at the amount to be paid?

c. Apart from the money that is paid for the land, are there other things that must be done for the family/stool? [To establish any customary practices in place for land allocation][e.g. contribution to traditional events, other]

B7. What type of document do you give to the people you give land?

B8. From the day a person approaches a stool/family, on average how long does it take for him/her to get access to the land?

SECTION C: Land Information and Records Management

This section is aimed at understanding the nature of land information management by the customary sector in the case study areas. To be answered by responsible persons for this activity.

C1. Do you keep records on the land that you give to people?

□ Yes (1) □ No (2) [If No go to C4]

C2. If Yes, What records do you keep?

C3. How are the records kept?

C4. Who has access to the records?

C5. In your view how can the management of land information be improved?
SECTION D: Accountability, Transparency and Conflict Resolution

D1. What happens to money paid when land is given out? [Will crosscheck to ascertain the authenticity of the response]

D2. Have children in your family/stool obtained land on growing up? [measures put in place protect the land for future generations]

D3. Has the stool/family been involved in any land dispute in the past 5 years?
   □ Yes  (1)  □ No  (2)  [Go to D6]

D4. If Yes, What are the most frequent land disputes?

D5. How are land disputes involving the following usually addressed? [The processes and rules for dispute resolutions, who are involved, how decisions are enforced etc]
   a. Between your family/stool and other families/stools in the city?
   b. Between the family/stool and somebody you have given land?
   c. Within the stool/family?
   d. Between the people you have given land?

D6. Where do disputes usually get settled?

D7. Usually, how long does it take to settle disputes brought to the traditional authority or stool/family?

SECTION E: Linkages with government land agencies and private professional

These series of questions seek to understand the processes, rules and structures in place for interactions between the customary institutions and the government/formal land institutions.

E1 Are any government land agencies involved in the allocation of land?
   □ Yes  (1)  □ No, why?  (2)  [Go to E5]

E2 If Yes, Please list them

E3 Which aspects of your operation do you involve the government land agencies? For example…
   i) Does the Lands Commission help you to survey your land? If yes, how?
   ii) Do you ask the Lands Commission to help you fix the price for land? If yes, how?
   iii) Do you rely on information from the Lands Commission when you are giving out land?
   iv) Does the Lands Commission rely on information from you when they are processing land document? If yes, How?
   v) Does the Town and Country Planning Department help you to prepare layout? If yes, How?
   vi) Do you ask for information from the Planning Department when you are giving out land?
   vii) Does the Office of the Administrator of Stool Lands collect ground rent for you? If yes, what is the arrangement?
   viii) Other

E4 From the list of agencies identified in E2, what specific challenges do you face working with them?

E5 Do you employ professionals in the management of your lands?
   □ Yes  (1)  □ No, why not?  (2)
SECTION F: Land Administration Reforms

F1 Do you feel that land administration reforms that are underway are necessary?

□ Yes (1) □ No (2) □ Unsure (3)

F2 If Yes, which aspects of the way you deal with your land should be adopted in the current land administration reforms in the country?

F3 If No, why not?

F4 Do you feel that the customary authorities can continue to manage their lands without the involvement of government land agencies?

□ Yes (1) □ No (2) □ Unsure (3)

F5 If Yes, please expand your views on the capacity to do so and perceived advantages

F6 If No, Why Not?

F7 What are your views on the LAP in terms of the following activities:

a) Legal and institutional reforms
b) Land information management,

c) Establishment of Customary Land Secretariats (CLS)?
APPENDIX 4B Interview Guide – Government Land Sector Agencies

The interview is targeted at authorised representatives of the government land agencies involved in the land documentation and registration in the respective case study cities.

Background

1. Name of Agency: ____________________________________________________________

2. Role in Land management [Surveying, Planning, Valuation, Registration and documentation, other]

3. Position/Rank of Officer: ____________________________________________________

4. How long have you been working in this organisation?
   - □ Less than 3 years (1)
   - □ 3 years – 5 years (2)
   - □ 5 years – 10 years (3)
   - □ Over 10 years (4)

5. Gender:
   - □ Female (1) □ Male (2)

SECTION A: Legal and Policy Mandate

A1. What are the relevant legal and policy requirements for land management within your agency’s operations? [Obtains copies of establishment law, policies and other documents relating their mandate]

SECTION B: Rules and Processes in Land Registration

[B Obtain documented detailed processing procedures and check against the actual processes. Will also obtain official processing fees for various transactions] [Will follow up with the tracing and mapping of the registration of typical land transactions through the various agencies]

B1. What steps are followed in the documentation and registration of land in your agency? [In order to compare the practice with the theory]

B2. How long does it take to complete a land registration process in your agency (from the time a transaction is submitted to the time it leaves)? [Will determine actual process times from actual observations]

B3. What problems does your agency face in the registration process? [Will identify specific problems through the actual steps followed]

B4. How can these problems be addressed?

B5. How has the land tenure arrangement in the city influenced the land registration process?

SECTION C: Inter-organisational Linkages
These questions seek to establish the nature and extent of collaboration among the formal land agencies in the case study cities. Will obtain any available legal and/or policy documents.

C1. Does your agency consult other agencies in its operations?
   □ Yes (1) □ No (2) [Go to C4]

C2. If Yes, which agencies do you consult in the performance of your functions? [list agencies and information sought]

C3. What factors facilitate or impede collaboration?

C4. What do you think can be done to improve collaboration with other agencies?

SECTION D: Linkage with and Perceptions of Customary Institutions

D1. Does your agency interact with any customary land institution in the performance of its functions?
   □ Yes (1) □ No (2) [Go to D3]

   [If Yes, obtain necessary documents requiring such collaboration]

D2. Based on your agencies experience with customary land institutions in the city [Accra/Kumasi], what is your opinion about their operation in the following areas?


D3. How can the interactions between your agency and the customary land institutions be improved?

SECTION E: Real Estate Market Operation

E1. Does your agency record/maintain real estate information?
   □ Yes (1) □ No (2) [Go to Section F]

E2. If Yes, What type of real estate information do you record/maintain?

   [Obtain details of such data especially relating to areas chosen within the case study cities]

E3. What has been the trend in volume of land transactions in the city for both stool/family land areas and public land areas in the past 10 years? [Obtain relevant data to facilitate comparative analysis]

E4. What has been the trend in land values for various land uses (residential, commercial, mixed-use, and industrial) in the city for both stool/family land areas and public land areas in the past 10 years? [Obtain relevant data]

SECTION F: Land Information Management

[To assess the type of system in place for land information management]
F1 Please describe the steps for accessing land information in your agency? [By the public and other agencies]

F2 What measures are in place to ensure the quality and reliability of the information you maintain? [Security of information against manipulation, etc.]

F3 What are the problems that you face in the management of land information?

F4 How can the problems be addressed?

F5 Do you have plans for computerisation? □ Yes □ No

F6 If Yes, what are the plans put in place for the next the next 5 years?

**SECTION G: Assessment of Performance**

[Obtain information on performance targets and data with respect to the following: number of transactions processed, time taken to deliver services, coverage of operation, revenue levels for at least 10 years]

G1. What factors do you think account for your performance since you have been in employment?

G2. How has the land tenure arrangement in the city contributed to the performance of your agency?

G3. What major problems does your agency face in the performance of its functions?

G4. What critical resources are required by your agency to improve its performance?

**SECTION H: Land Administration Reforms**

H1. Does your agency have any role in the Land Administration Project (LAP)?

□ Yes (1) □ No, (2) [Go to H3]

H2. If Yes, Please describe the role of your agency.

H3. What aspects of your role can be improved?

H4. What are your views on the LAP in terms of the following activities:

a. Legal and institutional reforms

b. Land information management,

c. Establishment of Customary Land Secretariats (CLS)?

H5. What aspect of the operation of the customary land institutions would you like to be adopted under the current land administration reforms?

H6. Based on your observations of the performance under LAP 1, which activities should be prioritised in LAP 2?
APPENDIX 4C Interview Guide – Land and Property Market

Professionals/Local Government

Background

1. Metropolitan Area: ____________________________
2. Position: ________________________________________
3. Qualification: _________________________________
4. Professional Membership: ___________________________
5. Years of Experience: ____________________________
6. Areas of expertise: Real Estate Consultancy; Real Estate Development; Local Government; Other
7. Gender:
   □ Female (1) □ Male (2)

SECTION A: Land Documentation and Registration

[These questions will be asked separately for both public and stool/family land transactions]

A1. Do you process and register land title documents? [with respect to family/stool and public lands]
   □ Yes (1) □ No (2) [Go to Section B]

A2. If Yes, How long does it take to process land title documents [for customary and public lands separately]? [Question relate to Accra and Kumasi]
   □ Less than 3 months (1)
   □ 3 months – 6 months (2)
   □ 6 months – 1 year (3)
   □ 1 year – 2 years (4)
   □ Over 3 years (5)

A3. For a parcel of land [family/stool or public] you registered within the last year, what was the total cost? _______________ When [date]?

A4. What is your level of satisfaction with the current procedure for land registration in terms of the following? [To be answered separately for stool/family and public lands]
A5. How can the procedure for land registration be improved [for stool/family and public lands]?

A6. In your opinion, does formal land title registration impact on real estate transactions?
   □ If Yes (1) how? □ If No (2) Why not? □ Not sure (3)

SECTION B Key Information Requirements and Access to Information

B1. Do you require any land information in the performing your activities?
   □ Yes (1) □ No (2)

B2. If Yes, what key information do you require? List

B3. What are the sources of the information? [List the sources]

SECTION C: Perceptions of the operation of the formal and customary Land Institutions

C1. Do you work with the formal national land sector agencies in the city?
   □ Yes (1) □ No (2) [Go to C3]

C2. If Yes, how would you assess the effectiveness of the performance of the formal land institutions in the city in the following areas?

C3. Do you work with the customary land institutions in the city?
   □ Yes (1) □ No (2) [Go to Section D]

C4. If Yes, how would you assess the effectiveness of the performance of the customary land institutions in the city in the following areas?

SECTION D: Real Estate Market

D1. Are you a Real Estate Developer/Professional?
   □ Yes (1) □ No (2) [Go to Section E]
D2. What has been the **volume of land transactions in the city** for both stool/family land areas and public land areas in the past 10 years? [Ask for specific numbers and obtain relevant data to facilitate comparative and trend analysis]

D3. What have been the land values **for various land uses** (residential, commercial, mixed-use, and industrial) in the city for both stool/family land areas and public land areas in the past 10 years? [Ask for specific sales and also obtain relevant data – land value trends]

D4. What factors account for these changes [changes in land values]?

D5. Who are the most active participants in the real estate market in the city? [Accra and Kumasi]

D6. Are unregistered family/stool lands uses as collateral for mortgages/loans?

   □ Yes (1) □ No (2)

D7. If Yes, what proportion of total loans/mortgages?

D8. What do you think are the major impediments in developing a viable real estate mortgage market in Ghana?

D9. In what ways has formal title registration impacted on your business activities?

D10. What opportunities are available for real estate companies to do business? [Specifically in Accra and Kumasi]?

**SECTION E: Views on Land Administration reforms**

E1. Do you have any role in the Land Administration Project (LAP)?

   □ If Yes [Go to E2] □ If No [Go to E3]

E2. Please describe your role?

E3. In what areas do you think your role can be improved?

E4. What are your views on the LAP in terms of the following activities?

   a. Legal and institutional reforms
   b. Land information management,
   c. Establishment of Customary Land Secretariats (CLS)?
APPENDIX 4D Interview Guide – Land Administration and Real Estate Academicians and Policy Informants

1. Name of Institution: _____________________________________________________

2. Position/Rank: _________________________________________________________

3. Experience: ____________________________________________________________

4. Areas of Expertise: ______________________________________________________

5. Qualifications: PhD, Master, Other

6. Gender:
   □ Female (1)
   □ Male (2)

SECTION A: Perceptions of the Land administration and real estate sector

A1. In your view what key challenges face land administration in Ghana?

A2. What are the main constraints and challenges facing the urban real estate sector in Ghana?

SECTION B: Views of the Customary Land Sector

B1. What specific historical and contemporary events or factors have influenced indigenous land management in Ghana? [Obtain relevant policy and legal documents regarding the land administration and real estate sector]

B2. What is your opinion of the current performance of customary land tenure institutions in urban land management in Accra and Kumasi in terms of …? [Allocation of Land; Records keeping; Transparency and Accountability; Land Litigation and Conflict Resolution]

B3. What aspects of customary land administration do you think should be retained in the current land administration reform in the country?

SECTION C: Views on Formal Land Sector

C1. How would you assess the effectiveness of the operation and performance of the formal land sector agencies on urban land management in terms of …? [Service delivery; Land information management; Allocation of land etc.]

C2. What are your views on the effectiveness of land registration in Accra and Kumasi? [In terms of the Coverage; Clarity of processes and procedures; Cost of delivery of the service, Accessibility of the service, Quality of service]

SECTION D: Views on Land Administration Reforms

D1. What are your views on the following activities under the Land Administration Project? [Obtain any relevant literature and document]
   a. Legal and institutional reforms
   b. Land information management,
   c. Establishment of Customary Land Secretariats (CLS)?

D2. Based on your observations of the performance under LAP 1, what do you think should be done differently under Phase two of LAP?
APPENDIX 4E Interview Guide – Financial Institutions

Background

1. Name of Institution: ________________________________________

2. Main areas of focus: General Banking, Mortgage Financing, Home Financing, Non-Banking, Other [Select more than one]

3. Position: ________________________________________

4. Gender:
   □ Male (1)
   □ Female (2)

SECTION A

A1. What has served as the major collateral for the loans extended from your institution for the past 5 years?

A2. What is your institution’s policy regarding the use of property/land as collateral for loans? [To ascertain among others how title to property is established] [Obtain relevant documents]

A3. What is the total value of loans in Ghana Cedis (or percentage of loans) granted by your institution using land/property as collateral for the past 5 years? [Obtain data on yearly basis for the past 5 years]

A4. Are unregistered family/stool lands used as collateral for mortgages/loans?
   □Yes (1)
   □No (2)

A5. If Yes, what proportion of total loans/mortgages is secured by unregistered landed property?

A6. For what purposes are loans/mortgages secured by landed property used?

A7. Which category of persons are the major beneficiaries of mortgages for real estate purposes?

A8. What do you think are the major impediments in developing a viable real estate mortgage market in Ghana?
## APPENDIX 5 - Coding of Key Informants

<table>
<thead>
<tr>
<th>Land Sector Agencies</th>
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</tr>
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<tbody>
<tr>
<td><strong>Accra</strong></td>
<td><strong>Kumasi</strong></td>
<td><strong>Principal Lands Officer</strong></td>
<td>AC1</td>
</tr>
<tr>
<td><strong>Lands Officer</strong></td>
<td>AC2</td>
<td><strong>Senior Lands Officer</strong></td>
<td>KS2</td>
</tr>
<tr>
<td><strong>Registrar of Lands</strong></td>
<td>AC3</td>
<td><strong>Chief Inspector of Lands</strong></td>
<td>KS3</td>
</tr>
<tr>
<td><strong>Senior Lands Officer</strong></td>
<td>AC4</td>
<td><strong>Regional Surveyor</strong></td>
<td>KS5</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Registrar of Lands</strong></td>
<td>KS5</td>
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<tr>
<td></td>
<td></td>
<td><strong>Principal Executive Officer</strong></td>
<td>KS6</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Valuer</strong></td>
<td>KS7</td>
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<td><strong>Customary Tenure Institutions</strong></td>
<td></td>
<td><strong>PRO Gbawe</strong></td>
<td>AC7</td>
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<td><strong>Private Real Estate Consultant</strong></td>
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