



**UNIVERSITY OF CAPE TOWN**  
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**Faculty of Engineering & Built Environment**

**Integrating land administration systems in peri-urban customary areas in Ghana**

**by**

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DOCTOR OF PHILOSOPHY**

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## **ABSTRACT**

Dual land administration systems operate in many peri-urban customary areas in sub-Saharan Africa (Burns, 2007), yet the rationality behind them is different, and possibly conflicting (Watson, 2003). The conflicting rationalities between the dual systems have created binaries in land administration discourse. Some scholars have promoted statutory land administration systems over customary systems (Hardin, 1968). Many pre-21st century land administration systems theories were purely economy-based, and sought to discredit customary land administration and tenure systems (De Soto, 2000; Peters, 2009). The weaknesses of customary land administration and tenure systems have been widely articulated in economy-based land administration literature (Demsetz, 1967). However, recent research findings seem to suggest that peri-urban customary land management could improve through hybrid land administration, incorporating both customary and statutory systems (Whittal, 2014). In this study, statutory and customary land administration systems are examined to understand how they can be integrated to improve effective land delivery at the peri-urban interface in Ghana. A case study analysis of hybrid forms of land administration was undertaken, using both primary and secondary data. Relatively successful case studies (from Ghana and other parts of sub-Saharan Africa) were deliberately chosen to learn good ways of managing peri-urban customary land. Land administration practices in such areas were assessed using the good land governance framework. The case study analysis reveals that hybrid land administration systems are appropriate in enhancing livelihood sustainability and tenure security of the local people. To this end, the study proposes some improvements in hybrid land administration practices to reduce conflicting rationalities between customary and statutory land administration systems.

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*“For the LORD gives wisdom; from HIS mouth come knowledge and understanding” -*

Proverbs, 2:6 (International Bible Society, 2005).

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## GLOSSARY OF TERMS

Allocation Note	Documentary proof of customary land allocation in Ghana (Asiama, 2004).
Asantehene	The king of the Ashanti Kingdom
Certificate of Customary Ownership	Document issued to provide tenure security for people living in customary areas in Uganda (Van Asperen, 2014).
Certificate of Delimitation	Formal evidence in respect of one's customary land right in Mozambique (Norfolk and Tanner, 2007).
Certificate of Leasehold	Documentary proof of a person's right in a particular piece of land in Namibia (Mundia, 2007).
Certificate of Rights	Document issued to customary landholders to secure their land rights in Botswana (Nkwae, 2006).
Customary Land Administration System	Land administration system based on the customs, values and traditions of a group of people. Tribal, communal and customary land administration systems are used interchangeably in this study.
Drink money	Amount of money paid to customary landowners for acquiring land in customary areas in Ghana (Asiama, 2004).
Earth god	Deity in Ghana linked to land.
Elders	Members of a traditional council in Ghana.
Governance	Public decision-making processes that bring together the government, civil societies and the local community (Deininger, Selod and Burns, 2011). It is defined by a set of principles. In this research, good governance and good land governance are used interchangeably.

Ground rent	Annual rate paid to customary landowners by customary landholders in Ghana (Asumadu, 2003).
Hybrid land administration system	Land administration system incorporating customary, statutory and, sometimes, informal systems.
Land Management Paradigm	Performing the core land administration functions (land tenure, land valuation, land development and land use) in a holistic manner, with the aim of achieving sustainable development (Williamson, Enemark, Wallace and Rajabifard, 2010).
Linguist	Traditional interpreter for a chief in Ghana.
Minimalism	The minimum necessary intervention required by customary land administration systems to improve peri-urban customary land delivery.
Novel land administration practice	Land administration practice exhibiting innovation and provides lessons for customary/statutory land administration systems.
Peri-urban land	Peri-urban land is the term used for land at the interface between urban and rural land (Arko-Adjei, 2011).
Pers. comm.	Personal communication.
Sale	‘Sale’ is used in this study to imply land transaction.
Stamp duty	Amount of tax charged on a piece of land during land registration in Ghana.
Statutory Land Administration Systems	Land administration systems based on statutory laws.
Statutory Planning Committee	Statutory body set up to approve planning schemes in Ghana.
Stool land	Piece of land controlled and managed by a traditional council in a customary area in Ghana.

Thangatha

Customary land tenure practice in Malawi where community members assist the chief in his work, in return for their right to occupy a certain piece of land (Kandawire, 1977).

## **LIST OF ABBREVIATIONS**

AD	Adumasa (Case study area)
AUC	Adumasa Unit Committee
CLB	Community Land Board
DCE	District Chief Executive
ES	Esereso (Case study area)
ELAC	Esereso Land Allocation Committee
FAO	Food and Agriculture Organisation
FLTS	Flexible Land Tenure System
GIS	Geographic Information System
HLAS	Hybrid Land Administration System
HR	Human Resources
IIED	International Institute for Environment and Development
IS	Information System
IT	Information Technology
KM	Kumasi
LAP	Land Administration Project
LAPCAS	Land Administration Procedures Capacity and Systems
LAS	Land Administration Systems
LGAF	Land Governance Assessment Framework
LMP	Land Management Paradigm
LRD	Land Registry Division
LVB	Land Valuation Board
MoU	Memorandum of Understanding
MLMC	Mocuba Land Management Committee

NCLAS	Namibia Communal Land Administration System
NHAG	Namibia Housing Action Group
OASL	Office of the Administrator of Stool Lands
OCLB	Olukonda Communal Land Board
SDC	Swiss Agency for Development and Cooperation
SMD	Surveying and Mapping Division
SPC	Statutory Planning Committee
TCPD	Town and Country Planning Department
TLB	Tlokweg Land Board
UN	United Nations
UNDP	United Nations Development Programme
UNECA	United Nations Economic Commission for Africa
UNECE	United Nations Economic Commission for Europe
VGGT	Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries, and Forests in the Context of National Food Security
WCED	World Commission on Environment and Development
YS	Yasore (Case study area)
YDC	Yasore Development Committee

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## **CHAPTER 1: GENERAL INTRODUCTION**

### **1.1 INTRODUCTION**

A peri-urban area serves as an interface between urban and rural environments. It is neither urban nor rural, but exhibits dual characteristics of both urban and rural areas (Brook and Dávila, 2000; Lambert, 2011). Peri-urban areas may serve as access areas for those wishing to live in urban areas. These peri-urban areas may experience land administration problems, due to the influx of people and the high rate at which land converts from one use (e.g. subsistence agricultural) to another (e.g. residential) (UN-FIG, 2010).

Land administration challenges in peri-urban areas in sub-Saharan Africa are exacerbated by the heterogeneous relationship between humankind and land (Kapitango, Meijs, Saers and Witmer, 2008). In addition, the current environment in sub-Saharan African countries is dynamic (Holden and Bezu, 2014). As a result, more locally appropriate, hybrid and dynamic land administration systems may be required to manage peri-urban customary land in this area (Enemark, Bell, Lemmen and McLaren, 2014). In this study, statutory and customary land administration systems are examined to understand how they can be integrated at the peri-urban interface in Ghana.

Obeng-Odoom (2012: p.162) defines land tenure as a “system of institutions or rules of land ownership, use, management, obligations, responsibilities and constraints on how land is owned and used”. Land tenure is regarded as secure if it guarantees landholders protection from “expropriation, encroachment or forced

eviction” (Obeng-Odoom, 2012: p.162). The attainment of tenure security in a fair and equitable manner has caused scholarly debates on the best form of land tenure to keep. Two main opposing views (individualisation and collectivisation) are apparent in contemporary discourse on land tenure and administration systems (Obeng-Odoom, 2012). Generally, individualisation is aligned to statutory land tenure (land registration) and supports capitalism through land marketisation (Adams, 1993; De Soto, 2000; Sheldon, 2001; Kotz, 2006; Badie, Berg-Schlusser and Morlino, 2011; McCraw, 2011) whilst collectivisation relates to customary land tenure (communal ownership) and does not support the commodification of land. Supporters (e.g. Hardin, 1968; De Soto, 2000; UN- HABITAT, 2008; Peters, 2009) of land registration (individualisation) argue that private land rights are incentive for maximisation of land use, while communal landownership encourages reckless land use which can negatively affect community development. Boydell (2010), however, opines that decisions on land registration are made by elites for selfish gains, and are not in the best interests of local people. Many proponents of land registration have used the term ‘tragedy of the commons’ to discourage the promotion of communal landownership (Hardin, 1968), holding that shared ownership of natural resources (including land) encourages misuse and depletion of such resources.

Obeng-Odoom (2013: p.29), however, found that, in Ghana, certain customary land administration and tenure practices (communal ownership) “escape the problems associated with the so-called tragedy of the commons”. This finding (Obeng-Odoom, 2013) indicates that communal landownership (customary land tenure) is not bad, as tarnished by some scholars (Demsetz, 1967; Hardin, 1968). There are

novel cases of customary land administration and tenure practices across sub-Saharan Africa. This study concentrates on only good customary land administration cases to create awareness of what customary land administration and tenure systems can offer in contemporary land administration and tenure systems debate.

The customary (communitarian) school of thought asserts that land value should not be viewed from monetary perspective. Students of the communitarian school believe in social capital (Coleman, 1988) and the relevance of social networks. Such social networks can be built through common ownership of resources and shared interests (Katz, 2000). The communitarians support land tenure systems based on the tradition and current customs of a group of people. They argue that such forms of land tenure offer a better security than state-led land policies and private landownership. They further argue that individualised land tenure systems side-line the local people, but customary land tenure systems empower them (Anderson, 2006; Amanor, 2010). Obeng-Odoom (2014: p.119), however, advises trustees of customary land not to use the “discourse of communitarianism to pursue their personal interests”.

Both customary and statutory land administration systems operate together in many peri-urban customary areas in sub-Saharan Africa (Burns, 2007), yet the rationality behind these systems is different, and possibly conflicting. Crook, Affou, Hammond, Vanga and Owusu-Yeboah (2007) assert that areas where these dual land administration systems operate can suffer from increasing land conflicts. The land conflicts in such areas can be attributed to the binary nature of the debates

about the promotion and contestation of the two main land administration systems (i.e. customary/communitarian and statutory/individualism). Each of the systems has its own weaknesses and strengths. For instance, it has been argued that statutory land administration systems lack flexibility and favour only the more affluent (Toulmin, 2006). Proponents of statutory land administration systems, however, argue that they (statutory systems) promote economic growth and more efficient land market systems (Peters, 2009). Customary land administration systems, in the same vein, have either been criticised for being an impediment to economic growth (De Soto, 2000; Peters, 2009), or supported by some scholars as the best system to meet the land needs of the peri-urban poor (Asumadu, 2003; Asiana, 2004; Amanor, 2010). The different perceptions held by researchers, policy-makers and practitioners regarding customary and statutory land administration systems reveal the conflicting rationalities that exist between these two systems of land administration (Watson, 2003; De Satgé, 2014). Crook *et al.* (2007) argue that these conflicting rationalities can have some consequences on the social regulation of rights to allocate land in peri-urban customary areas.

The promotion and contestation of customary and statutory land administration systems have received much attention by researchers. Pro-statutory land administration systems theories based on land registration have been challenged (Bugri, 2008; Abdulai and Owusu-Ansah, 2014; Whittal, 2014; Abdulai and Ochieng, 2017). Whilst it has been argued that land registration (based on title or deed) is the panacea to the challenge of declining economic growth and tenure insecurity in peri-urban customary areas (De Soto, 2000; UN- HABITAT, 2008), findings from many research projects do not corroborate such an argument

(Abdulai, 2006; Bugri, 2008; Abdulai, 2010; Abdulai and Owusu-Ansah, 2014; Whittal, 2014; Abdulai and Ochieng, 2017). For instance, Bugri (2008) found that, in Ghana, the perception of customary landholders about their tenure security is positive. Such perception of tenure security (without land registration) is as important to customary landholders as obtaining a legal status (Payne, Durand-Lasserve and Rakodi, 2009). Abdulai (2006) equally affirms that land registration has little impact on security and certainty of land tenure in peri-urban customary areas in sub-Saharan Africa. In his quest to find a link between land registration and land tenure security, the data collected and analysed did not suggest any direct link between the two.

A recent research finding by Abdulai and Ochieng (2017), also corroborates the view that land registration alone cannot guarantee tenure security in peri-urban customary areas. Abdulai and Owusu-Ansah (2014) found in Ghana that, it is possible for registered landowners to lose their ownership of land even at the state courts. They found that land litigation cases are not simply ruled in favour of landowners with title registrations at the state courts in Ghana. The above finding indicates that the state courts might be aware of the possible corruption within state land institutions (Ubink, 2008). What proponents of land title registration fail to acknowledge is that many state land institutions in sub-Saharan Africa are marred with corruption and bribery (Njoh, 2006). In addition, the cost of registering land (even excluding bribes) could be expensive to the peri-urban poor (Okpala, 2009). Affluent people could bribe certain land officials to get land which are not fairly acquired to be registered in their names. If land title registration is automatically accepted as the only proof of landownership, it may imply that poor people will

always lose land litigation cases at the state courts. The way to determine rightful ownership of customary land therefore, is to investigate the customary processes of acquiring the land in question prior to its statutory registration. Customary processes of land acquisition in peri-urban customary areas remain relevant in ensuring land tenure security in peri-urban customary areas (Abdulai and Ochieng, 2017).

The assertion that land registration alone cannot guarantee security of tenure (Abdulai and Ochieng, 2017) has led to new ways of ensuring tenure security. For example, title insurance has become famous in many developed countries such as the United States of America and Canada (Sirmans and Dumm, 2006). With this approach of title protection, land title holders insure their titles with an insurance company and are indemnified when they lose such titles due to litigation or expropriation (Moody, 2005). Title insurance has been criticised based on the following: Firstly, it is expensive to insure a title and many people in developing countries may not afford to insure their titles (Ford, 1982). Secondly, title insurance only transfers tenure insecurity from the title holder to the insurer, and is not a sustainable mechanism for ensuring tenure security. In other words, someone still has to pay for the cost of tenure insecurity. In many cases, land litigations have to be dragged through state courts before title holders are indemnified (Ford, 1982). What is required is a form of tenure security that has little or no financial consequence on any individual or entity. This may be achieved through a cohesive and collaborative system where both customary and statutory land administration systems work together.

This present study does not seek to argue that land registration has no place in contemporary land administration debate. It, however, supports the opinion by Blocher (2006) that the intended outcomes of land registration have changed over time. To this end, land registration should no longer be viewed as the saviour to liberate landholders from the evil rule of customary land tenure systems. In fact, recent studies have not told any better story, in terms of tenure reform and land registration and their impact on providing improved security of tenure, than what customary tenure systems can offer (Blocher, 2006).

Institutional capacity should be considered when reforming/designing a land administration system. Abdulai and Domeher (2012) argue that lack of competent personnel to lead land registration processes (which mostly results in flawed registration processes), and lack of enforceability of registration laws, render land registration ineffective in sub-Saharan Africa. The above assertion by Abdulai and Domeher (2012) suggests that, although land registration may be appropriate for many locations in sub-Saharan Africa, the requirements for running a successful land registration programme are lacking in some areas. Land registration continues to underpin many development programmes in sub-Saharan Africa (UN-HABITAT, 2015), but it is necessary to first build the required infrastructural support. This can be costly and take a great deal of time to implement, while sustainability demands that capacity building at local level is part of any initiative (Kahle and Gurel-Atay, 2014).

Critics of customary land administration and tenure systems argue that customary land tenure systems lack security as they are not formally recorded or registered

(De Soto, 2000). Such critics fail to recognise that customary land institutions have their own ways of keeping land records, and that, the written method of keeping land records is foreign (Asumadu, 2003). In certain rural customary areas in Ghana, land transactions and transfer of land rights take place in the presence of local witnesses and boundaries are determined by landmarks such as rivers and trees (Amanor, 2010). Customary landholders make sure that such landmarks which serve as boundaries are maintained (Asumadu, 2003). In addition, witnesses pass on their knowledge of ownership of a piece of land from generation to generation. Such social recording goes some way to protect the security of land rights in customary areas in Ghana (Asiama, 2004). This implies that unwritten records of landownership may not have direct negative impact on tenure security as argued by certain scholars (e.g. De Soto, 2000; Peters, 2009). The social tenure domain model recognises this form of social tenure and employs simple tools to document the land rights of local people (Lemmen, 2010).

Acquaye (1984) asserts that customary land tenure insecurity is a perception and may not be the reality in many peri-urban customary areas in sub-Saharan Africa. Many scholars began to criticise customary land administration and tenure systems prior to the twenty-first century (De Soto, 2000). Many of the reports published to condemn customary land tenure systems in that era were not informed by empirical evidence (Crooks *et al.*, 2007). Twenty-first century research into customary land administration systems reveals that customary land administration and tenure systems have something to offer in meeting the current land needs of people living in peri-urban customary areas (Abdulai and Ochieng, 2017). Many of such research, however, suggest that customary land administration and tenure systems

require some level of support from statutory land administration systems (Crooks *et al.*, 2007).

Another side of the argument against customary land administration and tenure systems is their hindrance to economic growth. Bugri (2008), however, found that low levels of crop production in many peri-urban customary areas in Ghana are due to lack of finance, poor soil quality, poor weather conditions and other non-tenurial factors that influence crop production. Bugri (2008) found no link between customary tenure systems and the low levels of crop production in peri-urban customary areas in Ghana. The above finding nullifies the contestation against customary land administration and tenure systems on the basis of their (customary systems) hindrance to economic growth. Anderson (2006: p.12) found in New Papua Guinea that large commercial logging companies, large plantations and miners successfully carry out operations on leased customary land without any interruptions from the customary landowners. De Soto (2000) argues that land rights security will create access to capital for production, which will subsequently lead to economic growth. De Soto's (2000) thesis has been extensively criticised (Blocher, 2006), and economic growth in peri-urban customary areas in sub-Saharan Africa depends on many non-tenurial factors as noted by Bugri (2008). Switching from customary land tenure to statutory land tenure systems may only address an insignificant aspect of complex issues affecting economic growth in sub-Saharan Africa (Bugri, 2008). What is required in the short to medium term is a hybrid system that can support existing operational indigenous land tenure systems to meet the land tenure needs of local people. Recent developments in certain peri-urban customary areas suggest that customary land administration and

tenure systems need to be strengthened to enhance customary land tenure security (Ubink, 2008) in a pragmatic approach (Payne *et al.*, 2009). Land tenure policies in sub-Saharan Africa should not introduce drastic changes to existing tenure systems (Payne *et al.*, 2009). There is a paradigm shift from the mainstream promotion and contestation of the dual land administration systems (i.e. customary and statutory systems) to an approach focussing on accommodation and integration (Whittal, 2014), rather than parallel or duality of systems. This approach goes beyond binary land administration theories and frameworks that either support land registration or customary tenure systems (see chapters 3 and 5). Payne (2004) questions the favouring of statutory tenure systems in classifications. Such classifications appear to align with the idea of evolution of land rights and eventual extinction of customary land rights, administration and tenure systems (Whittal, 2014). Such approaches have met with severe resistance in many peri-urban customary areas across sub-Saharan Africa (Njoh, 2006). Royston and Kihato (2012) promote the development of a new language in the land rights and tenure discourse to allow for complexity and heterogeneity, rather than the mainstream support of only one type of tenure system. Such complexity in land administration may be achieved through the integration of different types of land administration and tenure systems, as is the focus of this present study. Many scholars have proposed alternative ways of strengthening customary land administration systems, rather than their abolition (Abdulai, 2006; Bugri, 2008; Domeher and Abdulai, 2012; Abdulai and Owusu-Ansah, 2014). For instance, Larson (1991) stresses the need to understand the context of interlinking statutory and customary tenure arrangements, and the overlap of customary institutions with state land institutions.

The adaptation paradigm postulates that customary tenure should not be replaced with land registration (Crooks *et al.*, 2007). It recognises existing customary land rights (both written and unwritten), and accepts that legalisation of customary land tenure will rather improve security and certainty of customary land rights (Boamah, 2011). Abdulai and Domeher (2012) state that tenure security is a combination of legal certainty and community recognition of a person's land rights, and assurance of protection by existing legal and institutional structures. This definition of tenure security implies that customary land tenure can enjoy security in Ghana, as local communities in Ghana recognise customary land rights. Whittal (2014) developed a new model for the continuum of land rights that disaggregates land tenure security from land right types. This allows researchers, policy makers and practitioners to see that land tenure security can be improved for many land right types by improving the triplet of land tenure security indicators – legality, legitimacy and certainty. It is not always necessary or desirable to change a land right type to improve land tenure security, and, as described above, in many cases this causal presumption is false. This (often false) link between customary land rights and tenure insecurity has caused investors to avoid customary landholdings (Okpala, 2009). What may be required therefore, to erase such a myth is for the state to recognise customary land practices in law. This will go some way to assure investors of the certainty of land rights and the security of land tenure in customary areas, since these customary land rights will then be defensible in court and enforced through state institutions. This is evident in some peri-urban customary areas in Ghana (Abdulai and Ndekugri, 2007). Ghana boasts of a “strongly legalised form of customary land tenure” (Crooks *et al.*, 2007: p.12). Customary land law is recognised by the state and has been integrated into common law in

Ghana (Obeng-Odoom, 2016). This implies that customary landholders can defend their land rights at the state courts, even without land registration.

Recognition and legalisation of customary land laws and tenure systems play a crucial role in ensuring social cohesion. Crooks *et al.* (2007) relate the civil war which occurred in Cote d'Ivoire in the 1990s to the suppression of customary land tenure systems by statutory laws. In countries where customary land laws are not legalised and recognised by the state, communities allied to governments in such countries are usually given preferential access to land. This can sometimes result in politicised ethnic conflicts, which can culminate in civil war (Crooks *et al.*, 2007). Boamah (2011) opines that this act of land tenurial favouritism is also common in certain peri-urban customary areas, where chiefs are the sole land administrators. He argues that land rights of persons recognised by chiefs are protected, whereas social groups lacking recognition from chiefs often lose land in such areas.

The fit-for-purpose approach to land administration is equally an attempt to close the gap between customary and statutory land administration and tenure systems (Enemark, Bell, Lemmen and McLaren, 2014). It advocates that land administration debate should not be on what is theoretically desirable, but what fits into the local situation. To this end, participation becomes critical in identifying what is the best land administration and tenure option for local people (Obeng and Whittal, 2014). Land administration and tenure systems should not be designed in the office by professionals and brought to the local people. The local people who are directly affected by a land administration proposal should also be involved in its design. Participation may serve as a contributing factor in designing a hybrid

land administration system. In addition, there should be a minimal but strategic state intervention in customary land administration processes (section 3.4).

Another consensus approach towards formalisation of customary land administration and tenure systems is the social tenure domain model. The model accommodates off-register rights and claims which are mostly described as informal and illegal (Lemmen, 2010). The model seeks to integrate such informal land rights with the cadastral system. The model is relevant in recent land administration systems discourse as it provides solutions to the lack of adequate infrastructure in developing countries to support the implementation of land policies (Lemmen, 2010). To this end, all forms of tenure are recorded (using less sophisticated tools) based on evidence gathered from local communities in respect of the land rights held in a piece of land.

The hierarchies of rights model equally seeks to negotiate rights between large-scale investors and peasant farmers and other small-holders. The model advocates for the retention and recognition of the rights of small-holders during natural resources exploitation in developing countries (Lemmen, 2010). Anderson's (2006) opportunity cost model also assists scholars to appreciate the value of customary land, which is seldom tradeable market value, but a combination of a range of values held in land. For instance, Anderson (2006) argues that customary land has values such as cultural and inter-generational values, which would be lost on registration in a non-customary system. Advocates of land registration normally ignore the real land values of customary land tenure which are lost during the process of land title registration (Peters, 2009).

## 1.2 PROBLEM STATEMENT

Peri-urban customary land which was once regarded as a common good and was efficiently managed by customary systems has now become a commodity with market value in many sub-Saharan African countries (Anderson, 2006). This may be attributed to the growing urbanisation in such countries (Abdulai, 2010). Customary land administration systems alone are no longer able to manage peri-urban customary land efficiently, due to the changes in the development, use and value of customary land (Okoth-Ogendo, 2008). Mounting evidence across sub-Saharan African countries indicates that customary land administration systems require support in the management of peri-urban customary land (Jul-Larsen and Mvula, 2009).

Land administration problems, such as multiple land sales (sale of the same piece of land to different people), litigation over land and non-adherence to the principles of good land governance, have been reported in some peri-urban customary areas in Ghana. For instance, Akrofi (2013) contends that, in Ekyem and Boadi (peri-urban customary areas in Ghana), multiple sales of the same land are taking place, and that no records of land transactions are kept. Ubink (2008) also posits that the right to sell land has become a bone of contention among customary landowners in Ghana.

According to Arnstein (1969), participation progresses from the lowest level of manipulation to the highest level of citizen power. At the manipulation level, participation becomes a ruse to advance the unilateral decisions of policy makers. At the level of citizen power, however, individuals are given the power to make

decisions on issues that affect them (Arnstein, 1969). There is a low level of participation in customary land delivery in many peri-urban customary areas in Ghana (Ubink, 2008). In such areas, individuals generally do not have control over land administration decisions (Kutsoati and Morck, 2012). The above challenges within customary land administration systems have culminated in unplanned development, landlessness, food insecurity and associated problems, such as unemployment and poverty in some peri-urban customary areas in Ghana (Abdulai and Ndekugri, 2007).

In many peri-urban customary areas in Ghana, development precedes planning (Abdulai *et al.*, 2007). Such areas lack proper access to roads, bulk water supply and sanitation services (Cashnoba, 2013). Chiefs who claim to be the sole owners of customary land in Ghana expropriate land from their subjects and sell it to developers (Hammond, 2008). In many cases, farmlands are converted to residential developments, leaving subsistence farmers with no source of livelihood (Obeng-Odoom, 2013). These problems associated with customary land administration systems are not peculiar to Ghana; many sub-Saharan African countries face similar challenges (Shipton, 2002).

Consequently, there have been numerous attempts to replace customary land administration systems with statutory land administration systems in sub-Saharan Africa (Obioha, 2008). For instance, in Botswana, customary land which has hitherto been administered by chiefs and traditional authorities has now been placed under the administration of land boards (Adams, Kalabamu and White, 2003; LAPCAS, 2009). In urban and peri-urban Lesotho, customary land

administration systems have been completely abolished, reportedly due to inefficiencies in the customary systems (Leduka, 2001; Aliber, Bohloa and Makhakhe, 2003; Leduka, 2005; Johnson, 2013). Anderson (2006) subsequently laments on the incessant attempts to register customary land in sub-Saharan Africa.

In some countries, such as Ghana, Mozambique and Namibia, statutory land administration systems have been allowed to operate alongside customary systems (Carilho, 1994; Negrão, 1999; Malan, 2003; Tanner and Baleira, 2006; Knight, 2010). This has created multiple or dual land administration systems in these countries (Knight, 2010). In Ghana, for instance, such dual land administration systems have not been fully integrated (Obeng-Odoom, 2016). Customary land administration systems compete with statutory systems in some peri-urban customary areas in Ghana (Obeng-Odoom, 2013). Chiefs and other customary landowners defy all statutory procedures for the allocation and development of customary land in certain customary areas in Ghana (Mireku, Kuusaana and Kidido, 2016). They see statutory land administration systems as a vestige of colonisation (Njoh, 2006; Okpala, 2009). Any attempt to 'formalise' customary land administration systems in Ghana has faced some resistance (Domeher and Abdulai, 2012). For instance, the King of the Ashanti Kingdom (in Ghana) has disbanded many land allocation committees that were established in Kumasi to assist chiefs in peri-urban customary land administration (Ubink, 2008). Chiefs continue to protect the customs and traditions of their ancestors, whilst government land institutions seek to promote efficient land market systems in Ghana (Berry, 2002). These diverse objectives have created a dichotomy between customary and

statutory land administration systems in Ghana, and households and businesses are left to struggle in this chasm (Ubink, 2008).

Customary land administration challenges are more acute in peri-urban customary areas than in urban and rural areas in Ghana (Abdulai and Ndikugri, 2007). There is a need to find new and adaptable ways of administering land in peri-urban customary areas, as the relationship between people and land in these areas is constantly changing (Obeng-Odoom, 2015). However, how to find the right land administration tools that can serve the needs of people who reside in peri-urban customary areas has become a scholarly debate (UNECA, 2003). The research problem is conceptualised in Figure 1.1.

Figure 1.1 portrays the different positions held by customary landowners, professional land administrators and informal households. It can be viewed from the diagram that customary landowners seek to protect their customs and traditions through customary land administration. This objective, however, differs from that of the professional land administrators (i.e. to ensure efficient land market systems). To the informal household, the only thing that matters is to find a secure place to live. The circle in the diagram represents the dichotomy created due to the different positions held by the different role-players (i.e. customary landowners, professional land administrators and informal households). The arrows on the circle indicate the problems emanating from such dichotomy.

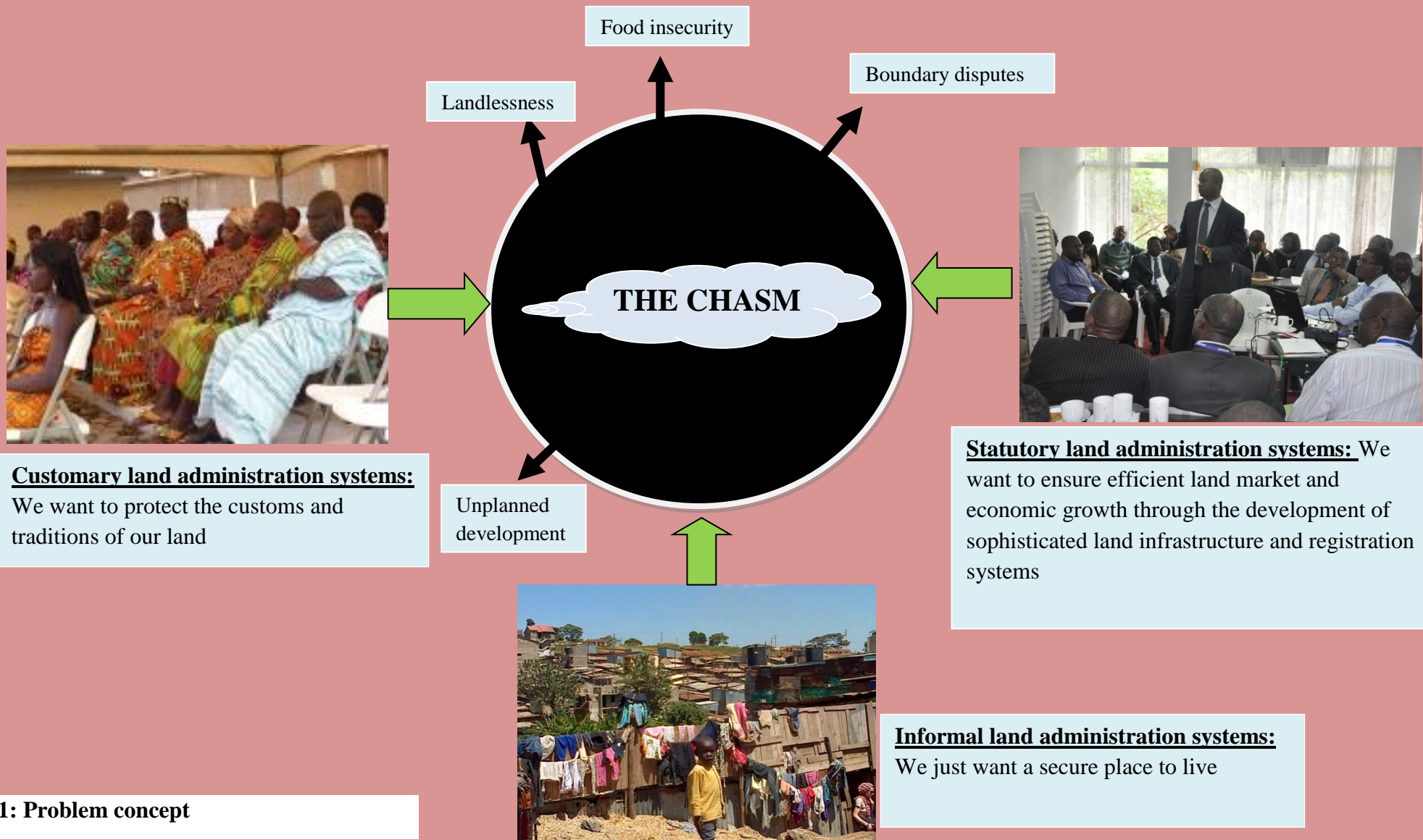


Figure 1.1: Problem concept

### **1.3 AIM OF THE RESEARCH**

This research seeks to explore how statutory systems of land administration in Ghana can integrate customary land administration aspects to serve the land needs of a rapidly urbanising population at the peri-urban interface, characterising customary and non-customary land practices.

### **1.4 RESEARCH OBJECTIVES**

Section 1.1 indicated that land administration discourse centres around three main positions – promotion, contestation and consensus-building between customary and statutory land administration and tenure systems. Section 1.2 subsequently outlined the problems emanating from the binaries created between customary and statutory land administration and tenure systems. As part of the consensus-building approach to addressing land administration and tenure systems challenges in sub-Saharan Africa, this present study seeks to examine the appropriateness and effectiveness of hybrid land administration systems in sub-Saharan Africa. To achieve the above primary objectives, it is imperative to understand existing frameworks, practices and processes of hybrid land administration systems. The practices and processes of hybrid land administration systems are assessed against an adopted framework to determine their appropriateness in the context of peri-urban customary land delivery. In light of the above, the study adopts the embedded objectives listed below to support its primary objective of examining the appropriateness and effectiveness of hybrid land administration systems in sub-Saharan Africa.

1. To review existing frameworks for assessing land administration systems.

2. To describe and examine the practices and processes of existing hybrid land administration systems in selected sub-Saharan African countries.
3. To undertake a comparative analysis of existing hybrid land administration systems using a good land governance theoretical framework.
4. To examine ways of improving hybrid systems of land administration in Ghana.

## **1.5 RESEARCH QUESTIONS**

The main research question to be investigated towards the achievement of the core research objectives is:

*What are the existing local hybrid land administration and tenure practices in Ghana that are consistent with national laws whilst also reducing conflicting rationalities?*

To answer the above research question, the following embedded questions should first be answered.

1. What are the existing frameworks for assessing land administration systems?
2. What are the good land governance requirements for hybrid land administration systems?
3. What novel or hybrid land administration practices in other sub-Saharan African countries are applicable to Ghana?
4. How do hybrid land administration systems operate in terms of land access, land tenure, land use and land development?

5. What is the role of community land organisations such as land allocation committees, land boards, unit committees, development committees and resident associations in hybrid land administration systems?
6. How can local hybrid land administration and tenure practices in Ghana be improved to reduce conflicting rationalities between customary and statutory land administration systems?

## **1.6 THE RESEARCH**

This study identifies and assesses existing hybrid land administration systems successfully implemented in selected case study areas. A multiple case study approach (comprising seven case studies) is adopted in this research. The research continues the main research projects recently undertaken by some prominent researchers in land administration and tenure systems in Ghana (see for example Domeher and Abdulai, 2012; Obeng-Odoom, 2013; Abdulai and Owusu-Ansah, 2014; Mireku *et al.*, 2016; Obeng-Odoom, 2016; Abdulai and Ochieng, 2017). Findings from the above research unanimously point to the fact that customary land administration and tenure systems can enhance peri-urban customary land delivery and tenure security if they are strengthened. This present study takes the findings of the above research projects further, by exploring existing local hybrid land administration and tenure practices in Ghana that are consistent with national laws whilst also reducing conflicting rationalities.

## **1.7 RESEARCH PROPOSITION**

A statutory land administration system in a country such as Ghana, with customary land practices, can manage peri-urban customary land well, if its structural and operational design, as well as its tools, recognise and incorporate customary and non-formal aspects of land administration systems.

## **1.8 RESEARCH ASSUMPTIONS**

This research is conducted in the assumption that peri-urban customary areas record exponential population growth rates due to urbanisation. Urbanisation further results in high land demand for residential and industrial development in peri-urban customary areas. The high land demand in peri-urban customary areas renders customary land administration and tenure systems ineffective and results in land tenure insecurity and unsustainable livelihoods. It is further assumed that both customary and statutory land administration institutions will be willing to work together to improve customary land delivery in Ghana. The study assumes that the necessary land laws and infrastructure to implement hybrid land administration systems in Ghana are in place.

## **1.9 RESEARCH ACTIVITIES**

Past research on land administration systems are reviewed to gain insight into the current debate on land administration systems. Knowledge creation has predominantly been influenced by positivist, interpretivist or critical realist ideologies (Whittal, 2008). These philosophical stances are critiqued to identify

which one(s) is most appropriate for land administration systems research. Different methodological approaches for conducting research are investigated. The concept of minimalism as applied in arts and architecture argues for simplicity in design (Rose, 1965). The relevance of minimalism in the development of a hybrid land administration model is explored. A framework for analysing the case studies through the lens of good land governance is identified. Multiple case studies from seven case study areas are undertaken to describe various land administration systems and practices in areas where statutory and customary land administration systems interface. The seven case studies are analysed within the context of the adopted analytical framework. Figure 1.2 presents a conceptual framework of the research design.

#### **1.10 ADDRESSING RESEARCH BIAS**

This research may be compromised by two forms of bias – personal bias and design bias. Personal bias can be introduced into a research as a result of the researcher’s personal exposure and perceptions. The researcher holds a degree in development planning, which is underpinned by interpretivist philosophy (section 3.5.2). His Master’s Degree (City and Regional Planning), however, is premised on both positivism (section 3.5.1) and interpretivism. Adumasa, where the researcher hails from, is a peri-urban customary area in Ghana. The researcher worked at the Development Planning Office of the Bosomtwe Atwima Kwanwoma District government in Ghana for a year, in 2006. During that period, he built a strong relationship with both traditional leaders and government institutions in this District, in which the primary case study of Esereso is located. The possible impact

of the above bias on the credibility and independence of this research is dealt with through triangulation in data collection and analysis.

The findings and conclusions of a study can further be influenced by the choice of case study selection. Many peri-urban customary areas in sub-Saharan Africa may be struggling to address the dichotomy between statutory and customary land administration systems (Boydell, 2010). Research has reported low levels of tenure security and livelihood sustainability of the inhabitants of peri-urban customary areas in Ghana (Baffour and Hammond, 2013). In addition, land administration practices in many peri-urban customary areas do not conform to good land governance principles (Hammond, 2006).

This research does not seek to confirm or refute such findings, but attempts to uncover and understand positive aspects of hybrid land administration systems. This study, therefore, concentrates only on case study areas with successfully implemented hybrid land administration systems. However, the literature review is extended to include some peri-urban customary areas in sub-Saharan Africa where hybrid land administration systems have not been successfully implemented to understand the problem of non-hybrid land administration systems. The results of this study are intended to generalise to the theory of good hybrid land administration systems in peri-urban areas in Ghana, and not to other cases of land administration in general. This knowledge can potentially be used by others in addressing land administration challenges found in peri-urban customary areas through promoting hybrid land administration systems.

## **1.11 LIMITATION OF THE STUDY**

Field data was collected for the three primary case study areas only (Esereso, Adumasa and Yasore). The analysis of the secondary cases was based on secondary data only, as they served as supplementary cases to the primary case study areas. No data could be obtained for certain indicators selected to assess land administration practices in the secondary case study areas. For instance, the study could not determine whether certain community projects were funded through proceeds from land sales in the secondary case study areas. The average turnaround time for the processing of land applications could also not be determined in the secondary case study areas, due to lack of data. The primary case studies, however, provided the required data to support the analysis and conclusions of the study.



**Figure 1.2: Research design**

In Figure 1.2 above, novel and hybrid land administration practices in Botswana, Mozambique and Namibia (secondary cases) are applied to novel and hybrid land administration cases in Ghana (primary cases). Land administration practices in both the primary and secondary cases are cross-analysed (using a good land governance framework) to identify similarities and differences in land administration practices in the various case study areas. Findings from the case study analysis are used as a basis for recommending improvements in hybrid land administration in Ghana.

## **1.12 RESEARCH SCOPE**

The research is limited to the analysis of land administration systems and their functional components, as well as cases of hybrid land administration systems in peri-urban customary areas in sub-Saharan Africa. The research excludes the cultural and religious implications of customary land administration practices. Some research projects have been undertaken in this regard (Chike, 2008; Eze, 2008). The research also excludes the analysis of land administration systems in developed countries. Land administration systems are diverse and contextual in relation to the need of the people they seek to serve. In examining the appropriateness and effectiveness of hybrid land administration practices in sub-Saharan Africa, it may not be relevant to benchmark such practices with those in developed countries (see critique of land administration benchmarking in section 5.3).

### 1.13 CASE STUDY AREAS

Seven peri-urban customary areas were selected from four sub-Saharan African countries for the purpose of studying hybrid land administration systems. The case studies comprise of Esereso, Adumasa, Yasore, Tlokweng, Mocuba, Olukonda and Oshakati. Table 1.1 indicates the locations of the case study areas. Detailed descriptions of the case study areas, including the criteria used in the case study selection are given in chapter 4.

**Table 1.1: Case study areas**

<b>CASE STUDY AREA</b>	<b>COUNTRY</b>	<b>REGION</b>
<b>PRIMARY CASE STUDY AREAS</b>		
Esereso	Ghana	West Africa
Adumasa	Ghana	West Africa
Yasore	Ghana	West Africa
<b>SECONDARY CASE STUDY AREAS</b>		
Tlokweng	Botswana	Southern Africa
Mocuba	Mozambique	Southern Africa
Olukonda	Namibia	Southern Africa
Oshakati	Namibia	Southern Africa

### 1.14 CONTRIBUTION TO KNOWLEDGE

This study seeks to explore existing local hybrid land administration and tenure practices in Ghana that are consistent with national laws whilst also reducing conflicting rationalities. The study presents a detailed discussion of peri-urban customary land administration practices that have received little attention in existing literature. Some existing literature focuses on revealing the weaknesses of

customary tenure systems. This present study, however, concentrates on 'successful customary land administration cases'. To this end, the study offers understanding of how customary processes work cohesively with a statutory system. This study, tends to challenge the simple binaries of culture/tradition against modernity as it provides examples of culture working closely with modernity.

Many researchers in the land administration and cadastral fields have used participation as a good governance principle to analyse land administration and cadastral systems (Whittal, 2008; Arko-Adjei, 2011; Akrofi, 2013). None of the researchers have, however, used the Arnstein's participation ladder to assess participation in land access. This study attempts to assess participation in land access using the Arnstein's participation ladder. The Arnstein's participation ladder reveals the different forms of participation in peri-urban customary land delivery processes. Based on the Arnstein's participation ladder, the study coins a new concept (the puppeteer's form of participation), to describe participation through consultation and informing (section 5.8.5.1).

Minimalism has been used in art, literature and architecture to determine how much work needs to go into a particular piece of art. The concept of minimalism has been scarcely applied in land administration and cadastral systems research. This research adopts the concept of minimalism (section 3.4) in discussing hybrid land administration systems design. Minimalism seeks to promote simplicity in land administration systems design. It brings both customary and statutory land administration systems together in peri-urban customary land delivery. To this end,

statutory land administration systems only seek to support customary land administration systems, as minimally as possible, and do not seek to replace customary land administration systems. The study further introduces the concept of ‘conflicting rationalities’ (section 3.3) in land administration literature. This concept may help researchers to understand and appreciate the different rationalities held by customary landowners and statutory land administrators in peri-urban customary land administration.

## **1.15 STRUCTURE OF THE THESIS**

The thesis is divided into nine chapters, covering the key research issues. It commences with a general introduction and concludes with recommendations for future research. The nine chapters are outlined below:

### **Chapter 1: General introduction**

This chapter begins with the general introduction to the research. Problem definition, research objectives and questions, the main research activities, the research scope, assumptions and contribution to knowledge are discussed in this chapter. The chapter concludes with a synopsis of the thesis.

### **Chapter 2: Land administration systems review**

Chapter 2 seeks to establish the knowledge context in respect of land administration systems. The purpose of this chapter is to identify the knowledge gap(s) in the debate around land administration systems, and how the needs of people living in peri-urban customary areas can be served. To realise this purpose, current literature on land administration systems and reforms are reviewed.

### **Chapter 3: Theoretical framework**

This chapter discusses different land administration systems theories. The theories are discussed around the current debates on the formalisation of land tenure – promotion, contestation and consensus-building. The tenets of statutory and customary land administration systems are reviewed. The strengths and weaknesses of each of the systems are discussed in this chapter.

### **Chapter 4: Methodological framework**

Specific steps followed in the collection and analysis of data are discussed in this chapter. A multiple case study approach is argued to be appropriate for this research. Different data collection techniques used for gathering empirical evidence are also discussed in this chapter.

### **Chapter 5: Analytical framework**

The framework used to analyse the case studies is developed in this chapter. Certain good land governance principles and their indicators are discussed. It is argued that adherence to such principles may promote sustainable livelihoods and tenure security of local people.

### **Chapter 6: Case study narratives**

This chapter reflects the results of the study. The various land administration practices in the seven selected case study areas are described in this chapter. The chapter presents the structures and processes of land administration in the various case study areas.

### **Chapter 7: Case study analysis**

The chapter analyses the results of the case studies against the good land governance framework. Good land administration practices as identified from the

case studies are discussed, and some good aspects of statutory and customary land administration systems are identified.

### **Chapter 8: Improving local hybrid land administration and tenure practices in Ghana**

In this chapter, a proposal on how to reduce conflicting rationalities in land administration systems at the peri-urban interface in Ghana is put forward.

### **Chapter 9: Conclusions and the need for future research**

This chapter links the research findings to the objectives of the research. The chapter further presents recommendations for future research in addressing the dichotomy between statutory and customary land administration systems at the peri-urban interface in Ghana.

## **1.16 CONCLUSION**

Chapter 1 presented a general overview of the study. The research points to the conclusion that land administration and tenure problems experienced in many peri-urban customary areas in sub-Saharan Africa (section 1.2) can be attributed to the binaries created between customary and statutory land administration systems. Despite the many efforts to address land administration and tenure systems challenges in sub-Saharan Africa, researchers have made little attempt to uncover the real problem – *conflicting rationalities emanating from these binaries*. Proposals around building consensus in land administration systems, may have little impact on resolving the land administration impasse, if researchers and land administrators do not understand and appreciate the diverse rationalities that inform land administration and tenure practices by local people. For this reason, the study

joins the current discourse on the consensus-building approach towards the formalisation of land tenure, with an attempt to address the issue of conflicting rationalities in peri-urban customary land administration. Minimalism and good land governance principles (e.g. participation, equity and fairness, transparency and accountability, and effectiveness and efficiency) will go some way to address the issue of conflicting rationalities in peri-urban customary land administration. Chapter 2 reviews the different views held by researchers on the formalisation of land administration and tenure systems.

## **CHAPTER 2: LAND ADMINISTRATION AND TENURE SYSTEMS REVIEW**

### **2.1 INTRODUCTION**

Although there could be many types of land administration and tenure systems, researchers have sought to group them into formal and informal tenure systems (Crooks *et al.*, 2007). All forms of tenure systems that are not aligned to statutory and state-organised systems have been described as informal (UN-HABITAT, 2008). Some researchers describe customary land tenure systems as part of the informal land tenure systems (Kieyah and Kameri-Mbote, 2010). These categorisations and binaries have led to the incessant debates about what is a good or bad land tenure system (Whittal, 2014). The binary nature of the land administration systems debate opens up research in the land administration field with respect to hybrid, mixed and dual/parallel formal/informal land administration systems, which by their nature are also complex.

Recent land administration and tenure systems research seeks to close the gap between the so-called formal and informal land administration and tenure systems. The strengthening of customary land tenure systems has become the focus of many recent research projects (Abdulai and Owusu-Ansah, 2014; Antwi-Boasiako, 2017). In this chapter, the different views held by researchers on land administration and tenure systems are explored. The main argument in chapter 2 is that neither statutory nor customary land administration and tenure systems alone, are able to meet the current land needs of people living in peri-urban customary areas in sub-Saharan Africa. As a result, a hybrid land administration and tenure

system that incorporates the strengths of both statutory and customary land administration systems should be pursued.

Chapter 2 is divided into sixteen sections. The first section constitutes an introduction to the chapter. Section two presents a historical background of customary land tenure systems in Ghana. The debates on land administration and tenure systems are reviewed in section three. Three main positions in terms of land administration and tenure systems are apparent in this section (i.e. promotion, contestation and consensus-building). The volatile nature of customary law and its impact on customary land administration and tenure systems is discussed in section four. Two main categories of customary law (i.e. ‘official customary law’ and ‘living customary law’) are identified in this section. Policy implications of the land administration debates are discussed in section five.

It is discovered through literature that many land administration and tenure reforms in sub-Saharan Africa are informed by the drive to replace customary land administration and tenure systems (Okoth-Ogendo, 2008). Such land administration reform programmes have, however, not been very successful in many countries (Arko-Adjei, 2011). Section six reveals the dynamics in customary land tenure systems, and how they have adapted to land administration reform programmes. The main finding in this regard is that, customary land administration and tenure systems are dynamic, and can adapt to changes. For this reason, they can be integrated with statutory and other non-customary systems to improve peri-urban customary land delivery. To substantiate this assertion, section seven identifies some current changes in customary land administration systems. Section

eight discusses the responsiveness of customary land administration and tenure systems to statutory systems. Section nine discusses land transactions in customary areas. The section explains why land transactions in customary areas have been described by some scholars as informal and illegal (De Soto, 2000). Customary land tenure security issues are discussed in section ten. The two main perceptions of customary land tenure insecurity are discussed in this section. Some challenges associated with customary land institutions are elaborated in section eleven. The main argument here is that customary land institutions require some intervention to promote good land governance.

As current customary land tenure formalisation debate is geared towards consensus-building, section twelve and thirteen review the current interventions in customary land administration systems and hybrid land administration systems design respectively. It is suggested here that, hybrid land administration systems should be adaptable, flexible, upgradeable and affordable. The impact of land administration systems on both sustainable development and sustainable livelihoods is discussed in sections fourteen and fifteen respectively. It is argued in these sections that efficient land administration and tenure systems have significant impact on the livelihoods of people living in peri-urban areas, and are necessary contributing factor towards poverty eradication, which is also a key focus of the 2030 agenda for sustainable development (United Nations, 2015). A synthesis of the issues identified in chapter 2 and the questions emanating from the literature review are provided in section sixteen.

## 2.2 HISTORICAL CONTEXT OF CUSTOMARY LAND TENURE SYSTEMS

There have been mixed interpretations of the existence of customary land tenure systems in both pre-colonial and colonial era. Some writers suggest that customary land tenure systems existed in some parts of sub-Saharan Africa prior to the arrival of the colonial powers (Njoh, 2006; Okpala, 2009), while others argue that customary laws and tenure systems were perpetuated by the colonial powers (Hill, 1966).

According to Njoh (2006), there were established customary institutions to support the allocation and management of land, and other resources in various local communities prior to the arrival of the colonial powers in Nigeria, and other parts of Africa. Crooks *et al.* (2007), however, suggest that various forms of customary landholdings and land rights including absolute ownership and different types of 'shared' ownership were introduced during the colonial period. The claim that land could not be sold became necessary during the 1920s when there was a great demand for land in Ghana for the cultivation of cocoa (Hill, 1966). Land in these areas could only be leased on the conditions set by the chiefs (Hill, 1966).

Berry (2002) opines that colonial policies recognised the authority of the variety of customary laws and land tenure systems in Ghana, and allowed for the creation of Native Courts with the chiefs as judges. Woodman (1996) claims that the Native Courts were considered by the colonial government as part of the order of state courts and that, customary laws could be defended in the higher courts in Ghana. This has continued, and all customary rules are judiciary recognised by the 1992

Constitution of Ghana (Berry, 2001). Chiefs and other traditional leaders remain a critical part of customary law in Ghana, despite the abolition of the Native Courts in 1958 (Crooks *et al.*, 2007). Chiefs in Ghana have effectively used the concept of communal landholding to obtain the support of “colonial and post-colonial” governments for customary land administration and tenure systems (Obeng-Odoom, 2014: p.119).

The historical context of customary land tenure systems in other sub-Saharan African countries, such as Kenya, presents a different view from Ghana. For instance, whilst the colonial government in Ghana recognised customary tenure systems, the colonial government in Kenya viewed customary land tenure as an obstruction to economic development (Okoth-Ogendo, 2008). There were early attempts to replace customary land tenure systems in Kenya, whilst in the case of Ghana; chiefs enjoyed the support of the colonial government (Woodman, 1996). Dickerman *et al.* (1989) state that there are differences between countries in terms of the structure of registration systems introduced during the colonial era, which also continue to underpin current registration systems.

Local communities in Ghana still see chiefs as custodians of stool lands (Asiama, 2004). The current influence and power of chiefs over customary land in Ghana could be traced to colonial history. The colonial government fully supported the power and the leadership of chiefs in Ghana (Woodman, 1996). Although the concept of allodial land ownership gave chiefs power to control land in Ghana, such power was limited as they were only seen as ‘trustees’ or guardians and not absolute owners of land (Asiama, 2004). These checks prevented any possible

desires by the chiefs to gain sole political control over land in Ghana (Hammond, 2008). Berry (2002), however, contends that certain chiefs in Ghana sought to move from just being trustees of land to be the sole owners of land in their local communities. Unfortunately, chiefs in Ghana have been successful in this move, partially due to the fact that the 1992 Constitution recognises the role of chiefs in customary land management (Government of Ghana, 1992). To this end, the state does not interfere in land matters at the local level, unless it has some interests (e.g. expropriation of land in the public interest). Coupled with the respect that local communities have for their traditional leaders, chiefs in Ghana have successfully perpetuated the idea that they are the absolute owners of customary land, and have gained full control over customary land (Ubink, 2008). This poor land governance could set a theme for possible corruption in customary land delivery. Asante (1977), however, encourages chiefs and other traditional leaders who control customary land to remain accountable to the local people, and should not abuse the absolute power bestowed on them by the very people they serve.

To understand the repetition and continuity of historical practices, Hobsbawm and Ranger (1983) coined the concept of *invented tradition* to explain how recent forms of traditional practices emanate from uncontested historical practices. Chiefs and other traditional leaders in Ghana and other parts of sub-Saharan Africa have established continuity of customary land tenure practices with their historic past (Hobsbawm and Ranger, 1983). It could be argued that certain customary land tenure practices in sub-Saharan Africa were invented, others were constructed, and some were formally instituted by the colonial powers as can be observed in Ghana. This supports Boydell and Shah's (2003) assertion that land tenure systems are

manmade, and the rules governing them are made by those who benefit from their operations. Notwithstanding the origin of such customary land tenure practices, they have continued and become resilient in recent and modern societies in sub-Saharan Africa, and they cannot be easily overlooked (Kihato, Royston, Raimundo and Raimundo, 2012).

### **2.3 DEBATE ON LAND ADMINISTRATION AND TENURE SYSTEMS**

Many land administration and tenure systems research in sub-Saharan Africa has focused on promoting either statutory or customary land administration systems. Statutory land administration systems are based on individualisation of land rights and formalisation of land tenure records (UN-HABITAT, 2008). In customary environments, however, multiple interests exist in a parcel of land, and rights in customary land may not be individualised (Abdulai and Owusu-Ansah, 2014). This may explain the existing dichotomy between statutory and customary land administration systems. Customary land “is a form of collective and inalienable title which adapts and sustains common benefits, over many generations” (Anderson, 2006: p.11). Most people in Ghana access land through customary processes (Obeng-Odoom, 2014). In recent times, however, customary processes of accessing land have come under severe attack from some scholars and other international agencies. Anderson (2006) argues that the call for land registration is perpetuated by individuals who want to commercialise and change the features of customary land.

Statutory land tenure systems are underpinned by western worldview that sees individual registered tenure as the only secure form of tenure (De Soto, 2000). This

western worldview has, however, been critiqued (Payne, 2004; Rakai, 2005; Akrofi, 2013). It perpetuates the binaries of formality and informality in land administration systems (Royston, 2007; Royston and Kihato, 2012). The question of secure land tenure systems cannot be answered by what is formal or legal. It may rather be answered by what is desirable and socially legitimate (Kihato *et al.*, 2012). Some researchers have identified different indicators of land tenure security that go beyond what is formal or legal (Royston, 2012; Whittal, 2014). For instance, the role of social networks has been identified as an important contributing factor of tenure security (Cousins, Hornby, Kingwill, Royston and Trench, 2005; Royston 2012).

The western worldview of land tenure systems is premised on the position that secure land rights is a prerequisite for accessing capital which can result in economic development (De Soto, 2000). For this reason, statutory land administration systems are bent on building strong and sophisticated land market systems, sometimes at the detriment of the customs and values held by local people (Bugri, 2008). Statutory land administration and tenure systems defy all social and cultural implications of land administration practices in pursuit of economic development (UN-HABITAT, 2008). In developed countries and non-customary environments, the impact of statutory land administration practices on customary land tenure systems may not be felt to any significant extent. In customary environments, however, statutory land administration and tenure systems can become a threat to customary tenure systems (Hall, 2007). Many statutory land administration and tenure practices undermine customary land tenure systems, resulting in conflicting rationalities. Such conflicting rationalities emanate from the

different perceptions held by statutory and customary land administration systems theorists (Acquaye, 1984; Halle, 2012).

It has been argued that effective land market systems may not directly address poverty in peri-urban areas, as many peri-urban dwellers are not able to participate in such systems (Kihato and Royston 2013). Recent research findings point to the fact that customary tenure options can contribute to addressing poverty in peri-urban areas across sub-Saharan Africa (La Ferrara and Milazzo, 2014). For instance, Bugri (2008) found that customary land administration systems are able to allocate land efficiently in certain peri-urban customary areas in Ghana.

It may be universally acknowledged that efficient land management is a necessary pre-condition for the growth of urban and peri-urban centres (Kutsoati and Morck, 2012). However, statutory land administration systems may not be the only mechanism to ensure efficient land management. The role of customary and other land tenure options should be recognised in pursuit of efficient land management in sub-Saharan Africa. Abdulai and Ndekugri (2007) argue that procedures for accessing land may serve either as an incentive or a disincentive for investment in land. It cannot, however, be concluded that customary procedures for accessing land automatically serve as a disincentive for investment in land, and that, statutory means of accessing land is the best option as argued by Kieyah and Kameri-Mbote (2010). Abdulai, Ndekugri, Olomolaiye and Proverbs (2007) even believe that land registration can reduce tenure security in certain situations. Although they accept that land registration can facilitate land transactions, the authors opine that addressing land tenure insecurity requires a multi-faceted approach rather than land

registration alone. Obeng-Odoom (2012) argues that the reductionist nature of land registration programmes makes them less effective in addressing the land needs of poor people in sub-Saharan Africa. Tenure security is dynamic and may have complex and different conceptions – legal, social and economic. This has been described as the “tripartite view of security of tenure” (Obeng-odoom and Stilwell, 2013: p.324). According to Payne (2002) there is no general standard to measure tenure security across the tripartite conceptions. For example, what is perceived as tenure security from an economic perspective may be different from tenure security from social and legal perspectives. The concept of conflicting rationalities again resurfaces in the differing views on tenure security. Land registration is aligned to the economic conception only, and ignores the other conceptions of tenure security (Obeng-odoom and Stilwell, 2013: p. 326). It can therefore not be accepted as the only tool to ensure tenure security in sub-Saharan Africa, as tenure security has social and legal implications, rather than economic conceptions alone.

The notion that customary land tenure systems do not provide incentives for investment because they do not permit individual land ownership is mooted in many recent research reports (Abdulai and Ndekugri, 2007). It has been established through empirical research that land registration has no direct impact on agricultural productivity of land in sub-Saharan Africa (Abdulai, 2006). For instance, Migot-Adholla and Bruce (1994) observed no direct relationship between land registration and agricultural productivity in Kenya, Ghana and Rwanda. This finding was also corroborated by Place and Hazell (1993). Bromley (2008) equally found no impact of land titling on crop production in sub-Saharan Africa. Pinckney and Kimuyu (1994) undertook a comparative study on land administration

practices in Kenya (with individual land title registration) and Tanzania (where land belongs to the state). The outcome of the study did not reveal any significant difference in terms of land title registration on land investment. Payne *et al.* (2009) also found in sub-Saharan Africa that individual land title does not guarantee access to credit and has no impact on land investment. A research conducted in Lac Alaotra Region of Madagascar also revealed no correlation between land titling and access to credit by rice farmers in the Region (Jacoby and Minten, 2007). Matchaya (2008) opines that titling or no-titling factors do not determine land ownership security in peri-urban customary areas in sub-Saharan Africa. It has, however, been confirmed that land title registration has some significant impact on tenure security and land investment in countries in other continents, other than those in sub-Saharan Africa (Kieyah and Kameri-Mbote, 2010). This may be attributed to the availability of the required infrastructure in those countries to support the effective implementation of land registration systems (Williamson *et al.*, 2010). For instance, Alston, Lipcape and Schneider (1996) confirmed direct relationship between land title registration and land investment in Brazil. Feder and Onchan (1987) equally observed significant effects of land title registration on agricultural productivity in Thailand. The above two different set of findings reveal the heterogeneous environments in which land administration and tenure systems operate. To this end, it may not be advisable to impose one continent's best land administration and tenure practices on other (Whittal, 2008).

Kieyah and Kameri-Mbote (2010) question the assertion that individual land title registration has no direct impact on land investment in sub-Saharan Africa. They argue that land title registration is a necessary factor for land development and

economic growth in all countries, and countries in sub-Saharan Africa will begin to realise the expected benefits of individual land title registration in due course. Baffour and Hammond (2013) contend that land titling is relevant in sub-Saharan African countries where appropriate programmes are in place to implement them. They (Barffour and Hammond, 2013) assert that empirical evidence exists to support the claim that land title has positive impact on land investment and productivity even in sub-Saharan Africa. Hammond (2006) also opines that there is a direct correlation between land title registration and increase in land value in some urban areas in Ghana. He argues that land title registration provides credible source of land records, leading to efficiencies in land market systems. Notwithstanding the above argument in favour of land registration, the reality remains that in many sub-Saharan African countries, there is a lack of required infrastructure to support effective land registration systems.

Some scholars believe that customary and other informal land transactions are responsible for the rising land prices and ineffective use of land in peri-urban areas (Feder and Onchan, 1987). Larbi (1996) in the same vein opines that customary land administration systems culminate in poor living environments in urban and peri-urban areas in Ghana. Anti-customary land administration systems theorists call for land reform (including nationalisation) on the basis that customary land tenure systems constrain the development of land market systems (Feder and Onchan, 1987; De Soto, 2000; Peters, 2009). This call is necessitated by the assumption that the state will be able to efficiently allocate customary land to individuals for development. The above assertions and recommendations against customary land administration and tenure systems are influenced by early attempts

by land administration researchers to replace customary land tenure systems with statutory systems (Anderson, 2006). Asante (1997), however, argues that state control of land should be avoided as much as possible as customary tenure is capable of yielding the desired results for local people.

Some researchers and writers in the land administration field have hit back on the views held against customary land tenure systems. Antwi (2002) for instance argues that customary land administration systems are operated in line with the economic laws of demand and supply, and cannot be a hindrance to economic development. He (Antwi, 2002) further objects to the assertion that customary land tenure systems are responsible for the land administration challenges experienced in peri-urban and urban areas in Ghana. In fact, Kasanga, Cochrane, King and Roth (1996) are of the opinion that government bureaucracies, rather than customary land delivery processes are responsible for the land administration problems experienced in Ghana. Amanor (1999) equally opines that government land institutions appropriate land to the bureaucratic elites at the expense of poor people. Kironde (2000) argues that state land agencies have contributed to the distortions in land transactions and investment decisions in urban and peri-urban areas across sub-Saharan Africa. Atwood (1990) asserts that customary land tenure systems promote some level of tenure security. He further argues that the invasion of statutory land administration systems in sub-Saharan Africa which culminated in the non-recognition of customary land tenure systems led to the current customary land tenure systems challenges. Anderson (2006) opines that title registration exposes customary land to commercial transactions and measures the value of

customary land which is regarded as inestimable asset on the basis of monetary value.

Migot-Adholla, Hazell, Blarel and Place (1991) suggest that customary land administration and tenure systems were deliberately misrepresented by colonial administrators to advance colonisation. Okpala (2009) argues that statutory land administration tools based on European laws were convenient for the colonialists to advance their colonial agenda in Africa. Many anti-customary tenure systems writers argue that customary land administration systems lack land transaction records. Mabogunje (1992), however, asserts that customary landowners kept records of land transfers in the pre-colonial era. Arko-Adjei (2011) found that, in Ghana, customary land administration and tenure systems are adaptable to indigenous institutions and capacities, and remain responsive to the needs of the local people and avoid negative red tape and delays associated with dysfunctional bureaucracies.

Colonial administrators regarded customary tenure as the opposite of freehold and individualised land tenure systems (Njoh, 2003). Abdulai and Ndekugri (2007), however, argue that customary land administration and tenure systems acknowledge and uphold individual ownership of land, as customary landowners do not interfere in the rights of grantees during the lease period. They (Abdulai and Ndekugri, 2007) argue that customary land administration and tenure systems cannot be ostracised on the assertion that they do not promote individual land ownership. Okpala (1981) also opines that customary land tenure systems inherently promote private property rights as individual grantees are allowed to use

their land in consistent with approved land use schemes without any interference from customary landowners. Okpala (1981) further asserts that grantees of customary land can enjoy the proceeds from the land allocated to them.

Customary land tenure inherently has two distinctive interests (allodial and usufruct). The argument that customary land tenure does not promote individualised land title is aligned to only the allodial aspect of customary tenure. The allodial title in customary land lies with the community. However, individuals and families can have usufruct interests in customary land (Kasanga *et al.*, 1996). The conversion from allodial title to usufruct rights in customary land, however, remains an area of scholarly debate (Amanor, 2010). Ubink (2002: p.17) opines that no express grant may be required from the community holding the allodial title in the case of rural and farming lands. She is of the opinion that individuals can acquire usufruct rights by implied grant. However, in peri-urban customary areas where there is virtually no vacant land and orderly physical development is required, it is necessary for individuals to obtain an express grant from the allodial title holder (Ubink, 2002).

Usufruct interests in customary land are inheritable and may only end through the consent of the right holder. The chief cannot forcefully seize customary land from an individual who has usufruct right in a piece of customary land. Individuals who have usufruct interest can enjoy all of the rights constituting the interest (Asiama, 2004). This implies that customary land tenure systems allow individuals to enjoy private and uninterrupted rights in customary land for a specified period of time (Kasanga *et al.*, 1996). Even in terms of customary leasehold agreements, current landholders are given the first priority to renew a lease and can continue to hold the

right in the land they occupy (Lentz, 2010). Individuals with usufruct rights can bequeath same to their dependants when they die (Asiama, 2004). Ubink (2002: p.3) found that the Ghanaian courts protect the usufruct interests of individuals in stool land. Usufruct right is regarded by some customary land administration commentators as a potentially perpetual right (Kasanga and Kotey, 2001). Others, however, assert that the allodial title holders may still have the authority to dispossess individuals of their usufruct rights (Alden Wily and Hammond, 2001).

The transformation of customary rural areas into peri-urban areas has revealed insecurity in usufruct rights. Some cases in Ghana suggest that the conversion of farmland to residential land causes the individual's usufruct right to lapse (Ubink, 2002). In many peri-urban areas, allodial title holders forcefully expropriate land from individuals who hold usufruct rights in what was once farmland (Amanor, 2010). Many land conflicts in Ghana could be attributed to the process of rural transformation and its implication on customary land tenure systems (Asumadu, 2003). Land administrators and the state courts still find it difficult to rule in such cases, as many individuals who obtained usufruct rights through implied grants have no documentation (e.g. land allocation papers) to defend their land rights (Ubink, 2008). Even those with land allocation papers stand a risk of losing their land in case of litigation. Mireku *et al.*, (2016) found that, in Ghana, land allocation notes alone are not able to provide adequate security for the local people. They assert that a land allocation note is just evidence that someone has acquired land customarily, and is a "step towards acquiring full legal rights over land under customary tenure" in Ghana (Mireku *et al.*, 2016: p.148). It is thus important for

grantees of customary land to complete all required legal processes (including the registration of land transaction at the Lands Commission).

There is a claim in Ghana by some chiefs that usufruct right in land extinguishes when a farmland is zoned for urban development (Ubink, 2002). Crooks *et al.* (2007) argue that such a claim is in contradiction with judicially recognised customary law. However, the local people will not challenge such a claim in a customary tribunal due to the respect they have for their chiefs (Asiama, 2004). Certain writers have subsequently questioned if customary land tenure systems can adequately protect the land rights of peri-urban dwellers (Debroy 2000; Maxwell, Larbi, Lamptey, Zakariah and Armah-Klemesu, 1999).

In light of the above tension between statutory and customary land administration and tenure systems, some scholars have suggested a more consensus approach towards the formalisation and/or strengthening of customary land administration and tenure systems. For instance, the continuum of land rights model (Whittal, 2014), the fit-for-purpose approach to land administration (Enemark *et al.*, 2014), the social tenure domain model and the hierarchies of rights model (Augustinus, Lemmen and Van Oosterom, 2006) seek to close the gap between customary and statutory land administration systems. These consensus land administration models are discussed in section 1.1 and are revisited in chapter 5.

## 2.4 THE DYNAMICS OF CUSTOMARY LAW

The on-going debates around customary land administration and tenure systems could be attributed to the volatile and unpredictable nature of customary land tenure systems. Such dynamics in customary land tenure and administration systems could be traced to the complex nature of customary law. In fact, Asante (1997) admits that contemporary customary law poses a severe problem to lawyers. Customary law could be categorised into ‘official customary law’ and ‘living customary law’ (Cornell, 2009). This categorisation of customary law explains the differences between the customary practices accepted and practiced by local people and those recognised by the state. This duality, even within customary law, adds complexity. Also, the nature of living customary law is different from that of official customary law. Living customary laws are dynamic, local and emic in nature eschewing codification which, by its very process, destroys key elements of this nature. On the contrary, official customary law is derived from living customary law but in the process of codification, fixes the law in time and generalises the norms and practices for the country as a whole (so that they can be generally enforced), or worse, codifies customary law of more powerful groups and entrenching inequity (Cornell 2009). Official customary law is perceived by professionals as pronounced in court judgments and textbooks (Bennett, 2009). Living customary law on the other hand, refers to the customs that regulate the daily lives of the local people, sometimes in contradiction with the views held by professionals (Ozoemena, 2016). Asante (1965) asserts that there is a conflict between judicial interpretation of customary doctrine and customary practices at local communities. Diala (2017) argues that the concept of ‘living customary law’

is ambiguous and lacks adequate theoretical discourse. He further asserts that the so-called 'living customary law' cannot be divorced from the concept of legal pluralism.

Whilst it is not the intention of this study to engage in the theoretical discourse on the concept of 'living customary law', the study acknowledges the above categorisation of customary law, as it seeks to explain the existing conflicting rationalities between the worldviews held by state land administrators and the rationalities that inform customary land administration practices at the local level. In countries such as Ghana, where customary law is legally recognised, there could still be contestation around the interpretation of living customary law (Cornell 2009). For instance, certain customary land administration practices may not be known to state land agencies and may not be accommodated by statutory land administration institutions. In such situation, statutory land administration systems may not work cohesively with the customary land administration systems as there could be some living customary laws not perceived by state land administrators. It is thus imperative to understand this categorisation and dynamics of customary law in an attempt to achieve integration in land administration systems.

Ubink's (2002) observation in Kumasi (in Ghana) goes some way to explain the categorisation of customary law into official and living customary law. She found that individuals can defend their usufruct rights at the state courts. Nevertheless, there are certain customary land practices in peri-urban Kumasi that "are not in conformity with the rules of customary law as laid out in the courts" (Ubink, 2002: p.3). She bases this difference on two factors - legal and political. The legal factor

deals with the legal processes of translating customary norms into “judicial customary law”. The political factor on the other hand, explains the limited effect of judicial decisions on customary practice due to political arrangements at the local level. The legal (judicial customary law) factor can be related to official customary law whilst the political factor relates to living customary law. This finding by Ubink (2002) shows that there are complexities in customary law which ultimately affect customary land administration and tenure systems. Cohen (1995) describes such customary law complexities as “hard coin of social fact in place of paper legalities”. Asante (1997) admits that certain customary practices are applicable to certain communities and are rooted in the customs of the local people. Such customary practices become a social fact, which cannot be subjected to ‘paper legalities’ (Cohen, 1995). As noted by Berry (2013), customary land administration based on only social processes may lead to manipulation of customary land tenure by chiefs. For instance, she (Berry) found that ownership and administration of certain land in Ghana is not informed by any rules and ‘enforcement mechanisms’. Lack of set rules may open customary land tenure to social processes through which the most powerful groups in communities may use land claims to gain power and wealth. In many instances, historical accounts on customary practices are manipulated to advance the selfish ambition of few powerful groups (Berry, 2013). How to achieve a balance between social processes and judicial precepts in customary law to effectively administer customary land remains a matter of scholarly debate.

## **2.5 POLICY IMPLICATIONS OF THE LAND ADMINISTRATION SYSTEMS DEBATE**

Land policy development and reform in sub-Saharan Africa have been influenced by the theoretical debates on land administration and tenure systems. Over the past decades, countries across sub-Saharan Africa have experienced land policy reforms to address poverty, unemployment and slow economic development (Benjaminsen, Holden, Lund and Sjaastad, 2009). Such policies were influenced by international funding agencies and donors such as the World Bank (IFAD, 2011). Many of the land policy reforms have focused on changes in customary land administration and tenure systems (Kalabamu, 2000). For instance, the World Bank-led land policy reform programmes in sub-Saharan Africa were biased towards individual land titling and registration (UN-HABITAT, 2008). The objectives behind the World Bank-led land policy reform programmes were to promote improved tenure security and efficient land market systems (UN-HABITAT, 2008). Chauveau (2005), however, asserts that the above land reform objectives were not realised in many sub-Saharan African countries where such programmes were implemented. Many research reports confirm that there has not been improved secure land tenure and economic growth in sub-Saharan African countries where individual land titling and registration programmes were implemented (Antwi-Boasiako, 2017). It has been reported that statutory land administration systems are not affordable to the peri-urban poor, and have only sought to benefit few elite (Abdulai and Owusu-Ansah, 2014). Anderson (2006: p.11) argues that the drive for land title registration is a neo-colonial movement for depriving poor people of their land. According to Anderson (2006: p.11) there is no empirical evidence that land title registration actually denotes the economic assertion that it provides opportunities for peasant

farmers to “enter the cash economy”. The land administration systems debate lingers on, and scholars and researchers continue to be divided in opinion, as to what best approach to adopt towards the formalisation of customary land tenure in sub-Saharan Africa.

## **2.6 CUSTOMARY LAND ADMINISTRATION SYSTEMS DYNAMICS**

Akrofi (2013) researched the functionality of customary land tenure systems in Ghana. Using case studies from both patrilineal and matrilineal systems of inheritance, he identified some aspects of functional customary tenure systems. Using good governance indicators, he argues that functional customary tenure systems exhibit accountability, efficiency and effectiveness, equity and fairness, participation, affordability, stable administration and are accessible to the local people. However, he admits that the factors that determine the functionality of land administration systems are dynamic and vary over time, based on local conditions.

Customary land administration systems are dynamic in nature. The rules and principles that govern them constantly change and adapt to current circumstances (Asiama, 2004; Kapur, 2011; Kutsoati and Morck, 2012; La Ferrara and Milazzo, 2014). For instance, it has been observed in recent research that certain matrilineal customary environments in Ghana have improved in the area of gender equity by allowing women to participate in land decision-making processes (Obeng-Odoom, 2016). Matchaya (2008) also found that women feel more secured in matrilineal customary areas in Malawi. Kalabamu (2000) posits that customary land administration systems lose some features and retain others as they undergo transformation. For instance, in many sub-Saharan African countries, individuals

can now own land irrespective of their gender (Adams, Kalabamu and White, 2003). In addition, certain customs and traditions (e.g. offering sacrifices prior to the commencement of physical development) are no longer adhered to in customary land acquisition processes in Ghana (Asiama, 2004). The flexibility and dynamism in customary land administration systems imply that they can be integrated with statutory systems to meet the current land demand of people living in peri-urban customary areas.

## **2.7 CHANGE FACTORS IN CUSTOMARY LAND ADMINISTRATION SYSTEMS**

Changes in customary land administration systems may be brought about by economic reform, socio-cultural and political transformation, technological innovations, population increase, urbanisation and globalisation, amongst other drivers (Ting and Williamson, 2001). These factors have a direct impact on land demand and therefore put pressure on customary institutions that administer customary land (Ubink, 2008). Many researchers argue that colonisation has caused major changes in customary land administration systems (Njoh, 2006; Abdulai, 2010). They blame the current customary land administration challenges on land laws introduced by colonisation. For instance, Hall (2007) has expressed concern about the lackadaisical attitude on the part of some governments in sub-Saharan Africa towards eliminating vestiges of colonial land laws from customary land tenure and administration. However, customary land administration systems are faced with many complex challenges (section 1.2), which require a contemporary intervention, rather than blaming colonisation, which ended more than half a century ago in many sub-Saharan African countries (Gocking, 2005).

Customary land tenure and administration systems could have changed spontaneously even without colonial intrusion. For instance, many of the innovative changes observed in customary land practices have nothing to do with colonisation (Van Asperen, 2014). Evidence from various sub-Saharan African countries points to the fact that customary land administration systems require some strategic interventions to service the needs of people (Ubink, 2008). Both statutory (believed to have been introduced by colonisation) and customary land administration systems should be integrated to form a hybrid system of land administration.

## **2.8 RESPONSIVENESS OF LAND ADMINISTRATION SYSTEMS**

In an attempt to discover how customary land administration systems respond to statutory land administration systems, Kandawire (1977) undertook a case study on the traditional *thangatha* (customary land tenure practice in Malawi where community members assist the chief in his work in return for the right to occupy a piece of land) in pre-colonial and colonial systems of land tenure in Southern Malawi. He found that the traditional *thangatha* in Malawi had been taken over by the colonial statutory systems of land administration. Njoh (2006) argues that customary land administration systems were previously used effectively to manage customary land, prior to the introduction of statutory land administration systems. Okpala (1981) posits that, prior to colonisation, many traditional towns and villages in sub-Saharan Africa were managed without applying any statutory land administration tools and that customary land administration tools were used to order settlement patterns. Okpala (2009) argues that customary land administration tools ensured the orderly structure of settlements and that land use during that era

adhered to the customs and norms of local people. Customary land administration systems provided for all land uses (e.g. markets, churches/mosques, farms, community centres, playgrounds and movement patterns). Land value during that regime was purely assessed on the basis of communal benefit and shared interest (Njoh, 2006).

However, statutory land administration systems were gradually introduced in customary land management in sub-Saharan Africa during the colonial era (Okpala, 2009). In many countries, statutory land administration systems sought to replace the customary systems (Okpala, 2009). Customary land administration systems have in many ways responded to the threats posed by statutory land administration systems (Arko-Adjei, 2011). In countries such as Mozambique, Namibia, Ghana and Botswana, customary land administration systems have adapted to the statutory systems and work co-operatively with them (statutory systems) (Tanner and Baleira 2006; Van Der Molen, 2006; Akrofi, 2013). In some countries like Lesotho, however, customary land administration systems have been excluded from urban and peri-urban land management (Johnson, 2013).

## **2.9 LAND TRANSACTIONS IN CUSTOMARY AREAS**

Many land transactions in customary areas in sub-Saharan Africa are argued to be illegal and informal (Home, 2010). This can be attributed to the fact that many customary areas lack proper planning and mechanisms to control and monitor land use (Ubink, 2008). Many researchers have argued that land can be cheaply and easily acquired in customary areas in sub-Saharan Africa (Ubink, 2008; Jul-Larsen and Mvula, 2009; Chimhowu and Woodhouse, 2010). This, however, may not

mean that customary land administration systems, on their own, promote efficient market systems, as argued by Akrofi (2013). As observed by Ubink (2008), many land transactions in customary areas (in Ghana) take place outside both customary and formal institutions. Efficient land market systems require proof of land transfer (security) and potential increase in land value as a motivation for investment (De Soto, 2000; Peters, 2009). Although land access in customary areas is known to be cheap and easy, cases of lack of proof of land ownership and reduction in land values (due to lack of proper planning and infrastructure) have been reported across sub-Saharan Africa (Ubink, 2008; Home, 2010).

Jul-Larsen and Mvula (2009) contend that more affluent people tend to avoid customary land transactions in Malawi, due to their inherent ambiguities. Akrofi (2013) sees this as an opportunity for poor people to access land in customary areas since they will not face competition with the rich. Poor people may, however, require investments in customary areas to support their livelihoods. Such investments may be attracted to customary areas when the ambiguities in customary land transactions are eliminated and investors can be assured of security and a good return on their investments (De Soto, 2000; Peters, 2009). Statutory land administration systems may have something to offer in this regard. For instance, in Ghana, land use planning and registration functions are within the ambit of government, whilst customary land allocation falls under traditional leadership (Arko-Adjei, 2011). Hybrid land administration systems may bring the two institutions together to improve land market systems in peri-urban customary areas in Ghana, without necessarily compromising the livelihoods of local people.

## **2.10 CUSTOMARY LAND TENURE SECURITY**

Two main perceptions of customary land tenure insecurity exist. Firstly, it has been argued that customary land administration systems lead to insecurity of land rights, which repels investments (Ubink, 2008). Anti-customary theorists have argued that customary land administration systems are concerned with the strengthening of social relations, rather than promoting economic development (De Soto, 2000; Peters, 2009). It has further been argued that customary land administration systems promote inequality, as the elite expropriate land from the poor and less powerful in customary areas (Ubink, 2008). There is mounting evidence of land expropriation by influential elites and increasingly restricted and insecure access to land by the poor in many peri-urban customary areas across sub-Saharan Africa (Ubink, 2008).

Customary land actors usually operate on different levels – “some have more negotiating powers and more defining and contesting powers than others” (Shipton, 2002: 10). This makes the less powerful vulnerable in customary land market competitions (Woodhouse, 2003). Alden Wily and Hammond (2001) attribute this inequality to a shift in the role of traditional leaders from stewardship to ownership in many sub-Saharan African countries. In terms of the current customary land administration systems in Ghana, for instance, traditional leaders are not only seen as stewards over the land (which is supposed to be a communal property), but also as the ‘owners’ of the land (Ubink, 2008). This shift in role can be attributed to the rising land values, which has led to the commodification and individualisation of land (Ubink, 2008).

Bruce (1988) argues that traditional leaders can convert customary rights to personal rights where land is unoccupied. Ubink (2008), however, found that traditional leaders are even attempting to acquire personal rights over occupied land under cultivation by community members in some peri-urban customary areas in Ghana. Customary land administration systems with the chief as the sole administrator of land are clearly dominated by the traditional elite (Alden Wily and Hammond, 2001). The above observations necessitate statutory land administration systems to work closely with customary land administration systems to improve tenure security in peri-urban customary areas in sub-Saharan Africa.

## **2.11 CUSTOMARY LAND ADMINISTRATION INSTITUTIONS**

Customary land administration in Ghana is undertaken by customary leaders (Kings, chiefs, queen mothers and family heads) (Asante, 1997). Customary institutions remain resilient and are the main institutions for customary land management in many parts of sub-Saharan Africa (Ray and Reddy, 2003; Bennett, 2004). In many customary areas, land is collectively owned by communities and its administration is vested in customary leaders (Lentz, 2010). Grischow (2008) posits that customary authorities are the most appropriate custodians of customary land. However, some deficiencies in customary land administration, such as multiple sales of the same piece of land and the misappropriation of land proceeds have been reported in some customary areas in Ghana under traditional leadership (Ubink, 2008; Akrofi, 2013). In addition, customary institutions in many sub-Saharan African countries are devoid of good land governance principles (UN-HABITAT, 2010). Lyon (2000) argues that customary leaders who pursue their

selfish interests, to the detriment of their communities should face the sanction of community members. Grischow (2008), however, argues that community members may accept whatever authority of their customary leaders and may support them (customary leaders). Such unconditional support enjoyed by many customary leaders in Ghana has made it difficult for the state to intervene in customary areas where land administration malpractices exist (Ubink, 2008).

Statutory land administration systems in some parts of sub-Saharan Africa have provided oversight over the management of customary land. For instance, in Ghana, the Lands Commission facilitates formal lease agreements and the registration of customary land transactions (Abdulai and Ndekugri, 2007). This has curbed the problem of multiple sales of customary land in certain customary areas in Ghana (Abdulai, 2006). Integrating customary and statutory land administration systems may therefore improve quality and accountable leadership in peri-urban customary land administration.

## **2.12 INTERVENTIONS IN CUSTOMARY LAND ADMINISTRATION SYSTEMS**

In view of the current challenges that customary land administration systems face (section 1.2), many researchers have proposed different interventions to either improve or replace customary land administration systems (Toulmin and Quan, 2000; Toulmin, 2006; Delville, 2007). One type of such interventions centres on privatisation and land title registration to ensure efficient land market systems. Proponents of such intervention argue that customary land administration systems are volatile and that their unpredictable nature discourages investments (De Soto,

2000; Peters, 2009). It has further been argued that customary land tenure and administration systems are the main cause of underdevelopment and poverty in many sub-Saharan African countries (De Soto, 2000; Peters, 2009).

Prior to the twenty-first century, many land administration reform programmes in sub-Saharan Africa were informed by economic development (Alden Wily, 2000; Alden Wily and Hammond, 2001). Many governments in sub-Saharan Africa subsequently transformed their existing customary land administration structures and processes to cater for the 'modernised' system (Delville, 2007). Arko-Adjei (2011) posits that land administration institutions that replaced the customary structures were state-led and bureaucratic. Such institutions in many cases excluded customary leaders and the local people (Bugri, 2008). As a result, this intervention could not thrive in some customary environments (Dalrymple, 2005). Some researchers have argued that the above approach to the formalisation of customary land administration systems has not benefited the peri-urban poor (Fourie, 2002; Deininger, 2003; Cotula, 2007). The failure of the economic development approach to the formalisation of customary land tenure and administration systems called for other interventions to improve customary land administration systems (Domeher and Abdulai, 2012).

Since the beginning of the twenty-first century, new ways of addressing customary land administration challenges have emerged. There has been a shift from customary land administration systems replacement to their enhancement (Durand-Lasserve, 2006). The new intervention seeks to promote and capacitate customary institutions (Abdulai and Ochieng, 2017). It has been argued that interventions in

customary land administration systems should be minimal (Benjaminsen, Holden, Lund and Sjaastad, 2009). Some aspects, such as participatory land delivery processes and accountable customary land institutions, should be improved, instead of the complete replacement of customary land administration systems (Amanor, 1999; Ubink and Amanor, 2008; Toulmin, 2009; Akrofi, 2013). Abdulai and Owusu-Ansah (2014) discovered that this new intervention is being implemented in Ghana through the Land Administration Project (LAP). LAP seeks to capacitate chiefs to effectively carry out land administration functions within their own customs (Akrofi, 2013). In Mozambique, local communities have been empowered to administer and manage their own land, and have been given the right to grant land to investors (Jenkins, 2001; Jenkins, 2003; Norfolk and Tanner, 2007). To date, the two opposing schools of thought continue to defend their respective viewpoints.

In the midst of the relentless struggle between the two opposing viewpoints, cases of innovation in customary land administration systems have been reported across sub-Saharan Africa (Bassett, 2005; Durand-Lasserve, 2006; Nkwae, 2006; Deininger, Ali, Holden and Zevenbergen, 2008; Nkwae and Dumba, 2009; Arko-Adjei, 2011; Akrofi, 2013; Van Asperen, 2014). Some cases of novel land administration practices that have implications for the development of hybrid land administration systems are analysed in chapter 7.

## **2.13 HYBRID LAND ADMINISTRATION SYSTEMS DESIGN**

Arko-Adjei (2011) used the elements of adaptability, flexibility, upgradeability and affordability to design a land administration system for peri-urban customary areas in Ghana and found them to be useful. Customary land administration systems in some sub-Saharan African countries have been found to be adaptable, upgradeable, flexible and affordable (Norfolk and Tanner, 2007; Nkwae and Dumba, 2009; Arko-Adjei, 2011; Akrofi, 2013). These findings are useful in the designing of hybrid land administration systems. Under this section, cases where customary land administration systems are found to be adaptable, upgradeable, flexible and affordable are discussed.

### **2.13.1 Adaptability of customary land administration systems**

Adaptability is used here to mean the ability of land administration systems to react and adjust to change (Ting and Williamson, 2001). Adaptability in this context is usually understood to imply gradual changes in land administration, in line with current realities. Many countries in sub-Saharan Africa have adopted adaptation strategies to improve their customary land administration systems (Arko-Adjei, 2011). In such countries, customary land administration systems are allowed to operate alongside statutory systems. People who hold customary land rights can register such rights with statutory land institutions. For instance, in Ghana, people who acquire land from chiefs can register the land transaction with the Lands Commission (Asiama, 2004). The right is registered as customary leasehold, which is administered at the formal court. This provides a form of security for people who acquire land through customary means in Ghana (Asiama, 2004). Both Arko-Adjei

(2011) and Akrofi (2013) have observed that customary and statutory land administration systems are working together to provide tenure security for people living in some peri-urban customary areas in Ghana.

In Namibia, customary land rights can be registered with the state. All land allocated by chiefs and ratified by communal land boards in Namibia are legally recognised (De Vries and Lewis, 2009). Individuals who acquire land from chiefs can register their land with communal land boards and receive certificates of leasehold. The certificate of leasehold is a proof of a person's right in a particular piece of land and is recognised by the government of Namibia (Van Der Molen, 2006).

In Mozambique, customary land administration systems have adapted to statutory systems. People who hold customary land rights in Mozambique may not register such rights statutorily. They only need the testimonies of neighbours to secure their customary land rights (Norfolk and Tanner, 2007). Communities who wish to have documentary evidence may, however, apply for a Certificate of Delimitation (a certificate of formal evidence in respect of one's customary land right) (Norfolk and Tanner, 2007). Land that is customarily acquired (whether registered or not) is as secure as land acquired through statutory means in Mozambique (Norfolk and Tanner, 2007).

It can be deduced from the above cases that customary land administration systems can work with statutory systems if governments in sub-Saharan Africa will make a conscious effort to integrate them, rather than superimposing one on the other.

Countries in sub-Saharan Africa that have attempted to abolish customary land administration systems have experienced a number of problems. For instance, when the Administration of Land Act of 1973 attempted to take customary land administration from chiefs in Lesotho, they (chiefs) fought against this step (Mdee, 1991). This led to the promulgation of the Land Act in 1979, which sought to integrate both customary and statutory land administration systems in Lesotho (Johnson, 2013).

In Ghana, customary land is regarded as inalienable, because of its ties with ancestral spirits and the earth (Kasanga, Cochrane, King and Roth, 1996). In some customary areas in Ghana, regular sacrifices are offered to the earth god for productive land and the protection of community members (Lentz, 2010). Statutory land administration systems should recognise the cultural and spiritual relationship between humankind and land (Akrofi, 2013). In many sub-Saharan African countries, statutory land administration systems ignore the cultural and spiritual ties that people may have with land in customary environments (Njoh, 2003). In such countries, customary land administration systems have not been able to adapt to the statutory systems (Arko-Adjei, 2011).

### **2.13.2 Flexibility of customary land administration systems**

In addition to their adaptable nature, customary land administration systems have been found to be flexible. This implies that customary land administration systems can be easily modified to suit the current situation (Mundia, 2007). Flexibility in this context implies rapid changes in land administration, without any particular

trend over time. Many researchers have observed that institutional and regulatory frameworks that govern customary land administration in sub-Saharan Africa are flexible enough to allow for amendments that may improve the land rights of people living in peri-urban customary areas (Nkwae, 2006; Mundia, 2007; Arko-Adjei, 2011; Barry and Roux, 2012; Akrofi, 2013). For instance, in Mozambique, customary land rights can be registered, or not. Customary structures may choose to work with community land organisations, as in the case of Namibia and Ghana. In Botswana, customary structures have given way to community land organisations (land boards), but have, however, retained customary laws and principles (Nkwae, 2006; Mundia, 2007).

Statutory land administration systems, on the other hand, are noted to be rigid and bureaucratic. One of the reasons why statutory and customary land administration systems have not been able to integrate in many sub-Saharan African countries, is the rigidity of statutory systems (Amanor, 2010). Certain laid down rules and principles should be adhered to in statutory systems. Any slight deviation from such principles is regarded as informal (Okpala, 2009). Countries such as Lesotho, where statutory land administration systems have not compromised some of their principles, have eventually lost customary land tenure and administration systems (Leduka, 2001). In integrating statutory and customary land administration systems, formal institutional, legal and technical arrangements need to be flexible to accommodate customary practices (Amman and Duraiappah, 2004; Enemark *et al.*, 2014). For instance, as statutory land administration systems employ sophisticated means, such as GIS and satellite imagery, to gather spatial data, customary systems should be allowed to use sketch maps and other informal means

that are affordable and useful to the local people (Zevenbergen, Augustinus, Antonio and Bennett, 2013).

Statutory land administration systems should adopt flexible technical standards and processes in administering customary land. Kingwill (2005) have discovered in rural South Africa that statutory land administration systems with modern cadastral infrastructure are in conflict with customary systems, which require traditional tools only to administer land. Kingwill (2005) advises that cadastral systems in customary environments need to support existing customary practices and not work against them.

### **2.13.3 Upgradeability of customary land administration systems**

In the context of this study, upgradeability means the ability of customary land administration systems to improve its functions. Anti-customary land administration theorists have argued that customary land administration systems are unable to provide tenure security (De Soto, 2000; Peters, 2009). In recent years, however, it has been observed that certain countries in sub-Saharan Africa have allowed customary tenure systems to be upgraded (Enemark *et al.*, 2014). For instance, in countries such as Namibia, individuals may improve their tenure security from starter titles to landhold titles, and even to freehold titles (De Vries and Lewis, 2009). In some parts of Namibia, individuals are initially granted starter titles at group levels. The head of the family is allocated the right to a piece of land within a settlement block. The settlement block may be registered at the Registrar of Deeds if approved by a local authority (Kapitango, Meijs, Saers, and Witmer, 2008). Individuals who hold starter titles may not erect permanent structures on

their land. However, they can upgrade to landhold titles. Landhold titles may be granted to individuals within a settlement block when certain levels of basic services have been extended to the area within which the settlement block is situated. People with landhold titles can erect permanent structures (Van Der Molen, 2006). If they wish to upgrade further, they may apply to the local authority for a freehold title (Van Der Molen, 2006). The upgradeability of tenure systems is possible if land administration systems are flexible (Zevenbergen *et al.*, 2013). In hybrid land administration systems, it should be possible for someone who holds a leasehold title to gradually migrate to a freehold title (customary freehold).

In Botswana, people whose customary tenure securities are threatened may apply for a Certificate of Rights (Nkwae and Dumba, 2009). People who are granted a Certificate of Rights can use their land without fear of eviction (although the land may not be surveyed). They may relinquish or transfer their use rights to others. Individuals who have Certificates of Rights can apply for a leasehold title in surveyed and planned areas (Adams *et al.*, 2003).

The Land Registration Certification Programme in Ethiopia provides some level of tenure security for people living in informal and customary areas. The land certification and registration process involves the demarcation of boundaries (using simple tools) and the establishment of community registry offices. The land registration certificate contains the land information, a photograph and the name of the holder, as well as the stamp of the local registry. People who possess registration certificates in Ethiopia cannot be evicted from their land (IIED, 2006; Deininger *et al.*, 2008).

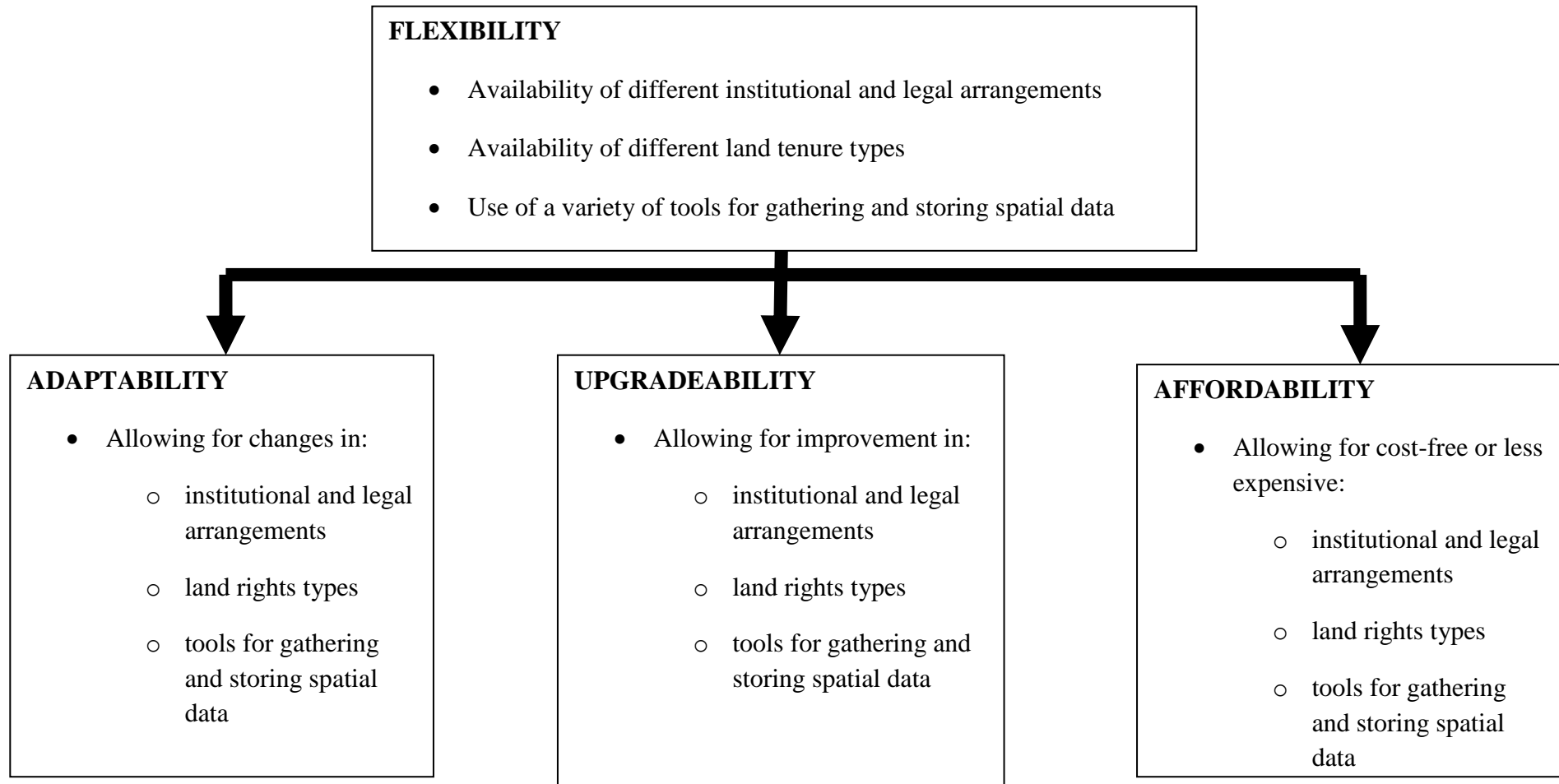
In Uganda, certificates of customary ownership provide tenure security for people living in customary areas (Mayanja, Massa and Julius, 2015). Individuals who have certificates of customary ownership can use them as collateral for credit. The certificate of customary ownership can be issued after the demarcation of land boundaries. Individuals who hold certificates of customary ownership in Uganda can upgrade their land titles from leasehold to freehold (Mayanja *et al.*, 2015). In Zambia, customary landholders can upgrade their customary land rights to freehold which may be registered with the government of Zambia (Mudenda, 2007). The above observations indicate that customary land administration systems can provide tenure security for people and should therefore not be abolished.

#### **2.13.4 Affordability of customary land administration systems**

Affordability refers to the provision of land administration services that are within the financial capabilities of intended beneficiaries (Chileshe and Shamaoma, 2014). Statutory land administration systems have been criticised for being expensive and unaffordable for the urban poor (Njoh, 2006). Statutory land administration systems employ sophisticated tools and complicated legal instruments, making it expensive to administer land. The legal and other costs involved in statutory land administration are usually transferred to clients who, in many cases, cannot afford them (Okpala, 2009). Evidence across sub-Saharan Africa indicates that many people living in urban and peri-urban areas have avoided statutory land administration systems due to the high cost and red tape involved, opting for either customary or informal means of accessing land (Adams *et al.*, 2003).

Customary land administration systems, on the other hand, have been noted to be relatively affordable, based on the use of simple and traditional tools for administering land (Amanor, 2010). For instance, in Uganda, sketch maps are used to gather spatial data rather than the GIS and satellite imagery (Mugambwa, 2002). In Mozambique, customary landholders need not spend money in securing their customary land rights: They need only the testimonies of their neighbours to secure their land rights. This has taken away financial burden from customary landholders in Mozambique (Norfolk and Tanner, 2007).

Flexibility may be considered a central requirement for effective land administration systems. For land administration systems to be adaptable, there has to be flexibility. In Mozambique, customary land administration systems have adapted to the statutory systems, because they (customary systems) are flexible (Tanner and Baleira, 2006). For land administration systems to be affordable, there should be flexibility in the use of land administration tools. People should be allowed to use simple and traditional land administration tools and arrangements that are affordable to them. Different land tenure types should be allowed to operate and the opportunity for changing from one tenure type to another should be created (Simbizi, 2016). Hybrid land administration systems should be flexible, adaptable, upgradable and affordable (Figure 2.3).



**Figure 2.1: Framework for HLAS design**

Figure 2.3 indicates the essential elements/indicators to consider in designing a hybrid land administration system. These indicators are flexibility, adaptability, upgradability and affordability. The indicators are used to assess three main aspects of land administration and tenure systems (i.e. institutional and legal arrangements, land right types and land administration tools). It is portrayed in Figure 2.3 that flexible land administration can culminate in adaptable, upgradable and affordable land administration systems.

## **2.14 LAND ADMINISTRATION AND SUSTAINABLE DEVELOPMENT**

Sustainable development has been defined in different ways (Kates, Parris and Leiserowitz, 2005). The common definition, however, emphasises meeting the needs of both present and future generations (Parris and Kates, 2003; Kahle and Gurel-Atay, 2014). Sustainable development is concerned with maintaining economic growth and human development indefinitely (Kahle and Gurel-Atay, 2014). It has, however, proven difficult to achieve both economic growth and social development in sub-Saharan Africa (Soubbotina, 2004). Many programmes that seek to promote economic growth in sub-Saharan Africa mostly compromise some basic social development principles (e.g. access to a healthy environment, food security, safe drinking water and secure tenure) (White, Stallones and Last, 2013).

Although it has been argued that economic growth may translate into human development (De Soto, 2000; Peters, 2009), this has not always been the case in many sub-Saharan African countries (Platteau, 2000). Economic growth in many

parts of sub-Saharan Africa has created polarised economies (the poor have become poorer, whilst the rich have become richer) (Halle, 2012). The need to promote both economic growth and human development through appropriate land administration systems is recognised in this research.

Poverty eradication has become the main focus of sustainable development (United Nations, 2015). It is recognised through the 2030 Agenda for Sustainable Development that, poverty eradication “in all its forms and dimensions, including extreme poverty, is the greatest global challenge and an indispensable requirement for sustainable development” (United Nations, 2015: p.3). The global challenge of poverty is expected to be addressed through the 17 sustainable development goals (SDGs) and 169 targets contained in the 2030 Agenda for Sustainable Development. The new SDGs seek to address global issues such as poverty, hunger (food security and promotion of sustainable agriculture), gender equity and empowerment of women and girls, inclusive and sustainable economic growth and productive employment, managing forests sustainably, avoiding land degradation and biodiversity loss, building accountable and inclusive institutions, among others (United Nations, 2015). It is expected that these goals and their respective targets will transform the world (United Nations, 2015). The 2030 Agenda for Sustainable Development builds on the “three dimensions of sustainable development: economic, social and environment” (United Nations, 2015: p.3), and has implications for land tenure and administration systems design.

The 2030 Agenda for Sustainable Development is cross-sectoral and a multi-disciplinary approach is required to achieve its goals and targets. It can also be seen

that certain issues reflected in the SDGs are aligned to the needs of developing countries. For instance, many developing countries are struck by poverty, hunger, gender inequality and unemployment (United Nations, 2007). Researchers from a range of fields may be required to contribute to the realisation of these goals. This research uses the good land governance framework to assess land administration practices in some selected areas in sub-Saharan Africa. The selection of the principles and indicators of good land governance was developed prior to the SDGs but is well-aligned to the aims of addressing poverty, hunger, gender inequality and building strong institutions. The above four goals were selected because they have direct implications on people living in the developing world (UN- HABITAT, 2015) (see United Nations, 2015 for all 17 SDGs). For instance, the study recommends the highest form of participation (citizen power) to be encouraged in customary land administration (section 5.8.5.1). This level of participation may empower women to make decisions that favourably affect their lives. In addition, the good land governance principles of fairness and equity (as adopted in this study) may promote access to land-related economic opportunities for all. This may address the triple effect of unemployment, poverty and hunger, as people can access land resources that may improve their lives. The 2030 Agenda for Sustainable Development further seeks to achieve accountable and inclusive institutions. For this reason, accountability is selected as a good land governance principle to assess land administration institutions in the case study areas. It is envisaged that accountable land administration institutions may lead to inclusive and transparent land delivery processes. It may further assist in eradicating corruption, nepotism and racketeering, which have rendered many public

institutions in sub-Saharan Africa ineffective and non-responsive to the needs of the people (United Nations, 2007).

The application of good land governance principles is likely to improve the sustainability of land administration, which in turn, should improve tenure security and the livelihood sustainability of local people. It is observed that many people living in poverty in sub-Saharan Africa have no security of tenure and source of livelihoods (Ubink, 2008). Poverty may therefore be addressed through the provision of tenure security and sustainable livelihoods to people living in peri-urban customary areas (United Nations, 2015). Sustainable livelihoods may also address the issues of hunger and unemployment which are also the focus of the 2030 Agenda for Sustainable Development (United Nations, 2015).

## **2.15 LAND ADMINISTRATION SYSTEMS AND SUSTAINABLE LIVELIHOOD**

In his attempt to find answers to how land administration systems enhance the livelihood strategies of local people, Carney (1998) put forward the sustainable livelihoods framework to help analyse how land tenure and administration systems enhance the livelihoods of local people. Carney (1998) posits that changes in land tenure and administration systems should be considered in relation to their impact on people's livelihoods. The sustainable livelihoods framework seeks to evaluate access to capital assets, natural land resources and social capital (Tanner, Baleira, Norfolk, Cau and Assulai, 2006). Adams, Sibanda and Turner (1999) argue that social capital creates opportunity for a range of livelihood opportunities, such as the prospect for local people to sell their labour or engage in small-scale farming.

Many people living in peri-urban customary areas in Ghana depend on land-based resources for their livelihoods (Norfolk, 2004; Cotula, 2007). In such peri-urban customary areas, however, productive land is increasingly used for residential developments, jeopardising the livelihoods of the local people (Ubink, 2008). In addition, many people living in urban and peri-urban areas in sub-Saharan Africa access residential land through customary and informal means (Akrofi, 2013). It has been observed that such people often face threats of eviction, due to their inability to satisfy certain statutory land administration requirements (Ikejiofor, 2007). Kombe (2005) suggests that land administration and tenure systems in sub-Saharan Africa should be appropriate for the local people and improve land supply. Land policies should focus on supporting the customary land sector to address its inherent problems. This may go some way to support the livelihoods of the local people.

Statutory land administration systems are perceived as expensive by the peri-urban poor (Okpala, 2009). Ikejiofor (2007) and Egbu, Olomolaiye and Gameson (2008) observed that the costs of 'legal' property development in cities across West Africa include direct costs in respect of the requirements for obtaining official land and development rights, as well as informal costs (bribes and gifts). Developments in such cities that do not conform to the set regulations are regarded as illegal (Ikejiofor, 2007). Only a few individuals who can afford both the official and informal costs become part of the formal sector while the majority resort to informal, illegal and unauthorised developments (Egbu *et al.*, 2008, p. 130). For instance, Arimah and Adeagbo (2000, p. 287) found that "83% of housing developments in a middle-income neighbourhood in Ibadan, Nigeria, were

‘unauthorised’ because they had ‘contravened’ various aspects of the planning legislation”. This shows that local people are often not able to cope with the demands of statutory land administration systems, based on legal concepts and administrative systems.

Akrofi (2013) uncovered a challenge around landlessness in some peri-urban areas in Ghana, where customary land administration systems are operating independently of statutory systems. In such areas, the chiefs are the sole owners of land. They evict local people from their farmlands and sell the land to developers (Ubink, 2008). There may be no planning schemes that control development or protect environmentally sensitive areas in such dysfunctional customary areas (Akrofi, 2013). By themselves, statutory and customary land administration systems alone have negatively impacted on the livelihood strategies of local people (Ubink, 2008; Ikejiofor, 2009; Akrofi, 2013). Hybrid land administration systems, incorporating both statutory and customary land administration practices, may enhance the livelihoods of local people, because they are flexible and allow for a wide range of tenure options (Tanner and Baleira, 2006).

Many land administration reforms in sub-Saharan Africa have destroyed the livelihoods of local people, because they were not designed in line with the livelihood strategies of the people they intend to serve (Arko-Adjei, 2011). Many such land administration reform projects sought to replace customary land tenure and administration systems (Amanor, 2010). Local livelihoods in many sub-Saharan African countries are embedded in the customs and traditions of the local people (Asiama, 2004). Removing customary elements from land administration

can be tantamount to the destruction of the livelihoods of these people. In Lesotho, for instance, the transition of land administration from customary to statutory systems resulted in many people losing their farmlands, which were their main source of livelihood (Johnson, 2013). Many people sold their farmlands, due to the fear of land expropriation by the government (Johnson, 2013).

Urbanisation has caused changes in the use of customary land. For instance, prior to the twentieth century, many people in sub-Saharan Africa survived on subsistence farming (Kajoba, 1996). In current days, however, population increase has created the need for commercial farming, which requires modern land administration practices. It has been argued that investors will invest only if they can be assured of tenure security and formal land registration, which are associated with statutory land administration systems (De Soto, 2000; Peters, 2009). Youth in peri-urban areas in sub-Saharan Africa may also prefer to work in factories and companies, earning monthly salaries, rather than to engage in subsistence farming (Cotula, 2006). This implies that in customary environments where commercial farming is not feasible due to the small parcels of land and lack of formal land registration, the youth may not have access to work to earn a livelihood (Cotula, 2006). Kajoba (1996) has, however, warned that the introduction of commercial land use practices should not prevent those households who rely on subsistence farming from accessing land.

## **2.16 CONCLUSION**

Debates on land administration and tenure systems in sub-Saharan Africa have been reviewed in chapter 2. The debates centre on promotion, contestation and

consensus-building regarding customary and statutory land administration systems. It was observed from literature that scholars hold conflicting views regarding the role of statutory land administration and tenure systems in sub-Saharan Africa. Whilst some argue that land registration has no place in peri-urban customary areas in sub-Saharan Africa, and should not be tolerated (Njoh, 2006; Kasanga *et al.*, 1996), others maintain that land registration is the only way to improve land tenure systems in this region (De Soto, 2000; Peters, 2009). The main observation is that land registration is thriving in some developed countries in other continents. However, its applicability in sub-Saharan Africa remains a subject of scholarly debate. Further to this, existing literature suggests that countries in sub-Saharan Africa have different historical background in relation to customary land tenure systems. This has resulted in different views on whether customary tenure systems existed prior to colonisation or they were created by colonial governments (Hill, 1963). Notwithstanding the above contestation, current customary land administration practices in various countries in sub-Saharan Africa are traceable through historical records. For instance, in countries like Ghana, where the colonial government supported customary land tenure, the system has continued till today and has become part of the state-recognised systems of land administration (Ubink, 2008). This experience is somehow different from that in Kenya where there were early attempts to abolish customary land tenure during the colonial era (Okoth-Ogendo, 1976). It was further found in literature that customary law is dynamic and thus retains a certain element of unpredictability. Although there are certain customary practices that are common within a state, and are known and even codified in law by statutory agencies, others remain unknown to professionals who live outside the communities where such customary practices are known

(Ozoemena, 2016). This finding warns against recommendations and conclusions that seek to impose a particular land administration practice on a group of people without understanding their customary land practices. This may result in conflicting rationalities. One thing was clear from the literature review – land administration and tenure systems remain highly contextual, even amongst countries in the same sub-region, and within the regions of one state. For this reason, recommendations and conclusions on land administration and tenure systems should not be generalised to all countries in a region, or even within one country. Every case should be examined on its own merit, although comparisons may be made and lessons shared. In pursuit for an effective land administration and tenure system, the focus should be on what will work in a particular area during a particular period of time. This assertion brings out the main research question which this study seeks to find answers to – ‘What are the existing local land administration and tenure practices in Ghana that are consistent with national laws whilst also reducing conflicting rationalities?’ (see section 1.5 for other research questions). Chapter 3 attempts to position the land administration and tenure systems debate in a theoretical discourse. The chapter groups the various land administration systems theories into contestation, promotion and consensus-building land administration systems theories.

## **CHAPTER 3: THEORETICAL FRAMEWORK**

### **3.1 INTRODUCTION**

Chapter 2 demonstrated that two opposing views exist in respect of land administration systems in sub-Saharan Africa. One ideology seeks to promote the dominance of statutory land administration systems, whilst the other advocates for the continuous existence of customary land administration systems. This reveals the conflicting rationalities (Watson, 2002; Watson, 2003) in land administration in peri-urban customary areas in sub-Saharan Africa. In recent years, however, land administration systems debate has shifted from promotion and contestation to consensus-building. In this chapter, theories that inform the three main positions (promotion, contestation and consensus-building) of land administration systems are discussed. This study is underpinned by theories that promote consensus-building in land administration systems. Chapter 3 consists of six main sections. The first section is an introduction to the chapter. The second section outlines various land administration systems theories. There are conflicting views on land administration and tenure systems held by different theorists, and this prompts a discussion on the concept of conflicting rationalities in section three. Some scholars have expressed concerns about the level of statutory intervention in customary land tenure systems (Crooks *et al.*, 2007). To understand how best state land agencies can intervene in customary land administration processes, the concept of minimalism is discussed in section four. The fifth section deals with ontological and epistemological issues, and it is argued that critical realism may be

an appropriate paradigm for land administration systems research. Section six draws some conclusions on the issues discussed in chapter 3.

### **3.2 LAND ADMINISTRATION SYSTEMS THEORIES**

The different philosophical stances in respect of land administration systems are discussed under this section. Both customary and statutory land administration systems theories are discussed. Some recent research projects in land administration systems have sought to strengthen and improve customary land tenure and administration systems, rather than to replace them (Van Asperen, 2014). Many international organisations, such as the World Bank and the Food and Agriculture Organisation, have shifted their focus and policies from promoting only land market efficiencies to ensuring sustainable livelihoods and tenure security in sub-Saharan Africa (Knight, 2010; Holden and Bezu, 2014). This creates the need to understand the role of customary land administration systems in improving the livelihoods and tenure security of local people. Many scholars have subsequently joined the debate in favour of customary land administration systems (Abdulai, 2006; Bugri, 2008; Ubink and Amanor, 2008; Domeher and Abdulai, 2012; Abdulai and Ochieng, 2017).

Land administration reform projects in sub-Saharan Africa that set out to abolish all traces of customary tenure and administration systems have been critiqued by some researchers and found not to be useful (Deininger *et al.*, 2008). For instance, it has been reported that some people lost their farmlands in areas (e.g. Lesotho) where such reforms were implemented (Johnson, 2013). The new thinking in terms

of land tenure formalisation in sub-Saharan Africa is geared towards the strengthening of customary land administration systems (Knight, 2010). This study supports this new thinking. However, customary land administration systems may be strengthened if they are integrated with statutory land administration systems, rather than operating on their own. This study therefore attempts to examine the appropriateness and effectiveness of hybrid land administration systems in sub-Saharan Africa. This objective requires that the tenets of both customary and statutory land administration systems be well understood to find synergy between them.

### **3.2.1 Lockean property theory**

The Lockean property theory is premised on the principle of *unilateral appropriation*. This principle indicates that individuals can endeavour to acquire property rights which other people should respect and accept (Locke, 1993). Locke (1993) argues that people have ethical obligations to honour the property rights of others and that such obligation supersedes any social or customary agreements. The Lockean property theory asserts that natural resources (e.g. land) could be unowned and individuals work towards owning them (Arneil, 1994). This assertion continues to suggest that individuals who work to own such resources should be allowed to keep them permanently if the continuous use of the resource does not pose any threat to others (Locke, 1960). This viewpoint supports the argument for individual land title registration. The Lockean property theory is, however, labour-based and has been described as Locke's labour theory of property acquisition.

Locke (1993) assumes that there is enough land with no institutions to manage it or any medium of exchange to trade therewith. He argues that the first individual who is willing to work on the land does not require the permission of anyone to possess the land. This argument will not be favoured in certain customary societies where chiefs are regarded as landlords and must grant permission to people who wish to use land. For instance, Kandawire (1977) found that community members had to assist the chief in his work, in return for the right to occupy land in Southern Malawi.

Locke's labour theory of property acquisition indicates that one should cause a significant change on land to possess it. For instance, farming is regarded as a significant activity on land and a farmer can possess the land on which he/she farms. However, a hunter cannot possess the land on which he/she hunts as there is no significant change to the land through hunting (Lindsay, 2005). The above distinction between the farmer and the hunter is informed by an argument that the value of land is insignificant unless someone works on it to produce goods for consumption (Lemos, 1991). Some scholars assert that the labour-based theory defends possession of merely the value added by the farmer and not the full value of the land (Kramer, 2004; Lebovics, 1991). Other writers have questioned the relevance of the Locke's labour theory of property acquisition in modern civil societies where land is scarce, has gained monetary value and state land institutions have been established to manage it (Sreenivasan, 1995; Waldron, 1988). Waldron (1988) opines that the abundance of land is not an excuse for individuals to exclusively own land, and that people can enjoy subsistence through common ownership. This opinion supports the adaptation theory, which encourages the local

people to manage their own land in line with their customs (Delville, 2010). However, the Lockean theory seems to elevate farmers/pastoralists over hunter-gatherers while the latter use the land in a much more sustainable manner usually (Kajoba, 1996). It is related to use-based land value only – in line with the historical agricultural revolution. The theory cannot work in countries where hunter-gatherer societies, or even in a society where pastoralism and crop growing are supplemented by hunting and gathering. The latter land use demands commonage. That commonage should be protected from individual land grabbing for personal gain such as would be advanced by the Lockean theory.

As the name suggests, Locke's labour theory of property acquisition places much emphasis on human capital and how people should be rewarded for their labour. This labour-based view of land administration defends the proletariat, and is contrary to capitalism which only protects the interests of owners of capital (e.g. money) (Ollman, 1978; Hawken, Lovins and Lovins, 1999; Bacher, 2007) and assets that have capital value (e.g. land). Unlike the Locke's labour theory of property acquisition, many of the economy-based theories (e.g. replacement and De Soto theories) suggest that investors (i.e. the bourgeoisie) should be allowed to earn profit from their investments in land. The economy-based theories place more emphasis on the interests of investors than labourers who work on the land (Sjaastad and Cousins, 2009). Locke's labour theory of property acquisition, however, shares some views with the replacement and De Soto theories. For instance, Locke (1993) asserts that although GOD gave land to humankind in common, strict common ownership excludes individuals from accessing land. This

same view is held by De Soto; his theory argues that common ownership of land sometimes excludes certain groups of people from accessing land (De Soto, 2000).

To ensure equality in land access, Locke (1993) stresses that an appropriator should not misuse his or her land or take in excess of what they can use (*the no-waste proviso*). Some authors argue that subsistence farmers waste land as they don't put it to full use (Macpherson, 1962; Mautner, 1982). This argument suggests that people with modern industrialised technology are justified to appropriate land from peasant farmers. This suggestion supports the modernisation and evolutionary theories, which perceive customary land administration and tenure practices as primitive and a hindrance to economic growth (Boserup, 1965). Locke's labour theory of property acquisition at the same time protects subsistence farmers through its *charity proviso* - everyone has access to subsistence, irrespective of the level of technology (whether primitive or advanced) they use to add value to the land (Widerquis, 2010).

### **3.2.2 Evolutionary theories, modernisation theory and utilitarian property theory**

Many theories from both the physical and social sciences have been used in land administration systems research. The modernisation, evolutionary and some other economic theories have not been spared in this regard. Property theories are normally labelled as modernisation, utilitarian or evolutionary (Alexander and Peñalver, 2012). Such theories are usually opposite to pro-poor and adaptation theoretical approaches (e.g. fit-for-purpose) to the formalisation of land tenure systems (UN HABITAT, 2015: p.18).

### **3.2.2.1 Utilitarian property theory**

Utilitarian property theory advocates for property rights as opposed to moral rights. Whilst advocates of rights-based approaches argue that land rights should be recognised no matter the economic consequences, proponents of the utilitarian property theory are concerned with the impact on land tenure choices on both economic and human development (Alexander and Peñalver, 2012). To this end, the land tenure option that is likely to yield the highest positive outcome for most people is regarded as the best tenure option (Andrews, 2009). What remains contested, however, is what constitutes a positive outcome and how to measure the consequences (whether good or bad) of chosen land tenure options (Alexander and Peñalver, 2012: 12). Economy-based land administration theorists measure the outcome of land tenure options on the basis of their economic utility. To this end, rights-holders are expected to derive maximum benefits from their investments in land (Watson Hamilton and Bankes, 2010). This economic view of land tenure systems has negative consequences for vulnerable groups, as it exposes them to unhealthy competition which can consequently cause them to lose their land rights to investors.

### **3.2.2.2 Modernisation and evolutionary theories**

The modernisation theory postulates that societies move from a traditional and primitive state to a modern state that offers a better economic, political and social outcome for people (Coetzee, 2001). Proponents of the modernisation theory argue that the progression from a primitive to a modern state occurs in a linear and

irreversible fashion, and such progression is inevitable (Coetzee, 2001). Two economy-based evolutionary property theories (i.e. Demsetz's theory of evolution to private property and Hardin's tragedy of the commons) are underpinned by the modernisation theory. Demsetz (1967) argues that communal land tenure systems become ineffective in the face of population pressure. According to Demsetz (1967) land titling is the alternative efficient tenure system to achieve development during population pressure. Demsetz (1967) opines that there is lack of controls in communal systems, which allows people to misuse land at the expense of others. Demsetz (1967) believes that if people are allowed to own land privately, they will take better care of it.

Other argument of the Demsetz's theory of evolution to private property is that private landownership promotes intergenerational equity. This argument has also been used by pro-customary land administration and tenure systems theorists (Curry, 2001). Demsetz (1967) opines that individuals with private land will endeavour to protect their land and ensure its existence beyond their (individuals) lives on earth. He argues that communal landownership encourages the present generation to think of their current land needs only. What Demsetz (1967) fails to acknowledge is that only the descendants of present-day private landowners will continue to own land in future and that, the children of those who have lost their land due to privatisation will continue to be landless in future. This implies that future generations will continue to suffer from the current problems associated with land title registration. Demsetz's (1967) argument that private landownership promotes sustainable land management is thus refuted, as it only seeks to promote

the future interests of specific groups whose present families enjoy the benefits of land title registration.

The theory of the tragedy of the commons has also been used to advance the privatisation of land. Hardin (1968) argues that individuals tend to be reckless and wasteful when they know that someone else has to bear the costs of their actions. He opines that when land is accessible to all, individuals will continue to exploit it until they no more have the capacity to use the land anymore. In using common pasture land to illustrate the evil side of common landownership, Hardin (1968) asserts that individual herdsmen will continue to acquire additional cattle since the cost of feeding such cattle on common pasture land is borne by others and not only by themselves (herdsmen). This may continue until the pasture is deteriorated. Hardin (1968) thus supports Demsetz by arguing that the best way of sustaining land is through privatisation of land. Hardin (1968) opines that only those who are likely to use land efficiently are entitled to land, and that 'free riders' who take advantage of common landownership to waste land should be eliminated from land use. Locke (1993) argues that GOD gave land to humankind in common. Hardin (1968) therefore has no right to suggest that certain people should be excluded from the use of such a 'free gift'. The question of who will bear the costs of the landlessness of the 'free riders' is not addressed by Hardin.

Darwin (1859) argues that the current forms of life on earth originated through a common descent. The process of origination is believed to be dynamic and involves changes from one simple form to a more complex one (Darwin, 1859). For this reason, the theory of evolution has been described by some as descent with

modification (Barlow, 1963; Bowler, 2003). The theory of evolution is not argued from either a religious or biological perspective in this study; its relevance to land administration systems debate is, however, critiqued.

Some researchers argue that land tenure and administration systems have evolved from a simple (customary) form to a more sophisticated (statutory) form (De Soto, 2000; Peters, 2009). It is argued that in small rural environments where there are few people and land is in abundance, land may be effectively administered using simple tools and in line with the customs and traditions of the people (Lugard, 1965). Lugard (1965) further argues that customary land ownership may be appropriate in rural areas, as the land may not have much economic value and there may be no incentives for market-based land development and investment. As the rural area becomes urbanised and faces population pressure and land scarcity, more sophisticated tools and statutory instruments may be required to administer land (Boserup, 1965). At that stage, the land may have acquired economic value and attracted investment (Marquette, 1997). Pro-statutory land administration theorists argue that registered individual land titles, rather than communal land ownership, may propel investment in urban and peri-urban areas (De Soto, 2000; Peters, 2009).

The increase or decrease in the economic value of land due to changes in settlement forms (from rural to peri-urban to urban and the reverse thereof) is acknowledged in this research. However, the thinking that such changes could be pre-determined and occur in a linear fashion has been counter-argued (Whittal, 2014). Human behaviour, unlike biological actions and reactions, cannot be pre-

determined. It may not be necessary for a particular system of land tenure and administration to change due to changes in the settlement form (Whittal, 2014).

The evolutionary theory assumes that changes in customary land tenure and administration systems will automatically lead to an improvement in the livelihoods of local people (Demsetz1967). This may not be true, as certain changes in customary land tenure and administration systems in sub-Saharan Africa have affected the livelihoods of local people negatively (Johnson, 2013). Statutory land administration systems may attract investments to local areas, which may lead to economic growth but not necessarily to any improvement in the standard of living of the local people. When land becomes scarce due to population pressure, the strengthening of customary and traditional systems of administering land, rather than their replacement, may be required. The strengthening of customary land administration practices to cope with the current needs may be achieved by allowing both statutory and customary land administration systems to work together, as proposed in this study.

Whittal (2014) argues for an approach that accommodates diversity in land tenure, rather than one that reflects an evolutionary approach. Rakai (2005) warns against European acculturation in land tenure and administration systems in sub-Saharan Africa. Tenure duality and pluralism that promote desirable natural land tenure and administration systems should be encouraged (Rakai, 2005; Kihato and Royston, 2013). Such tenure arrangements “transcend worldviews, values, concepts, goals and institutions” (Whittal, 2014: p.15). The new approach to land administration systems design and tenure arrangements in sub-Saharan Africa is focused on land

administration tools that promote pro-poor, sustainable, scalable and gender responsive tenure arrangements (Enemark *et al.*, 2014). This new shift requires inclusivity and pragmatism in land administration systems design. Akrofi and Whittal (2011) emphasise the need to understand and strengthen existing customary systems, which are based on the customs and values of the local people. In creating more opportunities for statutory land administration systems to thrive in peri-urban customary areas, the existing customary tenure arrangements need to be recognised (Kihato, Royston, Raimundo and Raimundo, 2012).

Modernisation and the evolutionary property theories have been criticised for causing vulnerable groups to lose their land rights. It is further argued that modernisation is the cause of civil wars in many sub-Saharan African countries (Crooks *et al.*, 2007). This is partly due to reaction by the marginalised groups who feel isolated from the modernised development processes. The evolutionary property theories do not address the issue of costs associated with landlessness. Many of the socio-economic problems (e.g. unemployment, homelessness and drug addiction) in sub-Saharan Africa can be attributed to landlessness (UN HABITAT, 2015). When the so-called inefficient land-users lose their land, they mostly become liabilities to society. In sub-Saharan Africa, land tenure has multiple dimensions including economic, social, religious, cultural and political (IIED, 2006). For instance, the personhood perspectives of land place much emphasis on the emotional value of land rather than its economic value (Watson Hamilton and Bankes, 2010). Anderson's (2006) opportunity cost idea of customary land tenure also highlights the non-economic dimensions of customary land tenure, which

cannot be traded off for money. The evolutionary theories only recognise the economic dimension of land tenure, and their adoption has resulted in many social and political problems in sub-Saharan Africa (Whittal, 2014).

### **3.2.3 The replacement theory**

The main argument of the replacement theory is that customary land administration and tenure systems should be replaced with statutory land administration systems. The transition of economies in sub-Saharan Africa from agrarian to a more sophisticated industrialised economies has raised the question of the ability of customary land administration and tenure systems to cope with the current land demand (Sjaastad and Cousins, 2009). Some researchers have subsequently called for customary land holdings to be consolidated and communal land ownership and leasehold to be converted to freehold tenure (Gluckman, 1969; Harrison, 1987). Harrison (1987) opines that customary tenure systems encourage land fragmentation and common use which hinders economic growth. Gluckman (1969) asserts that customary tenure systems are governed by communal rights and do not allow individuals to hold freehold titles. Proponents of the replacement theory argue that communal ownership can result in tenure insecurity as individuals within the community cannot defend their private interests (Noronha, 1985). According to Ostrom (2000), group rights in customary tenure were only relevant for the purpose of subsistence farming in the pre-colonial era, and are no more useful in modern societies. Dorner (1972) opines that customary rights are inalienable, discourages investments and are a hindrance to development. The views held by the proponents of the replacement theory were drawn from economists such as Meek (1968), Ault

and Rutman (1979). The replacement theory is thus market based and holds the view that individual title registration is the basis of economic growth in any economy (De Soto, 2000).

Harrison (1987) argues that customary land tenure systems exclude non-members of the community from accessing land. The replacement theory suggests that land title registration is the only option to be considered in modern societies (Chimhowu and Woodhouse, 2006). Many governments in sub-Saharan Africa have bought into the philosophies held by the replacement theory, and have subsequently abolished customary land administration and tenure systems in their countries (World Bank, 1974).

The replacement theory is pro-western and disrespects the customs and traditions that inform customary land administration practices in sub-Saharan Africa. Not only that individual land title registration (as espoused by the replacement theory) may not be appropriate in customary areas in sub-Saharan Africa (Njoh, 2006), but assertions by advocates of the replacement theory bring back bad memories of colonisation. Colonisation and westernisation have sought to take away much of what Africans cherish (Okpala, 2009). The identity of Africans has been buried through western ideologies, and many African cultures and religions have succumbed to western pressure (Njoh, 2003). The few exceptions that the African person is bent on dying to protect include how they manage their own land (Kurwakumire and Kuzhazha, 2015). If the war for retention of the best customary land tenure is lost, it may imply that the war on emancipation from western dominance is an abortive attempt. For this purpose, traditional leaders in many sub-

Saharan African countries such as Ghana, have vehemently opposed all attempts to replace customary land administration and tenure systems in their countries (Njoh, 2003). In the Ashanti region of Ghana for instance, the Asantehene has become a strong defender of customary land administration and tenure practices. The authority of the Office of the Asantehene is recognised by the local people and state land institutions are not able to defy such authority (Ubink, 2008).

Meinzen-Dick and Mwangi (2009) assert that customary land tenure consists of a multiple of rights, rather than a single ownership. Proponents of the replacement theory fail to acknowledge this multiplicity of customary land rights (Mathieu *et al.*, 2003). As a result, the replacement theory disregards the complex nature of customary land tenure systems (Quan, 2008). The idea of individual land titling and registration tends to create ownership of land rather than overlapping bundles of rights (Benjaminsen *et al.*, 2009). Land is not just a commodity, but has important spiritual and cultural values, and defines the identity of the local people (Anderson, 2006). This implies that land tenure creates linkages between community members and also links them to the physical environment. Such interconnections further create a web and constellation of interests (UN-HABITAT, 2015: p. iv). There could be a number of rights and responsibilities allocated to individuals or group of individuals in a piece of land (Watson Hamilton and Bankes, 2010). The different interests are legally independent and can be defended in isolation at state courts. Such interests also remain dynamic and can change overtime (Simpson, 1976). The bundle of rights concept explains the complex nature of land tenure systems and suggests that tenure security cannot be viewed from an individual ownership perspective as postulated by proponents of

the replacement theory (UN-HABITAT, 2015). Honoré (1961) identifies eleven rights and incidents of ownership which go some way to elaborate on the bundle of rights concept (see UN-HABITAT, 2015: p 16-17, for the different incidents of ownership). Honoré's (1961) eleven rights and incidents of ownership suggest that different stakeholders may have different interests in a piece of land. Five main rights and incidents of Honoré's (1961) eleven rights and incidents of ownership (i.e. the right to own, the right to use, the right to manage, the prohibition of harmful use and the incident of residuary) are relevant to the debate on customary land administration systems. In customary areas, chiefs possess the allodial title to land (the right to possess). Individual community members, however, can claim usufruct rights in the same piece of land (the right to use). In the same vein, state land institutions and civil societies have the responsibility to manage the use of the same piece of land (the right to manage) to prevent possible disaster to other community members and the environment (the prohibition of harmful use). The other incident that has remained an area of concern is the incident of residuary. This incident indicates that the land in question can revert to the allodial owner when the user loses his/her usufruct rights. The question of how someone can lose his/her usufruct rights, however, remains unanswered. Whilst some proponents of land registration and individual land ownership argue that people should be allowed to use land permanently without ever losing such use rights (De Soto, 2000; Peters, 2009), some scholars admit that the transfer of land from usufruct land right holders to allodial title holders has not been transparent and fair (Ubink, 2008; Amanor, 2010; Arko-Adjei, 2011; Akrofi, 2013). For instance, it has been observed in certain customary areas in Ghana that chiefs expropriate land from

people who hold genuine usufruct rights in land (Ubink, 2008). The debate on land tenure security should take the above rights and incidents into consideration.

Land registration seeks to benefit primary right-holders only, and it automatically ends the rights and interests of all other parties (Österberg, 2002). Land title registration perpetuates disparity between the poor and the rich, as affluent groups are able to afford the cost of land title registration, whilst the poor may not (Nkwae, 2008). The implication of this is that whilst the rich enjoy exclusive rights in a piece of land, the poor will continue to share land rights with others. The group rights of the poor also remain unprotected under land registration systems, and may be exclusively acquired by the rich at a later stage (Bassett, Blanc-Pamard, Boutrais, 2007). No wonder recent land administration and tenure research projects suggest that land registration has failed to improve the livelihoods of people in sub-Saharan Africa (Nkwae, 2008).

#### **3.2.4 The De Soto Theory**

Both the De Soto theory and the replacement theory are regarded as anti-customary and they advocate for land titling and registration. The De Soto theory is, however, more pragmatic in its approach to the formalisation of customary land tenure systems. For instance, the replacement theory focuses on the absolute reform of rights and seeks to consolidate landholdings into registered freehold tenure. The De Soto theory on the other hand, recognises existing land rights and seeks to formalise them (Sjaastad and Cousins, 2009). According to De Soto (2000), poverty and the absence of formal property rights are causally linked. The main argument of the De Soto theory is that non-registration of property rights by the

formal system results in dead capital, which cannot produce any wealth for the poor to help them change their circumstances. Like the replacement theory, the De Soto theory postulates that land registration will culminate in economic growth and improved taxation (AusAID, 2000; Benjaminsen *et al.*, 2009). Anderson (2006: p.18), however, doubts the fulfilment of the “promises of rural credit, greater security of title and greater agricultural productivity” made by proponents of land title registration. For instance, Cotula, Toulmin and Hesse (2004) found no direct link between title registration and access to credit in rural Kenya. Domeher and Abdulai (2012: p.1) equally opine that land registration on its own will not be able to address “the problem of limited access to credit in the developing world”. Abdulai *et al.*, (2007) note that low income and high interest rates determine access to credit in sub-Saharan Africa, rather than land registration. The De Soto theory is underpinned by capitalism. It advocates for private ownership of land (O'Hara, 2003; Bacher, 2007; O'Hear, 2009). Like the capitalist, De Soto (2000) believes that investors should be allowed to use land to maximise profit, so that they will be motivated to expand their investments.

The De Soto theory can be critiqued from two main perspectives. Firstly, individual land title registration may lead to polarised societies, where people who exclusively own land can exploit those who do not (Scott and Marshall, 2005). This exploitation manifests itself not only in the form of employing cheap labour to work on the land, but also buying land from peasant farmers (mostly at low cost) and subsequently denying them their source of livelihood. For instance, Akrofi (2013) observed in certain peri-urban customary areas in Ghana that families who sold their farmland to investors had no source of livelihoods. Secondly, De Soto's

idea of capital places value on money more than natural and human capital (Fulcher, 2004). According to De Soto (2000), all forms of capital are dead if they do not translate into wealth creation. This assertion may mean that natural capital such as forests, land and water should be privatised (McCraw, 2011). Unrestrained by legislation, investors may ‘destroy’ these natural resources for profit. Human capital deals with human capacities, such as the skills and knowledge of employees (Itzkoff, 2003; Jamil, 2004). De Soto and other economy-based land administration systems theories argue that local people can sell their human capital (in the form of labour) when land is privatised and subsequently attracts investments (De Soto, 2000; Peters, 2009). However, the majority of people living in peri-urban areas in sub-Saharan Africa are unlikely to have skills and knowledge beyond peasant farming (Livingstone, Schonberger and Delaney, 2011). The majority of them are therefore employed at the lowest wage and continue to live in poverty (Livingstone *et al.*, 2011).

Like the other formalisation theories, the De Soto theory has faced some criticisms from a number of scholars. For instance, Ikejiofor (2009) raises the issue of the high costs of land title registration and the inability of the poor to afford this. As argued against the replacement theory, the De Soto theory may result in inequality as the rich who can afford to acquire and register land will do so at the expense of the poor (Obeng-Odoom, 2016). Although the De Soto theory claims to recognise and formalise existing land rights, Bromley (2009) opines that governments will not be willing and able to establish institutions that will protect the existing land rights of the poor. This may allow the rich to appropriate land which once belonged to the poor. Sjaastad and Cousins (2009) equally assert that governments in sub-

Saharan Africa may not be willing to transfer authority to the local people to lead the land formalisation processes. Meinzen-Dick and Mwangi (2009) raise concerns about possible unhealthy competition that land title registration may pose to well-functioning customary systems in rural areas. Such competition can sometimes distort effective local systems of land administration. Bromley (2009) admonishes governments in sub-Saharan Africa to maintain legitimate and well-functioning customary systems of land administration, rather than looking elsewhere for statutory systems that may not work well for the local people. Different groups (e.g. young and elderly people, men and women) exist in communities (Benjaminsen *et al.*, 2004). The De Soto theory, however, does not acknowledge the diverse land access challenges of these different groups (Toulmin, 2009). However, land title registration may affect land access by other vulnerable groups such as women, as they may not be able to access land through formal institutions (Benjaminsen *et al.*, 2009). The De Soto theory holds a simplistic view of customary land administration and tenure systems. However, the relationship between humankind and land remains intricate. The De Soto theory ignores such intricate nature of customary land rights. De Soto's (2000) assertion that land title registration will lead to improved access to credit has been refuted by some writers. For instance, Joireman (2008) argues that land title registration does not automatically provide capital for the poor. Holden, Otsuka and Place (2008) also observed that land title registration has not facilitated access to credit in sub-Saharan Africa. This implies that access to capital and investment in land depends on other factors (apart from title registration) that the De Soto theory does not consider.

### **3.2.5 The dual tenure theory**

The dual tenure theory postulates that both customary and statutory land tenure systems should be legally-recognised and allowed to operate alongside each other (Spiertz, 2000). The dual tenure theory argues that certain land can be held under western European laws, while others could still be held under customary law (Arko-Adjei, 2011 p. 34). The dual tenure theory promotes legal pluralism in land administration and tenure systems. It allows both customary and state land institutions to co-exist to manage the different legitimate systems of land tenure. Advocates of the dual tenure theory argue that customary land tenure cannot be completely replaced as some local people access land through customary means in many areas in sub-Saharan Africa (Bruce, 1988; Batungi and Ruther, 2008). For instance, it has been observed that statutory tenure works in urban areas in Ghana, while customary tenure systems work in rural areas (Obeng-Odoom, 2014). The peri-urban environment, however, remains a contested space, where statutory systems are fighting to takeover (Ikejiofor, 2007).

The dual tenure theory attempts to reach consensus between customary and statutory land tenure systems, by suggesting that both systems should be allowed to operate with no interference from the other. This viewpoint, however, does not promote cohesion between the two systems, and could create tension between statutory and customary land administration institutions and could also result in complicated legal challenges and land management ambiguities (Nkwae, 2006).

Dowuona-Hammond (2003) questions the practicality of the co-existence of customary and statutory tenure systems. Although the two systems can co-exist, it may be difficult for both of them to enjoy legitimacy at the same time. Customary land rights are based on different conditions from statutory tenure systems (Mulolwa, 2002). The different conditions may result in ambiguities in land tenure, whereby customary land rights may not be acknowledged by legislation. In addition, the co-existence of customary and statutory institutions and legal arrangements may pose a threat to tenure security as it may result in one land right type assuming supremacy over the other. For instance, if two people claim rights (one under customary law and the other, under statutory law) in the same piece of land, the dual tenure theory does not indicate whose right will be legally supported (Toulmin, 2009) and which land institution has the final decision making power (Benjaminsen *et al.*, 2009). The assumption that both customary and statutory land institutions have the same levels of decision making power will create an avenue for people to use the kind of land administration institution that will defend their claim (Toulmin, 2009), or to use both either in serial or parallel.

### **3.2.6 The adaptation theory**

The adaptation theory postulates that local communities should be allowed to manage their own land through the establishment of customary land administration systems that are entrenched in traditional institutional structures (Delville, 2010). The adaptation theory acknowledges the social, spiritual and political relationships between people and the land they occupy (Anderson, 2006). Advocates of the adaptation theory argue that individualisation of customary land rights weakens the social ties of groups and communities (Deininger, 2003; Cotula, 2007). Payne

(2004) argues that it is irrelevant to adopt an economy-driven approach to drive land tenure reforms in sub-Saharan Africa. Customary land tenure systems remain flexible and responsive to socio-economic dynamics, and may not require any external influence to deliver land efficiently to the local people (Njoh, 2006). This viewpoint is also supported by the World Bank (2006), as it accepts that customary land tenure systems is able to offer security of tenure to the local people at affordable cost. Whilst proponents of both the replacement and De Soto theories argue that customary land tenure discourages investment, those of the adaptation theory believe that usufruct customary rights promote investments (Amanor, 1999; Asiama, 2004).

Scholars of the adaptation theory hold various views on the relevance of customary land administration tenure systems. These views ranges from a total exclusion of statutory systems in customary environments to a hybrid form of land administration and tenure systems. For instance, those who opt for a locally-driven tenure advocate for different customary tenure categories for various customary groups in local communities. Their main argument is that there are diverse rationalities and rules that govern customary land tenure practices in different communities (Sikor, 2004; Toulmin, 2009). Toulmin (2009) opines that the diversification of customary land tenure practices makes it both costly and complicated to incorporate the different customary tenure practices into one system. Proponents of the replacement theory have used the above argument to discredit customary land tenure practices (De Soto, 2000; Peters, 2009). Meinzen-Dick and Mwangi (2009), however, maintain that individual land title registration will rather exacerbate the problem of diverse customary land tenure practices, by

destroying existing functional local systems. As land title registration is expected to be implemented by state land institutions, advocates of the adaptation theory question the capacity of central governments to implement a nationwide land registration programme in sub-Saharan Africa (Sjaastad and Cousins, 2009). For instance, huge backlog of title deed registration has been reported in many countries across sub-Saharan Africa (Toulmin and Quan, 2000). Toulmin (2009) subsequently argues that indigenous suitable land administration systems will offer a better option than a centralised land title registration programme which many governments in sub-Saharan Africa have no capacity to implement. Such programmes are unlikely to be sustainable as a result. Payne (2002) advises that ample time should be allowed for governments in sub-Saharan Africa to build adequate capacity of land sector departments before formal methods for improving tenure security could be considered. Hammond (2008) also suggests that land policy reforms in sub-Saharan Africa should take into consideration the restructuring of existing land formalisation arrangements and the necessary government infrastructure investments to ensure significant benefits. There should be a mechanism to assist governments in sub-Saharan Africa to predict land tenure policy outcomes. This will help governments to understand and mitigate possible impacts of land tenure policies on existing tenure systems (Payne *et al.*, 2009). Hammond (2008) opines that it is relevant for policy makers to have knowledge of the expected benefits to be derived from land policies. In many cases, certain land tenure policies are praised when introduced to sub-Saharan Africa. However, their implementation yields marginal or no positive impact on local people. For instance, Hammond (2008) discovered that, in Ghana, policies on land registration have little positive impact on the local people despite the world-wide veneration of such

policies. Payne (2004: p. 167) argues that land tenure systems “form a continuum of categories”. Acknowledgement of the critical differences between such ‘continuum of categories’ is vital for the achievement of policy objectives. Land tenure policies have the potential to facilitate or inhibit “security and rights for vulnerable groups, such as tenants and women” (Payne, 2004: p.167).

Economy-based land administration theories are top-down and exclude the local people (who are most often poor) from land administration processes. Locally-driven tenure systems, however, encourage community participation in land administration processes. The local people are capacitated to administer their own land, with little or no state intervention (Okpala, 2009). Sikor (2004) notes that involving the local people in land administration processes is a prerequisite for obtaining their approval and support for the implementation of a land administration programme. The resistance faced by both the replacement and De Soto theories in local communities in sub-Saharan Africa can be attributed to the non-involvement of local people in the proposed process of customary land tenure formalisation (Deininger *et al.*, 2008).

In her work on resistant texts, Winkler (2017) identifies some important factors that lead to community resistance to foreign interventions. Winkler (2017) warns against the trap of assumptions. Land administration interventions based on economic development have the tendency of assuming that land ownership in customary areas is individualised, and not based on communal ownership (De Soto, 2000). Many economy-based land administration theorists are caught in this web of assumption due to lack of knowledge of first-hand experience in

administering customary land. The first-hand experience of local people in customary land tenure systems precludes threats of tenure insecurity and economic retardation (Deininger *et al.*, 2008). The local people perceive land administration interventions based on registration as colonial-based opinions, and hence, resist them (Njoh, 2006). Land administrators should be aware of this decolonial thinking to understand the resistant texts at play in formalising customary land administration and tenure systems. Understanding the resistant texts in customary land administration and tenure systems change, may open new windows on how land administrators think on theorising land administration and tenure systems (Winkler, 2017).

Advocates of locally-driven tenure systems argue that local people should be allowed to utilise less sophisticated and affordable tools to administer their land (Deininger *et al.*, 2008). Many people living in peri-urban areas across sub-Saharan Africa remain poor and cannot afford high costs of land title registration (Lemmen, 2010). The main criticism against the adaptation theory is that it promotes disparity at the community level. Peters (2009) argues that certain vulnerable groups such as women and migrants are not allowed to participate in customary land delivery processes in some communities. Cases of dominance over customary land delivery processes by traditional elite have been observed in many areas across sub-Saharan Africa (Alden Wily and Hammond, 2001). Critics of the adaptation theory maintain that the current land administration challenges (e.g. marginalisation of women in land management, lack of land transaction records, multiple sales of the same piece of land and unplanned developments) in peri-urban customary areas can be attributed to lack of good leadership in customary areas

(Woodhouse, 2003). In defence, proponents of the adaptation theory have indicated that customary land institutions and traditional leaders should be capacitated to manage customary land (Bruce, 1988). Toulmin (2009), however, opines that capacitation of traditional leaders and customary landowners may give them more power to exploit vulnerable groups. This argument has implications for the contents of capacitation programmes for customary landowners. Such programmes should not only seek to equip customary landowners with land administration skills and tools. It should also seek to change their mind-sets about land administration. For instance, Ubink (2008) observed that certain chiefs in some peri-urban customary areas in Ghana claim sole ownership of customary land and use all the proceeds from land sales to benefit themselves and their immediate families at the expense of community development. The focus of customary land administration capacitation programmes (such as the Land Administration Programme currently being implemented in Ghana) should also include conscientisation on how customary landowners can use customary land delivery processes to promote community development.

Another group of the adaptation theory scholars advocate for an incremental improvement in customary land administration and tenure systems. They repudiate the idea of replacing customary land tenure systems and argue that customary land tenure systems should be supported in an incremental manner (Adams *et al.*, 2003; Norfolk and Tanner, 2007). According to Fitzpatrick (2005), gradual improvement in customary tenure systems can assist the local people to manage land in line with their current economic and land needs. Duran-Lasserve (2006) posits that although individual land title registration could be appropriate in sub-Saharan Africa, it will

require a number of years to move from communal landownership to private land ownership systems. The main advantage of an incremental approach to the formalisation of customary tenure systems is the opportunity for the local people to gradually upgrade their current ‘informal’ land rights to a more ‘formal’ ones. Many scholars and international donor agencies such as the International Institute for Environment and Development (IIED) and the UN-HABITAT support the notion of incremental approach to customary land tenure formalisation (IIED, 2006; UN-HABITAT, 2012). Scholars who believe in instant replacement of customary land tenure systems have criticised the incremental model on the basis that it does not provide a permanent and concrete solution to the challenges associated with customary land tenure systems (Fitzpatrick, 2005; Sjaastad and Cousins, 2009).

The hybrid approach to the formalisation of customary land tenure systems is associated with the adaptation theory. Supporters of the hybrid approach argue that land administration systems in customary areas should combine the strengths of existing local tenure practices with aspects of statutory tenure systems that are consistent with customary land tenure systems (Mulolwa, 2002). The right balance between customary and statutory land tenure systems, however, remains a scholarly debate (Delville, 2010).

### **3.2.7 The Land Management Paradigm**

Williamson *et al.* (2010) argue that land administration consists of more than its familiar functions of mapping, cadastral surveying and land registration. In their

Land Management Paradigm theory, they advocate for an integrated approach to performing the core land administration functions (land tenure, land valuation, land development and land use), with the aim of achieving sustainable development. These functions should be performed within a country's institutional arrangements and land policy framework, with an effective land information infrastructure (Williamson *et al.*, 2010).

Land tenure defines either the statutory or customary relationship between people and land (Williamson *et al.*, 2010). It regulates the behaviour of people in relation to land. Rules of tenure define how property rights to land are to be allocated within societies. The rights to use, control and transfer land, as well as associated responsibilities and restraints, are defined by land tenure. Williamson *et al.* (2010) identify four elements associated with land tenure (rights; responsibilities; restrictions; and risks). Rights refer to the privileges the landholder has in respect of the land. This may include the right to use the land for a particular purpose, or sell it. Although the landholder may have an exclusive right to the land, he/she equally has the responsibility of protecting it. To this end, he/she may not expose the land to any use that may endanger either the land or the local people. To ensure that people use their land responsibly, restrictions are imposed on the use of land – certain pieces of land may be used for specific purposes only. In many cases, such restrictions are imposed to prevent possible risks associated with the piece of land. For instance, swampy areas may be used only for small-scale farming, and not for physical developments, due to their exposure to flooding (which is a risk to the landholder).

The nature of land tenure (either statutory or customary) determines the kind of rule that governs the relationship between people and land. For instance, in a statutory tenure system, exclusive land rights can be assigned to either an individual or a corporate body (FAO, 1994). In a customary tenure system, however, a right of commons may exist, where each member of a particular community has the right to use a piece of land (FAO, 2007).

In statutory land administration systems, there are legislative instruments that govern land valuation and taxation. Individual land/property owners need to pay tax on their piece of land, depending on its size and location (Enemark, 2005). In customary environments, customary landowners (traditional leaders) collect part of the produce that comes out of the tilling of their land. This can serve as taxation (Kandawire, 1977). However, in customary areas where farmlands are increasingly being converted into residential and other developments, such taxation becomes a thing of the past (Arko-Adjei, 2011). Developers may pay a once-off amount (known as *drink money* in Ghana) and may not be liable to pay any amount to the customary landowner throughout the lease period (Akrofi, 2013). What has not been established, is whether there is a form of land valuation in informal land administration systems. However, in most developing countries, such as Ghana, people who trade in informal spaces are most often forced to pay taxes to the local government (Arko-Adjei, 2011). What remains in contention is why these squatters are charged taxes if their occupation is not recognised by law. In integrating statutory and customary land administration systems, the dynamics of the various forms of land valuation and taxation should be understood.

Land development is concerned with the alteration of land forms (from either a natural or semi-natural state) for the purpose of agriculture, housing, and other uses (Williamson *et al.*, 2010). In customary environments, agriculture remains the key purpose of land development. However, the introduction of sophisticated industries with their associated developments, such as roads and high-rise buildings, has led to a shift in this purpose (Knight, 2010). Land development can also be concerned with the extension of bulk infrastructure/permanent services (such as roads, bulk water and sanitation systems) to developable areas. The key challenge in most peri-urban customary areas in Ghana is the lack of such bulk infrastructure (Ubink, 2008). Development in many peri-urban customary areas in Ghana often precedes planning (in terms of infrastructure). As a result, development in these areas does not benefit from water connections or sewerage reticulation systems (Ubink, 2008).

Land use refers to the utilisation of a piece of land for a particular purpose (FAO, 2007). On controlling land use through zoning regulations, the land use is divided into residential, commercial, industrial, agricultural and educational use zones, among others. In statutory land administration systems this allows for the land managers to regulate spatial activities (Williamson *et al.*, 2010). Even though such tools may not be available in the customary environment, Okpala (2009) asserts that, in the past, customary land administration systems provided for each spatial activity (market and market squares, religious groves, farms and communal assembly places). However, customary land administration systems alone may not be able to cope in terms of ordering spatial activities in the midst of urbanisation and the unprecedented demand for land in current customary environments. This

study advocates for the integration of statutory and customary land administration systems to improve peri-urban customary land delivery in Ghana.

Land administration functions operate within policy and institutional frameworks (Arnot, Luckert and Boxall, 2011). Land management policies should take into consideration the complexity in the core functional components of land administration systems and their intricate relationships. Research on land administration systems should not isolate any of the functional components, as they are interconnected (Ackoff, Addison, Carey and Gharajedaghi, 2010).

In integrating land administration systems, there is a need to understand the relationship that exists between the core functions of land administration system as well as the institutional and policy frameworks within which these functions operate. According to Williamson *et al.* (2010), a country's land management is assessed on the basis of how rights in land are secured and transferred. It is also assessed on the basis of planning and control of the use of land, as well as the implementation of utilities, infrastructure and construction plans. Land management in most sub-Saharan African countries is considered poor, due to tenure insecurity, the haphazard use of land, lack of proper mechanisms for land valuation and proper planning in terms of utilities and infrastructure development (Shipton, 2002; Enemark *et al.*, 2014).

Enemark (2007) argues that sound land management may result from the comprehensive implementation of land policies. In many sub-Saharan African countries, however, there is no link between land use planning controls and land

values and the operation of the land market (Ubink, 2008). This may be due to poor administrative and management procedures (Williamson *et al.*, 2010).

Land policy may be associated with a number of tools, such as enhancing tenure security, land markets and the taxation of real property, depending on the objectives of a country's land policy (Enemark, 2005; Van Gelder, 2010). For instance, land policies in the developed world may be associated with land markets and real property taxation, whilst those in the developing world may be associated with security of tenure, land use control and creating land access for the poor (UN-HABITAT, 2008; Williamson *et al.*, 2010). This variation in respect of land policy objectives makes it ill-advised to transplant land policies from one country to another (Whittal, 2008). Enemark *et al.* (2014) argue that the focus of land administration systems in developing countries should be on meeting the land needs of the local people. This may be achieved through the development of land policies that are informed by the needs of local people (Simbizi *et al.*, 2014). The Land Management Paradigm is used to recommend improvement in hybrid land administration systems in Ghana (chapter 8).

### **3.3 CONFLICTING RATIONALITIES**

The concept of 'conflicting rationalities' was coined by Watson (2003) to explain how people view development differently. Schermbrucker (2010) has subsequently warned against the practice of taking a normative theoretical position at the expense of the rationalities held by local people. In his work on "conflicting rationalities in contested urban space", De Satgé (2014) uncovers the tension

between the acknowledgement of the contextual-related diversity and the desire of contemporary theorists to produce normative theoretical positions. This tension may explain why efforts to formalise customary land administration systems have often met with resistance by local people (De Satgé, 2014). Although community interest in land administration is regarded as important by land administrators, there are conflicts relating to the exact level of collaboration between customary and statutory land administration systems, as well as the extent of statutory intervention (Shipton, 2002).

The concept of ‘conflicting rationalities’ may help researchers to understand the dichotomy between statutory and customary land administration systems. Akrofi (2013) argues that customary land tenure and administration systems are underpinned by the African perception of land. However, land administrators who adopt formal strategies to manage land may hold different perception from the customary landholders, who have their own rationality informing management of land (De Satgé, 2014). The vastly different worldviews that inform the design and management of statutory and customary land administration systems explain the lack of integration between these two systems in many sub-Saharan African countries (Arko-Adjei, 2011).

African perception of land and land value systems needs to be given as much attention as the western perception of land. But the reality is that, in many areas, land administrators think that customary land administration systems (which embody African values and customs) do not constitute acceptable forms of land management and have to be replaced (De Soto, 2000; Peters, 2009). Implicit in this

ideology is the assumption that local people will accept the imposed statutory land administration systems as a necessary part of development and modernity/progress and change their way of thinking about land so as to avoid conflict with the imposed land management ideology. However, many research findings have shown otherwise (Gough and Yankson, 2000; Ray and Reddy, 2003; Kingwill, 2005).

The divergent views on land administration systems held by different groups need to be recognised and incorporated in land administration transition processes. The perceptions of statutory land administration systems by land administrators (based on the rationality of Western modernity and development) should be recognised. The perceptions of customary land administration systems by the local people (based on their customs, values and culture) should equally be recognised. This process of understanding the impact of the colonial era and western globalisation, and giving prominence and place to African philosophy and ideology is embodied in the emerging theory of decolonialisation. In integrating land administration systems, the diversity in land administration theories (those in support of customary and statutory systems) needs to be celebrated rather than repressed (Benner, 2016). The logic that informs the coping strategies by the less privileged in society should not be undermined in land administration transition processes. Policies on land administration transition may be resisted or embraced, based on the above considerations (Robins, 2003).

### **3.4 A MINIMALIST APPROACH TO LAND ADMINISTRATION SYSTEMS DESIGN**

Minimalism is used here to mean the minimum necessary intervention required by customary land administration systems to improve peri-urban customary land delivery. This study introduces the concept of minimalism into the land administration reform debate to promote simplicity in land administration systems design. Minimalism was first introduced in the visual arts, design and architecture during the 20th century (Brater, 1987; Strickland, 1993; Battcock, 1995; Hornstein, Nunes and Grohmann, 2006). The minimalist artist, architect or designer is concerned with simplicity, rather than a detailed decoration in his/her work (Pawson, 1996; Christopher, 2009). The minimalist argues that the less complicated and simpler a design is, the more it communicates with people (Christopher, 2009; Meyer, 2010). The concept of minimalism has also been introduced in literary works (Batchelor, 1997; Millburn and Nicodemus, 2014). Minimalist writers use words sparingly (Schwartz, 2008). They give a superficial description of the story and allow their readers to be involved in interpreting or judging the characters (Baker, 1988; Meyer, 2004; Epstein and Seely, 2006; McDonald, 2007; Obendorf, 2009; Blanco, 2011; Phillips, 2013).

The concept of minimalism has also found its way into the urban planning profession in recent times. Advocates of minimalism posit that comprehensive master planning, which predicts every spatial activity, has failed (Freestone, 2000; Dewar, 2011). They argue that spatial planning “should provide the minimum strong actions necessary to give direction, while allowing maximum freedom for the ingenuity and creativity of both designers and decision-makers to enrich the

emerging reality” (Dewar, 2011, p. 245). This new thinking in urban planning has led to strategic spatial planning that concentrates on key spatial interventions that require public investments to attract private responses (investments) (Harrison, Todes and Watson, 2008).

The concept of minimalism may be applicable to land administration systems design in peri-urban customary areas. The nature of land tenure and administration increases in complexity when settlements change from rural to peri-urban or urban forms (Arko-Adjei, 2011). Customary land administration systems may experience certain challenges in this process of change (section 1.2). Customary institutions may change to administer land effectively throughout this process. State land agencies should identify the key challenge(s) in customary land administration systems and assist in this process of change. However, customary land tenure and administration systems may not need to be replaced, as proposed by the accommodation view (Whittal, 2014).

Minimalism may be seen in land administration programmes implemented in certain countries in sub-Saharan Africa (chapters 6 and 7). In Botswana, the establishment of land boards (section 2.7.1) may be regarded as the minimum intervention required to replace customary leadership in customary land administration, and not to replace the entire customary land administration system. Customary land administration by land boards in Botswana can be regarded as a modified customary land administration system (Adams *et al.*, 2003). In Namibia, the minimum strategic intervention required in customary land administration was the establishment of communal land boards to assist traditional leaders in

customary land administration (Mundia, 2007). In Ghana, the Land Administration Project (LAP) has identified the need to capacitate chiefs in customary land administration (Arko-Adjei, 2011). In Mozambique, community members have been given the power to administer their land within customary rules and laws (Norfolk and Tanner, 2007). The above cases indicate that specific challenges in customary land administration systems can be identified and the required interventions applied accordingly. This may, however, not necessitate the replacement of customary land administration systems.

A minimalist land administration systems design should be simple and conform to the local situation. Complexities that may deter the local people from supporting such systems should be avoided as far as possible. For instance, hybrid land administration systems may lead to joint land development processes between customary and statutory land institutions. Simple techniques should be employed in the joint development process to assist the local people, who may not be familiar with sophisticated land administration tools.

Interventions to improve land administration systems and sustainable land management may include cadastral systems reform, improved access to land information, the development of spatial data infrastructure and land registration systems, among others (Enemark, 2003). It may be expensive to focus on all the above elements when designing land administration systems for peri-urban customary areas in sub-Saharan Africa. In addition, the land administration systems in such areas may not support the implementation of some of the above interventions (Enemark *et al.*, 2014). For instance, land title registration is not

allowed in certain parts of Ghana (Cashnoba, 2013). Furthermore, lack of modern cadastral infrastructure in many sub-Saharan African countries makes it difficult to implement effective cadastral systems (Chileshe and Shamaoma, 2014). Land administration systems design for peri-urban customary areas should therefore focus on the minimum required interventions. However, such minimum interventions should create opportunities for the local people to build an effective land administration system to meet their local needs. This study, for instance, identifies a joint land development process as an important area of focus to improve land administration in peri-urban customary areas in Ghana (section 8.6).

A minimalist land administration systems design should give direction in terms of future improvements to the systems. It should also be flexible and adaptable to respond to possible future changes in the design. Minimalist land administration systems design should also focus on specific land administration outcomes that will directly benefit the local people. This is also in line with the focus of the fit-for-purpose and pro-poor approaches to land administration (Zevenbergen *et al.*, 2013; Enemark *et al.*, 2014; Simbizi *et al.*, 2014). For instance, land administration systems that seek to promote market efficiencies only, may not directly benefit the local people in sub-Saharan Africa (FAO, 1994; FAO, 2002; Arko-Adjei, 2011). Land administration systems design for peri-urban customary areas in sub-Saharan Africa may focus on the improvement of tenure security and sustainable livelihoods for the local people (Simbizi, 2016). The objective of land administration systems in the developed world, however, may be different (Enemark *et al.*, 2014). In the developed world, land administration systems design may focus on the development of sophisticated cadastral and spatial data

infrastructure to promote land market efficiencies (Williamson *et al.*, 2010). This focus may not hold direct or immediate benefits for the peri-urban poor in sub-Saharan Africa. Benchmarking should therefore be avoided in a minimalist land administration systems design (Enemark *et al.*, 2014). Key to a minimalist approach to land administration systems design, is the identification of minimum strategic interventions that will produce direct results for the local people.

### **3.5 ONTOLOGY AND EPISTEMOLOGY**

The existence of knowledge and how to interpret it has become a bone of contention between social and pure science researchers. For this reason, researchers clearly indicate their positions in terms of what they perceive to be knowledge and how it is interpreted in research. The perception of what is knowledge and how it is interpreted swings between positivism and interpretivism (sections 3.5.1 and 3.5.2). However, it has been argued that some flexibility should be allowed and that both could be used in certain areas of research (Whittal, 2008). This section discusses the two extreme positions of positivism and interpretivism, and argues that critical realism may be appropriate in cadastral and land administration systems research. Before the discussion ensues, it may be appropriate to expatiate on the concepts of ontology and epistemology. Although some research reports attempt to explain these concepts (Whittal, 2008), their meaning and application in this study need to be indicated.

Ontology explains what exists and the meaning of the existence of an object (Jacquette, 2002; O'Hear, 2009). Ontology means "the theory of being" (Heidegger, 1999: p. 1). Ontology also explains the reality of being (Heidegger,

1999). There are different views of what is real. People may present reality in different ways, in line with their belief systems and research traditions. The challenge is how to bring such different views about reality together (Munn and Smith, 2008). What justifies one's belief about what is real, is known as epistemology (Audi, 2011). Epistemology explains the truth about what people perceive to exist. Epistemology questions why we believe what we believe (Audi, 2011). It is concerned with the justification of belief systems. Both ontology and epistemology help us to know about the existence of knowledge and how we know about such knowledge (Clough and Nutbrown, 2007). These two related concepts (ontology and epistemology) have implications for research in land administration and cadastral systems research. This is because research conclusions and recommendations are mostly informed by how the researcher perceives knowledge and its interpretation. This may explain why researchers hold different views on land administration systems (Munn and Smith, 2008).

There are different philosophies of what constitutes knowledge and how to interpret it. Such philosophical positions may include positivism, post-positivism, interpretivism, structuralism, post-structuralism, social constructivism, postmodernism, advocacy, pragmatism and critical realism (Deleuze, 2002; Sun, 2011). However, only positivism, interpretivism and critical realism are discussed in this study.

### **3.5.1 Positivism**

Positivism argues that real and true knowledge must be scientifically proven (Denzin and Lincoln, 1998). Any information that is not underpinned by logical

and mathematical reasoning, is not considered real by the positivist (Heisenberg, 1971; Denzin and Lincoln, 1998). Research projects that are informed by positivist ideologies adopt quantitative methods of analysing data. Positivism is concerned with the validity and verifiability of data, which attempts to explain the existence of knowledge (Gartell and Gartell, 1996). This has become known as the empirical data in research. Empiricism is a branch of positivism that argues that knowledge can be derived from facts only and not from speculations. Positivism argues that the physical world is governed and operated by a general set of rules and principles (Hanson, 2008). To the positivist, social relations have no link to or implications for the interpretation of what is considered to be knowledge. Positivism either rejects or proves the existence of knowledge through the scientific testing of propositions (Halfpenny, 1982).

Post-positivism was introduced to correct the drawbacks in positivist thinking and has been described as an internal criticism to positivism (Philips and Burbules, 2000). For instance, positivism assumes that the researcher/enquirer and the subject of enquiry or the research object are independent of each other (Philips and Burbules, 2000). This has been found to be untrue, as many research findings are influenced by the researcher's ideological affiliation, knowledge, background and values (Philips and Burbules, 2000). Post-positivism accepts the relationship between the researcher and the research, but warns against bias and subjectivity in research findings (Zammito, 2004).

Post-positivism agrees that although certain propositions may not have been proven, they can provisionally be accepted for further investigation. Such

propositions may be modified or rejected when they have been subjected to further testing (Lincoln and Guba, 2000). Unlike positivism, Post-positivism argues that not every knowledge claim may be verifiable (Philips and Burbules, 2000). This assertion leads to the concept of falsification (the possibility to prove a particular statement to be untrue) (Karl, 2005). Post-positivism maintains that belief systems should have some element of truth and validity (Popper, 1963), but avoids assertions that are based on individuals' subjective perceptions and considerations. This is in contrast with relativism, which accepts individual subjective viewpoints (Sahakian and Sahakian, 1993; Hanson, 2008).

Neither positivism nor Post-positivism on their own is sufficient for a research project that intends to integrate customary and statutory land administration systems, for the following reasons: Firstly, the African perception of land is based on belief systems that may not be scientifically proven (Barry, 2002; Chike, 2006). For instance, in certain customary areas in Ghana, people believe that there is a relationship between the dead and the living, and that the dead have placed the land in the custody of the living, for preservation on behalf of the unborn generation (Amanor, 2010). There are therefore spiritual, cultural and social relationships in customary land tenure and administration systems in Ghana. Although, such knowledge claims cannot be scientifically proven, they cannot be ignored in customary land administration systems studies. Since positivism and Post-positivism do not tolerate such 'unsubstantiated' knowledge claims, it cannot be used in customary land administration systems research, without also employing ideas from interpretivism to supplement such knowledge claims. Secondly, while conclusions drawn from most land administration systems research are based on

empirical observations, such research does not employ only a quantitative approach to data collection and analysis; most of the data is qualitative. The study does not reject positivism and Post-positivism entirely. It does, however, argue that positivist and interpretivist ideologies can be brought together to study cadastral and land administration systems (Whittal, 2008).

### **3.5.2 Interpretivism**

Interpretivism has been described as anti-positivism (Myers, 2008). Interpretivists argue that research findings can be ascertained through the interpretation of the research elements (Klein and Myers, 2001). They further argue that human interests can be integrated into research, and that knowledge is acquired through social constructions (Klein and Myers, 2001; Myers, 2008; Moore, 2009). Interpretivists repudiate the idea of an objective viewpoint. Unlike the positivist, the interpretivist believes in realism. The interpretivist accepts subjectivity in the interpretation of existing knowledge (Flick, 1998; Klein and Myers, 1999; Mingers and Willcocks, 2004). Interpretivists further argue that there is a direct link between the research and the researcher (Mingers and Willcocks, 2004). Interpretivist studies gather qualitative data through interviews and observations (Flick, 1998).

Interpretivism has been criticised for its advocacy for subjectivity, which may result in bias in research findings (Trauth, 2001). The personal viewpoints accepted in interpretivist studies make it difficult to generalise research findings. Data collected in interpretivist research may not be reliable, because of possible influence by the researcher (Trauth, 2001). Like positivism, interpretivism on its

own may not be adequate for land administration systems research, due to its exclusive support for qualitative research methods. Critical realism, on the other hand, allows for the use of both qualitative and quantitative methods in research.

### **3.5.3 Critical realism in land administration systems research**

Many philosophical approaches to the creation and interpretation of knowledge, such as positivism and interpretivism, fail to acknowledge the difference between ontology and epistemology (Brown, Fleetwood and Roberts, 2002). Critical realism, however, accepts that these two concepts are different and that statements about knowledge claims could either be ontological or epistemological (Brown *et al.*, 2002). Critical realism allows for flexibility in research and avoids conflict at the ontological and epistemological levels (Brown *et al.*, 2002). Critical realism distinguishes between a reality that exists independently of human knowledge and a reality based on social science and empirical knowledge (Archer, 1998; Reed, 2001; Fox, 2009). It, however, embraces both realities in social science research (Whittal, 2008). To the critical realist, the natural and social realities are perceived as open stratified systems of objects with causal powers (Morton, 2006).

Critical realism perceives knowledge to be in three stratified domains: the empirical domain; the domain of actuality; and the domain of reality. The empirical domain explains observations based on one's experiences (Collier, 1994). The actual domain explains events produced and reproduced by human structures. The domain of reality explains the processes within the human structures that produce and reproduce the events (Marsh and Furlong, 2002; Bhaskar and Callinicos, 2007).

Critical realism attempts to achieve a balance between objectivity and subjectivity in research through the use of both quantitative and qualitative methods. “It is a pluralist approach and an alternative to the traditional dualism of positivism versus interpretivism” (Whittal, 2008: p. 90). Critical realism accepts both the natural and social worlds as contributing to reality (Whittal, 2008). According to Bhaskar (1998), there are two forms of science – pure science and social/human science. Pure science is associated with transcendental realism, whilst social science is linked to critical naturalism (Bhaskar, 1998). Transcendental realism argues that scientific enquiries should be subjected to objective processes and experimentation. Transcendental realism warns against cause-and-effect relationships in science. It sees science as a progressive process, which should culminate in an improvement in the understanding of research objects (Dobson, Myles and Jackson, 2007). Critical naturalism, on the other hand, posits that the human world is in contrast with the physical world; therefore, research that seeks to study the human world should adopt a different approach from that proposed by transcendental realism (Dobson *et al.*, 2007).

The critical naturalist is concerned with the identification of scientific methods that explain social events. Critical naturalism acknowledges the rapid fluctuation in human structures (Lopez and Potter, 2001). Human structures produce and reproduce social actions. The replication and alteration of human actions make the study of human subjects difficult (Lopez and Potter, 2001). Critical naturalism argues that social science research methods, including the qualitative analysis of

human structures, will help to unlock the complexities in human behaviour (Sayer, 1992).

Critical realism brings both transcendental realism and critical naturalism together to understand the reality and truth about science (Sayer, 2000). As such, critical realism is applicable to both social and natural sciences. It acknowledges that both positivism and interpretivism contribute to an understanding of what is real, and that neither the quantitative nor the qualitative approach alone should be preferred, but that they should ideally be combined (Whittal, 2008: p. 90).

Critical realism has been severely criticised. Jackson (2006), for instance, argues that it will not be possible to bring both positivism and interpretivism together, since they are incompatible. However, it has been shown through recent research that both positivism and interpretivism can be employed in studying cadastral and land administration systems (Whittal, 2008; Akrofi, 2013). Nevertheless, the claims of critical realism should be subjected to wide criticism to ensure that the truth is approximated as best as possible (Whittal, 2008: p.90).

Critical realism may be considered appropriate for land administration systems research, for the following reasons. Firstly, customary land tenure and administration systems are rooted in the custom and cultural values of local people (Chike, 2006). This makes it necessary to employ qualitative approach to a study of customary land tenure and administration systems. However, the observation of boundaries, land values and land information may be subjected to quantitative analysis (Akrofi, 2013). This implies that land administration systems research is

composed of both transcendental realism and critical naturalism. Land tenure and administration systems research requires an approach that supports the integration of both quantitative and qualitative methods in observing the social and natural aspects of land (Whittal, 2008; Harre, 2009). Critical realism integrates both quantitative and qualitative approaches to generate new knowledge, and may therefore be considered appropriate for land administration systems research.

Secondly, the complexity of the study of human phenomena is an indication that both qualitative and quantitative methods need to be employed in their investigation (Creswell, 2009). Critical realism can adopt either a concurrent or sequential use of quantitative and qualitative approaches in the investigation of a phenomenon (Creswell, 2009). The combination of both quantitative and qualitative methods in research has been found to be more useful in understanding a research problem than the use of either one alone (Whittal, 2008; Creswell, 2009; Akrofi, 2013).

Critical realism adopts a pluralistic approach to derive knowledge about a research problem (Brown *et al.*, 2002; Creswell, 2009). It is not allied to any single philosophy (Krauss, 2005). It draws from both positivism and interpretivism knowledge claims. It does not draw any line between what is perceived to be true and what is really true (Krauss, 2005; Creswell, 2009). Researchers who adopt critical realism believe in practical truth (truth is what works at the time). For this reason, research that employs critical realism can combine both quantitative and qualitative approaches. Creswell (2009) advises researchers who adopt critical

realism to indicate the purpose and the need for integrating quantitative and qualitative data in their research.

#### **3.5.4 The ontology of statutory land administration systems**

Like positivism, statutory land administration systems are based on the quantitative measurement of land parcels. The cadastre thus becomes a key instrument in statutory land administration systems (Williamson *et al.*, 2010). The focus of statutory land administration systems in many countries is on the development of sophisticated land information infrastructure (such as the GIS) to give accurate land information in terms of parcel size, ownership, value and use of land (Enemark, 2001). In statutory land administration systems, any land claim that cannot be proven in terms of documentation is not likely to be supported by legal provisions (Arko-Adjei, 2011). For this reason, land title registration becomes important in statutory land administration systems (De Soto, 2000; Peters, 2009). This, however, is contrary to customary land administration practices, especially the ones in some parts of Mozambique, where land ownership is accepted on the basis of neighbours' testimony and not on documentary proof (Norfolk and Tanner, 2007).

Statutory land administration systems further assess land value on the basis of investment returns on a parcel of land. This explains why, in many countries, land market efficiencies and the ability to collect property tax based on market value have become the main focus of statutory land administration systems (Arko-Adjei, 2011). Supporters of statutory land administration systems argue that individual land title registration and freehold tenure systems will encourage investments and

should therefore be promoted (De Soto, 2000; Peters, 2009). Individual land title registration and tenure freehold systems are, however, not supported by customary land tenure systems in Ghana (Akrofi, 2013). Researchers who argue for the replacement of customary land administration systems claim that customary systems lack proper cadastral and other land management tools to promote efficient land market systems (De Soto, 2000; Peters, 2009).

### **3.5.5 The ontology of customary land administration systems**

In many parts of sub-Saharan Africa, land is perceived as an inheritance handed over by the ancestors to the living, to be kept for future generations (Asumadu, 2003). This perception of land places a huge responsibility on customary leaders and their communities to manage land in a manner that will not disadvantage future generations. Customary land administration systems are underpinned by this responsibility. In some customary environments, it is believed that the people have some spiritual ties with the land (Njoh, 2003). To this end, customary land is regarded as a deity in many areas in sub-Saharan Africa (Akrofi, 2013). In certain parts of Ghana, for instance, it is believed that if customary land is allocated inappropriately, the responsible individual may incur the wrath of the gods (Asiama, 2004). For this reason, sacrifices are offered regularly for blessings and good harvests in such areas (Kasanga *et al.*, 1996).

The way land is perceived in the African context is rooted in the concept of community (including the dead and the unborn). Although the identity of individuals is recognised, their identities are intertwined with the community

(Chike, 2008). According to Chike (2008), the African worldview of land has three aspects: religion, community and time. He relates the aspect of religion to the spiritual relationship individuals have with land, and community to the relationship between individuals and their communities. The concept of community focuses on the traditions, cultures, and values that define the people (Eze, 2008). Dzobo (1992: p.132) defines the concept of community as, “we are, therefore I am, and since I am, therefore we are”. This perception of community creates a sense of belonging and patriotism among community members. Chike (2008) argues that Africans’ perception of time points to actual events and not to any abstract chronology. Akrofi (2013) argues that such perception influences the duration of tenure. This may explain why in many customary environments, leasehold tenure systems are preferred to freehold tenure systems (Amanor, 2010).

### **3.5.6 The epistemology of customary and statutory land administration systems**

Customary land tenure resides with the community (vested in traditional leadership). To this end, no single individual owns land in customary areas in Ghana (Asumadu, 2003). Since customary land does not belong to anyone, no-one has the authority to sell customary land. Customary land is leased to individuals for specific purposes (e.g. farming, housing, etc.) and for a specific time. Since customary land is not sold, individuals who require them (customary land) do not have to pay the market price (Asiama, 2004). For instance, in Ghana, the money paid for accessing customary land is regarded as *drink money* (Asiama, 2004).

Prior to the 21<sup>st</sup> century, people only had to present a bottle of drink to the chief to access customary land in Ghana (Asiama, 2004). There was no need for them to pay money. The drink was used to offer a sacrifice to the earth god, asking for the permission of the ancestral spirits to allocate such land for development (Asiama, 2004). This practice has, however, been modified. In modern customary areas in Ghana, people who acquire land pay some amount of money (although this is still regarded as *drink money*) (Kasanga *et al.*, 1996).

Because land is communally owned in customary areas, customary land cannot be held permanently by one person (Amanor, 1998). Individual land title registration and freehold systems are therefore, not encouraged in customary environments (Atwood, 1990). However, one may enjoy full land rights throughout one's lifetime, and even bequeath such right to one's children (Arko-Adjei, 2011). In customary environments, land administration and management systems seek to achieve spiritual and cultural objectives, rather than economic and environmental objectives (Njoh, 2006).

Statutory land administration systems interpret effective land administration systems as those having modern cadastral systems and sophisticated spatial data infrastructure to promote efficient land market systems. The values and cultures of people associated with the land are not considered in promoting effective statutory land administration systems (De Soto, 2000; Peters, 2009). The African worldview of land is not respected by statutory land administration systems in some sub-Saharan African countries, and this has deepened the statutory-customary land administration divide (Abdulai and Ndekugri, 2007).

### **3.6 SYSTEMS THINKING APPROACH TO LAND ADMINISTRATION RESEARCH**

A systems thinking approach has been identified as useful when investigating a phenomenon with many components (Murphy, Knight and Burlington, 2010), such as land tenure and administration systems (Whittal, 2008; Simbizi, 2016). Many researchers (Fourie and Van Gysen, 1995; Barry and Fourie, 2002; Bennett, 2004; Bennett, Wallace and Williamson, 2008) in land administration and cadastral systems have used social systems approaches underpinned by principles of holism. Fourie and Van Gysen (1995) argue that peri-urban land can be administered efficiently if its core functions are seen as a whole. This argument is also supported by the Land Management Paradigm (Williamson *et al.*, 2010), which is adopted in this study (section 3.3.4).

There are four core functions of land administration systems – land tenure, land use, land development, and land value (Williamson *et al.*, 2010). These core functions operate within institutional frameworks that are influenced by customs, culture and politics (Williamson *et al.*, 2010). The core functions of land administration systems should not be investigated in isolation. There should be a holistic approach to the investigation of cadastral and land administration systems (Williamson *et al.*, 2010).

The core functions of land administration systems should be understood as an integrated whole and not segregated parts (Nkwae, 2006). Zevenbergen (2002) argues that land administration research findings can be distorted if the core functions of land administration systems are investigated in isolation. This study

acknowledges the relevance of a systems thinking approach in studying land administration systems in peri-urban customary areas. Data was collected on land tenure, land use, land value and development, as well as the institutional and legal frameworks within which land administration systems operate in the case study areas. However, social systems tools are not employed in this study, as the study's main objective is to generalise to the theory of good hybrid land administration systems in peri-urban customary areas in Ghana, and not to investigate the linkages between the core functions of individual land administration systems (either statutory or customary).

### **3.7 CONCLUSION**

Chapter 3 has given some insight into land administration and tenure systems theories and knowledge claims that are applicable to research in general. The Lockean property theory is found to be complicated. Not to say that the theory is contradictory, it seems to support private ownership of land, and yet gives preference to labourers to permanently own land. This is found to be interesting as many land administration theories that promote private ownership of land advocate for investors (mostly owners of capital) to own land. For instance, the evolutionary, De Soto and the replacement theories postulate that peasant farming does not promote economic development and therefore, investors with modern technologies should be given an uninterrupted private access to land. The relevance of the Locke's labour theory of property acquisition in contemporary land administration and tenure discourse has been debated by some scholars (Simmons, 1992; Lamb and Thompson, 2009). What makes the theory questionable is the non-realisation

of its key assumptions. For instance, land is no more in abundance, money plays a vital role in land transactions and there are established state land institutions to manage land (Lamb and Thompson, 2009). It is thus impossible to suggest that individuals can access land without either paying for the land or seeking permission from the appropriate authorities.

The economy-based land administration and tenure systems theories (such as evolutionary, De Soto and replacement) that advocate for individual land title registration and private land ownership have equally been critiqued (Antwi-Boasiako, 2017). They are regarded as anti-customary and seek to abolish communal and all forms of group tenure systems. Such approaches to customary land tenure formalisation have been found to be expensive and unsupportive of local means of accessing land. The adaptation theory serves as a counter-theory to the set of economy-based theories. Its support for local land administration practices is noted in recent literature (Arko-Adjei, 2011). However, concerns of the inability of such local land administration practices to cope with current land needs have been raised by some scholars (Demsetz, 1967; Hardin, 1968; De Soto, 2000; Peters, 2009). The arguments against both individual land title registration and communal land ownership may not suggest that both should be allowed to work in parallel as espoused by the dual tenure theory. The parallel existence of the two systems has been found to create tension between statutory and customary land administration institutions and can result in complicated legal challenges and land management uncertainties (Nkwae, 2006).

The differences in the philosophical stances on land administration and tenure systems indicate that Watson's (2003) ideology of conflicting rationalities can be accommodated in recent land administration and tenure systems discourse. Scholars who engage in the debate between individual land title registration and communal landownership should understand the diverse views and interests held by each side. A consensus-building approach that negotiates between customary and statutory land administration and tenure systems has been echoed in recent literature (Delville, 2010). Such consensus-building approach is in line with hybrid land administration systems. Many pro-poor land administration models such as the fit-for-purpose, the social tenure domain model, the hierarchies of rights and Whittal's (2014) version of the continuum of land rights model support a pluriversal, inclusive and hybrid approach to land administration and tenure systems. However, scholars who advocate for hybrid land administration systems still grapple with the appropriate level of statutory involvement in customary land administration and tenure practices. Some scholars suggest that customary land administration systems may need a strategic and minimal intervention (from statutory systems) to efficiently manage peri-urban customary land (Adams *et al.*, 2003). The design of land administration systems for peri-urban customary areas should focus on the most important issues that promote tenure security and livelihood sustainability. When it becomes necessary for statutory land administration systems to intervene in customary land administration practices, such intervention should focus only on specific areas of weakness in the customary systems. Statutory land administration systems should not attempt to replace customary land administration systems as advocated by the replacement theory (Noronha, 1985). The concept of minimalism as known in the fields of arts and

architecture may help in understanding the required level of involvement of statutory systems in customary land administration practices. The methodological framework for the research is discussed in chapter 4.

## **CHAPTER 4: METHODOLOGICAL FRAMEWORK**

### **4.1 INTRODUCTION**

Chapter 2 reviewed current debates on land administration systems. Chapter 3 subsequently positioned the different views on land tenure systems in theoretical discourse. Chapter 4 presents the study's methodological framework. Various methodological approaches are explored in this chapter. The chapter presents the research methods and procedures followed in this study. The design, selected case study areas, instrumentation and methods for data collection, analysis and presentation are also discussed in this chapter. The chapter further discusses procedures implemented to enhance the validity and reliability of the research, as well as ethical concerns. The main argument in this chapter is that the case study method is relevant for studying land administration systems. Chapter 4 is divided into seven sections. Section one is an introductory section. Section two presents the research design. This section discusses the case study approach to research. Section three gives an overview of methodological perspectives. The selection of the case study areas is discussed in section four. The criteria used in the selection process are outlined in this section. The data collection processes are outlined in section five. Section six presents the data analysis processes and section seven concludes the chapter.

### **4.2 RESEARCH DESIGN**

The design of this study was informed by the central research objective of examining the appropriateness and effectiveness of hybrid land administrations

systems in sub-Saharan Africa. Three primary case studies (from peri-urban customary areas in Ghana) and four secondary case studies (across Southern Africa) (Table 1.1) were undertaken, with a particular focus on the land administration practices in such areas.

Yin (2003) suggests that case study research is an appropriate strategy for investigating real life events in their natural settings. This is because it captures both the phenomenon and its context. The case study approach was considered well suited to understand the phenomenon of land administration systems within the natural settings of the case study areas in which they are practiced. In addition, the case study method is promoted as a sound and rigorous method in studying land administration and cadastral systems (Çağdaş and Stubkjaer, 2009). Furthermore, land administration systems are highly determined by social and cultural factors, and as such, local conditions need to be understood in the development and reform of land administration systems. The case study method was deemed appropriate for this research, as it (research) aims to improve land administration systems within a specific context (Yin, 2003).

The case study method has been used by many researchers in land administration and cadastral systems (Whittal, 2008; Arko-Adjei, 2011, Akrofi, 2013; Enemark *et al.*, 2014; Simbizi, 2016). “A case study is an empirical inquiry that investigates a contemporary phenomenon within its real-life context” (Yin, 2003: p.13). A case study research strategy includes a technique for design, data collection and analysis. Case study research has been found useful in promoting understanding of complex issues (Scholz and Tietje, 2002; Zaidah, 2007). The case study method

has been applied in many fields of study. For instance, Grassel and Schirmer (2006) used the case study method in the field of sociology, Lovell (2006) used it in law, while Taylor and Berridge (2006) employed it in medicine. The case study method has been used in understanding the impact of government programmes on intended beneficiaries (Zaidah, 2007). Çağdaş and Stubkjaer (2009) discovered that 100% of the sample taken on doctoral research on cadastral development used case studies. Zaidah (2007) argues that some important data that needed to be collected in most studies could have been obscured if the case study method was not employed.

Using the case study method to study land administration systems in Nigeria and Ghana respectively, it was discovered that data obtained from the study in Nigeria differed from the data obtained from Ghana (Gough and Yankson, 2000; Ikejiofor, 2009). Some researchers have cautioned against generalisation of conclusions in case study research, particularly when it depends on a single case exploration (Tellis, 1997; Yin, 2003). Hamel, Dufour and Fortin (1993) stress the need to set parameters and objectives when using the case study method.

Tellis (1997) contends that, using a case study, a researcher is able to go beyond the quantitative analysis of a research object and understand its behavioural condition. He advises, however, that both quantitative and qualitative data need to be included in a case study to understand both the process and outcome of a research object.

Since the case study method has received criticism in terms of its lack of robustness as a research tool (Miles, 1979), Zaidah (2007) places paramount importance on crafting the design of case studies. The case study design may include either single or multiple case studies. Nkwae (2006) used the multiple case study method to study land tenure and administration systems in some selected countries in sub-Saharan Africa. While discovered that each locality was unique, useful lessons pertaining to land problems could be drawn from the study. Whittal (2008), on the other hand, found the single case study useful in her research on fiscal cadastral systems. The complexity of the phenomenon being investigated may determine whether single or multiple case study methods should be employed (Zaidah, 2007). This study uses multiple case studies from selected peri-urban customary areas in sub-Saharan Africa to study land administration systems. Each case is first analysed within its unique context, using the good land governance framework, and lessons pertaining to hybrid land administration systems are drawn for cross case study analysis (chapter 7).

The case study method may employ sampling techniques in determining the study population. Manyong and Houndekon (2000) used the stratified and random sampling methods to study the linkage between land tenure systems and the application of land improvement technologies in Benin. They used descriptive statistics such as means and frequency of events to describe the tenure arrangements. They found that security over land was a determining factor for the adoption of a land-improving technology.

The design of the case study was based on multiple cases of land administration practices from selected peri-urban areas across sub-Saharan Africa. Land administration institutions and processes were analysed within the context of the different land administration practices in the selected peri-urban customary areas. The research design included seven peri-urban case study areas (from Ghana, Botswana, Namibia and Mozambique). The study began with a general analysis of statutory and customary land administration systems in the selected countries. It then continued to analyse land administration practices in the selected peri-urban areas. The selected case study areas were categorised into primary and secondary (section 4.4). Ghana was considered a primary case study area, due to the existing competing nature of land administration systems in some parts of the country (Arko-Adjei, 2011; Akrofi, 2013). All the case studies were analysed, using the good land governance framework (chapter 5) to identify a group of desirable elements that could be applicable to peri-urban land administration in Ghana.

### **4.3 METHODOLOGICAL PERSPECTIVES**

Varied methodological approaches are available to inform a study in land administration and cadastral systems. Whittal (2008: p.107) argues that a “holistic approach to problem solving requires the consideration of the multidimensional nature of the complex real world”. This argument justifies the need for a multi-perspective approach in considering an appropriate methodological framework for this research (Whittal, 2008).

The method adopted in this study is a mix of quantitative and qualitative research approaches. The study recognises the intricate nature of human behaviour and how it cannot be quantified or predicted. Qualitative methods were therefore deemed useful in revealing and understanding the complex human behaviour associated with land administration systems. The study equally acknowledges the fact that land administration systems are concerned with the cadastre, which can be better understood through a mix of qualitative and quantitative methods. This is the reason why both qualitative and quantitative approaches were used in this research, with an interpretive approach to data analysis. These approaches allowed for in-depth analysis of land administration systems in the selected case study areas.

#### **4.4 SELECTION OF CASE STUDY AREAS**

Eight countries (Lesotho, Uganda, Kenya, Zambia, Ghana, Mozambique, Botswana and Namibia) were initially considered for this study. Four of them (Ghana, Mozambique, Botswana and Namibia) were selected, based on the following criteria. Firstly, customary cultures and practices in sub-Saharan Africa are aligned with customary practices in peri-urban Ghana (Arko-Adjei, 2011; Akrofi, 2013). Therefore, the case studies are all in sub-Saharan Africa since the case study findings are intended to be generalised to peri-urban Ghana.

Secondly, the chosen sub-Saharan African countries were all once colonised and thus share some common historical processes. Njoh (2006) argues that countries in sub-Saharan Africa had achieved significant success in customary land administration prior to the European conquest. The colonial establishment, however, attempted to replace customary land administration systems with

European varieties, and land laws and policies were simply transferred to the colonies (Njoh, 2006: p. 21). The essence of the above criterion was therefore to assess how customary land administration systems in the selected case study areas have been successfully integrated with statutory land administration systems to form a functional hybrid system.

The third criterion was based on the successful implementation of hybrid and novel land administration systems. Since the study seeks to investigate integrated land administration systems in sub-Saharan African countries, the chosen case study areas had to exhibit this integration. This criterion required specific cases to be selected from the case study countries. Such case study areas had to display a practice of novel or hybrid land administration systems. The case study countries had to meet all four criteria before they could be selected. Lesotho could not be included, since customary land administration systems have been abolished in both urban and peri-urban areas (Johnson, 2013). Although Uganda, Kenya and Zambia met the first two criteria, they were not included in this study due to lack of adequate evidence of the successful implementation of hybrid land administration systems in those countries (Van Asperen, 2014). Ghana, Mozambique, Botswana and Namibia met the first three criteria and were assessed against the fourth criteria.

The choice of cases of reasonably successful hybrid land administration systems could lead to the criticism of bias in the results and weakened generalisation. However, only reasonably successful cases will be able to reveal the common aspects contributing to their success in the multiple case studies. Also, the results

of this case study are intended to be generalised to theory of good hybrid land administration systems in peri-urban areas in Ghana, and not to other cases of land administration in general.

The fourth criterion was based on the nature of the settlement. The case study areas from the selected countries had to be peri-urban areas, since it is to peri-urban Ghana that the case study findings are to be generalised. The study therefore seeks to identify certain peri-urban areas in sub-Saharan Africa where strides have been made to ensure hybrid land administration systems.

Based on the above criteria, the following seven peri-urban areas were selected from the four countries: Esereso, Adumasa, Yasore (Ghana), Tlokweng (Botswana), Mocuba (Mozambique), Olukonda and peri-urban Oshakati (Namibia). Customary land delivery and allocation processes, as well as customary and state land institutions, in the selected case study areas were analysed, using the good land governance framework. Table 4.1 illustrates the case study selection process. It can be seen from Table 4.1 that Lesotho, Uganda, Kenya and Zambia were discarded, chiefly due to the fact that none of them had successfully implemented hybrid land administration systems. For this reason, they were not assessed in terms of the fourth criterion (availability of peri-urban settlements). The motivation for the selection of specific peri-urban cases within the case study countries is given in sections 4.4.1 and 4.4.2.

**Table 4.1: Case study selection**

Country	Criteria				Comment
	Location	Formerly colonised?	Successful implementation of hybrid LAS?	Availability of peri-urban settlements?	
Lesotho	sub-Saharan Africa	Yes	No	Discarded	Rejected
Uganda	sub-Saharan Africa	Yes	No	Discarded	Rejected
Kenya	sub-Saharan Africa	Yes	No	Discarded	Rejected
Ghana	sub-Saharan Africa	Yes	Yes	Yes	Selected
Zambia	sub-Saharan Africa	Yes	No	Discarded	Rejected
Mozambique	Sub-Saharan Africa	Yes	Yes	Yes	Selected
Botswana	Sub-Saharan Africa	Yes	Yes	Yes	Selected
Namibia	Sub-Saharan Africa	Yes	Yes	Yes	Selected

#### 4.4.1 Primary case study areas

The primary case study areas include Esereso, Adumasa and Yasore. These three areas were selected due to their unique peri-urban characteristics. Land in Esereso became of high demand in the early 1990's (section 6.3). The erstwhile Esereso chief instituted proper mechanisms to incorporate state land agencies in land administration. This practice has since continued even after the demise of the chief (section 6.3). Adumasa has no chief. Individual families manage their own land with the assistance of the Adumasa Unit Committee (section 6.4). The case of Adumasa is interesting, due to the implementation of a hybrid land administration system in a customary environment, without a chief. Yasore has a chief, who manages land together with the Yasore Development Committee (section 6.5). The

above three peri-urban customary areas present different characteristics of land administration in peri-urban customary areas in Ghana (sections 6.3 – 6.5).

#### **4.4.2 Secondary case study areas**

The secondary case study areas include Tlokweng (Botswana), Mocuba (Mozambique), Olukonda and peri-urban Oshakati (Namibia). These areas were selected based on evidence of the successful implementation of novel and hybrid land administration systems. Land administration in Tlokweng involves independent land boards without chiefs (section 6.7). The case of Olukonda involves both land boards and chiefs (section 6.11). Land administration in peri-urban Oshakati involves community organisation (section 6.12), whilst land administration in Mocuba involves local people (without a chief) (section 6.9).

#### **4.5 DATA COLLECTION TECHNIQUES**

Data collection comprised a combination of desktop data acquired from secondary data sources and primary data collected from fieldwork. Field data on land administration practices was collected in respect of the Esereso, Yasore and Adumasa cases. These areas were regarded as primary case study areas and field data was required to understand the land administration practices in the areas. Published materials were used as the source of data for the secondary case study areas and included the following:

1. **International organisation publications:** Policy documents, statements and guidelines, reports of investigations, submissions and proposals to organisations, reported cases, minutes and reports of meetings.

2. **Domestic government publications:** Statutes, regulations, policy documents, reports of investigations and reported cases.
3. **Non-governmental publications:** Reports, policy documents and press briefings.
4. **Books, journal articles and published papers** on land administration systems, cadastral systems and land laws.

#### **4.5.1 Process of acquiring data in the primary case study areas**

Multiple data sources were used in this study to ensure the corroboration of the information that was acquired from the interviews. Open-ended, structured and focus interviews were conducted with participants. Various documents and secondary data were also collected. The bulk of the data was collected during a visit to Ghana in November 2013, during which three traditional leaders were interviewed from the three primary case study areas (one from each case study area). The reason for interviewing the traditional leaders is that they are the custodians of customary land and they understand customary land administration processes in the case study areas. Traditional processes were followed to obtain permission to interview the traditional leaders, where applicable. In the case of Yasore, a message was initially sent to the elders requesting to interview the chief. The elders then agreed on the subject and the purpose of the interview and subsequently informed the chief. A date and time were set for the interview.

In Ghanaian culture, chiefs only speak and listen via a person known as a linguist (traditional interpreter for the chief). The linguist listens to the interviewer in the presence of the chief and re-echoes what he hears to the chief, and *vice versa*

(Asiama, 2004). Open-ended interviews were employed with the traditional leaders. This was imperative, as a pre-determined set of questions could have limited the data acquired to what the researcher knew or expected about land administration practices in the case study areas. In employing open-ended interviews, however, issues that were pertinent to the research questions, but were not initially conceived of by the researcher, were revealed by the respondents.

Data was sourced from the five main state land departments in Ghana namely the Customary Land Secretariat of the Land Administration Project (LAP), Administrator of Stool Lands, the Survey and Mapping Division, the Department of Town and Country Planning, and the Deeds Office. The decision to interview officials from the state land departments was based on the involvement of these departments in customary land delivery processes in the primary case study areas. The primary case study areas have employed hybrid land administration systems and both customary and statutory land institutions are involved in customary land delivery processes in these areas. It was thus necessary to source information in respect of the role of state land departments in land delivery processes in the primary case study areas. One key informant government official from each of the above departments was interviewed at the national, regional and district offices. Interviewing one official per department at the various offices was sufficient, as the officials solely outlined the formal processes and procedures of their respective departments, and not their personal views on statutory land administration systems in Ghana. Preliminary meetings were held with all government departments linked to land management to schedule interview dates.

Structured and focused interviews were employed in gathering data from government departments. The reason for choosing structured and focused interviews was to ensure that the respondents would provide information on the processes and procedures for land administration, rather than their personal views. Questionnaires were sent to the respondents in government departments, and responses were received, with an average turnaround time of five (5) working days. Where specific questions were not well answered, a follow-up meeting was arranged with the respondent to seek clarity and obtain further information.

Each of the three primary case study areas has community land organisations (i.e. Adumasa Unit Committee, Esereso Land Allocation Committee and Yasore Development Committee). Two members from each of the above committees were interviewed. The community land organisations are directly involved in customary land delivery processes in the primary case study areas. It was thus necessary to collect data from them on the processes of customary land delivery in the various case study areas. The chairpersons and secretaries of each of the community land organisations were interviewed. The chairpersons and secretaries were chosen as they are at the fore-front of the community land organisations. Twenty households from each of the primary case study areas were interviewed. The selection of the households was based on snowball sampling. The sampling was done to include a fair representation of different household types in the case study areas (i.e. female-headed households, child-headed households, and households headed by a couple). In addition, the sampling considered both indigenous and migrant households. Deininger *et al.* (2010) argue that different households access peri-urban customary land through different means – formal and informal. It was thus necessary to

collect data from the different types of households to understand how they access land in the primary case study areas. Written documents, such as journal articles and government publications, regarding land administration in Ghana were also reviewed to obtain information that might be relevant to this study. The purpose of reviewing the written documents was to enhance triangulation and ensure complementarity of the primary data sources. The interviews were conducted under the following themes.

**Customary land delivery processes:** - All participants in the three primary case study areas were interviewed on customary land delivery processes. Both structured and open-ended interviews were employed in sourcing information on customary land delivery processes in the primary case study areas. The traditional leaders provided information on customary processes of acquiring land in their respective areas. The state land departments outlined statutory land administration processes including surveying, planning and the registration of customary land transactions in the primary case study areas. The Land Registry Division provided information about the role of the Asantehene's Secretariat in the registration of land transaction in the case study areas. The community land organisations in the primary case study areas provided information on the joint land delivery processes between customary and statutory land institutions in the primary case study areas. Households in the primary case study areas provided information on how they acquired land in the respective primary case study areas. The different participants provided corroborated processes of customary land delivery in the various primary case study areas.

**Community participation in land administration:** - Data on community participation in land administration processes in the case study areas was obtained from both community land organisations and households through both structured and open-ended interviews. Community land organisations provided information on the various mechanisms used to promote community participation in land administration processes in the primary case study areas. Households provided information about their perceptions of the nature and levels of participation in the case study areas. Community land organisations are responsible for initiating and managing land delivery processes in the various local communities and it was necessary to inquire from them how community members are involved in land delivery processes.

**Statutory registration of customary land transactions:** - Data was collected through structured interviews on statutory registration processes of customary land transactions in the primary case study areas. The Lands Commission provided information in respect of statutory registration of customary land transactions in the case study areas. Such information was obtained through the national and regional offices of the Lands Commission. The Land Registry Division of the Lands Commission provided detailed information about the statutory processes of registering land transactions. Such information was corroborated by the Land Valuation Division and the Office of Administrator of Stool Lands. Other state land departments such as the Survey and Mapping Division as well as the Town and Country Planning Department also provided information about the statutory processes of registering land transactions.

**Validation of customary land transaction:** - Data was obtained through structured interviews on validation of customary land transactions. This information was obtained from the Regional Lands Commission Offices and corroborated by the National Lands Commission Office. Other focused areas of the interviews conducted include livelihood support and institutional arrangements. Households provided information about how they support their livelihoods in the primary case study areas and the Land Registry Division described the institutional set up for land administration in Ghana. In addition, information on institutional arrangements for customary land delivery in the primary case study areas was obtained by the district offices of the Town and Country Planning Department.

#### **4.5.2 Process of acquiring data in the secondary case study areas**

Data from the secondary case study areas was gathered mainly through secondary sources. Relevant journal articles and publications on land administration systems from each of the selected case study areas were reviewed. Issues discussed in these publications that were relevant to the research questions were noted. The focus of the review was on the following:

1. Novel or hybrid land administration systems.
2. Land administration issues in the case study areas that deal with the incorporation of strategies that enhance the livelihoods of the local people.
3. How land administration systems in the secondary case study areas attempt to address issues such as tenure security, sustainable land administration and good land governance.

### **4.5.3 Data triangulation**

The data obtained from different sources were triangulated to ensure the reliability of information gathered. According to Yin (2003), the essence of triangulation using multiple sources of data is to develop converging lines of inquiry. Case study results may be much more credible if information is gathered from different sources that corroborate each other (Yin, 2003). The data collected from both primary and secondary sources were linked together to draw a concrete conclusion on the integration of land administration systems. The study's findings are presented in an integrated manner to enhance better analysis and discussion.

## **4.6 DATA PROCESSING AND ANALYSIS**

The data analysis methods used in this study were primarily qualitative. Case study narratives were written, describing the various land administration systems. The customs, laws, policies and regulations affecting land administration systems in the case study areas were identified. These were linked to the responses received from the interviews. The documents and interviews were used to identify the features of the various systems of land administration in the case study areas. The processes of land use, land development and land acquisition extracted from the interviews and documents were analysed by comparing them against the good land governance framework (chapter 7).

The data from interviews were verified using other interviews and documentary evidence. The purpose of this verification was to ensure data triangulation and

corroboration. Documentary evidence and various interviews assisted in this process. For instance, the documentary evidence in respect of land administration in Ghana was combined with interview data. Data from the interviews and documents provided an indication of land tenure, land development and land acquisition processes in the case study areas.

Data from the case study areas was evaluated using the good land governance framework. Through the process of cross-tabulation, the different land administration practices in the case study areas were identified. The common desirable elements of land administration from the case study areas informed the proposal on how to reduce conflicting rationalities in land administration systems at the peri-urban interface in Ghana (chapter 8).

#### **4.7 ETHICAL CONCERNS**

All information gathered for this study was controlled in terms of the Ethics Policy of the University of Cape Town. Respondents were not forced to participate in the study. The study objectives and the role of the prospective respondents were clearly explained and consent was sought from them. The interviews began only after the respondents had indicated their willingness to participate in the study. To minimise potential harm to the respondents, their identities were protected and they were informed of their anonymity in the study. Codes were used to track the interviews and questionnaires, instead of the actual identities of the respondents.

## 4.8 CONCLUSION

Chapter 4 described the research methodology designed in relation to the research problem and existing research in the field of land administration. It was argued that a multi-perspective approach is required in considering an appropriate methodological framework for land administration systems research. The research approach is both qualitative and quantitative. It was argued in this chapter that both qualitative and quantitative approach should be employed in studying land administration systems as they involve the analysis of both human behaviour and the cadastre (Whittal, 2008). The case study method was deemed appropriate in investigating the research problem because it facilitates the exploration of a phenomenon that cannot be separated from its context and time (Yin, 2003). This type of exploration was deemed necessary to fill the identified knowledge gap in land administration systems, particularly within the context of peri-urban customary land administration (section 1.13). The chapter further described the criteria for selecting the case study areas. The common factor considered in choosing the case study areas was their locations. All the case study areas are located in sub-Saharan Africa. This is because land administration systems are context-specific and countries of the same sub-region should be compared against each other, rather than against those of different sub-regions. Different participants were selected and various data collection techniques were employed to ensure data triangulation and enhanced complementarity. The analytical process was described. The validity and reliability as well as ethical issues were also discussed. The analytical framework for the research is developed in chapter 5.

## **CHAPTER 5: FRAMEWORKS FOR ASSESSING LAND ADMINISTRATION SYSTEMS**

### **5.1 INTRODUCTION**

The methodological framework for the research was discussed in chapter 4. Chapter 5 seeks to develop an appropriate analytical framework to assess land administration systems in the case study areas. A good land governance framework is adopted in this regard. The quest for effective ways of managing land at the peri-urban interface has prompted many researchers (Whittal, 2008; Arko-Adjei, 2011; Abdulai and Owusu-Ansah, 2014; Van Asperen, 2014; Enemark *et al.*, 2014; Simbizi, 2016; Obeng-Odoom, 2016) to undertake studies on land administration systems. The outcomes of such studies have in one way or the other been influenced by the theory on which the research was based, the methodological approach adopted, the research question/s asked, and the analytical framework adopted. These form the ontological (the existence of knowledge) and epistemological (how to interpret an existing knowledge) foundation of research (section 3.5). In this chapter, the different frameworks used by researchers to assess land administration systems are reviewed.

Chapter 5 is divided into nine main sections. Section one is an introductory section. Section two to section eight discusses various land administration frameworks (evaluation, benchmarking, performance measurement, re-engineering, bookkeeping and accounting, pro-poor land administration and good land governance). The main argument in this chapter is that effective land administration may be enhanced through efficient land administration processes

and accountable land institutions. Such processes and institutions are underpinned by effective land laws and land administration infrastructure. Certain good land governance principles are applicable to land administration processes, whilst others are linked to land administration institutions, laws and infrastructure. However, the processes, institutions, laws and infrastructure for land administration are interlinked. Section nine is a concluding section.

## **5.2 Evaluation framework**

Evaluation is the process of assessing land administration systems to determine if they comply with set processes and standards (SDC, 2000). Evaluation also involves assessing the outcome of a land administration project against its predetermined objectives. This can be done if an effective performance management system is put in place to monitor the implementation of such a project (section 5.4). Evaluation may ensure improved productivity and efficiency and lead to outstanding performance (Cracknell, 2000). A number of research projects have been undertaken on the evaluation of land administration systems. For instance, UNECE (2001) evaluated the performance of land administration systems in selected countries.

It has been argued that a standardised method should be adopted when evaluating the performance of land administration systems (UNECE, 2001). However, there may be no internationally accepted methodologies to evaluate and compare the performance of land administration systems. This is because land administration systems are constantly changing (Williamson *et al.*, 2010). In addition, societies

perceive land administration systems differently according to their own contexts (Whittal, 2008).

Baird (1998) asserts that land administration systems should have well-defined objectives, a clear strategy, measurable indicators and expected results. These elements of the evaluation framework are found to be important. For instance, Simbizi (2016) emphasises the need for the development of context-related indicators to assess tenure security in developing countries. Without such indicators, the impact of land administration projects on the livelihoods of people in sub-Saharan Africa cannot be assessed (Simbizi, 2016). The objectives of a land administration project should be evaluated (through an appropriate set of indicators) to determine how such objectives seek to meet the needs of intended beneficiaries (Mwangi, 2008). As put forward by the fit-for-purpose framework, the key focus of any land administration project should be on meeting the needs of the local people (Enemark *et al.*, 2014). Lack of a well-defined land administration objective may lead to the transplanting of land administration systems from other parts of the world, which may not be applicable to the local context (Enemark *et al.*, 2014). This (transplanting of land administration systems) is evident in many land administration projects implemented in sub-Saharan Africa (Arko-Adjei, 2011).

There should be a strategy in place to achieve the objectives of a land administration project. Many land administration projects in sub-Saharan Africa fail to yield their intended objectives, due to lack of strategies to implement them (United Nations, 2015). Strategies for implementing land administration projects

may include the development of effective institutions and financing structures. The evaluation framework is useful in assessing the effectiveness of “the institutions and organisations, and the financing structure” (Stuedler, Rajabifard and Williamson, 2004: p.8) towards achieving land administration objectives.

Stuedler *et al.* (2004) provide a framework for evaluating land administration projects, which recommends areas and aspects of land administration to be evaluated, indicators to be measured and good practices to be adopted. It provides direction in setting indicators and targets towards achieving the objectives of a land administration project (Edouard, Espinosa and Pantoja, 2015). However, the aspect of “good practices” in the framework may lead to benchmarking. The evaluation framework is not fully adopted in this study, since it supports benchmarking (section 5.3). However, the research acknowledges that specific indicators (based on local situations) are required in assessing land administration systems (Simbizi, 2016). To this end, the adopted analytical framework (good land governance) for this study uses indicators to assess land administration practices in the case study areas (section 5.8.5).

### **5.3 Benchmarking framework**

Benchmarking involves searching for and incorporating international ‘best practice’ into a country’s land administration systems (Camp, 1989; Stuedler and Williamson, 2001). Stuedler and Kaufmann (2002) argue that benchmarking has a contribution to make towards improving the performance of land administration systems. For this reason, researchers continue to search for international best

practices to promote good performance in land administration systems in sub-Saharan Africa (Steudler and Kaufmann, 2002). Steudler and Kaufmann (2002: p.10) assert that benchmarking is an acceptable process and has been used to promote greater understanding of what others do. The concept of benchmarking may be useful in the business environment, as companies may strive to achieve the same objective: profit. It may, however, not be useful to apply benchmarking in undertaking land administration reform in sub-Saharan Africa. What is ‘best practice’ for one country may not necessarily be ‘best practice’ for another (Whittal, 2008; Zevenbergen *et al.*, 2013; Kurwakumire and Kuzhazha, 2015).

Many African traditions and/or customs are not receptive to foreign acculturations and therefore, they struggle to keep pace with foreign practices when these are introduced to Africa (Njoh, 2003). Even though the developed world has achieved a significant advancement in land administration, Africa does not follow this lead (Kurwakumire and Kuzhazha, 2015). This is because the objective behind land administration in sub-Saharan Africa is completely different from that of the developed world (Okpala, 2009). For instance, while land administration systems in the developed world may seek to promote market efficiencies, those in sub-Saharan Africa may seek to protect the tenure and livelihoods of the poor (Österberg, 2002; Burns, 2007; Knight, 2010; Enemark *et al.*, 2014; Simbizi, 2016). Enemark *et al.* (2014) therefore recommend a fit-for-purpose approach (section 5.7.1) to land administration – a useful approach in sub-Saharan Africa. Transplanting land administration practices from the developed world into sub-Saharan Africa may be detrimental to the majority of people who depend on land for their livelihoods (Kingwill, 2005).

The above argument explains why only cases from sub-Saharan African countries were selected for this research (section 4.4). Even though land administration practices in the various case study areas are assessed against the good land governance framework, and benchmarked against each other, this is done within the context of sub-Saharan Africa and not the developed world.

#### **5.4 Performance measurement framework**

A performance management system refers to the processes and mechanisms put in place to monitor and evaluate the implementation of a project against its set objectives (Nielsen, 2013). Performance management systems entail the process of developing performance measures (indicators), tools of measuring the indicators and frameworks for rewarding outstanding performance and addressing underperformance (Swiss, 2005). Performance measurement is a subset of performance management systems. It is concerned with the quantitative and/or qualitative measurement of set indicators (Swiss, 2005). Performance measurement has been used in land administration and cadastral systems research. For instance, Whittal (2008) used a performance measurement framework consisting of seven qualitative attributes (elements) – effectiveness, efficacy, elegance, empowerment, emancipation, exception and emotion (7Es) to analyse the performance of fiscal cadastral systems and found them useful. Akrofi (2013) also employed this framework in his assessment study on customary land tenure systems in Ghana.

The performance measurement framework is useful in assessing the performance of land administration systems. The good land governance framework adopted in

this study is partially informed by the performance measurement framework. For instance, the indicators used to assess land administration practices in the case study areas seek to promote effectiveness, efficacy/efficiency, empowerment and emancipation (through participation by citizen power) (section 5.8.5.1). The other elements of the performance measurement framework (e.g. exception, emotion and elegance) could not be measured. How to measure the above elements remains a challenge for researchers (Whittal, 2008; Akrofi, 2013).

## **5.5 Re-engineering framework**

Ting and Williamson (2001: p.1) identify “a framework for re-engineering land administration systems”. Ting and Williamson (2001: p.20) argue that global drivers (i.e. “sustainable development, urbanisation, globalisation, economic reform and environmental management”) impact on the humankind-land relationship and should therefore be considered in designing land administration systems. Tan (1999), however, argues that global drivers are not the major determinants of cadastral change. Tan (1999: p.1) is of the opinion that a country’s internal priorities and challenges (e.g. conflict among stakeholders) may lead to changes in land administration and cadastral systems. Tan’s (1999) alternative view of land administration systems goes some way to support the fit-for-purpose approach to land administration systems design (Enemark *et al.*, 2014). This alternative view further reveals the conflicting rationalities that exist between different role players in land administration systems in peri-urban customary areas. When land administrators understand that factors that influence changes in land administration systems are internal, they may attempt to find internal solutions to

address problems that may arise from such changes (fit-for-purpose) (Enemark *et al.*, 2014). However, if factors of change are considered to be external (global), land administrators and researchers may look for external solutions (benchmarking).

According to Ting and Williamson (2001), the identification of required technical and administrative tools to support effective land administration systems should be informed by the current humankind to land relationship, and how such relationship is envisaged to be changed due to the possible influence of global drivers. This viewpoint is also held by Tuan (2006) and Kurwakumire and Kuzhazha (2015) in their works on re-engineering land administration in Vietnam and Zimbabwe respectively. However, neither Tuan (2006) nor Kurwakumire and Kuzhazha (2015) confirm that land administration and cadastral systems changes emanate from global drivers only. Such changes could either be globally or internally influenced. Tuan (2006) argues that past land information systems do not comply with current requirements imposed by new land laws in peri-urban customary areas. He recommends that technical and institutional aspects of land administration systems should be re-structured to meet the current demand imposed by such new land laws. Kurwakumire and Kuzhazha (2015) found that the cadastral systems in Zimbabwe is predominantly analogue. Kurwakumire (2014: p.64) argues that it is difficult to implement effective land administration without adequate up-to-date land information. Kurwakumire and Kuzhazha (2015) subsequently recommend that cadastral systems should be automated to meet the current land demand. They admit, however, that certain parts or sections of existing

land administration and cadastral system may be retained. They further oppose the idea of benchmarking in the re-engineering process.

Tuladhar (2003) holds a different view from Kurwakumire and Kuzhazha (2015) on the re-engineering of land administration systems. Tuladhar (2003) argues that the re-engineering process should start from identifying the current obsolete elements of the existing land administration systems. He posits that the logic behind current land administration practices should be assessed for relevance to current circumstances. This assessment may be important, based on the ever-changing relationship between humankind and land (Williamson *et al.*, 2010). As the relationship changes, certain land administration practices become obsolete (Tuan, 2006). Tuladhar (2003) argues that such obsolete practices should be discarded. This viewpoint may support the argument that customary land administration systems are no longer useful in modern urban and peri-urban environments (De Soto, 2000; Peters, 2009). This assertion has been critiqued throughout this study. The study argues that customary land administration systems can be improved to serve the land needs of peri-urban dwellers if they are integrated with statutory systems (chapter 8). Zevenbergen *et al.*, (2016) found that the “new ways” of doing things are not always affordable to the local people. They recommend that pro-poor and fit-for-purpose approaches should be encouraged in re-engineering land administration systems in sub-Saharan Africa. Cete and Yomralioglu (2013: p.197) further assert that “governments need to develop their own solutions in the re-engineering process for their own circumstances”. Governments in sub-Saharan Africa should not discard their old land administration practices, as postulated by Tuladhar (2003), but should rather

improve on their old practices to make them more effective and responsive to the needs of the local people. The framework for re-engineering land administration systems attempts to develop a theoretical framework for land administration system, which is underpinned by benchmarking (Tuladhar, 2003).

Like the evaluation framework, the framework for re-engineering land administration systems emphasises the development of vision and strategies for a country's land administration systems. It equally accepts that new and acceptable ways of improving land administration systems can be obtained through benchmarking (Ting and Williamson, 2001).

This study acknowledges the dynamic relationship between humankind and land. However, changes in this relationship may not be as a result of global drivers only, as argued by Ting and Williamson (2001). Such changes can also result from internal factors (e.g. internal conflicts, change in land laws and institutions). The assertion that benchmarking can be used to improve land administration systems is refuted in this study. The study supports the fit-for-purpose approach, which considers internal drivers of change (e.g. land laws, conflict among stakeholders) and local solutions to land administration challenges (Tan, 1999; Enemark *et al.*, 2014).

## **5.6 Bookkeeping and accounting framework**

Bookkeeping refers to the recording of financial transactions as part of the accounting process in business (Weygandt, 2003). Bookkeeping and accounting principles are mostly known in the business environment. In recent years, however,

these concepts have been introduced in land administration and cadastral systems research. Kaufmann (2000) used the bookkeeping and accounting systems approach to study cadastral systems. He asserts that land administration and cadastral systems should include a systematic process of collecting credible information on land parcels to support land taxation, land market and land use planning. He further asserts that land administration systems should adhere to defined rules and principles.

The main shortcoming of the bookkeeping and accounting systems approach is that it sees reliable information as the only tool for sustainable land administration. Although reliable information is a prerequisite for sustainable land administration, other issues such, as participation, accountability, transparency and equity, should also be considered. The bookkeeping approach is concerned with the efficiency of land market systems (De Soto, 2000; Peters, 2009), and does not address the social implications of land market efficiency.

The bookkeeping and accounting framework requires the establishment of sophisticated spatial data infrastructure (such as Geographic Information System - GIS) to manage land information (Buzai and Robinson, 2010). Enemark (2005, p.3) argues that land administration functions are facilitated by appropriate land information infrastructure that provides up-to-date information about the built and natural environments. Kurwakumire (2014) further asserts that effective land information infrastructure provides local people with the potential of promoting sustainable development. Land information infrastructure and information communication technologies are necessary for effective land administration.

However, in many customary peri-urban areas in sub-Saharan Africa, there is a tendency to separate statutory land administration systems from customary land administration systems. There is no effective institutional mechanism for integrating both statutory and customary land administration practices in many sub-Saharan African countries (Antwi-Boasiako, 2017). These problems often lead to poor administrative and management procedures that fail to deliver the required services to the local people. Investment in land information technologies (such as GIS) in these areas will only partially solve a much deeper problem: the failure to integrate statutory and customary land administration systems. In addition, certain forms of spatial data infrastructure are expensive and may not be accessible to many people living in peri-urban areas in sub-Saharan Africa. For instance, Mundia (2007) found that certain people in Windhoek (Namibia) perceive the GIS as expensive.

In an attempt to find affordable means of ensuring reliable land information, Whittal (2011) researched alternative (unconventional) methods of maintaining up-to-date information on land transactions for the urban poor in South Africa. She proposes the use of cell-phone technology as a pro-poor step towards a solution to the problem of expensive land information systems. However, such unconventional methods may not replace existing expensive well-functioning land information systems. In integrating statutory and customary land administration systems, it is imperative to identify affordable means of maintaining reliable land information that will be accessible to all. Enemark *et al.* (2014) further recommend that affordable technology should be used in improving land administration systems in sub-Saharan Africa.

## 5.7 Pro-poor land administration frameworks

Zevenbergen *et al.* (2016) have introduced alternative approaches to land administration. Such approaches seek to challenge conventional forms of land administration and provide the basis for a new land administration theory. For instance, it has been observed that conventional approaches to land administration systems have failed to achieve their intended objectives in sub-Saharan Africa, because they remain expensive and inaccessible to the poor (UN-HABITAT, 2012). Lemmen (2010) argues that conventional land administration systems do not consider the needs of the poor. For instance, such conventional approaches promote individual land titling, which Zevenbergen *et al.*, (2013) argue cannot deliver tenure security to the poor in sub-Saharan Africa. For example, 75% of people are excluded from formal land administration in sub-Saharan African countries where conventional land administration approaches are adopted (Zevenbergen *et al.*, 2016). This results in a land administration divide, where the rich have access to formally recorded and recognised land rights, while the poor continue to suffer tenure insecurity (Bennett *et al.*, 2008).

Many unconventional approaches to land administration have emerged to address the challenges that conventional land administration systems pose to effective land administration in sub-Saharan Africa. These unconventional approaches include the fit-for-purpose, pro-poor land recordation and pro-poor rural land tenure security (Zevenbergen *et al.*, 2013; Enemark *et al.*, 2014; Simbizi, Bennett and Zevenbergen, 2014). These approaches are collectively called pro-poor land administration (Zevenbergen *et al.*, 2016). The aim of pro-poor approaches to land

administration is to deliver tenure security and livelihood sustainability to the poor (UN-HABITAT, 2012). Pro-poor land administration designs take into consideration the livelihood strategies of the poor, promoting a range of land rights and equitable access to land. Unconventional land administration designs further promote affordable land registration through the use of simple but effective land tools and flexible land administration systems (Williamson *et al.*, 2010; Arko-Adjei, 2011; Zevenbergen *et al.*, 2013; Enemark *et al.*, 2014; Van Asperen, 2014).

Land administration systems in many sub-Saharan African countries have been re-engineered to promote pro-poor land administration (Enemark *et al.*, 2014). The re-engineering process includes the redesigning of land institutions to ensure good land governance, and the redrafting of land laws and policies to legally recognise customary land tenure systems and simplified surveying and mapping tools (Zevenbergen *et al.*, 2016). For instance, the Land Tenure Regularisation in Rwanda (Sagashya and English, 2010), the Rural Land Certification Programme in Ethiopia (Deininger *et al.*, 2008), the Land Administration Programme in Ghana (Arko-Adjei, 2011), the Land Tenure Services Project in Mozambique (Hagos, 2012), and the Flexible Land Tenure System in Namibia (Mundia, 2007) are attempts to ensure pro-poor land administration in sub-Saharan Africa.

### **5.7.1 The fit-for-purpose approach**

The fit-for-purpose approach is concerned with land administration designs in line with people's land needs (Enemark *et al.*, 2014: p.6). It further seeks to protect the land rights and livelihood sustainability of the local people. Enemark *et al.* (2014) argue that the current land administration solutions (e.g. formal land title

registration systems) may not benefit the poor and most vulnerable (such as children and women). Obeng-Odoom (2014) observed that conventional land policies based on land registration may have had negative impacts on the livelihoods of weaker groups in communities.

The need for affordable and sustainable land administration systems to serve the poor has been expressed in many research projects (Arko-Adjei, 2011, Van Asperen, 2014; Enemark *et al.*, 2014). For instance, Enemark *et al.* (2014) have identified the fit-for-purpose approach as a new way of solving land administration challenges in sub-Saharan Africa. The fit-for-purpose approach to land administration seeks to address current land administration challenges within the context of a country or region (Enemark *et al.*, 2014). Unlike the benchmarking and evaluation frameworks, the fit-for-purpose approach avoids “advanced technical standards” (Enemark *et al.*, 2014: p.6). Enemark *et al.* (2014), however, suggest that certain advanced systems used predominantly in developed countries may be explored in sub-Saharan Africa. The fit-for-purpose approach is informed by the good governance principles of participation and inclusivity. Other principles of the fit-for-purpose approach include flexibility, affordability, reliability, attainability and upgradeability (Enemark *et al.*, 2014). A fit-for-purpose approach creates opportunities for poor societies to build their own affordable land administration systems (Enemark *et al.*, 2014). Land administration systems in sub-Saharan African countries should be flexible and promote the needs of the local people (e.g. tenure security and livelihood sustainability). A fit-for-purpose approach encourages incremental improvements in land administration systems. Land administration systems may be designed to initially meet the current basic

needs of the people. However, there should be incremental improvements “over time in response to the future needs which may be different from the current needs” (Enemark *et al.*, 2014: p.6).

### **5.7.2 Pro-poor land recordation system**

A continuum of land rights (e.g. group rights, overlapping rights, secondary rights and lesser forms of rights) may improve the security of tenure of people who do not have a formal registration system in sub-Saharan Africa (Whittal, 2014; Simbizi, 2016). It can assist individuals in taking initial steps towards the upgrading of their land rights. Existing local approaches to administering land should be recognised in building a pro-poor recordation system (Zevenbergen *et al.*, 2013). Existing community tenure practices should be recognised and formalised through the introduction of land records and indexes. Customary land transactions should be recorded on paper, and standardised forms should be used for land transactions. The standardised forms should be designed in a manner that community members will understand. This may encourage them to use such forms and assist them in remembering some important elements on the form. Community members can be appointed as land officers and record keepers. An office should be established to keep completed forms (Simbizi, 2016). These could form part of a computerised local land registry as a second stage.

Community leaders (e.g. chief, elders, religious leaders, local community leaders, ward or block heads and land committees) should lead the customary land tenure formalisation process (UN-HABITAT, 2012). Such leaders “know the local land tenure rules, their current interpretation in changing circumstances, the positions

and land interests of the different people in the community” (Zevenbergen *et al.*, 2013: p.3). Infact, Boamah (2014) found that certain chiefs in Ghana support formalisation of the use and boundaries of customary land. According to the chiefs, such formalisation has the potential of creating rural development opportunities and prevent land litigation in peri-urban customary areas (Boamah, 2014).

The capacitation of community leaders and local record keepers will go a long way to improve the tenure security of the poor. The pro-poor recordation process should be co-managed by both the state and the community (Zevenbergen *et al.*, 2013).

Zevenbergen *et al.* (2016) position pro-poor land administration within three conceptual frameworks – fit-for-purpose, pro-poor land recordation and land tenure security for the rural poor. Zevenbergen *et al.* (2016) integrate the above three conceptual frameworks to form a new conceptual model for pro-poor land administration. The aforementioned authors used the principles of flexibility, inclusivity, participation, affordability, reliability, attainability, upgradability, tenure complexity, preventive justice, systematic process, transparency, equitability and co-management to assess the Land Tenure Regularisation (LTR) in Rwanda. They found that the LTR complies with the three models and that the later support the delivery of enhanced land tenure security in Rwanda.

### **5.7.3 The continuum of land rights model**

The argument that customary land tenure systems are primitive and an obstacle to economic development is informed by the development agenda based on

modernisation theory (Coetzee, 2001). Modernisation theory postulates that a modern state is derived through a systematic linear process that produces favourable development conditions (Whittal, 2014). Evolutionary theory equally suggests that the progressive development in land administration and tenure systems requires a more sophisticated approach rather than the old customary style (Hardin, 1968). This viewpoint has, however, been critiqued by both Tan (1999) and Whittal (2014). The UN- HABITAT's (2008) version of the continuum of land rights model expresses the evolutionary theory idea. Like the evolutionary theory, the UN continuum of land rights model suggests that there is an incrementally linear progression from low levels to high levels of land rights (UN-HABITAT, 2008). The UN continuum of land rights model classifies customary land tenure as part of the low level and suggests that registered freehold tenure is the highest form of land rights (UN-HABITAT, 2008). What Whittal (2014) finds problematic about the UN continuum of land rights model is its determination on what is desirable and what is not. She (Whittal, 2014: p.21) rejects the duality of formality and informality to classify land rights types. Whittal (2014) further argues that there are a wide variety of land values that are not limited to capital markets. The UN model of the continuum of land rights is (perhaps unintentionally) market- aligned since it promotes individual ownership. The UN model assumes that land title registration will offer a better form of tenure security, which will culminate in increased land value and high taxation. Other authors, such as Weideman (2004), Payne (2004) and Rakai (2005) have also criticised the perception that registered freehold tenure is the ultimate and desirable type of tenure as promoted by the UN model of continuum of land rights. In many indigenous communities in sub-Saharan Africa, different tenure types co-exist (Sietchiping, Aubrey, Bazoglu and Augustinus,

2012). It may not be acceptable to judge land title registration as the best form of land tenure (Giddens, 1984; Giddens, 1998). Cousins *et al.* (2005) also maintain that a multidimensional rather than a uni-linear approach to improving land tenure systems will offer better and contextual options of land tenure types in peri-urban customary areas. Cousins *et al.* (2005) found that, in South Africa, customary land tenure offers tenure security alongside freehold tenure types. This finding supports Ubink's (2008) argument that policies on land administration and tenure systems should take into consideration existing land administration and tenure systems. New land administration and tenure models should include existing land tenure types without any prejudice (Kihato and Royston 2013).

Rakai (2005) asserts that land rights continuum should be desirable and occur within a neutral land tenure framework. A neutral land tenure framework that recognises existing informal processes of accessing land may go some way to improve tenure security for local people (Kihato *et al.*, 2012). The UN model of the continuum of land rights is biased towards land title registration and assumes that customary and all forms of informal land tenure systems will no longer operate in the land administration trajectory (UN HABITAT, 2008). This assumption is false, as customary and other informal land tenure systems have remained strong and resilient in many peri-urban areas across sub-Saharan Africa since the introduction of the continuum of land rights model (Njoh, 2006). In many instances, customary landholders have not progressed through the land rights and tenure types either because they feel secure in their current land rights or they simply want to avoid the complications associated with such progression (Okpala, 2009). The UN model of the continuum of land rights fails to recognise the costs involved in the upward

movement in land rights and tenure types. For instance, it has been established that land title registration processes are expensive and people avoid them in many peri-urban customary areas in sub-Saharan Africa (Okpala, 2009).

The continuum of land rights as originally developed by UN- HABITAT (2008) was revised by the Legal Entity Assessment Project (LEAP) (Royston 2012). The main point of departure of the LEAP's version of the continuum of land rights model is its rejection of the uni-linear understanding of the continuum of land rights as argued by the evolutionary theory. Unlike the UN model, the LEAP model accommodates regression in the land rights continuum. The Land Rights Continuum concept is continuously being developed further. For instance, the Urban Land Markets Programme's version of the continuum of land rights promotes the upgrading of land rights through lesser rights (e.g. leases), group titles as well as individual titles (Kihato *et al.* 2012). Whittal (2014) also introduces vertical dimensions to the UN model. She argues that land tenure security does not improve in a linear fashion as portrayed by the UN model. She assesses land tenure security along a vertical axis, rather than the horizontal axis proposed by the UN model. The triple measures of land tenure security (legitimacy, legality and certainty) as identified by Whittal (2014) offers a better option of assessing tenure security across different tenure types. Legitimacy refers to what people consider acceptable landholding and land administration practices. Legality refers to the legal and statutory recognition of landholding and land administration practices. Certainty is a measure of whether land administration processes are free from corruption and land conflict (Sietchiping, Aubrey, Bazoglu and Augustinus, 2012). Customary land administration and tenure systems require legitimacy, legality and certainty to

improve tenure security. They do not need to be converted to title registration before they can promote tenure security.

The UN-HABITAT (2015) defends that the continuum of land rights model was not meant to be a theory and does not support modernisation and evolutionary development theories. The UN-HABITAT (2015) therefore dismisses the critiques of the continuum of land rights model as aligned to modernisation and evolutionary development theories. However, the UN-HABITAT (2015) has revised its stand on the continuum of land rights model. For instance, a new concept (constellation and web of interests) has been introduced to support the continuum of land rights model. The UN-HABITAT (2015) admits that the continuum of land rights model only provides a strategic direction to enhance security of tenure. The constellation and web of interests metaphor has thus been introduced to “provide a wider range of purposes” in the land tenure debate (UN-HABITAT, 2015: p.v). Unlike the former focus of the continuum of land rights model, the constellation and web of interests metaphor does not prescribe a utopian form of land tenure (GLTN, 2013).

#### **5.7.4 Opportunity cost valuation of customary land**

The struggle between land title registration and communal land ownership has propelled many scholars to borrow concepts from different fields to defend their views on what form of land tenure and administration systems should prevail. Anderson (2006) used the concept of ‘opportunity cost’ to analyse the implications of land title registration on customary land. The term opportunity cost is an economic concept coined by Von Wieser in 1914. In simple terms, opportunity cost

refers to lost alternatives resulting from one chosen alternative (Von Wieser, 1927). The concept of opportunity cost becomes relevant when one is faced with a decision of choosing what to do with a limited resource within the context of many choices. Anderson (2006) correctly applies this concept in an attempt to reveal the real cost of land title registration borne by peasant farming households in customary areas. De Soto (2000) argues that customary landholders are poor because their wealth is locked up in customary landholdings. To De Soto and other advocates of economy-based theories, customary peasant farming families could be wealthier if they allow their land to be registered and possibly consolidated and sold to investors. Anderson's (2006) opportunity cost concept serves as a counter-argument to the views held by economy-based land administration systems theories. Anderson (2006) argues that although, the small farming families in customary areas may be cash poor, they are asset rich. The value of customary land should not only be seen in terms of the amount of money investors are prepared to pay for it. Case studies across sub-Saharan Africa suggest that the value of customary land has been under-estimated, and customary landowners lease their land at minimal values (Curtin and Lea, 2006). Anderson (2006) attributes this to lack of adequate information on the real opportunity cost value of customary land. The good governance principles of participation and transparency may assist peasant farming families with information about the value of their customary land. The cash-poor customary landowners remain vulnerable to investors (cash offers), as they (customary landowners) are mostly under pressure to earn money to cater for their other needs (e.g. buy clothes, pay medical bills and children school fees) (Curtin and Lea, 2006).

The disappointing side of economy-based theories is that economists are only concerned with the cost incurred by investors, such as their fixed capital and the depreciation of their assets. The cost borne by customary landowners through the contribution of their customary land is normally excluded from the cost estimation of investments in customary areas (Burnett and Ellingsen, 2001). Anderson (2006) argues that customary land has different subsistence, economic, social and cultural uses which can serve as opportunity cost when it is leased out or sold for commercial investments. Customary land has subsistence value, ritual value, cultural value and inter-generational value. All the above types of values could be sacrificed through land title registration. When customary land is alienated, peasant farming families may not have access to the alienated land on which they once farmed (Curtin and Lea, 2006). Advocates of economy-based theories argue that the peasant farming families will engage with the formal economy to support their livelihoods. However, the opportunities offered by the formal sector are mostly not conducive to the peasant farming families, who are normally uneducated (Burnett and Ellingsen, 2001). For instance, Anderson (2006) found in New Papua Guinea that peasant farming families who opt to work in the formal sector earn lower wages than those who engage in subsistence farming. Selling of customary land with the hope that 'ordinary' people may seek options from the formal sector may be a dark path (Anderson, 2006). Narokobi (1988) opines that customary land is perpetual and should be held in trust for unborn generations. This inter-generational value is precious and it is treacherous for the current generation to trade it for money. It is believed in Ghana that; certain local people have spiritual ties with land. In such areas, regular sacrifices are made to the earth god (Lentz, 2010). When such customary land is alienated, the local people may not have the

opportunity to continue performing rituals on the land. In many customary areas in sub-Saharan Africa, it is believed that ancestors still dwell in the land on which they were buried (Lentz, 2010). Alienating customary land through title registration may also mean that the homes of the ancestors are sold off. Anderson's (2006) opportunity cost concept is an eye-opener for customary landowners and other pro-customary land administration and tenure systems scholars in terms of what has to be sacrificed during land title registration. This study adopts good governance framework to assess hybrid land administration systems in peri-urban areas, with the hope that advocacy for participation and transparency (as good governance principles) will provide customary landowners (normally peasant farming families) with enough information to make a choice between land title registration and customary tenure.

### **5.7.5 Social tenure domain model**

An effective land administration infrastructure is necessary for land allocation, land markets, land use and development control. However, in many peri-urban customary areas, there is no land administration infrastructure to ensure effective land management. There is little or no cadastral coverage in such areas (Williamson *et al.*, 2010). People living in areas with no cadastral coverage often have no access to potable water supply and sanitation. This is because in many countries in sub-Saharan Africa, governments are not permitted to extend permanent water and sanitation services to people living in informal areas (Lemmen, 2010). Lemmen (2010) opines that many governments in sub-Saharan Africa do not recognise the need to extend statutory land administration systems to

include customary and informal tenures. The social tenure domain model seeks to establish all forms of relationships (including formal and informal) between humankind and land. Whilst many approaches to addressing the problem of informality is focused on building formal institutional and legal frameworks (Peter, 2009), the social tenure domain model focuses on developing pro-poor land management tools to resolve the challenges of off-register rights. Like the continuum of land rights model, the social tenure domain model recognises a range of documented and undocumented rights. The social tenure domain model provides alternative tools for recording different tenure types that are undocumented. The social tenure domain model relies on spatial information provided by the local people to determine and confirm land rights of local people. The social tenure domain model promotes inclusive land administration and recognises customary and traditional land administration in local communities. Economy-based land administration theories, such as the evolutionary theories, assert that such local ways of managing land are outmoded and inhibit development in modern societies (Hardin, 1968). The social tenure domain model, however, is in line with the adaptation theory and aims to improve tenure security of local people. It relies on local knowledge to delineate boundaries and determine tenure in local communities. Such a participatory approach gives the local people a sense of ownership of the process of land administration. The social tenure domain model seeks to close the technical gap between the cadastre (mostly available in urban areas) and oral records of tenure (mostly in peri-urban and rural areas). The social tenure domain model is a form of consensus-building approach to resolving the impasse between customary tenure and land title registration.

## 5.8 Good governance

Governance can be defined as the way society is managed and how the competing interests of different groups are negotiated through the formal institutions of government and informal arrangements (FAO, 2007: p.5). “Governance is concerned with the processes by which citizens participate in decision-making, how government is accountable to its citizens and how society obliges its members to observe its rules and laws” (FAO, 2007: p.5). How this process is undertaken, indicates the nature of governance (good or weak governance). Although there may be different definitions of good governance, common to all the definitions is a set of principles that seek to improve good governance (World Bank, 2012). Good governance and good land governance are used interchangeably in this study.

The need to adopt good governance in land administration systems has been echoed in many research reports (Whittal, 2008; Deininger *et al*, 2010; Williamson *et al.*, 2010; Akrofi, 2013; Hull and Whittal, 2013; United Nations, 2015). For instance, Deininger *et al.* (2010), emphasise the need for the development of land institutions to promote good governance in land administration. Good land governance may promote investment, tenure security, livelihood sustainability and improve accountability at the local level (Deininger *et al.*, 2010). Good land governance has a role to play in achieving sustainable development goals, such as poverty eradication, food security and environmental sustainability, as contained in the 2030 Sustainable Development Agenda (United Nations, 2015). The sustainable development goals may be achieved through the application of good land governance principles, such as transparency, efficiency, participation,

accountability, equity, effectiveness and fairness in land administration (Arko-Adjei, 2011). These good land governance principles may protect the land rights of people, reduce corruption in land administration, and subsequently improve the livelihoods of local people (Deininger *et al.*, 2010).

The increased demand for land in peri-urban customary areas requires that good governance principles be applied in peri-urban customary land administration (Bell, 2007; Kaufmann *et al.*, 2007; Deininger *et al.*, 2010). Good governance has become an element of sustainable development (Burns and Dalrymple, 2008). Many international organisations have subsequently recognised the importance of good governance in land administration (UN-FIG, 2001; UNHS and Transparency International, 2004; World Bank, 2006; United Nations, 2015). Good land governance has the potential of reducing corruption and bribery. Deininger *et al.* (2010) assert that good land governance can promote sustainable economic development. This is true, as good land governance may promote tenure security, thereby encouraging people to make long-term investments in their land (FAO, 2012). Good land governance further seeks to protect the land rights of disadvantaged groups, such as women, children and migrants (Deininger *et al.*, 2010).

Lack of application of good governance principles may lead to weak governance in land administration (FAO, 2007). Weak land governance may subsequently lead to tenure insecurity and corruption in land administration, and vulnerable groups such as women and the poor may be most affected (Mathieu, Delville, Lavigne, Ouédraogo, Zongo, Paré, Baud, Bologo, Koné and Triollet, 2003; Van Der Molen

and Tuladhar, 2006; World Bank, 2012). For instance, some subsistence farmers in many peri-urban customary areas in Ghana lost their farmland, chiefly due to weak land governance (Akrofi, 2013). Weak land governance may further weaken institutional and legal frameworks, and may result in a lack of transparency, accountability and other good land governance principles that seek to protect the land rights of the poor (Burns, 2007; FAO, 2007; UN-HABITAT, 2007). Arko-Adjei (2011) argues that weak land governance may lead to forced evictions and the abuse of power by chiefs. This argument is corroborated by Akrofi's (2013) observation in certain dysfunctional customary areas in Ghana, where land is solely administered by chiefs and forced evictions have become common.

The need to promote good land governance has been recognised in Africa (African Union, 2009). The African Union has subsequently proposed the development of benchmarks for measuring performances against good land governance across African countries (African Union, 2009). Deininger *et al.* (2010) have subsequently emphasised the need for standardised criteria for assessing good land governance in Africa. The Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries, and Forests in the Context of National Food Security (VGGT) and the Land Governance Assessment Framework (LGAF) serve as a response to the need for standardised criteria for assessing good land governance across countries (Deininger *et al.*, 2010; FAO, 2012). It has, however, been argued in this study that benchmarking may not promote effective land administration or good land governance, due to country specific situations (section 2.4.2). Although the principles of good land governance may be universally applied, the criteria for measuring such principles may differ from country to country. The fit-for-purpose

approach to land administration, as proposed by Enemark *et al.* (2014), may serve as a better option in ensuring effective land administration in sub-Saharan Africa.

### **5.8.1 Good enough governance**

The way institutions view governance may be informed by their objectives (FAO, 2012). For instance, the World Bank and other international organisations may view governance as a tool to bring about political and social transformation, as well as economic development, in sub-Saharan Africa (World Bank, 2006; UNDP, 1997; IMF, 2005; DFID, 2001; USAID, 2005). The different perceptions of governance have culminated in various definitions of good governance with its associated principles and criteria for measurement (Grindle, 2005). The list of good governance principles (interventions) can be longer, and development practitioners usually face a challenge of selecting the appropriate set of good governance principles. The ever-growing list of good governance principles makes it difficult to select the best set of principles to address specific governance issues. Grindle (2005: p.1) contends that good governance interventions to address economic and political problems should be “questioned, prioritised, and made relevant” to specific conditions. Grindle’s (2005) concept of good enough governance helps development practitioners to assess good governance interventions on the basis of how they directly contribute to a particular social, political or economic situation. The concept of good enough governance is in line with minimalism as it advocates for minimal and strategic governance interventions to address specific challenges. According to Grindle (2005), the socio-economic and political conditions of countries may differ. For this reason, a pre-determined list of good governance principles and interventions may not be appropriate for all countries. The context

and content of governance issues should be analysed to understand the appropriate list of interventions to be implemented. This will assist in directing scarce resources to achieve good governance (Grindle, 2004).

Grindle's (2005) concept of good enough governance is not perceived to be in contrast with the concept of good governance. He only questions the long list of things to be done to address governance issues that normally affect development. Many development practitioners and research students may be questioned why only a particular list of governance interventions has been used in a particular research project. The truth is that no single governance agenda can include all the normative things to be done (Grindle, 2004). The good governance agenda should be streamlined and strategically directed towards addressing identified governance issue(s). In this research, the concept of good enough governance is not adopted as an analytical framework, but it is rather used to motivate why only certain good governance principles are selected to assess land administration practices in the case study areas. The main land governance issues in sub-Saharan Africa include lack of participation, inequitable land access, unaccountable land institutions, inefficient land administration processes and unfair treatment of disadvantaged groups (e.g. women and children) (World Bank, 2012). For this reason, the good governance principles and interventions adopted in this study seek to address the above land governance issues. This explains why certain good governance interventions or principles (e.g. the rule of law, pluralism, democracy, stability and lack of violence) are not explicitly articulated in this study.

## 5.8.2 Land Governance Assessment Framework

To inculcate good governance in land administration, the World Bank developed the LGAF, specifically to monitor and assess land administration systems across countries. The LGAF provides a holistic diagnostic review of land administration systems. It is used to assess how land administration systems in different countries comply with land governance principles (World Bank, 2012). The LGAF seeks to address legal and institutional inefficiencies in land administration. Effective legal and institutional frameworks are necessary for land rights recognition and enforcement (Deininger *et al.*, 2010). A range of existing land rights should be legally recognised (Simbizi, 2016). For instance, in areas where different land tenure systems operate, all such tenure systems should be legally recognised. There should be proper documentation to support the different land rights of people. People should be able to upgrade their existing land rights from for example, leasehold to freehold. The cost of upgrading existing land rights should not be excessively high to enable the poor to upgrade their land rights if they wish to do so (Enemark *et al.*, 2014). Institutions that regulate and manage land should be given clear mandates. In addition, land administration processes should be transparent and equitable. The LGAF seeks to assess how countries have developed effective legal and institutional framework to support their land administration systems (World Bank, 2012). Good land governance principles of equity and transparency become critical in the above regard.

The LGAF further seeks to assess whether land use planning laws (e.g. zoning schemes) are enacted and implemented to support the development. Such laws

should be flexible to amend and allow for necessary exemptions. Efficient processes for land use planning should be in place. Property taxes should be managed in a transparent and efficient manner (Zevenbergen *et al.*, 2016).

In terms of public land management, the LGAF seeks to assess how governments hold land in the interest of the public. Processes of land expropriation should not exclude affected parties. People who lose land rights through expropriation should be adequately compensated. State land should be transferred in a transparent manner (World Bank, 2012).

The LGAF further seeks to promote effective access to land information. There should be mechanisms to facilitate access to land information and land administration services (Zevenbergen *et al.*, 2016). The LGAF emphasises effective land dispute resolution and conflict management. Effective and transparent mechanisms for land dispute resolution should be in place (World Bank, 2012).

Deininger *et al.* (2010) question the effectiveness of existing indicators such as the World Bank's Country Policy and Institutional Assessment (CPIA) and IFAD's Performance-Based Allocation System (PBAS) to assess land governance (IFAD, 2011). Such frameworks are subject to the qualifications of experts, and their (frameworks) neutrality and credibility remain questionable (Deininger *et al.*, 2010). The World Bank's (2009) 'doing business' indicators may provide a better assessment tool for measuring good land governance. However, the focus on land title registration and other encumbrances makes it difficult to apply in sub-Saharan

Africa, where about 90% of land rights are not formally registered (Simbizi, 2016). Participation remains the main principle of LGAF implementation. The LGAF process is underpinned by a framework of land governance indicators in five key areas, as discussed below.

The LGAF first seeks to address challenges in legal and institutional frameworks for managing land. The need for such frameworks to recognise existing land rights, (even if such rights have not been formally registered) is emphasised by the LGAF. In many sub-Saharan African countries, customary landholders lose their land rights when statutory land administration systems are introduced (Johnson, 2013). This poses a threat to the land tenure security of people living in customary areas in such countries (Simbizi, 2016). Land policies should protect the rights of landholders, in line with their customs. Deininger *et al.* (2010: p.6), argue that failure to recognise existing rights may create tenure insecurity, curb investments in land and increase the potential for conflict. The land rights of vulnerable groups such as women, children and migrants should be sufficiently protected. Different rights may co-exist in peri-urban customary areas (Arko-Adjei, 2011). All such different rights should be legally recognised, and individuals should be allowed to upgrade their existing rights (Zevenbergen *et al.*, 2016). Institutional arrangements for land administration should promote decentralisation and avoid the overlapping of functions. The policy framework guiding the functions of land institutions should be backed by social consensus. Land policies should thus be developed in a participatory and transparent process (Deininger *et al.*, 2010: p.6).

The LGAF also focuses on the improvement of land use planning processes. Transparent land use planning processes should be in place and zoning schemes

should make provision for future land demands. Land use planning standards should not be unrealistic and should not force people into informality (Deininger *et al.*, 2010: p.7). The cost of implementing land use regulations should be affordable, to ensure effective enforcement. Information on planned changes in land use or the extension of bulk infrastructure, which is likely to increase land value, should be accessible to all (Zevenbergen *et al.*, 2016). This may prevent speculative land acquisition by a few of the elite (Deininger *et al.*, 2010: p.7). Re-zoning processes should be participatory. Building and development permits should be processed transparently and timeously. Land use restrictions should be in line with the interest of the public and exemptions should be granted when required (Zevenbergen *et al.*, 2016). Such improvements in land use planning are critical in ensuring effective hybrid land administration in peri-urban customary areas. For instance, in Ghana, many people avoid land use planning processes, due to the corruption and inefficiencies inherent in such processes (Akrofi, 2013). The focus of this study is to ensure that both statutory and customary land administration functions are performed in a manner consistent with good land governance principles. To this end, the study acknowledges the effort by the LGAF to improve land use planning in land administration.

Another focus area of the LGAF is public land management. Public land management remains critical in improving the lives of vulnerable groups in sub-Saharan Africa. For instance, effective public land management may provide access to public open spaces and the provision of bulk infrastructure. Public land should be acquired, managed and divested in a transparent manner. Land may be expropriated for public purpose only if direct negotiation with the landholder is not

possible (Deininger *et al.*, 2010: p.7). It is observed in many parts of sub-Saharan Africa that land belonging to the poor is normally expropriated without sufficient justification or compensation (Gyapong, 2009). This implies that vulnerable groups in such areas are battling to protect their land rights not only against the elite, but also the government. This presents a grievous challenge to the global effort of eradicating poverty (Arko-Adjei, 2011). Landholders whose land has been expropriated should be allowed to appeal the decision to expropriate their land and be compensated should they lose such an appeal (Deininger *et al.*, 2010).

There should be an inventory of public land, and its boundaries should be clearly identified. This may prevent possible encroachment on public land. In many peri-urban customary areas in Ghana, land reserved for public use, such as schools and playgrounds, are sold by traditional leaders for residential developments (Ubink, 2008). Such problems prevail because there is no proper inventory of public land in such areas (Akrofi, 2013). Deininger *et al.* (2010: p.8), assert that the absence of an inventory of public land may provide opportunities for the elite to “establish land rights through informal occupation and squatting”. People should have access to information on income and expenditure on public land. This may serve to address corruption in the management of public land in peri-urban customary areas (Deininger *et al.*, 2010).

The LGAF further emphasises the need for efficient land information systems that provide sufficient, relevant and current data at an affordable cost. Landholders and potential investors should have access to land information. In addition, land allocation processes should be transparent and communicated to community

members. In many peri-urban customary areas in sub-Saharan Africa, however, access to land information remains limited, and this affects the security of tenure of many people living in such areas (Ubink, 2008).

The last area of focus of the LGAF is effective dispute resolution mechanisms. Lack of good land governance in many peri-urban areas in sub-Saharan Africa invariably results in land disputes (Ubink, 2008). Land dispute resolution processes should be unambiguous, fair and transparent, and should be affordable to the poor (Deininger *et al.*, 2010). Both the VGGT and the LGAF highlight pertinent issues to be considered to improve good land governance in peri-urban customary areas. However, this study insists that good land governance practices in one country may not be applicable in another. Therefore, the call for benchmarking good land governance issues across countries, as made by both the VGGT and the LGAF is not supported in this study. A fit-for-purpose approach should rather be adopted when addressing land governance issues in individual countries.

### **5.8.3 Voluntary Guidelines on Responsible Governance**

The Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries, and Forests in the Context of National Food Security (VGGT) is an initiative by FAO to improve land governance, based on internationally accepted practices (FAO, 2012). The VGGT seeks to improve food security and poverty eradication through effective land tenure systems. The VGGT further seeks to ensure sustainable livelihoods, social stability, housing security, rural development, environmental protection and sustainable social and economic development. To achieve this, all legitimate tenure right holders and their rights (whether statutory or

customary) should be recognised (Deininger *et al.*, 2011). This may help to avoid the infringement of the tenure rights of the vulnerable (IFAD, 2011; FAO, 2012).

The VGGT seeks to improve land governance to protect the land rights of the vulnerable. It further seeks to find solutions to food and housing insecurity, poverty, environmental degradation and declining economic growth, in both rural and urban areas. It adopts principles such as human dignity, equity and justice, gender equality, consultation and participation, rule of law, transparency, accountability and continuous improvements to assess good land governance (FAO, 2012). Although the above good governance principles may be applied internationally, the criteria for assessing them may be different, based on the local situation. The VGGT shares similar focus area with the LGAF. Both the VGGT and LGAF seek to improve the recognition of different tenure rights, land use planning and real property taxation, proper land management, access to land information and land dispute resolution (Deininger *et al.*, 2010). The above issues remain critical in improving good land governance in sub-Saharan Africa, and were considered in the good land governance framework adopted in this study.

#### **5.8.4 Good land governance and sustainable land administration**

Sustainable development, like good governance, has been interpreted in different ways by different researchers (FAO, 1993; Deininger *et al.*, 2010; Williamson *et al.*, 2010; Akrofi, 2013; Hull and Whittal, 2013; United Nations, 2015). This is because the two concepts are broad in scope and cut across diverse disciplines. It is therefore appropriate to contextualise and relate these concepts to the particular field in which a study is being undertaken. For the purpose of this study, good

governance and sustainable development are discussed within the context of good land governance and sustainable land administration respectively.

A sustainable land administration system is used in this study to mean a land administration system that combines both local-level and centralised/modern land administration infrastructure and customary and statutory (land) laws, policies and institutions to protect the land rights and the livelihoods of local people (United Nations, 2015). Sustainable land administration systems promote productivity (through efficient land market systems), security of tenure, protection of viable agricultural land, and are accepted by local people (FAO, 1993). Sustainable land administration systems are resilient to the dynamic humankind-land relationship and the challenges this relationship may pose to effective land administration. Sustainable land administration systems remain responsive to the needs of local people, despite a change in land tenure, land value, land use or land development (Williamson *et al.*, 2010).

Sustainable land administration systems may serve as “a basis to promote economic development, social coherence and environmental sustainability” (Enemark, 2001: p.2). Sustainable land administration systems focus on the most appropriate factors that serve the needs of the local people. Issues relevant to sustainable land administration include the strengthening of land policies, institutional and infrastructural development to improve tenure security, sustainable livelihoods, and land market efficiencies (Williamson *et al.*, 2010).

FIG and UN organisations have held joint meetings to discuss ways of promoting sustainable land administration systems. The proceedings of such meetings have provided some direction on how to achieve sustainable land administration systems (UN-FIG, 1996; UN-FIG, 1999). Such pronouncements are contained in the Bogor Declaration and the Bathurst Declaration (UN-FIG, 1996; UN-FIG, 1999). In 1996, a group of cadastral experts met in Bogor, Indonesia, to find answers to the problems of land management and environmental protection. It was at that meeting that cadastral systems were officially recognised as a core part of land infrastructure to support sustainable land administration systems. It is argued that cadastral systems support security of land tenure, social justice and economic development (UN-FIG, 1996). The Bogor Declaration sought to set out the desirable requirements and options for cadastral systems for developing countries.

The Bogor Declaration puts cadastral systems at the centre of sustainable land administration (UN-FIG, 1996). Williamson *et al.* (2010) also assert that the cadastre is at the core of any land administration system. This assertion may, however, be contested. Although the cadastre may provide “spatial integrity and unique identification of every land parcel” (Williamson *et al.*, 2010: p.8), a sustainable land administration system may emerge from effective land laws, accountable land administration institutions, and efficient land administration processes. The cadastre is recognised as an important aspect of sustainable land administration systems. However, it may not on its own be able to resolve some key social, cultural and economic challenges associated with customary land administration in sub-Saharan Africa (Akrofi, 2013). It is therefore important to

consider all the other related aspects (e.g. customs and values) of customary land administration, rather than the cadastre only.

The Bathurst Declaration presents a broader perspective of sustainable land administration. The Bathurst Workshop investigated the major challenges with the development of appropriate land policies, institutions and infrastructure. Its main recommendations touch on the development of land tenure, land administration institutions and infrastructure to promote sustainable development (UN-FIG, 1999). The workshop recognises the dynamic nature of the relationship between humankind and land, and the role of land administration in ensuring sustainable development, among other issues.

The Bathurst Declaration provides some direction on how to improve land tenure, land administration institutions and infrastructure to support sustainable land administration systems. It identifies four principles of sustainable land administration, as discussed below.

#### **5.8.4.1 Security of tenure**

Tenure security is critical in ensuring sustainable land administration systems. Tenure security may protect the livelihoods of the local people and avoid evictions and land expropriation without compensation. It may also ensure the safe transfer of land rights from one person (e.g. parents) to another (e.g. children). To ensure secure land tenure, there should be mechanisms to document people's land rights, and people should have proof of tenure. For land rights to be secure, people should acquire land through the appropriate processes. In hybrid land administration

systems, people who acquire land through customary means should proceed to complete the necessary statutory land registration processes.

The land rights of people should be secure for the agreed period in terms of leasehold agreements, and indefinitely in terms of freehold agreements. For instance, in Ghana, land can be leased for 99 years (residential) and 50 years (commercial) (Arko-Adjei, 2011). People with leasehold titles should not fear any threat of eviction within the lease period. People should be able to transfer their land rights to their children and other dependants. There should be mechanisms to ensure the smooth transfer of land rights from one person to another, even when the former is dead. In the absence of proof of inheritance (e.g. a will), legislation should be in place to direct how dependants would be cared for to prevent them from losing their land rights.

Tenure security and equitable access to land and natural resources are critical to breaking the cycle of poverty (GLTN, 2013). Secure tenure rights may lead to investment in farming, housing and businesses, and can promote “economic growth, equity, peace and security, food security, sustainable urban and rural development and the sustainable management of soils, forests and other land ecosystems” (GLTN, 2013: p.1). The achievement of tenure security is based on the application of good land governance principles (GLTN, 2013). There is a need for the recording of the land rights of landholders, including women, men, businesses, households and communities, regardless of their tenure status (GTLN, 2013).

Access to secure land tenure for communities, especially subsistence farmers and vulnerable groups (such as women) has dominated most recent sustainable development discussions. The Post-2015 Development Agenda by the United Nations suggests a target to improve the share of women and men, communities and businesses with secure rights to land, property, and other assets by 2030 (United Nations, 2015). The Global Land Indicator Initiative (GLII) recommends the following four indicators to support the Post-2015 Development Agenda:

1. Percentage of women and men, communities and businesses that perceive their land resource and property rights as recognised and protected (GLTN, 2013: p.1).
2. Percentage of women and men, indigenous people and local communities and businesses with legally recognised evidence of tenure (GLTN, 2013: p.1).
3. Extent to which the national legal framework provides women and men equal rights to land resources and property (GLTN, 2013: p.1).
4. Extent to which the national legal framework recognises and protects legitimate land rights (GLTN, 2013: p.1).

The first two indicators measure tenure security outcomes, whilst the last two indicators serve as complementary indicators. The complementary indicators seek to promote the development of a legal and regulatory framework to support the security of land tenure. The above indicators were considered in selecting indicators for assessing good land governance in the case study areas.

#### **5.8.4.2 Development of regulatory and legal frameworks**

Livelihoods and land tenure security may be improved through the development of effective land laws and policies (Simbizi, 2016). Land laws and policies should be developed to regulate land administration processes. Both customary and statutory land laws should provide clarity on land delivery and dispute resolution processes (Arko-Adjei, 2011). There should be mechanisms to ensure that such land laws are implemented. Lack of effective land laws and policies to control land use and development may lead to haphazard development (Akrofi, 2013). This may affect the livelihoods of local people as viable agricultural land could be easily converted to residential and other physical developments. There should be laws and policies to direct the registration of land. Such laws should clearly indicate if land registration should be based on deed or title systems (Simbizi, 2016). The conditions for land expropriation and evictions, and the compensations to be paid to the affected people, should be stipulated in land laws and policies (FAO, 2012).

#### **5.8.4.3 Access to land-related economic opportunities**

Access to land-related economic opportunities in peri-urban areas may be assessed through how land administration practices in such areas seek to enhance the livelihood strategies of local people (Zevenbergen *et al.*, 2013). A livelihood may include the capabilities, assets (both material and social resources) and activities necessary to support a living (DFID, 1999: p.3). A livelihood is sustainable when it can withstand and improve from external pressure, maintain or enhance its capabilities or assets without undermining the natural resource base or jeopardising opportunities for future generations (DFID, 1999: p.3). Sustainable livelihood is a

necessary requirement for achieving poverty reduction, which is the prime focus of the new sustainable development agenda (United Nations, 2015). Many donor projects in sub-Saharan Africa currently focus on achieving sustainable livelihoods, as they are seen to be more effective in reducing poverty than projects that seek to improve economic growth, access to infrastructure and social services, which do not necessarily consider the ways in which local people make their living (Dalrymple, 2005).

The way in which people live and support their livelihoods may depend on where they are located (rural, peri-urban or urban). For instance, the majority of people in rural and peri-urban customary areas in Ghana support their livelihoods through subsistence farming (Dowuona-Hammond, 2003). Equitable access to agricultural land is therefore an important factor to consider in an attempt to improve the sustainable livelihoods of people living in such areas (Gough and Yankson, 2000), and good land governance may assist in this regard. Land allocation and development processes in such areas should not destroy farmlands. Although livelihood sustainability may depend on a complex socio-economic system, sustainable land administration may promote the protection of viable agricultural land, which serves as a means of livestock and crop production for the subsistence farmer. There should be mechanisms to ensure that the conversion of land from one use (e.g. farming) to another (e.g. residential) does not jeopardise people's livelihoods. Arable land should be protected from physical development, which may jeopardise food security. To do this, there should be proper land use planning and development control, as well as appropriate policies and legislation to enforce goals of sustainable development (Williamson *et al.*, 2010). Land administration

systems should allow future generations to have access to locally-produced food, employment, shelter and other basic human rights, such as access to water.

Although there may be different sustainable livelihood indicators, access to land by both women and men, as well as indigenes and non-indigenes remains imperative (Norfolk, 2004). This is regarded as an indicator to assess the good land governance principle of equity in land administration in the case study areas.

#### **5.8.4.4 Infrastructure development and institutional framework**

Detailed information about land parcels is a prerequisite for sustainable land administration systems. This may promote tenure security, provide access to credit facilities, facilitate efficient land transfers and land market systems, and provide basic information in the processes of physical planning, land development and environmental control (Enemark, 2003: p.8). Design and implementation of effective land administration infrastructure, including land information management systems and spatial data infrastructure, is critical to sustainable land administration systems. Land information management systems may include organisations, standards, processes, information and dissemination systems and technologies required to support the allocation, transfer, and use of land (Enemark, 2003: p.8). Land administration infrastructure in sub-Saharan Africa may not be as sophisticated as that in the developed world. However, it should provide effective citizen access to land information to protect security of land rights and improve the livelihoods of local people (Lemmen, 2010).

Competent staff may be required to run land administration institutions and implement land laws. Both statutory and customary land administration institutions should be equipped with human and other resources to provide efficient land administration services to people. There should be a clear definition of the roles of the central government, local authorities and customary authorities in land administration processes (Lambert, 2011). Community land organisations, such as land boards and land committees, may be established to assist customary institutions in land administration. There should be independent structures to adjudicate land delivery processes, should any party become aggrieved. Land administration institutions should be given both the legal power and social legitimacy to undertake land administration functions (Burns and Dalrymple, 2008).

Williamson *et al.* (2010), identify some principles of land administration - the systems of land administration, the functions of land administration systems and their linkages (Land Management Paradigm), intended beneficiaries (people and institutions) of land administration and how they interact (land governance), rights, restrictions and responsibilities of the beneficiaries (tenure security), the division of land and information about each parcel (cadastre), the nature and processes of land administration systems, and the required technology to ensure efficiency in land administration systems. The above principles should be considered in pursuit of sustainable land administration systems.

### 5.8.5 Principles and indicators of good land governance

Land decision-making processes can be complex and dynamic, and require some principles to underpin such decisions and their implementation (Thomas, Mansoor, Ashok, Daniel, Nalin and Ramon, 2000; Kaufmann *et al.*, 2007; Grimmelikhuijsen, 2009; Tundjungsari, Istiyanto, Winarko and Wardoyo, 2011). Such principles may be embodied in good governance (Woods, 2000). Good governance principles may include adherence to the rule of law, responsiveness, community participation, political pluralism, transparency, accountability, efficiency, effectiveness, accessibility, empowerment, equity and sustainability (Kaufmann *et al.*, 2007; UN-ESCAP, 2009; Zevenbergen *et al.*, 2016). The selection of good governance principles should be extended to include those that may improve economic, political and administrative stability in land administration (Kaufmann *et al.*, 2007; Lemmen, 2010).

Akrofi and Whittal (2011) identify some good governance principles (including integrity, stable administration, cost and affordability). Whittal (2008) also identifies some principles, such as efficiency, effectiveness, efficacy, elegance, empowerment, emancipation, exception and emotions (7Es) in her research on cadastral system. Although she refers to them as performance indicators, they can be incorporated into the list of good land governance principles.

There are indicators that are used to assess good governance principles (Prescott-Allen, 2001). Different good land governance indicators have been used to assess the nature of land tenure and administration systems in sub-Saharan Africa

(Kaufmann and Kraay, 2008; UN-HABITAT, 2012). Individual institutions choose indicators that are aligned to their objectives. Some of such indicators are used to assess the effectiveness of the institutions responsible for promoting good governance and the perception of citizens on how such institutions adhere to the good governance principles (Deininger *et al.*, 2010). For instance, the UN-HABITAT (2007) identifies some urban governance indicators that are used to assess how cities are planned and managed. The indicators are used to assess four sub-indices (participation, equity, effectiveness and accountability) of the Urban Governance Index. Although the indicators are not directly aligned with the focus of this study, the principles (sub-indices) of the Urban Governance Index remain relevant. The World Bank and FAO indicators are used to determine the success of land administration reform (Burns, 2007). Such indicators include security, clarity, simplicity, timeliness, fairness and accessibility. The above indicators are useful in assessing how land administration systems comply with good governance.

The World Bank Governance and Doing Business Index is used to assess accountability, political stability, adherence to the rule of law, and corruption control (World Bank, 2006). In addition to the principle of accountability, this study adopted indicators to assess transparency in land delivery processes in the case study areas. Such indicators can also be used to assess corruption control in land administration, as is the focus of the World Bank (World Bank, 2006). Political stability and adherence to the rule of law, however, fall outside the domain of this study. Zakout, Wehrmann and Torhonen (2007) identify some indicators for assessing good land governance. The indicators focus on land tenure security and efficient land market systems. They argue that time and cost are important factors

to consider in the implementation of effective land administration systems. To provide good land administration services to people, there should be clearly-defined and transparent procedures, a reasonable turnaround time for the processing of land applications, and the availability of report back mechanisms (Zakout *et al.*, 2007). These indicators are also found to be useful in this research.

Other good governance indicators include the United Nations Development Programme Governance Indicators (UNDP, 2007), and the FAO indicators on good governance in land tenure and administration (FAO, 2007). The FAO's good governance framework provides a clear direction for researchers and land administrators regarding how to select a list of good governance principles and indicators to assess them (the principles). FAO (2007) recommends participation, equity, fairness, transparency, accountability, effectiveness and efficiency as good land governance principles. Many researchers, such as Arko-Adjei (2011) and Akrofi (2013), have adopted the FAO good governance framework in assessing land tenure and administration systems in Ghana. The good land governance framework developed in this chapter is underpinned by the principles outlined in the FAO good governance framework. The UN-FIG (2001) guidelines on women's access to land also provide some direction on how to assess the good governance principles of equity and fairness. One of the indicators used to assess equity and fairness in land delivery in the case study areas is land accessibility by both men and women. The selection of this indicator is informed by the UN-FIG guidelines. Women are regarded as vulnerable and have been side-lined in land decision-making processes in many sub-Saharan African countries (Ubink, 2008). For instance, women are not allowed to own land independently in some parts of

Ghana (Grischow, 2008). This may be a violation of human rights principles. According to the FAO (2007: p.4) “improvements in land administration can help realise a society’s commitment to democracy, the rule of law and human rights”. Such improvements may be realised through good land governance (Whittal, 2008).

To add to the list of good governance indicators, Burns and Dalrymple (2008) have developed a framework for assessing governance in land administration. Their framework concentrates on the political economy and looks at factors that affect land administration arrangements. The framework covers the accessibility of land information, clarity and transparency of the mandate of land administration institutions, land policy, in line with the principles of fairness and equity, and the accessibility of judicial and non-judicial institutions, among others (Burns and Dalrymple, 2008: p.6). Transparency, accessibility, equity and fairness were taken from the framework developed by Burns and Dalrymple (2008) as good land governance principles in this study.

Deininger *et al.* (2010) also propose an approach to assess good land governance. Their framework seeks to assess legal, institutional and policy frameworks that support effective land administration systems. Some indicators used for the assessment include the recognition of existing land rights, affordability, availability of mechanisms to promote land-use planning and taxation, lack of negative externalities, support for effective decentralisation, management of state land to provide public goods, accessibility to land information, reliability and cost-effectiveness, and availability of dispute mechanisms. The good governance

framework developed by Deininger *et al.* (2010) introduces a new indicator (lack of negative externalities) to the list of indicators for assessing good land governance. Williamson *et al.* (2010) refer to such externalities as risks. This study emphasises the need to mitigate the risks associated with land tenure as part of the recommendations to improve local hybrid land administration practices in chapter 8. This may assist in reducing the negative externalities associated with land tenure and administration systems.

It can be observed from this section that good land governance is assessed using different principles and indicators. The selection of the principles and their indicators should, however, be informed by the goals, context and object of assessment (Grindle, 2005; Van Der Heijden, 2009). The good governance principles and indicators should not be considered in isolation when they are being used to assess land administration systems (Kaufmann *et al.*, 2007). In this study, the selection of the good governance principles was informed by the following factors:

- The selected principles seek to address critical issues in customary land administration in peri-urban customary areas in Ghana (Grindle, 2005).
- There are similarities between the principles and they address a broader spectrum of land governance issues (Arko-Adjei, 2011).
- The principles are related to what is regarded as good land administration practices by many researchers and international organisations (FAO, 2007; Kaufmann *et al.*, 2007; UNDP, 2007; United Nations, 2015).

In addition to the above factors, the selection of the indicators to measure the different good land governance principles was based on the following:

- How the indicator can assist in monitoring the good land governance principles.
- Availability of required data (UN-HABITAT, 2007).

The list of good governance principles and indicators adopted in this study are further discussed below.

#### **5.8.5.1 Participation**

Decision-making in respect of land administration and tenure systems should include all community members and other interest groups. Each individual or group of individuals who have a stake in land management should be consulted in land administration processes. For instance, in many peri-urban customary areas in Ghana, there can be different stakeholders in customary land administration (i.e. traditional leaders, community organisations, investors and state land agencies) (Boamah, 2011). Both men and women should be represented in land decision-making and implementation processes. For participation to thrive, freedom of expression and association should be encouraged (Kaufmann *et al.*, 2007).

Participation can take the form of either mass or representative participation. With mass participation, each individual is represented in the decision-making process through voting (e.g. referendum) (Blair, 2000). Representative participation is where the interests of individual stakeholders are represented by organised bodies, such as committees and associations (Deininger, 2003). Participation can be a

complex exercise and requires an effective mechanism to facilitate, negotiate and coordinate its processes. Participation should go beyond gathering inputs from stakeholders in respect of a decision that has to be taken. There should be mechanisms to translate such inputs into outputs in terms of the final decision to be implemented. In addition, decision makers should report back to stakeholders and interest groups regarding the implementation of a decision emanated from their (stakeholders and interest groups') inputs (Dorner, 1972).

Arnstein (1969) categorises participation in eight levels (from lowest to highest) – manipulation, therapy, informing, consultation, placation, partnership, delegated power, and citizen power. Manipulation is where decision-makers pretend to involve local communities in decision-making processes. For example, decision-makers may use inputs from the community to further an existing agenda, or use community representatives who have no power on official boards (Arnstein, 1969). This is the lowest level of participation, and should not be encouraged. This form of participation is regrettably observed in some dysfunctional peri-urban customary areas in Ghana (Akrofi, 2013). In such areas, community land organisations are only aides to the chiefs. They have no legislative authority in land administration and management (Ubink, 2008).

Therapy (as used by Arnstein, 1969) is where local people are only told of what has been decided or has already happened. It involves unilateral announcements by decision-makers, without listening to the people. As the name (therapy) suggests, community members are treated as patients, and decision-makers regard themselves as therapists. Like many doctor-patient relationships, decision-makers

prescribe antidotes to community problems, and community members are told how to use the medication (Arnstein, 1969). Consultation and informing take place where communities are told about a particular decision through meetings or surveys. Even though their views may be solicited, they may not be taken into account. This form of participation is prevalent in countries where public participation is a legislative requirement in public decision-making processes (Andre', Enserink, Connor and Croal, 2006). Decision-makers adopt the tactics of ventriloquists (*puppeteers*). As a puppeteer speaks through a puppet, so decision-makers speak through the community members (without necessarily the actual voice of the people). Many local governments in sub-Saharan Africa have adopted this puppeteer approach to public participation (Obeng and Whittal, 2014). Decision-making processes in such areas seem to be inclusive; however, the outcome of decisions is in fact based on the technical perceptions of bureaucrats, and not on the inputs of the *ordinary* community members (Obeng and Whittal, 2014).

Placation occurs where community inputs minimally affect public decisions. Even in countries where this form of participation is practised, community members may have to resort to public demonstrations and riots before their voices are heard (Crooks *et al.*, 2007). With partnership, communities have considerable influence on decision-making processes. The final decision, however, is still taken by decision-makers (e.g. government). Delegated power is at play when communities are given some authority to make certain decisions without any external influence. Citizen power is the highest level of participation. It is exercised when communities are allowed to take development initiatives without any external

influence. They retain control over how resources are used. An example of citizen power is self-government, where the community makes the decisions that affect its members. Most forms of public participation in sub-Saharan Africa have not attained the level of citizen power. It is disconcerting to note that some countries are still at the manipulation level (Ubink, 2008; Arko-Adjei, 2011; Akrofi, 2013). Even those who seem to be doing better are mostly at the placation level while only a few have attained the partnership level (Andre' *et al.*, 2006). Arnstein's (1969) ladder of participation is reflected in Figure 5.1.



**Figure 5.1: Levels of participation (Arnstein, 1969: p.217)**

Participation was selected as a good governance principle to assess the nature of land administration systems in the case study areas. This is because effective land administration should incorporate the needs of local people. This may be achieved when local people are involved in decisions that affect their relationship with land. For the purpose of this research, effective participation was assessed using the following indicators:

1. The availability of mechanisms to identify stakeholders and interest groups.

2. The level of involvement (participation) of identified stakeholders and interest groups in land administration processes.
3. The availability of mechanisms to coordinate, facilitate and negotiate participation processes.

The selection of the above three indicators to assess effective participation in land delivery was informed by the three dimensions of participation i.e. inclusivity, level and process. Land administration processes should be inclusive. Inclusivity implies that the interests of all stakeholders are considered in land decision-making processes, and that each interest group is given an opportunity to take part in the decision-making processes. This may be possible if the stakeholders and interest groups in the decision-making processes are identified

As discussed above, participation may take different forms or levels. It has been argued that citizens should be empowered (citizen power) to take their own decisions (Arnstein, 1996). In assessing the effectiveness of participation in land administration, it may be appropriate to know the levels at which people are participating (either at manipulation or citizen power level). Participation processes should be well-coordinated, and all conflicting interests should be negotiated. Power relations and disparity between interest groups should be acknowledged, and their possible negative impact on participation processes should be mitigated. This can be achieved when there are mechanisms to coordinate, facilitate and negotiate participation processes.

### 5.8.5.2 Equity and fairness

Equity and fairness as good governance principles seek to ensure that all interest groups in society benefit fairly from decision-making and implementation (Kaufmann *et al.*, 2007). Although participation may ensure that stakeholders are well represented in decision-making processes, there is a tendency to exclude the interests of some groups from the outcome of the decision-making process. The interests of vulnerable groups, such as women, children, people with disabilities, the poor, and the unborn generation, who may not be able to compete with influential and powerful groups, should also be considered in the decision-making outcome (FAO, 2007). In addition, people should be compensated if their land is expropriated for public purposes. Proceeds from land sales should be used to promote community development. In this way, local people can have access to land-related economic opportunities (FAO, 2012).

Equity and fairness in land administration can be viewed from two perspectives - distributional and intergenerational equity (Curry, 2001). Distributional equity implies that all stakeholders should have a say in land decision-making and benefit from land rights. Distributional equity advocates for fair access to information and standards of service. There should be no discriminatory practices in accessing land (Kaufmann *et al.*, 2007). Intergenerational equity, on the other hand, requires that the present generation use land and its resources sustainably, so that future generations are not denied such resources (WCED, 1987). Equity in land administration may be achieved if flexible, affordable, upgradeable and adaptable tenure arrangements are available (section 2.13).

Equity may not mean equality. Equality may imply that all interest groups have access to the same type of services. This may not be possible, as everyone does not have access to the same wealth and opportunity (Curry, 2001). However, those who may not be able to afford access to a particular service due to its high cost, should be given an alternative means of accessing a similar service. For example, the poor may not be able to afford access to land information through sophisticated and expensive technologies. However, they should be allowed to access land information through traditional and less expensive means (Lemmen, 2010). Different modes of accessing land by different groups should be allowed in land administration systems. For the purpose of this research, equity and fairness were assessed using the following indicators:

1. Access to land by both men and women.
2. Access to land by both indigenes and non-indigenes.
3. Compensation for land expropriation.
4. Community projects funded through proceeds from land sales/leases.

The selection of the above indicators was informed by the issues confronting customary land administration in sub-Saharan Africa (Grindle, 2005). For instance, customary land administration in Ghana has been marred by gender inequality, land expropriation without adequate compensation, discrimination against non-indigenes in land access, and lack of community development due to the misappropriation of land proceeds (Ubink, 2008; Arko-Adjei, 2011; Akrofi, 2013). The above indicators may assist in monitoring equity and fairness in land delivery processes in customary areas in Ghana.

### **5.8.5.3 Transparency and accountability**

Transparency as a good governance indicator is concerned with the free flow of information (UNDP, 1997). Communication thus forms a vital part of this principle. Transparency also seeks to promote adherence to rules and regulations that guide decision-making and implementation processes (Deininger *et al.*, 2011). People who are affected by a particular decision should be able to access information about how such decision is made and implemented. Information should be presented in a simple and understandable form to ensure that everyone receives the intended meaning of such information. Different modes of communication should be employed to reach as many interest groups as possible in respect of every decision-making and implementation process.

Land administration systems should promote access to land information. To achieve this, there should be mechanisms to record land transactions, land transfer and delivery processes, as well as other relevant land information. In addition, interest groups should be informed about rules and regulations that govern land administration in their areas, and be educated on how to apply such rules and regulations, as well as the consequences of violating them. This may be a challenge in many customary peri-urban areas in Ghana, as most customary laws are unwritten (Asante, 1997). This challenge may be mitigated through regular interaction between customary leaders (who may have knowledge of customary laws) and the community members. Access to information may empower local people to make informed decisions about their land. Community members should

be informed of the possible consequences of potential investments and developments in their areas.

Accountability is linked to transparency, as both principles seek to ensure that decision makers remain answerable to their people (FAO, 2007). However, transparency is used to assess land administration process, whilst accountability is used to assess land administration institutions. There should be reporting mechanisms and means of validating performance by land administrators. Community members should be allowed to question the actions of leaders without any fear or prejudice. In many peri-urban customary areas, accountability and transparency are a challenge, as people are not traditionally allowed to question the actions of their traditional leaders (who are also the custodians of customary land) (Alden Wily, 2000; Alden Wily and Hammond, 2001). This can be mitigated through the establishment of community land organisations that provide feedback to community members and independent adjudication structures to assess decisions taken by customary landowners. For the purpose of this research, transparency and accountability were assessed using the following indicators:

1. The availability of mechanisms to record land transaction/information.
2. The availability of independent adjudication structures/land dispute resolution mechanisms.
3. The accessibility to land information.
4. The availability of report-back mechanisms.

There are a lack of land transaction records and land information in many customary areas in Ghana (Ubink, 2008). In addition, land administrators remain

unaccountable in such areas, due to the lack of independent bodies to evaluate the decisions taken by them (Abdulai and Ndekugri, 2007). Land administration processes in such areas remain opaque and secretive, and the local people have no knowledge of such processes. For instance, both Ubink (2008) and Akrofi (2013) found in certain parts of Ghana that chiefs do not account for their actions and there is no evidence of land allocations. There are no “effective checks and balances in many customary areas to compel accountability” (FAO, 2007: p.9). The above indicators are expected to monitor transparency and accountability in land administration in customary areas in Ghana.

#### **5.8.5.4 Effectiveness and efficiency**

Effectiveness and efficiency as good governance principles seek to promote the provision of quality land administration services to community members in a manner that promotes sustainability and durability (World Bank, 2012). Legislation and policies should be in place to protect certain pieces of land (such as swampy and other environmentally sensitive areas) from physical development. Land administration systems should allow people to enjoy security of land rights for the agreed period of time (leasehold) or permanently (freehold). There should be no fear of evictions. There should be a smooth transfer of land rights from one person to another (i.e. from parents to their children). Tenure security may be achieved through proper documentation of land rights.

Effectiveness and efficiency in land administration are also concerned with the delivery of land administration services within a reasonable time (UN-HABITAT,

2008). Land delivery and dispute resolution processes should be completed within an appropriate timeframe. Land information should be equally obtained within a reasonable timeframe. There should be efficient methods of land delivery, tenure documentation and land dispute resolution to curtail cost. This may promote affordability in land administration, as ‘unnecessary’ costs will not be borne by people who access land or land information. Efficient and effective land administration may be achieved through the establishment of land information desks and the clarification of land delivery processes (UN-HABITAT, 2012), as well as proper legal and institutional arrangements. Effective and efficient land administration systems require that land administrators receive regular training on land administration and management. Efficiency was used to assess land administration processes, whilst effectiveness was used to assess land laws and land administration infrastructure in the case study areas. For the purpose of this research, effectiveness and efficiency were assessed using the following indicators:

1. Clear outline of land allocation procedure.
2. Proof of land allocation.
3. Training of people involved in land administration.
4. Average turnaround time for the processing of land applications, land dispute resolution and obtaining land information.

Table 5.1 summarises the good land governance principles and their respective indicators used to assess the nature of land administration practices in the case study areas.

**Table 5.1: Good land governance principles and indicators**

<b>PRINCIPLES</b>	<b>INDICATORS</b>
Participation	Availability of mechanisms to identify stakeholders and interest groups; level of involvement of identified stakeholders and interest groups in land administration processes; and availability of mechanisms to coordinate, facilitate and negotiate participation processes.
Equity and fairness	Access to land by both men and women; access to land by both indigenes and non-indigenes; compensation for land expropriation; and community projects funded through proceeds from land sales/leases.
Transparency and accountability	Availability of mechanisms to record land transaction/information; availability of independent adjudication structures/land dispute resolution mechanism; accessibility to land information; and availability of report back mechanisms.
Effectiveness and efficiency	Clear outline of land allocation processes and procedures; proof of land allocation; training of people involved in land administration and average turnaround time for the processing of land applications; land dispute resolutions and obtaining land information.

## 5.9 CONCLUSION

The various land administration frameworks discussed in chapter 5 are informed by the three main viewpoints on the formalisation of customary land administration and tenure systems (promotion, contestation and consensus-building). The evaluation framework, the benchmarking framework, the re-engineering framework, the bookkeeping and accounting framework are aligned to land title registration. These frameworks are informed by economy-based land

administration and tenure systems theories (e.g. De Soto, evolutionary and replacement theories). Conversely, the opportunity cost framework, the pro-poor land recordation and the fit-for-purpose frameworks are aligned to customary land administration systems, and are informed by the adaptation theories. The good governance and its associated frameworks (i.e. LGAF and VGGT) provide the required tools to assess the relevance of land tenure and administration options in sub-Saharan Africa. Good land governance can enhance tenure security and sustainable livelihoods, which are the two main areas of concern for most land administration projects implemented in sub-Saharan Africa (United Nations, 2015). The good governance framework is relevant for assessing land administration processes, land administration institutions, land laws and land administration infrastructure. Good land governance principles of participation, equity, fairness, transparency and efficiency (PEFTE) were identified as suitable to assess land administration processes in the case study areas. Accountability is used to assess land administration institutions, whereas effectiveness is used to assess land laws and land administration infrastructure. Land administration processes and institutions are underpinned by land laws and land administration infrastructure. PEFTE is more concerned with processes than institutions. For instance, a particular land administration process may be described as participatory if it allows for the involvement of stakeholders. Institutions may not be described as participatory, equitable, transparent, fair, or efficient (PETFE); rather, their processes and the way in which they work may be described as PEFTE. In using the good land governance framework to assess land administration systems, it may be appropriate to apply the PEFTE principles to analyse land administration processes, rather than institutions. How land administration institutions remain

accountable to the people (they intend to serve) should be the focus of assessing land administration institutions. Effectiveness is more aligned to land laws and land administration infrastructure. The two (laws and infrastructure) may serve as the wheels on which land administration institutions and processes thrive. The land administration practices in the case study areas are narrated in chapter 6 and analysed using the good land governance framework in chapter 7.

## **CHAPTER 6: CASE STUDY NARRATIVES**

### **6.1 INTRODUCTION**

The preceding chapters were devoted to contextualising this study. The evidence gathered from both primary and secondary sources is presented in chapter 6 and analysed in chapter 7. Chapter 6 begins with a brief description of land administration frameworks in the countries in which the case study areas are located. The main argument here is that good local hybrid land administration and tenure practices should be consistent with legal and institutional frameworks at the national level. This may seek to reduce conflicting rationalities that normally exist between statutory land administration systems (managed by central governments) and customary land administration systems (informed by the customs and tradition of the local people). The main focus of this study therefore, is to find existing local hybrid land administration and tenure practices in Ghana that are consistent with national laws whilst also reducing conflicting rationalities. Chapter 6 further gives a background and tells the story of land administration in the specific case study areas. Chapter 6 is categorised into part A and B. Part A presents the primary data obtained from Ghana whilst part B presents the secondary case studies. The chapter only describes the case studies. The case study analysis is presented in chapter 7.

#### **PART A: PRIMARY CASE STUDIES**

This part of chapter 6 presents the data obtained from fieldwork in Ghana. Part A outlines customary land delivery processes in the primary case study areas and reveals some novel land administration practices that may serve as precedents for effective hybrid land administration in sub-Saharan Africa. Part A is divided into

four main sections. The first section gives a broad overview of land administration systems in Ghana. The second section presents the Esereso case study and the third and fourth sections present the Adumasa and Yasore case studies respectively.

## **6.2 LAND ADMINISTRATION SYSTEMS IN GHANA**

There are four different systems of land administration in Ghana – informal systems, customary systems, neo-customary systems and statutory systems (Abdulai, 2010). Each of these systems is described below.

### **6.2.1 Informal land administration systems**

In Ghana, some people have no proof of ownership or rights in the land they occupy (Akrofi, 2013). These people either squat on state land, or have acquired customary land without going through the proper customary processes (Ubink, 2008). Some households in certain peri-urban areas in Ghana acquire land through family members of the chiefs, without their (the chiefs') knowledge. Such households have no allocation notes or any documentation that proves that such land transaction has taken place (Asiama, 2004). In many instances, such households face the threat of eviction from the chiefs (Asumadu, 2003). For example, Akrofi (2013) observed some informality in land administration in Maledjor, Amrahia and New Ningo (peri-urban customary areas in Ghana).

### **6.2.2 Customary land administration systems**

About 90% to 95% of peri-urban land in Ghana is held and managed under customary land administration systems (Obeng-Odoom, 2014). The Constitution of

Ghana accepts and protects customary land rights. According to Article 267 (10) of the 1992 Constitution of Ghana, “all stool lands shall vest in the appropriate stool on behalf of, and in trust for the subjects of the stool in accordance with customary law and usage” (Government of Ghana, 1992). To this end, traditional leaders administer customary land in Ghana (Kasanga and Kotey, 2001). However, the Lands Commission (as the statutory body) validates all customary land allocations within the land laws of Ghana (Asiama, 2004). The Constitution of Ghana places responsibility on traditional leaders to manage customary land to the benefit of their people (Government of Ghana, 1992).

### **6.2.3 Neo-customary land administration systems**

To enhance transparency and improve the recording of land transactions, some peri-urban areas in Ghana have adopted a neo-customary system (Asiama, 2004). A neo-customary system consists of the traditional authority (as customary actors) and a land allocation committee (made up of non-customary actors). The land allocation committee is composed of community members, including land professionals. It has a chairperson and a secretary. The secretary records every land transaction and gives periodic reports to the land allocation committee (Asiama, 2004). Although there are land allocation committees in Ghana, there is no legal instrument that regulates or support the functions of such committees (Ubink, 2008). Individual chiefs who require assistance in the administration of customary land may establish land allocation committees (Asiama, 2004). The land allocation committees report to the chiefs and can also be disbanded by them (chiefs) (Ubink, 2008; Akrofi, 2013). Not all local communities have such committees (Antwi-Boasiako, 2017). In areas where land allocation committees function well, they

have ensured the smooth allocation of customary land through proper recording of land transactions and using some of the proceeds from land transactions for community development projects (Biitir and Nara, 2015).

#### **6.2.4 Statutory land administration systems**

Although land administration systems in Ghana are predominantly customary, there are legally instituted government departments that collaborate with the customary structures to administer land (Obeng-Odoom, 2014). These departments include the Town and Country Planning Department (TCPD), Land Registry, Office of the Administrator of Stool Lands, Land Valuation Board and the Surveying and Mapping Division. The Land Registry, Land Valuation Board and the Surveying and Mapping Division (SMD) form part of the Lands Commission, which is responsible for administering all state lands in Ghana (Abdulai and Ochieng, 2017). The functions of the Lands Commission include surveying and mapping, land valuation and taxation, and land registration. The Lands Commission performs these functions through its various land sector agencies (Bugri, 2008).

The TCPD is responsible for ensuring the orderly and sustainable development of towns and cities in Ghana. The TCPD prepares planning schemes for state and customary (stool) lands and formulates settlements policies. The TCPD issues development permits to developers, in line with approved planning schemes (Obioha, 2008). The Office of the Administrator of stool lands (OASL) manages the revenue from leases of stool land (Gyapong, 2009). In the following sections, three peri-urban customary areas in Ghana where statutory land agencies work

together with customary institutions in customary land administration processes are discussed.

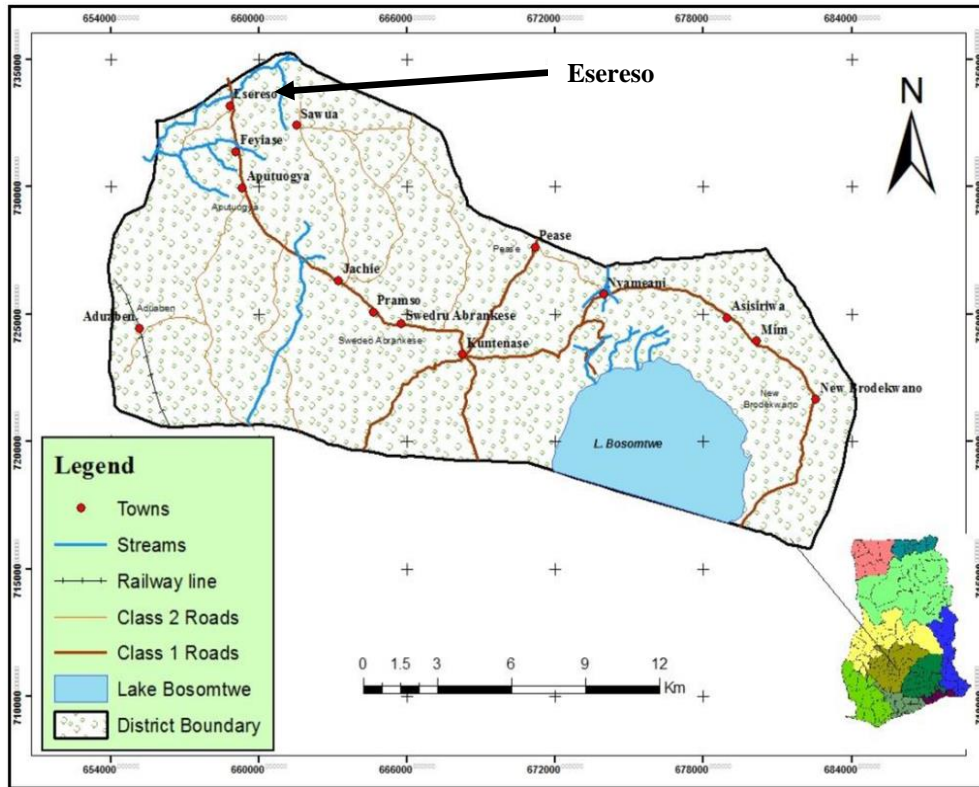
### **6.3 THE CASE OF ESERESO**

Development in many peri-urban customary areas in Ghana precedes planning (Awuah and Hammond, 2013). In addition, some chiefs and other customary landowners use proceeds from land sales to advance their own selfish ambitions (Ubink, 2008). In such dysfunctional peri-urban customary areas (Akrofi, 2013), customary institutions do not work with state land agencies to administer land (Toulmin, 2009). Esereso was chosen for the purpose of this study, since the chief of Esereso works with state land agencies to administer the Esereso land, and land delivery processes are in consistent with national laws. In addition, the chief uses some of the proceeds from land sales to promote community development. The Esereso case is a good example of an effective hybrid land administration system. Land administration practices in Esereso are narrated in this section.

#### **6.3.1 Background**

Esereso is a peri-urban customary area in the Ashanti region of Ghana. It has a population of about 6200 (Ghana Statistical Services, 2012). The population of Esereso has grown considerably over the past ten years, chiefly due to migration (Ghana Statistical Services, 2012). The main factor contributing to the influx of people into Esereso is the strategic location of the area. Esereso is located between two important nodes in the Ashanti region (i.e. Kuntense and Atonsu). Kuntense is noted for its tourism attractions (the Bosomtwe Lake) while Atonsu is the

industrial hub of Kumasi (the Ashanti regional capital) (Nyarko, Awuah, and Ofori, 2008). Figure 6.1 indicates the location of Esereso.



**Figure 6.1: Location of Esereso (source: Ghana Statistical Service, 2012)**

Land value at Esereso escalated in the early 2000’s due to high demand (ES1 Per. Com., 2013). The chief of Esereso adopted innovative ways of managing the Esereso land to ensure proper spatial development and the preservation of natural resources in the area (ES1 Per. Com., 2013). The entire land in Esereso is held in trust by the paramount chief of Esereso (ES1 Per. Com., 2013). One of the sub-chiefs who was interviewed, gave this maxim – “*Yedidi ani, na yennidi ase*”. This literally means that the chief gives customary land to his subjects to cultivate it and eat the produce thereof, but not to own or sell it (ES1 Per. Com., 2013).

### **6.3.2 Land delivery processes**

A traditional leader from Esereso indicated that the chief requested the local government (Bosomtwe Atwima Kwanwoma District Assembly) to assist with the land planning before the Esereso land was allocated for development (ES2 Per. Com., 2013). An official from the District Assembly confirmed this, and further indicated that the chief's request was sent to the Regional SMD (KM6 Per. Com., 2013). According to an official from the Regional SMD, the Esereso land was surveyed as per the chief's request. The base map was forwarded to the TCPD (ES6 Per. Com., 2013). According to an official from the TCPD, the Esereso Planning Scheme (indicating various public land uses) was developed in consultation with the Esereso community (KM8 Per. Com., 2013). The secretary of the Esereso Land Allocation Committee (ELAC) confirmed the involvement of the community in the planning process (ES3 Per. Com., 2013). The Planning Scheme was approved by the Statutory Planning Committee (SPC) (ES5 Per. Com., 2013). The SPC is chaired by the Bosomtwe Atwima Kwanwoma District Chief Executive (DCE) (a political appointee) and is made up of representatives from all line function departments. The SPC is a fair representation of all state land agencies and the community through the involvement of assembly members (elected by community members) (ES5 Per. Com., 2013). A traditional leader in Esereso indicated that no land was allocated until the Planning Scheme was approved (ES2 Per. Com., 2013). This was confirmed by the secretary of the Esereso Land Allocation Committee (ES3 Per. Com., 2013). The allocation of customary land in Esereso in line with an approved planning scheme is regarded as a good practice and is in contradiction with Matey's (2016) finding in some parts of Ghana that

zoning schemes conflict with customary landholdings in many customary areas in Ghana.

The involvement of state land institutions in customary land delivery processes in Ghana is corroborated in Akrofi's (2013) work on assessing land administration systems in Ghana. Arko-Adjei *et al.* (2009) also confirm that customary land administration practices in some parts of Ghana involve state land institutions. Forkuor, Kyei and Wusu-Adjei (2013), however, found in some parts of Ghana that customary land delivery processes do not involve state land agencies. In such areas, customary landowners allocate land "without or with minimal consultation with the" state land agencies (Forkuor *et al.*, 2013: p.1136). From the same research project, however, they found that other case study areas consult with state land institutions and together, have identified a joint process for customary land delivery. Akrofi (2013) points to the fact that there are some dysfunctional customary land administration areas that avoid state land agencies in customary land delivery in Ghana. This difference in findings explains the heterogeneous nature of customary land administration and tenure practices in Ghana.

#### **6.3.2.1 Community participation in land administration**

According to the chairperson of the ELAC, the chief of Esereso established the ELAC to assist in allocating the Esereso land for development (ES5 Per. Com., 2013). The leadership role played by the ELAC in customary land delivery processes is noted by all stakeholders in land administration in Esereso. The ELAC is made up of ten local community members (elected by the community), one land professional (appointed by the chief), and two members of the royal family (who

represent the chief). The ELAC meets once every month to discuss current developments in Esereso (ES3 Per. Com., 2013). When enquired from the secretary of the ELAC, he indicated that the ELAC is tasked by the chief to process land applications from prospective developers. He further indicated that the ELAC provides land information to people who may want to acquire land in Esereso (ES3 Per. Com., 2013). When the ELAC receives a land application, it assesses whether the land under consideration is not already allocated to someone. It also assesses the intended use of the land against the approved land use plan for the area. According to the chairperson of the ELAC, the ELAC informs the local community (through a local radio station) of all land applications (ES4 Per. Com., 2013).

The role played by the ELAC in promoting good land governance in Esereso is corroborated by other researchers. For instance, Antwi-Bosiako (2017: p.3) found significant contributions by land management committees in improving “transparency and accountability in customary land governance” in Ghana. She further found that the involvement of land management committees has reduced double allocation of same parcel to two or more individuals in some customary areas in Ghana. Bugri (2013) also comments on the relevance of land management committees in improving land sector governance in Ghana. Toulmin (2009) found that local land institutions play significant role in securing land and property rights of the local people.

Ubink (2008), however, presents a different perspective of land management committees in customary areas in Ghana. She indicates that such committees do not work well with chiefs in some parts of Ghana and are disbanded.

The households interviewed confirmed that they are consulted on land application processes (ES6 Per. Com., 2013). They further indicated that they are given the opportunity to comment on land applications submitted by prospective developers (ES6 Per. Com., 2013). The chairperson of the ELAC indicated that comments received from community members are taken into consideration by the ELAC before a final recommendation is submitted to the chief (ES4 Per. Com., 2013). According to the secretary of the ELAC, all objections raised against applications are resolved through negotiations with the disgruntled person(s) before the applications are finalised (ES3 Per. Com., 2013). The households interviewed indicated that they can send land decisions made by the chief to the Asantehene or the Court for arbitration if they are not satisfied with such decisions (ES6 Per. Com., 2013). It was, however, confirmed by the households that no such incidents have happened, as the ELAC is able to handle all objections before final decisions are made on applications (ES6 Per. Com., 2013). According to the secretary of the ELAC, the application is submitted to the chief for his endorsement after it has been considered by the ELAC (ES3 Per. Com., 2013). According to the chief, he meets with his elders and informs them about his intention to allocate the piece of land, based on the ELAC's recommendation (ES1 Per. Com., 2013).

After the consultation with the elders, the applicant is invited to pay the traditional *drink money*. The chairperson of the ELAC indicated that only non-indigenes pay

the market price for land in Esereso. Indigenes with usufruct rights in land do not pay money to develop their land. They only need to inform the chief of their intention to convert their land from subsistence farming to physical development in line with the approved planning scheme for the area (ES4 Per. Com., 2013). Although indigenes with no usufruct rights may pay money to access land, the amount of money they are required to pay is relatively minimal as compared to the amount paid by non-indigenes - sometimes 90% less than what the non-indigenes would be required to pay (ES4 Per. Com., 2013). The households interviewed indicated that both women and men can apply to access land in Esereso (ES6 Per. Com., 2013).

Participation in customary land delivery in Ghana has been confirmed by some researchers. For instance, Sewornu and Barry (2015) found that community members and other stakeholders are involved in customary land delivery processes in certain parts of Ghana. Biitir and Nara (2015) also confirm that community members are involved in customary land delivery processes in Ghana. Obeng-Odoom (2013) observed participation in customary land delivery processes in Ghana. Arko-Adjei (2011) found that some local communities in Ghana have employed participatory approaches to improve customary land delivery.

After the applicant has paid the required amount of money, the chief issues an allocation note (with two site plans) to the applicant. The allocation note is signed by the chief and the secretary of the ELAC (ES3 Per. Com., 2013). According to the secretary of the ELAC, he records (in a notebook) the land transaction to avoid possible multiple allocations (ES3 Per. Com., 2013). The chairperson of the ELAC

indicated that the land approval process usually takes a period of about 30 days if there are no objections to the application. This excludes statutory registration of the land transaction (ES4 Per. Com., 2013). According to the chief, he allocates 60% of the *drink money* for community development and keeps the remaining 40% for administrative purposes (ES1 Per. Com., 2013). The secretary of the ELAC showed me a school building constructed with money realised from the leasing of land in Esereso (Figure 6.2).



**Figure 6.2: A school building constructed with money realised from land sales in Esereso (Source: Field data, 2013)**

The chairperson of the ELAC indicated that successful land applicants are required to sign a Memorandum of Understanding with the ELAC, indicating their responsibilities in respect of the allocated land. For instance, the applicant is supposed to commence development on the allocated land within one year of receiving the allocation note (ES4 Per. Com., 2013). According to the chairperson of the ELAC, this timeframe restriction serves to discourage undeveloped land, which usually serves as hideouts for criminals in the area (ES4 Per. Com., 2013). The chairperson further indicated that land applicants are supposed to acquire a

development permit prior to the development of the allocated land (ES4 Per. Com., 2013). The secretary of the ELAC indicated that the ELAC can re-allocate the land to another person if the developer does not comply with certain conditions in the Memorandum of Understanding (e.g. failure to develop the land within the stipulated time). He, however, indicated that the ELAC only retains 10% of the *drink money* as administrative charges and refunds 90% to the applicant if the land is re-allocated (ES4 Per. Com., 2013).

The households indicated that they receive education on how to formally register their land transactions with the Lands Commission (statutory body) (ES6 Per. Com., 2013). The secretary of the ELAC indicated that the ELAC has helped many households to register their land transactions (ES3 Per. Com., 2013). Eighteen (18) of the 20 households interviewed, had registered their land transactions with the Lands Commission, developed their land in line with the zoning scheme for the area, and obtained development permits. The remaining two (2) had obtained allocation notes, but had not yet statutorily registered their land transactions with the Lands Commission. These two households indicated that they could not afford the additional amount of *drink money* charged by the Asantehene's Secretariat, as well as the other statutory registration charges (ES6 Per. Com., 2013). The two households who had not statutorily registered their land transactions indicated that their tenure security is not threatened as they see the allocation note as enough proof of tenure evidence (ES6 Per. Com., 2013). Mireku *et al.*, (2016), however, observed that land allocation notes alone are not able to provide adequate security for the local people. The disjuncture between the observation of Mireku *et al.*,

(2016) and the perception held by the households on allocation notes is analysed in chapter 7.

### **6.3.2.2 Statutory registration of customary land transactions**

The households indicated that they submit the allocation note (with the two site plans) to the Lands Commission to register their land transactions (ES6 Per. Com., 2013). According to an official from the Lands Commission, when an allocation note is received, the land under consideration is assessed to determine if it has been surveyed, falls within the approved planning scheme, and has not already been registered under another person's name (KM1, Per. Com, 2013). The official further indicated that the Lands Commission writes to request permission from the Asantehene's Secretariat before the land transaction can be registered. An official from the Asantehene's Secretariat indicated that the Asantehene owns all customary land in Esereso and should approve all land transactions in the area (KM2, Per. Com, 2013). The official further indicated that people who wants to register their land transactions have to pay additional *drink money* to the Asantehene before he grants his consent to such registration (KM2, Per. Com, 2013). After the additional *drink money* is paid, the Asantehene signs the allocation note to concur with the registration of the land transaction between the developer and the chief of Esereso (KM2, Per. Com, 2013). The applicant submits the allocation note (with the Asantehene's signature) back to the Lands Commission (KM2, Per. Com, 2013). Upon receipt of Asantehene's concurrence, the Lands Commission drafts the lease agreement between the applicant (as the lessee) and the chief of Esereso (as the lessor) (KM1, Per. Com., 2013). The lease agreement is

for a period of 99 years and 50 years for residential and commercial developments respectively (KM1, Per Com., 2013).

According to an official from the Lands Commission, the lease agreement is submitted to the OASL for the determination of ground rent to be paid by the developer (KM1, Per Com., 2013). Upon receipt of the lease agreement, the OASL captures the details (e.g. plot number and size, names of the lessor and the lessee) of the land and determines the amount of rent (ground rent) to be paid by the applicant (lessee). An official from the OASL indicated that the rent amount is based on the size and location of the land (KM3, Per. Com., 2013). The rent is paid annually by lessees and is managed by the OASL. According to an official from the OASL a stool land account has been established and all rents collected from lessees of stool lands are paid into such account (KM3, Per. Com., 2013). She indicated that the OASL keeps 10% of the revenue (rent) to offset its administrative expenses (KM3, Per. Com., 2013). The remaining revenue amount is disbursed according to the following proportions: 25% to the stool for its maintenance (paid to traditional leaders), 20% to the traditional authority and the remaining 55% to the local assembly (Bosomtwe Atwima Kwanwoma District) where the stool land is situated (KM3, Per. Com., 2013). Akrofi (2013) also confirms the above distribution of the ground rent in Ghana.

After the OASL has determined the ground rent, the lease agreement is forwarded to the Land Valuation Board (LVB). The LVB evaluates the land and determines the amount of tax to be paid. This is called the stamp duty. An official from the LVB indicated that the lessee pays a once-off stamp duty (KM4, Per. Com, 2013).

After the stamp duty has been paid, the lease agreement is sent to the court, where the Court Registrar administers the oath (KM4, Per. Com, 2013). The Asantehene’s Secretariat serves as a principal witness to the lease agreement between the applicant and the Esereso chief (KM4, Per. Com, 2013). Table 6.1 illustrates proof of land tenure in Esereso. As high as 90% of households interviewed have either allocation notes or lease agreements; implying that they have some documentation proof to guarantee security of land tenure.

**Table 6.1: Proof of land tenure in Esereso**

<b>Proof of land tenure</b>	<b>Frequency</b>	<b>%</b>
Only allocation note	2	10
Allocation note and lease agreement	18	90
None of the above	0	0
<b>Total</b>	<b>20</b>	<b>100</b>

**(Source: Field data, 2013)**

The process of statutory registration of customary land transaction in Ghana (as outlined in section 6.3.2.2) is confirmed by Kaiser Hughes, Knox and Jones-Casey (2011); Bugri (2013) and Antwi-Bosiako (2017).

### **6.3.2.3 Validation of customary land transaction**

An official from the Regional Lands Commission indicated that the Regional Lands Commission recommends to the chairperson of the National Lands Commission for concurrence after the lease agreement has been concluded (KM1, Per Com., 2013). When the chairperson agrees to the recommendations made by the Regional Lands Commission, the land transaction is registered and a code is

allocated to the land (KM1, Per Com., 2013). According to an official from the National Lands Commission, the Lands Commission grants its concurrence to the land transaction between the applicant and the Esereso chief to give it (land transaction) validity (KM5, Per. Com., 2013). This is in line with Article 267(3) of the 1992 Constitution of Ghana which states that, “there shall be no disposition or development of any stool (customary) land unless the Regional Lands Commission of the region in which the land is situated has certified that the disposition or development is consistent with the development plan drawn up or approved by the planning authority for the area concerned” (Government of Ghana, 1992).

According to some households in Esereso, it takes about three months to complete a land application in Esereso (from first application to the registration) (ES6, Per. Com., 2013). According to an official from the Lands Commission, the landholder can assign part of his/her right to a third party or mortgage his/her right to raise a loan after the lease agreement is concluded (KM1, Per. Com., 2013). Compensation is paid to the lessee when the land is expropriated for public purposes. Upon his/her death, the land right of the lessee can be bequeathed to an heir (KM1, Per Com., 2013). Table 6.2 indicates threats of eviction in Esereso. None of the households interviewed were faced with eviction threats. This could be attributed to the transparent and participatory processes of land delivery in Esereso.

**Table 6.2: Threats of eviction**

<b>Document</b>	<b>Frequency</b>	<b>%</b>
Eviction threat	0	0
No eviction threat	20	100
<b>Total</b>	<b>20</b>	<b>100</b>

**(Source: Field data, 2013)**

#### **6.3.2.4 Livelihood support**

According to the chief of Esereso, peasant households with usufruct interests are allowed to keep their land for subsistence farming, even when such land becomes ‘useful’ for physical development (ES1, Per Com., 2013). Fourteen (14) out of 20 households interviewed had used portions of their land for subsistence farming and built two-bed room houses on the other portion. These households depend on the land for their livelihoods. They sell some of their crops to buy basic items such as soap and clothing (ES6, Per Com., 2013). The remaining six of the respondents had sold their land and had no source of livelihood. One respondent narrated how he quickly squandered the money he received from the sale of his land. He confessed: “I deeply regret for exchanging my perpetual livelihood for something that did not last”. He explained that the land was intended to support his livelihood and that of his children (ES6, Per. Com., 2013). Table 6.3 illustrates the sources of livelihoods in Esereso, with 70% of the households interviewed engaging in subsistence farming.

**Table 6.3: Source of livelihood in Esereso**

<b>Source of livelihood</b>	<b>Frequency</b>	<b>%</b>
Subsistence farming	14	70
No source of livelihood	6	30
<b>Total</b>	<b>20</b>	<b>100</b>

**(Source: Field data, 2013)**

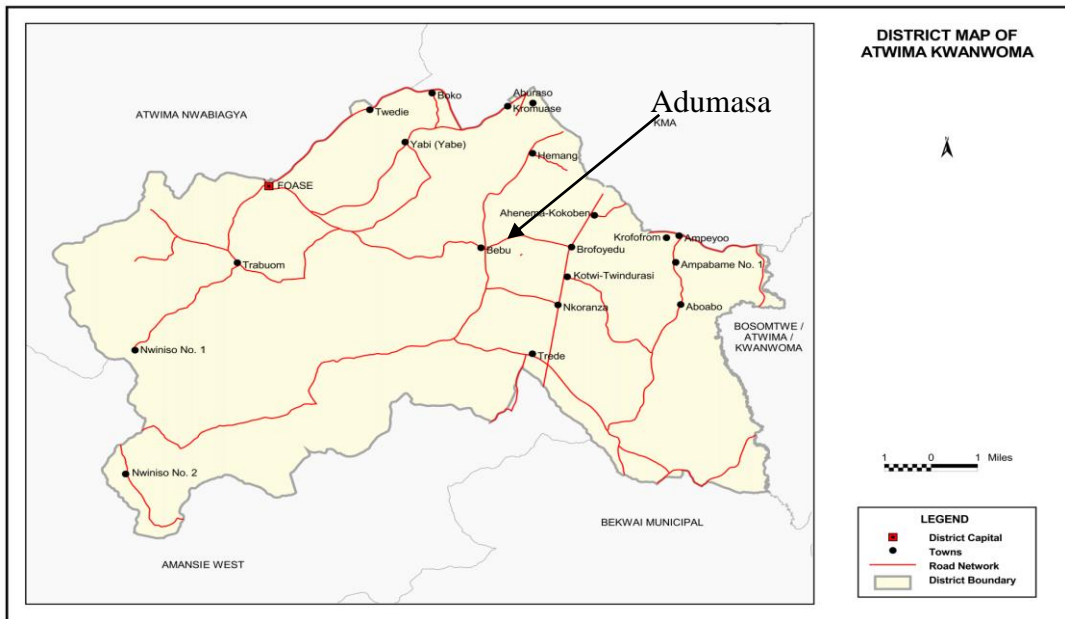
## **6.4 THE CASE OF ADUMASA**

It has been reported that customary land administration is not always effective in peri-urban customary areas in Ghana where land belongs to individual families (Akrofi, 2013). In such areas, the individual families mostly defy all statutory land laws in customary land delivery. Adumasa was chosen to understand how individual customary land-owning families partner with state land agencies to administer customary land. The Adumasa case is a good example of an effective hybrid land administration system as customary land delivery processes are in consistent with national laws. Land administration practices in Adumasa are narrated in this section.

### **6.4.1 Background**

Adumasa is a peri-urban customary area in the Ashanti region of Ghana. It has a population of about 1900 (Ghana Statistical Services, 2012). The population of Adumasa grew from 300 to about 1900 from 1990 to 2012, chiefly due to migration (Ghana Statistical Services, 2012). Adumasa is located along the main Kumasi – Obuasi Road (Figure 6.3). Land value in Adumasa increased in the early 2000's, due to high demand (AD1, Per. Com., 2013). Adumasa has no chief (AD1,

Per. Com., 2013). The area is customarily governed by the Odikro (traditional leader). Land in Adumasa belongs to individual families. The Odikro of Adumasa has established a unit committee to assist in land administration and community development. The Odikro, together with the Adumasa Unit Committee (AUC), have employed innovative ways of managing the Adumasa land (AD2, Per. Com., 2013). Figure 6.3 indicates the location of Adumasa.



**Figure 6.3: Location of Adumasa (source: Ghana Statistical Services, 2012)**

#### 6.4.2 Land delivery processes

According to the secretary of the AUC, individual families who owned land in Adumasa initially employed the services of private (mostly unregistered) surveyors and town planners to draw site plans during the 1990's, which were not approved by the SPC (AD1, Per. Com., 2013). The purpose of such 'site plans' was to determine how many plots one could get from a piece of land. This led to uncontrolled physical developments in the area (AD1, Per. Com., 2013).

In the early 2000's, the Odikro and the AUC devised a strategy to curb the problem of the haphazard allocation and development of land in Adumasa (AD2, Per. Com., 2013). The AUC approached the Regional SMD of the Lands Commission. The SMD met with all the land-owning families in Adumasa, together with the Odikro and the AUC. The SMD agreed to survey the Adumasa land and ensure the preparation of a planning scheme for Adumasa. Each land-owning family, however, had to compensate the SMD with a plot of land to defray the cost of surveying and the preparation of the planning scheme (AD3, Per. Com., 2013).

The land use planning process was a complex one, as the families did not want to sacrifice their land for the development of schools, open spaces, market squares and other public spaces (AD1, Per. Com., 2013). To address this challenge, the AUC resolved that families whose land had been zoned for public purposes would be compensated (AD3, Per. Com., 2013). The chairperson of the AUC indicated that the affected families received money from the AUC (AD3, Per. Com., 2013). The land was subsequently surveyed and planned. According to the chairperson of the AUC, the AUC is the custodian of all site plans in Adumasa (AD3, Per. Com., 2013).

Applicants (both men and women) who want to acquire land in Adumasa first have to contact the AUC. The AUC presents the site plans to the applicant. The applicant indicates which piece of land he/she is interested in buying. The AUC informs the land-owning family to determine if they are willing to lease such land. If the family agrees to lease the land, the AUC calls for a community meeting, where the intention to allocate the land for development is communicated to the

community members. The type of development and its effects (if any) on the community are also communicated to them (AD4, Per. Com., 2013). Community members are invited to express their concerns and any objections to the land application. Individuals who are not satisfied with the decision of the AUC may refer the matter to the Asantehene or the Court.

According to the secretary of the AUC, the applicant is invited to pay the agreed amount of money if no objection to the application is received within 10 working days, (AD1, Per. Com., 2013). According to the Odikro of Adumasa, only non-indigenes pay the market value for land in Adumasa. Indigenes pay relatively less amount of money to access land in Adumasa – about 50% less than what non-indigenes pay (AD5, Per. Com., 2013). The AUC receives the money and records the land transaction. It pays 60% of the amount to the land-owning family; keeping 10% as administrative costs and pays the remaining 30% into the Town Development Fund. The 30% is used for community development projects. The secretary showed me two standpipes in Adumasa provided with money realised from the leasing of land (AD1, Per. Com., 2013).

After the payment of the agreed amount of money, the Odikro issues an allocation note, signed by himself, the head of the land-owning family, and the secretary of the AUC (AD5, Per. Com., 2013). According to the Odikro, the signed allocation note is recognised by the Asantehene's Secretariat, which can be used to register the land transaction with the Lands Commission (AD5, Per. Com., 2013). Table 6.4 illustrates threats of eviction in Adumasa. 95% of the households interviewed indicated they are not threatened with eviction.

**Table 6.4: Threat of eviction in Adumasa**

<b>Threat of eviction</b>	<b>Frequency</b>	<b>%</b>
Eviction threat	1	5
No eviction threat	19	95
<b>Total</b>	<b>20</b>	<b>100</b>

(Source: Field data, 2013)

### 6.4.3 Statutory registration of customary land transactions

The statutory registration of customary land transaction in Ghana was examined in Section 6.3.2 and will not be re-examined in this section. It takes about one month and two weeks to complete a land application in Adumasa. After the land transaction has been registered with the Lands Commission, the lessee can allocate part of his/her right to a third party or mortgage his right to raise a loan. Compensation is paid to the lessee when the land is expropriated for public purposes. Upon his/her death, the land right of the lessee can be bequeathed to an heir (AD5. Per. Com., 2013). Table 6.5 indicates proof of land tenure in Adumasa with 70% of the households interviewed having either allocation notes or lease agreements as proof of land tenure.

**Table 6.5: Proof of land tenure in Adumasa**

<b>Document</b>	<b>Frequency</b>	<b>%</b>
Only Allocation Note	6	30
Allocation Note and Lease Agreement	14	70
None of the above	0	0
<b>Total</b>	<b>20</b>	<b>100</b>

(Source: Field data, 2013)

#### 6.4.4 Livelihood support

The land-owning families in Adumasa have the right to sell their land or keep it for cultivation. Sixteen (16) out of the 20 households interviewed had kept portions of their land for subsistence farming (AD6, Per. Com., 2013). The portions of farmland serve as sources of food supply to the community. Produce from the farms is sold at the local market. According to the Odikro of Adumasa, the conversion of viable farmland to residential and other physical developments is prohibited (AD5, Per. Com., 2013). For this reason, no cultivated land in Adumasa may be allocated for development. Community members can object to any land application if such land is currently being used to grow crops. This seeks to sustain food supply in Adumasa (AD6, Per. Com., 2013). Table 6.6 indicates sources of livelihood in Adumasa, with 80% engaging in subsistence farming.

**Table 6.6: Source of livelihood in Adumasa**

Source	Frequency	%
Subsistence farming	16	80
Informal trading	4	20
<b>Total</b>	<b>20</b>	<b>100</b>

(Source: Field data, 2013)

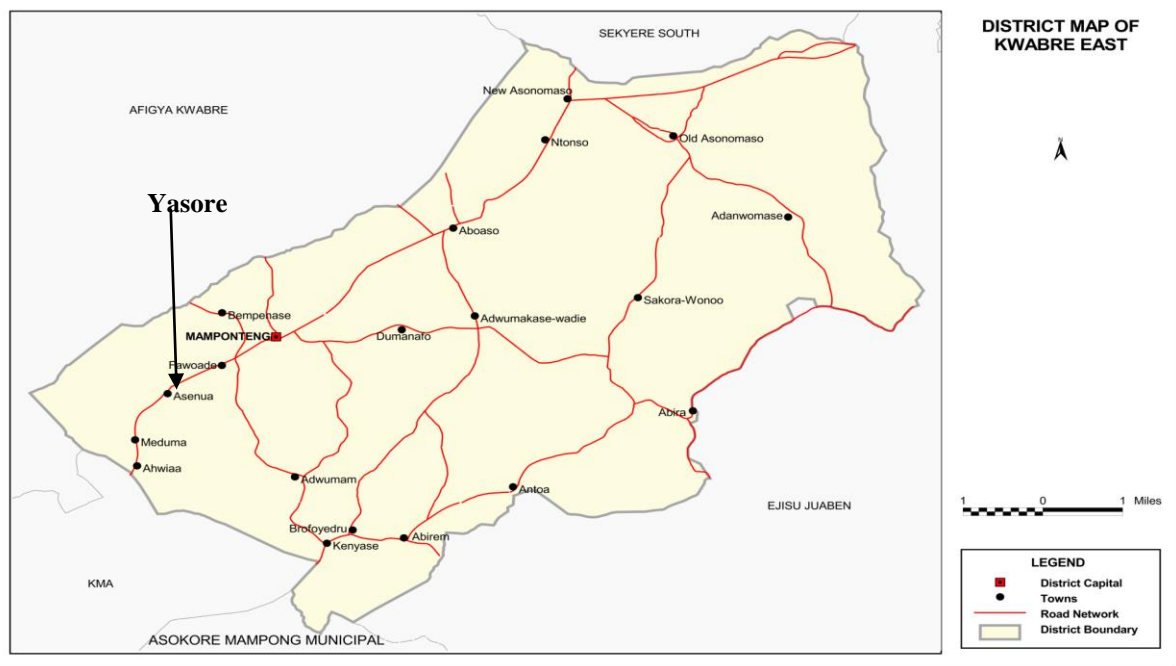
#### 6.5 THE CASE OF YASORE

Many peri-urban customary areas in Ghana face the problem of haphazard development (Toulmin, 2006). It has been difficult to ensure proper and orderly development in such areas (Awuah and Hammond, 2013). In Yasore, however, the chief and the Yasore Development Committee have restored spatial order after the

land was haphazardly allocated (YS1, Per. Com., 2013). The Yasore case is a good example of an effective hybrid land administration system. Land administration practices in Yasore are examined in this section.

### **6.5.1 Background**

Yasore is located along the main Kumasi-Mampong Road in the Kwabre District. It is about 15km from the Kumasi City Centre. It has a population of about 1200 (Ghana Statistical Services, 2012). Land in Yasore is administered by the chief of Yasore, with the help of the Yasore Development Committee (YDC). Before the establishment of the YDC, a few individuals from the royal family controlled land delivery processes in Yasore. This led to land administration malpractices, such as multiple sales of land and the allocation of land without approved planning schemes. This culminated in haphazard developments in Yasore (YS1, Per. Com., 2013). The chief of Yasore established the YDC to oversee the allocation and development of land to ensure orderly spatial development and promote security of tenure in the area (YS2, Per. Com., 2013). Figure 6.4 indicates the location of Yasore.



**Figure 6.4: Location of Yasore (source: Ghana Statistical Service, 2012)**

### 6.5.2 The Yasore redevelopment project

The YDC consulted the community members on how to rectify the spatial disorder in Yasore, chiefly caused by the improper allocation of land in the area. The community members recommended that a planning scheme be developed for the area (YS3, Per. Com., 2013). The YDC subsequently approached the Kwabre District Assembly for technical support in drafting the Yasore Planning Scheme. According to the secretary of the YDC, the drafting of the Planning Scheme was a challenging task, as the area was already developed (YS3, Per. Com., 2013). The Planning Department of the Kwabre District Assembly, together with the Regional SMD, surveyed the area and prepared a planning scheme. In many cases, land that was recommended to be used as open spaces, market squares and other public spaces (in the Planning Scheme) was already occupied (YS3, Per. Com., 2013). The YDC invited all property owners and community members to a general meeting, where the draft planning scheme was presented (YS3, Per. Com., 2013).

Community members were given a month to comment on the draft planning scheme. About 90% of the comments received from community members pertained to some portions of land that had to be used for public purposes (YS3, Per. Com., 2013). The affected households wanted to know how they would be compensated (YS3, Per. Com., 2013). According to a traditional leader in Yasore, the affected households were given alternative pieces of land and assisted by the YDC in rebuilding their houses (YS4, Per. Com., 2013). After all the concerns of the community members were addressed, the Planning Scheme was approved by the SPC, and has since become a tool to guide spatial development in Yasore (YS3, Per. Com., 2013). The cost of the Yasore redevelopment project was borne by the chief through the proceeds of the sale of land and contributions made by some concerned community members (YS4, Per. Com., 2013).

### **6.5.3 Statutory registration of customary land transactions**

The next phase of the Yasore redevelopment project was the registration of land rights of households. The YDC invited all households who had acquired land without being issued an allocation note by the chief. The non-indigene households had to pay a certain amount of money depending on the size and location of their land (YS4, Per. Com., 2013). The indigenes, however, were required to pay a lesser amount of money than the non-indigenes. According to the secretary of the YDC, the YDC recorded all the transactions, and allocation notes signed by the chief were issued to all households concerned (YS3, Per. Com., 2013). The households proceeded to register their land with the Lands Commission (YS3, Per. Com., 2013). Processes of statutory registration of customary land transactions in Ghana are narrated in Section 6.3.2. The chairperson of the YDC indicated that individuals

who are not satisfied with the decision of the chief may refer the matter to the Asantehene or the Court. Table 6.7 illustrates proof of land tenure in Yasore with 85% of households having both allocation notes and lease agreements.

**Table 6.7: Proof of land tenure in Yasore**

<b>Document</b>	<b>Frequency</b>	<b>%</b>
Only Allocation Note	3	15
Allocation Note and Lease Agreement	17	85
None of the above	0	0
<b>Total</b>	<b>20</b>	<b>100</b>

(Source: Field data, 2013)

The households interviewed indicated that it takes about two months to complete a land application in Yasore (YS3, Per. Com., 2013). Landholders in Yasore whose land rights are registered with the Lands Commission can allocate part of their rights to a third party or mortgage their rights to raise a loan (YS3, Per. Com., 2013). According to the secretary of YDC compensation is paid to such households when their land is expropriated for public purposes. Upon the death of the principal landholder, his/her land right can be bequeathed to an heir (YS3, Per. Com., 2013). Table 6.8 indicates the threat of eviction in Yasore, with 90% receiving no threat.

**Table 6.8: Threat of eviction in Yasore**

<b>Document</b>	<b>Frequency</b>	<b>%</b>
Eviction threat	2	10
No eviction threat	18	90
<b>Total</b>	<b>20</b>	<b>100</b>

(Source: Field data, 2013)

According to the chairperson of the YDC, both men and women can access land in Yasore (YS4, Per. Com., 2013).

#### 6.5.4 Livelihood support in Yasore

Nineteen out of the 20 households interviewed in Yasore indicated that they support their livelihoods through subsistence farming, as illustrated in Table 6.9.

**Table 6.9: Source of livelihood in Yasore**

Source	Frequency	%
Subsistence farming	19	95
Government worker	1	5
<b>Total</b>	<b>20</b>	<b>100</b>

(Source: Field data, 2013)

## PART B: SECONDARY CASE STUDIES

This second part of chapter 6 presents land administration frameworks and practices in other countries that could inform land administration practices in Ghana. Data presented in this section were obtained from secondary sources. The secondary case study countries are Botswana, Namibia and Mozambique.

### 6.6 LAND ADMINISTRATION SYSTEMS IN BOTSWANA

Land tenure in Botswana is categorised as state land, customary land, and freehold land. Customary land constitutes 71% of the entire land tenure type in Botswana (Adams *et al.*, 2003).

### **6.6.1 Administration of customary land in Botswana**

The Tribal Land Act vests customary land in Botswana in land boards (Government of the Republic of Botswana, 1968). Prior to the promulgation of the Tribal Land Act, customary leaders held the powers to administer customary land in Botswana. The Tribal Land Act, however, transferred the power to grant and cancel land use rights, the power to resolve land disputes, and customary land use restriction powers to the land boards (Adams *et al.*, 2003). However, customary land laws in Botswana were not amended or revoked by the Tribal Land Act (Government of the Republic of Botswana, 1992; Government of Republic of Botswana, 2000).

### **6.6.2 Land boards in Botswana**

Botswana experienced urbanisation during the 1960's (Kalabamu, 2000). The availability of infrastructure and social amenities in Gaborone (Capital City) attracted people from rural areas to Gaborone and its environs (LAPCAS, 2009). This resulted in land scarcity, which eventually culminated in land administration challenges, such as multiple sales of land and boundary disputes (Adams *et al.*, 2003). These problems were especially acute in customary areas where land was administered by chiefs (Nkwae and Dumba, 2009). To resolve the land administration challenges in customary areas, the Tribal Land Act of 1968 transferred all powers in respect of customary land administration from the chiefs to decentralised and non-political structures called land boards (Government of the Republic of Botswana, 1968). The Tribal Land Act, however, did not tamper with the customary land laws in Botswana (Nkwae, 2008). This (replacing customary leadership, without replacing customary land laws) presents an interesting direction

in the debate on the formalisation of customary land administration systems. As the minimalist approach to the formalisation of customary land administration systems postulates, there could be a partial replacement of certain dysfunctional elements within the customary system (section 3.4). The entire customary system, however, may not be replaced, as is the focus of the replacement and other economy-based theories.

The land boards in Botswana hold the power to grant and revoke land use rights. They are also responsible for resolving disputes on customary land (Kalabamu, 2000; Mathuba, 2003). However, land tribunals have been established to regulate the operation of the land boards. Individuals who are dissatisfied with the decisions of the land boards may appeal to the land tribunals. The land tribunals have the power to overturn such decisions if they are found to be inconsistent (Nkwae and Dumba, 2009).

Twelve main land boards currently operate in the ten administrative districts in Botswana. All twelve land boards are regarded as legal entities (with the capacity to sue and be sued) (Kalabamu, 2000). To promote decentralisation in land administration, an additional thirty-seven subordinate land boards have been established at various local levels in Botswana (Adams *et al.*, 2003). Community members who cannot access the main land boards at district level depend on the subordinate land boards for their land administration needs (Adams *et al.*, 2003).

The land boards are composed of different land sector agencies and local community members (Kalabamu, 2000). To protect the land boards from interference from political and traditional institutions, chiefs and their council

members, as well as people in political positions are not allowed to be part of the land boards (Nkwae and Dumba, 2009). The introduction of land boards in customary land administration in Botswana is regarded as novel and therefore could help inform practices elsewhere. The Tlokweng land board (TLB) is therefore selected as a case study in this research (section 6.7).

A land board is made up of twelve (12) members. Two of the members are representatives from the Ministry of Agriculture, Commerce and Industry and the Ministry of Local Government, Lands and Housing (Government of the Republic of Botswana, 1985). The remaining ten (10) members are selected from local communities by a land board selection committee set up by the government (Government of the Republic of Botswana, 2000). Land tribunals play oversight role in customary land administration in Botswana (Adams *et al.*, 2003; Kalabamu, 2003). A land tribunal is made up of three members, chaired by a lawyer serving in the Public Service (Government of Republic of Botswana, 2002; UN-HABITAT, 2010). The other two members are nominated by the Minister of Local Government, Lands and Housing (Government of the Republic of Botswana, 1992; Government of Republic of Botswana, 2001; Government of Republic of Botswana, 2003). The case of Tlokweng was investigated to establish how the TLB successfully administer customary land in Tlokweng.

## **6.7 THE CASE OF TLOKWENG**

Most of the challenges of customary land administration in many sub-Saharan African countries are attributed to poor traditional leadership (Wehrmann, 2008).

For instance, Akrofi (2013) found in certain dysfunctional customary areas that chiefs remain the sole beneficiaries of customary land transactions. All proceeds from land sales in such areas are used to support the chiefs and their immediate families (Matchaya, 2008). Botswana once experienced similar challenges in customary land administration (Adams *et al.*, 2003). To address the problem of the undue influence of traditional elite in customary land administration in Botswana, chiefs and other traditional leaders have been excluded from customary land administration (Government of Republic of Botswana, 2002). Their authority is given to independent land boards (Adams *et al.*, 2003). Tlokweng (in Botswana) was chosen to understand the role of community land organisations (e.g. land boards) in customary land administration. Land administration practices in Tlokweng are narrated in this section.

### **6.7.1 Background**

Tlokweng is a peri-urban area in Gaborone (the capital of Botswana). It falls under the jurisdiction of the South East District Council. The population of Tlokweng grew from 3 700 in 1964 to 36 000 in 2011 (Statistics Botswana, 2012). Tlokweng is an attractive area because of its closeness to Gaborone (Nkwae, 2006). The case of Tlokweng was selected to understand the practical role of land boards in peri-urban customary land administration in Botswana. Customary land in Tlokweng is administered under the TLB (Nkwae, 2006). Figure 6.5 indicates the location of Tlokweng.



**Figure 6.5: Location of Tlokweng (source: Statistics Botswana, 2012)**

### 6.7.2 Land delivery processes

The Tlokweng District Land Use Planning Unit, which is made up of representatives from all line function departments, serves as a coordinating committee for the development and approval of land use plans for Tlokweng (Government of Republic of Botswana, 2003; Bornegrim and Collin, 2010). The land use plan provides for public open spaces and other public land uses. Developable vacant land within the land use plan is advertised in public media by the TLB (Nkwae, 2006) and individuals have the opportunity to apply for the advertised land. When the TLB receives an application, a meeting is held between the applicant, local leaders and other stakeholders to discuss the land application (Bornegrim and Collin, 2010). The Department of Town and Regional Planning and the Department of Wildlife Management and Agriculture are involved in the land allocation processes to protect sensitive land from physical development

(Bornegrim and Collin, 2010). The Secretary of the TLB indicates the location of the land. Community members are given the opportunity to comment on the land application. If no objections are received from the community members, the application is approved and a Certificate of Customary Land Grant is issued to the applicant. The Certificate of Customary Land Grant serves as proof of tenure and indicates the holder's land right (Kalabamu, 2000). An applicant has the opportunity to appeal a decision made by the TLB to the Gaborone Land Tribunal, if he/she is not happy with such decision (UN-HABITAT, 2010).

Men and women have equal access to land in Tlokweng. Indigenes do not pay any money for the land. Non-indigenes, however, pay money to access land in Tlokweng (Kalabamu, 2000). Land transactions are recorded by the TLB.

The TLB has a system in place to record land information (Bornegrim and Collin, 2010). The TLB has a computer register which is used to search for land information regarding the name of the landholder, plot number, and other relevant information about the allocated land. All documents that belong to a specific plot are stored in the same folder (Van Asperen and Zevenbergen, 2012).

## **6.8 LAND ADMINISTRATION SYSTEMS IN MOZAMBIQUE**

About 90% of land tenure systems in Mozambique are regarded as customary (Norfolk and Tanner, 2007). The Constitution of Mozambique recognises customary land rights and they are as valid as statutory land rights (Government of Mozambique, 1990; UN-HABITAT, 2005). Customary land in Mozambique is administered at the community level and individual communities can create their

own land administration structures and rules (Taylor, 2007). In Mozambique, people who hold customary rights may not require any written document as a proof. The oral testimonies of people may be regarded as proof of customary rights and are recognised by the land laws in Mozambique (Knight, 2010). If land is expropriated by the state, the affected party is fully compensated (Durang and Tanner, 2004; Calengo, Monteiro and Tanner, 2007). The case of Mocuba in Mozambique was selected to understand land administration practices in Mozambique.

In Mozambique, government does not interfere in customary land administration (Anstey, Chande and Abacar, 2002; Norfolk and Tanner, 2007). Mozambique's land laws allow for the establishment of community land committees that represent local communities in all land related matters. Local communities may choose their committee members according to their own preference. It is, however, mandatory for the membership to be made up of both males and females (Tanner and Baleira, 2006). Chiefs may or may not form part of the land committee. Local communities have the final say in all land administration matters (Norfolk and Tanner, 2007).

## **6.9 THE CASE OF PERI-URBAN MOCUBA**

The local people are not directly involved in customary land decisions in many peri-urban customary areas across sub-Saharan Africa (Matchaya, 2008). Land decisions in such areas are taken by the chiefs without consulting the local people (Ubink, 2008). The non-involvement of local people in customary land administration in such areas does not demonstrate good land governance (Obioha, 2008). In Mocuba (in Mozambique), however, local people administer their own



## **6.9.2 Land delivery processes**

The Mocuba community is responsible for the allocation and management of land through its own customary systems. The Mocuba community has created leadership structures and rules through which customary land is administered (Knight, 2010). Land in Mocuba is administered by the Mocuba Land Management Committee (MLMC). The MLMC is made up of traditional leaders and other local community members. It is made up of twenty (20) members and it is chaired by the chief. The main role of the MLMC is to allocate land for development, resolve disputes over land and ensure compliance with land management rules within Mocuba (Knight, 2010).

In Mocuba, land use rights can be acquired in two ways: occupying land according to customary norms and practices; and occupying land in good faith for at least 10 years. Both rights are recognised as formal legal rights and may be the same as state awarded rights (Tanner and Baleira, 2006). Women have equal land rights to men (Norfolk and Tanner, 2007). No written proof of customary rights may be necessary. Customary rights must, however, be confirmed by the MLMC (Knight, 2010).

The MLMC gathers information in respect of one's occupation of a piece of land. A minimum of five (5) neighbours are invited by the MLMC to attest to the person's continuous occupation of the land. In addition, the MLMC confirms from the neighbours that the person is a law-abiding citizen and does not use the piece of land for any illegal activity (Knight, 2010). After the MLMC has satisfied itself, it

publicly announces the person's right to permanently occupy the land in its bi-annual community gathering (Knight, 2010). After the declaration by the MLMC, the person's right in the land becomes as valid as the state awarded rights. He/she can enjoy full legal recognition in terms of his/her right in the land. Under no circumstances can anyone (including the national government) forcefully eject the person from that piece of land without compensation. The person can transfer his/her right to a third party (Knight, 2010). Indigenes do not pay money to use land in Mocuba. Non-indigenes, however, have to pay money to access land in Mocuba. The MLMC records all land transactions in a notebook. It does not have a computer to record land information. Community members access land information through the testimony of neighbours (people who live close to a piece of land) (Knight, 2010).

Potential investors can apply to the MLMC for land (Durang and Tanner, 2004). However, the District Administrator must confirm that the land is unoccupied (Tanner, 2002). After the confirmation from the District Administrator, there is a community consultation to inform the local people of the intended use of the land. Community members have the opportunity to indicate if they have any interest in the piece of land. The terms of agreement between the community and the investor in respect of the use of the land should be clearly outlined and communicated to the local people. The investor should indicate how such investment would contribute to the livelihoods of the local people. Community members then vote on the land application. The MLMC can only grant a use right to the investor if no local person expresses a genuine interest in the land and more than 50% of the community members vote in favour of such investment (Knight, 2010). Individuals who are not

happy with the outcome of their land applications may appeal to the Local District Administrator. The Ministry of Finance and Planning and the National Directorate of Rural Development coordinate the development of land use plans in Mocuba. Land in Mocuba is allocated in line with the land use plan. The Mocuba land use plan provides for public open spaces and land for other public uses (Norfolk and Tanner, 2007).

## **6.10 LAND ADMINISTRATION SYSTEMS IN NAMIBIA**

There are three different systems of land tenure in Namibia – freehold, communal and state land (Kapitango *et al.*, 2008). Communal land in Namibia constitutes 36% of all land. More than two thirds of Namibians live on communal land (Wubbe, 2008). Communal land in Namibia is mostly not surveyed and unregistered (Mundia, 2007). This has led to tenure insecurity, boundary disputes, land grabbing, and low investment in many communal areas in Namibia ((Johann, 2003; De Vries and Lewis, 2009). To address poor land administration in communal areas, the government of Namibia introduced the registration of land rights in communal areas through the Communal Land Reform Act, Act No. 5 of 2002 (Government of Republic of Namibia, 2002).

### **6.10.1 Communal land reform**

The Communal Land Reform Act seeks to address access to land in communal areas. It regulates the land rights of residents in communal areas. The Communal Land Reform Act makes provision for the establishment of Communal Land Boards (CLBs) in communal areas. The CLBs are responsible for land

administration in communal areas (Government of Republic of Namibia, 2002). A CLB is made up of twelve members as per the following: one representative from the traditional authority, eight elected members from the community (including four women), one representative each from the Ministry of Agriculture, Water and Forestry, the Ministry of Regional, Local Government, Housing and Rural Development and the Ministry of Environment and Tourism (Government of Republic of Namibia, 2002). The main duty of the line function ministries is to render technical support to the CLB in the areas of their specialty (Wubbe, 2008).

The Communal Land Reform Act further defines the powers of the traditional authorities in the administration of communal land. The chief has the primary power to allocate or cancel any customary land right in respect of any portion of land in the communal area of a traditional community. Such an allocation or cancellation, however, has no legal effect unless it has been ratified by the relevant land board (Government of Republic of Namibia, 2002). There are two types of land rights in the communal areas of Namibia - customary land right, and right of leasehold (Kapitango *et al.*, 2008). People can hold customary land rights for as long as they live and can bequeath their rights to a spouse and children. The leasehold right is, however, for a maximum of 99 years, but is transferable as per Section 38(2) of the Communal Land Reform Act (Government of Republic of Namibia, 2002).

Like Botswana, Namibia has appeal tribunals that regulate the operations of the CLBs and the chiefs. The appeal tribunal may rescind any decision by a CLB or traditional authority if such decisions are found to be inconsistent (Government of

Republic of Namibia, 2002). The introduction of CLBs in Namibia provides insight into how both customary and community land organisations can be integrated to enhance customary land administration. This has implications for hybrid land administration systems in other countries. Two case study areas (Olukonda and peri-urban Oshakati) from Namibia are selected for further analysis (sections 6.11 and 6.12).

### **6.10.2 The Flexible Land Tenure System**

The Flexible Land Tenure System is an innovative land administration tool to address land tenure insecurity of poor people living in peri-urban and informal areas in Namibia. It seeks to create alternative forms of land title that are simpler and cheaper to administer and provides security of title for people living in low-income housing and in informal areas (Christensen, 2004).

Two different tenure types can be granted under the Flexible Land Tenure System - starter title and landhold title. In terms of the starter title, one person (usually the head of a family or household) is granted the right by the community to a site within a specific block. The block is registered in the name of the community (Christensen, Werner and Højgaard, 1999). Starter titles are registered locally and a copy of the information is kept at the National Registry (Christensen, 2004). Starter title holders cannot erect permanent structures on their allocated sites until infrastructure provision have been extended to the site. After the extension of infrastructure provision to the site, the starter title can be upgraded to landhold title. This is done through an application for land registration at the Deeds Registry Office. A landhold title is a statutory form of tenure equivalent to freehold. It can

be used as collateral for credit (Christensen *et al.*, 1999). Landhold titles allow for the development of permanent structures. People who hold this kind of title are compensated when their land is expropriated by the state (Christensen, 2004).

## **6.11 THE CASE OF OLUKONDA**

Olukonda, in Namibia, was selected for the purpose of this study to learn how both traditional institutions (comprising chiefs) and non-customary institutions (such as land boards) jointly administer customary land. In Olukonda, both the chief and the Olukonda Communal Land Board (OCLB) have a legislative mandate regarding effective land administration. Many researchers (Ubink, 2008; Arko-Adjei, 2011; Akrofi, 2013) have established that land allocation committees assist in customary land administration in peri-urban customary areas across sub-Saharan Africa. However, many of such committees have no legislative support and mostly face victimisation from some chiefs (Ubink, 2008). The case of Olukonda may present some direction on how land allocation committees in other countries may be legitimised. Land administration practices in Olukonda are narrated in this section.

### **6.11.1 Background**

Olukonda is a settlement in the Oshikoto region in northern Namibia. It is the district capital of the Olukonda electoral area and has a population of 9600 (Namibia Statistics Agency, 2014). About 85% of the residents in Olukonda hold customary land rights. None of these customary rights were registered prior to the promulgation of the Communal Land Reform Act (Kapitango *et al.*, 2008). The

following section describes how existing customary land rights were registered after the Act was promulgated.

### **6.11.2 Land registration process**

An applicant submits an application for registration to the OCLB. Both men and women can submit applications for registration. After the OCLB has received an application, it investigates the application through consultation with community members to establish when and how the customary right was acquired by the applicant, and whether other people claim any rights to the same piece of land (Kapitango *et al.*, 2008). The OCLB also checks the land under consideration against the land use plan. The Ministry of Lands and Resettlement and the Ministry of Environment and Tourism coordinate the preparation and approval of an integrated land use plan for Olukonda (Kapitango *et al.*, 2008). The OCLB displays the application on a notice board for a minimum of seven days to allow for any objections against the application (if any). It can also use its discretion to ensure that the notice of application reaches the majority of the residents in whose area the piece of land is situated. The notice may be displayed for more than the minimum seven days and the OCLB may make use of other electronic communication channels, such as the local radio (Kapitango *et al.*, 2008). If any genuine claim is received, the OCLB mediates such claim between the claimant and the applicant. The OCLB may also conduct a hearing into the claim if there are conflicting claims or doubts about the validity of the claim (Wubbe, 2008). If the parties do not reach consensus, the OCLB refers the claim to the traditional authority to deliberate and decide on the matter (Wubbe, 2008). An aggrieved person has 30 days to lodge an

appeal to the Minister of Lands and Resettlement, who may appoint an appeal tribunal to reconsider the decision made by either the chief or the OCLB. An appeal tribunal may set aside a decision made by the chief or the OCLB if it detects any inconsistency in such decision (Kapitango *et al.*, 2008).

After all objections have been resolved, the OCLB verifies the size and boundaries of the land under consideration. The verification team (made up of a land use planner, surveyor, civil engineer and members of the Land Board) starts with the mapping of the individual plots. The OCLB may approve or refer the application to the applicant for correction (Kapitango *et al.*, 2008), based on the evidence collected. If the application is approved, the applicant is issued with a Certificate of Registration. The Registration Certificate is prepared in duplicate, with a copy remaining with the OCLB for record purposes. The Registration Certificate is signed and stamped by the chairperson of the OCLB (Wubbe, 2008). The Registration Certificate is entered into the Namibia Communal Land Administration System (NCLAS). The NCLAS is a land registration system that stores data on communal land for the whole of Namibia. The NCLAS can produce certificates, reports, indexes and village maps (Wubbe, 2008). It can also be used to analyse land allocated to individuals and parcel size. Once the customary land right is registered, it lasts for the natural life of the holder. The land cannot be expropriated without compensation. The landholder may transfer his/her right to family members (Kapitango *et al.*, 2008). Indigenes do not pay money to access land in Olukonda. Non-indigenes, however, need to pay money to acquire land in Olukonda. Land transactions are recorded by the OCLB. Community members can

access land information in Olukonda at the offices of the OCLB, the local deeds registry or at the Windhoek Deeds Registry offices.

## **6.12 THE CASE OF PERI-URBAN OSHAKATI**

People living in informal areas in many sub-Saharan African countries have neither security of tenure, nor access to basic services, and are excluded from both statutory and customary land administration systems (Obioha, 2008). An effective land administration system has, however, been implemented in informal areas in peri-urban Oshakati in Namibia. The case of peri-urban Oshakati may present some direction on how to ensure effective land administration in informal areas in other contexts. Land administration practices in peri-urban Oshakati are narrated in this section.

### **6.12.1 Background**

Oshakati is the regional capital of the Oshana region. It has a population of 42 000 (Namibia Statistics Agency, 2014). About 50% of the total land area is prone to flooding, which limits the available land for urban expansion (Christensen, 2004). There are three household types in Oshakati – formal, informal and rural households. Figure 6.7 indicates the location of Oshakati.



**Figure 6.7: Location of Oshakati (source: Namibia Statistics Agency, 2014)**

Informal households constitute 73% of the total households in Oshakati (Namibia Statistics Agency, 2014). The formal households hold freehold titles and have no land security challenges. The informal households residing in peri-urban areas in Oshakati have, however, low levels of tenure security (Christensen, 2004). The Flexible Tenure System was implemented in peri-urban Oshakati to improve the tenure security of informal households (Christensen, 2004).

### **6.12.2 Implementation of the Flexible Tenure System**

The Flexible Land Tenure System was implemented in peri-urban Oshakati during the Oshakati Human Settlements Improvement Project in informal areas

(Christensen, 2004). Community-based organisations (Savings Schemes) were established to improve the livelihoods of people living in informal areas in peri-urban Oshakati. Members of the organisations pay contributions on a regular basis. The Savings Scheme records the money received from its members. The Savings Scheme provides access to land and housing for its members (Amoo and Haring, 2009). The Oshakati Town Council offered the Savings Scheme a piece of land for its members. The Namibia Housing Action Group (NHAG) and a land surveyor from the Oshakati Town Council developed a layout plan with individual plots for the members of the Savings Scheme. The layout plan indicates public areas such as schools and public open spaces. The Savings Scheme conclude individual land right agreements with all its members (Van Asperen and Zevenbergen, 2012). The land rights agreements include the successors of the members, to prevent property grabbing by extended family members, should a member dies (Van Asperen and Zevenbergen, 2012). Members of the Savings Scheme only pay water charges to the Oshakati Town Council; they do not pay land rent. Members of the Savings Scheme hold starter titles until their plots have been surveyed. They are granted landhold titles when the block in which their plots are located, is registered at the Deeds Registry (Campbell, De Kock, J. and Van Der Westhuizen, 2008). Once the land is registered, no-one may expropriate the land from the landholder without compensation. Both men and women can access land in peri-urban Oshakati. The Savings Scheme holds weekly meetings to discuss development in the area (Van Asperen and Zevenbergen, 2012).

## 6.13 CONCLUSION

Chapter 6 described the nature of land administration systems and practices in the different case study areas. A wide range of stakeholders are involved in customary land administration in both the primary and secondary case study areas. The significance of the inclusive nature of land administration for good land governance is discussed in chapter 7. Land committees serve as a link between customary and statutory land administration processes in the case study areas. Such land committees play a significant role in ensuring effective hybrid land administration in the case study areas. In Botswana and Namibia, land committees (land boards) are statutorily recognised and cannot be disbanded by customary landowners (e.g. chiefs). This is different from the land allocation committees in Ghana. In the case of Ghana, land allocation committees only serve as aides to the chiefs and have no legislative support. Chiefs in Ghana can refuse to work with the land allocation committees (Ubink, 2008). With the tremendous role played by land committees (such as land boards) in peri-urban customary areas, it would be appropriate for such committees to be recognised in the laws of Ghana. As observed in Namibia, the functions (both lead and collaborative) of the land committees should clearly be defined in law to avoid conflicts between land committees and chiefs. An alignment between customary land delivery processes and national land laws is also observed in the primary case study areas. This will be discussed in detail in subsequent chapters to understand how existing local hybrid land administration and tenure practices in Ghana are consistent with national laws whilst also reducing conflicting rationalities. The land administration practices observed in the various case study areas could be described as novel, and have

implications on contemporary land administration discourse. For instance, the grassroots approach to customary land administration observed in Mocuba (Mozambique) may be explored in other countries including Ghana. The hybrid institutional approach to customary land administration in Olunkoda (Namibia) is also a good practice to be tried in Ghana. In Namibia, traditional leaders (customary landowners), state land agencies and community land organisations (communal land boards) are all legally recognised in customary land administration. The effective quasi-formal land administration system observed in peri-urban Oshakati cannot be ignored in the current pursuit for ways of addressing tenure insecurity and lack of access to water and sanitation services in informal settlements in sub-Saharan Africa (Obioha, 2008). The data presented in chapter 6 is analysed using the good land governance framework in chapter 7.

## **CHAPTER 7: CASE STUDY ANALYSIS**

### **7.1 INTRODUCTION**

The analytical framework to assess the nature of land administration systems in the case study areas was developed in chapter 5. It was argued that hybrid land administration systems may enhance land tenure security and sustainable livelihoods of local people. This may be achieved through the development of effective and efficient institutional and legal systems. Chapter 7 attempts to understand how the land administration systems and practices in the case study areas conform to the good land governance framework developed in chapter 5. The data gathered from both primary and secondary sources are analysed, using the good land governance framework. The main argument in chapter 7 is that customary land administration and tenure systems are still useful in peri-urban customary land management, and they work better when integrated with statutory systems.

Chapter 7 is divided into eight sections. The first section is an introduction to the chapter. The participatory nature of land administration practices in the case study areas is assessed in section two. It is argued in this section that effective participation requires mechanisms to identify stakeholders and interest groups. As argued by Arnstein (1969), participation could be a mere manipulative tool and therefore, the level of involvement by the local people in any development agenda is crucial in determining the effectiveness of participation. Power dynamics and demographic differentiation can make participation a complex process. An

important element to consider therefore, in assessing effective participation is the availability of mechanisms to coordinate and facilitate its processes.

The third section assesses the equitable and fair processes of land administration in the case study areas. Criteria used in assessing equity and fairness in land administration in the case study areas include non-discrimination in land access, compensation for land expropriation and, promotion of community development through land administration. The fourth section discusses the level of transparency and accountability in land administration practices in the case study areas. Issues discussed in this section include proper recording of land transactions, accessibility of land information, availability of independent adjudication structures and feedback mechanisms. Efficiency and effectiveness in land administration is discussed in section five. Issues addressed under this section include clear and defined land delivery processes, proof of land ownership, training of land administrators and timeframes for addressing land applications and disputes. The institutional arrangements that support effective land administration in the case study areas are discussed in section six. Section seven assesses livelihoods and land tenure issues in the case study areas. Section eight concludes the chapter.

## **7.2 ASSESSING PARTICIPATION**

Participation may be enhanced when there are mechanisms to identify stakeholders and interest groups. The level of involvement (participation) of the identified stakeholders and interest groups is also critical in assessing participation in land administration. Due to the complex and dynamic nature of participation, mechanisms should be in place to coordinate and facilitate its processes.

Participation in land administration in the case study areas is analysed, based on the indicators below.

### **7.2.1 Stakeholder identification and definition of roles**

The identification of stakeholders is key in ensuring effective public participation in hybrid land administration systems. This may ensure that all stakeholders are consulted in land administration processes (Obeng and Whittal, 2014). Stakeholders in customary land administration in all the case study areas have been identified along with their roles - traditional authorities, state land agencies, community land organisations and the local community (sections 6.3 – 6.12). This has enhanced effective participation in the case study areas (sections 6.3 – 6.12). For instance, customary leaders (chiefs) are responsible for making final decisions in respect of customary land allocation in Esereso, Yasore and Olukonda, whilst land-owning families make final decisions in Adumasa (sections 6.3 – 6.12). The Tlokweng Land Board and the Mocuba community are the final land decision-making bodies in Tlokweng and Mocuba respectively (Habana, 2000; Government of the Republic of Botswana, 2001), whilst the Oshakati Savings Scheme makes final land decision in peri-urban Oshakati (Christensen, 2004).

The primary case study areas (Esereso, Adumasa and Yasore), Tlokweng and Olukonda present different perspectives on stakeholder identification and their (stakeholders') roles in hybrid land administration. In the primary case study areas, traditional leaders (customary landowners) are statutorily recognised, while community land organisations (e.g. land allocation committees) are not (Ubink, 2008). Tlokweng, on the other hand, has statutorily excluded traditional leaders

from customary land administration (Bornegrim and Collin, 2010). Both Tlokweng and the primary case study areas may present some challenges in ensuring effective participation in hybrid land administration. This is because both traditional leaders and community land organisations play important roles in ensuring effective hybrid land administration systems (sections 6.3 – 6.12). Traditional leaders are the embodiment of the customs, values and traditions of their people (Lentz, 2010). In seeking to integrate both customary and statutory land administration systems, it may not be appropriate to exclude traditional leaders from the process, as this may be regarded as disrespectful to the customs and culture of the local people (Lentz, 2010). The resistance against economy-based theories (e.g. replacement and the evolutionary theories) in sub-Saharan Africa, is due to the fact that many of such theories seek to exclude customary institutions from land administration (Peters, 2009). It has further been observed that community land organisations play a vital role in hybrid land administration, by enhancing effective participation (sections 6.3 – 6.12). The Olukonda case provides a better option, as it statutorily recognises both traditional leaders and community land organisations in communal land administration (Kapitango *et al.*, 2008).

State land agencies are key stakeholders in customary land administration in all the case study areas. For instance, the Tlokweng District Land Use Planning Unit, the Department of Town and Regional Planning and the Department of Wildlife Management and Agriculture are involved in customary land administration in Tlokweng (Bornegrim and Collin, 2010). The role of the Tlokweng District Land Use Planning Unit is synonymous with that of the Statutory Planning Committee in the primary case study areas (sections 6.3 – 6.12). Both structures are made up of

representatives from line function departments and serve as coordinating structures for the development and approval of land use plans in the respective case study areas (Bornegrim and Collin, 2010). The Ministry of Lands and Resettlement and the Ministry of Environment and Tourism coordinate the preparation and approval of integrated land use plans in Olukonda (Kapitango *et al.*, 2008). A similar role is performed by the Ministry of Finance and Planning, and the National Directorate of Rural Development in Mocuba (Knight, 2010).

Effective decision-making processes in many sub-Saharan African countries have been marred by lack of clarity on the roles of stakeholders (Obeng and Whittal, 2014). For instance, Ubink (2008) found in some customary peri-urban areas (in Ghana) that communities and their traditional leaders fight over the right to allocate customary land. Effective participation may be a mirage in such areas, as stakeholders have not agreed on their respective roles. In the case study areas, however, each stakeholder is aware of their respective roles in customary land delivery, and this has improved participation in land administration (sections 6.3 – 6.12).

### **7.2.2 Coordination, facilitation and negotiation of participation processes**

Participation in land administration may imply that different stakeholders are involved in land administration processes. The stakeholders may have different rationalities and ambitions which, in many cases, may be conflicting (Watson, 2003). In addition, some stakeholders may be more economically or politically powerful than others and may influence the participation process (Obeng and Whittal, 2014). Participation may become even more complex in hybrid land

administration systems, incorporating both customary and statutory systems. This is because land administrators who adopt formal strategies to manage land may hold different worldviews from the customary landholders who have their own rationalities informing the management of customary land (Watson, 2003). To overcome the challenge of such conflicting rationalities, to manage power relations and to manage control by the elite in participation processes, a mechanism needs to be in place to coordinate, facilitate and negotiate the participation process.

Participation processes in all the case study areas are coordinated, facilitated and negotiated by community land organisations. For instance, it was observed in Esereso, Adumasa and Yasore that community land organisations bring all stakeholders together to deliberate on all land applications. The community land organisations serve as a link between households, traditional authorities (customary land owners) and state land agencies. For instance, the Esereso Land Allocation Committee receives land applications, invites comments from households (community members), makes recommendations to the chief and directs applicants to the Lands Commission for the registration of land. A similar role is performed by the Tlokweng Land Board, Olukonda Communal Land Board, Oshakati Savings Scheme and the Mocuba Land Management Committee (sections 6.3 – 6.12). The functions performed by the above community land organisations have improved participation in land administration in all the case study areas. It can therefore be deduced that customary land administration systems require the establishment of community land organisations to improve participation in customary land allocation processes. This deduction is corroborated by both Arko-Adjei (2011) and Akrofi (2013). For instance, Akrofi (2013) found that community land

organisations are absent in dysfunctional customary areas, resulting in low or no public participation in land administration. What was concerning to note, however, is that only the Tlokweng Land Board and the Olukonda Communal Land Board are statutorily recognised in Botswana and Namibia respectively (Government of the Republic of Botswana, 2001; Bornegrim and Collin, 2010). None of the community land organisations in the primary case study areas has statutory recognition in Ghana. They have been established by traditional leaders to assist in customary land delivery (Ubink, 2008).

### **7.2.3 Levels of participation**

The case study areas reflect different levels on the participation ladder (Figure 5.1). All the case study areas except peri-urban Mocuba are at the consultation level where communities are given information about land administration and are asked to provide comments. They have not reached the level where communities can make independent land administration decisions. In all the case study areas (except peri-urban Mocuba), final land administration decisions reside with either chiefs or land boards (section 6.3 – 6.12). Even in Adumasa where the Odikro does not have the final decision-making power, such decisions are made by some few landowning families (section 6.4). Communities have not been delegated with any land administration decision-making powers and have little influence on decision-making processes (section 6.3 – 6.12). Many researchers have found in some parts of Ghana that chiefs do not allow democratic processes in customary land delivery (Ubink, 2008; Arko-Adjei, 2011; Akrofi, 2013). The analysis of the data in this research does not contradict such findings. However, a certain level of participation

could be observed in customary land delivery processes in the primary case study areas. Although customary landowners in the primary case study areas retain the right to make final land decisions, the local people are not excluded from customary land delivery processes, based on their gender or age. For instance, in all the case study areas, participation in land administration has moved beyond the initial levels of the participation ladder (manipulation, therapy and informing) (Figure 5.1).

Peri-urban Mocuba has attained the citizen power level of participation in land administration (Knight, 2010). The local community of peri-urban Mocuba takes land administration decisions independently of any external land institutions (Knight, 2010). Although state land agencies provide technical advice and the Mocuba Land Management Committee facilitates land administration processes, the community retains control over land (section 6.9.2). This level of participation is encouraged in land administration, since it empowers the local people who are the beneficiaries of land administration. Table 7.1 indicates the nature of participation in the different case study areas and how they comply with the participation indicators.

**Table 7.1: Participation in land administration**

CASE STUDY AREA	PARTICIPATION INDICATOR			
	Identified stakeholders	Level of stakeholder involvement	Community land organisation	Facilitation of participation processes
Esereso	Households; traditional leaders, the Esereso Land Allocation Committee and state land agencies	Households are consulted; state land agencies provide technical support and traditional leaders make final decisions	Esereso Land Allocation Committee	The Esereso Land Allocation Committee facilitates community participation processes
Adumasa	Households; traditional leaders; the Adumasa Unit Committee; Landowning families and state land agencies	Households and traditional leaders are consulted; state land agencies provide technical support; land-owning families make final decisions	Adumasa Unit Committee	The Adumasa Unit Committee facilitates community participation processes
Yasore	Households; traditional leaders; the Yasore Development Committee and state land agencies	Households are consulted; state land agencies provide technical support; traditional leaders make final decisions	Yasore Development Committee	The Yasore Development Committee facilitates community participation processes
Tlokweng	Households; the Tlokweng Land Board and state land agencies	Households are consulted; state land agencies provide technical support; Tlokweng Land Board makes final decisions	Tlokweng Land Board	The Tlokweng Land Board facilitates community participation processes

CASE STUDY AREA	PARTICIPATION INDICATOR			
	Identified stakeholders	Level of stakeholder involvement	Community land organisation	Facilitation of participation processes
Olukonda	Households; traditional leaders; the Olukonda Communal Land Board and state land agencies	Households are consulted; Olukonda Land Board facilitates participation processes and traditional leaders make final decisions	Olukonda Communal Land Board	The Olukonda Communal Land Board facilitates community participation processes
Peri-urban Oshakati	Households; Oshakati Savings Scheme and state land agencies	Households are consulted; Savings Scheme makes final decisions and state land agencies provide technical support	Oshakati Savings Scheme	The Oshakati Savings Scheme facilitates community participation processes
Mocuba	Households; the Mocuba Land Management Committee and state land agencies	Mocuba Land Management Committee facilitates participation processes; households make final decisions and state land agencies provide technical support	Mocuba Land Management Committee	The Mocuba Land Management Committee facilitates community participation processes

### **7.3 ASSESSING EQUITY AND FAIRNESS**

Equity and fairness in land administration require that no gender discrimination takes place in land access. They also require that both indigenes and non-indigenes have access to land, even if the latter has to pay for the land (Arko-Adjei, 2011). The other two indicators used to assess equity and fairness in land administration in the case study areas are, compensation for land expropriation and community projects funded through proceeds from land sales/leases.

#### **7.3.1 Equity of land access**

Harrison (1987) argues that customary land tenure systems exclude women, the youth and non-members of the community from accessing land. It was, however, observed from the case study areas that men and women, as well as indigenes and non-indigenes, can access land. This observation is in contradiction with certain customary land practices in some customary areas in Ghana, where women are not allowed to own land independently (Ubink, 2008; Arko-Adjei, 2011; Akrofi, 2013). The case study areas may be some of the few good cases in sub-Saharan Africa that have ensured equity of land access in this regard. For instance, in Esereso, children (both male and female including young adults) can inherit land from their parents without any prejudice from community members, if the land in question is owned by the parent and not the extended family. It should, however, be noted that women and the youth in customary areas in Ghana, traditionally respect older men, and this may give them (older men) the upper hand in customary land delivery processes (Ubink, 2008). Political economy analysis of customary land delivery processes should be extended to understand customary relationships

between women and men as well as the youth and adults. Although there may be no customary law that seeks to exclude any segment of people from customary land delivery processes in certain areas, women and the youth traditionally remain submissive to older men in some parts of Ghana (Akrofi, 2013). A popular Akan adage - *obaa to tuo a, etwene berima dem*, which literally means that when a woman acquires a gun (i.e. a property), it is the man who takes care of it, goes some way to explain the current 'deprived' state of women in customary land delivery processes in some parts of Ghana. In some modern peri-urban customary areas in Ghana, women are allowed to own land independently (Antwi-Boasiako, 2017). However, some of them may prefer their male counterparts to manage such land. This may not imply that women are deprived of land in Ghana as literally portrayed in some literature. In fact, the Constitution of Ghana allows women to own land independently and places a responsibility on the government to integrate women "into the mainstream of economic development" (Sambian, 2015: p.34). The reality, however, is that in many parts of Ghana, customary law does not allow women to own land (Amanor, 2010). Sambian (2015: p.35) argues that women's right to land in customary areas is context specific and should not be generalised. The family structure/ethnic relations and colonial history at the local level influence gender relations and women's rights to land. Although the above factors can be manipulated to deprive women of land in some customary areas, the primary case study areas present a good case of gender equity in land access.

The predicaments of non-indigenes in accessing land in peri-urban customary areas in Ghana have been widely articulated in literature (Antwi, 2002). This study found that non-indigenes pay land market values to access land in the primary case study

areas. Mahama and Dixon (2006) equally found that in Ghana, many non-indigenes cannot afford to access peri-urban and urban land due to its high cost. What this present study found to be innovative in the primary case study areas, however, is that both indigenes and non-indigenes are provided with tenure security through the registration of land transactions with the Lands Commission. This is in contradiction with Sambian's (2015) findings in some parts of Ghana, where non-indigenous farmers have used farmlands for many years without legitimacy and evidence to claim the land. Non-indigenes, however, cannot access land in peri-urban Oshakati (Christensen, 2004). In peri-urban Oshakati, only members of the Savings Scheme can have access to land. This is because the Flexible Land Tenure project was implemented for a defined group of people in peri-urban Oshakati (Christensen, 2004). Non-indigenes can pay money to access land in the other case study areas (chapter 6).

### **7.3.2 Fairness in the distribution of land resources**

Fairness requires that all community members benefit from the land resources in a community. This may be achieved through a fair distribution of land among community members, creating accessible public open spaces and financing community development projects with money realised from land sales. It was observed in all the primary case study areas that local people benefit from land resources. For instance, in Esereso, indigenous community members with usufruct interests in land are allowed to convert their farmland to residential development. This is a good land administration practice, as it was discovered in literature that, some allodial title holders dispossess individuals of their usufruct interests in some

parts of sub-Saharan Africa (Alden Wily and Hammond, 2001). The above observation is also in line with Ubink's (2002) finding that usufruct interests are legally protected in Ghana. Kasanga and Kotey (2001) also opine that usufruct interests are regarded as potentially perpetual interests in Ghana. Ubink and Amanor (2008), however, assert that conversion of farmland to residential land normally can cause individuals to lose their usufruct interests. The case of Esereso presents a precedent for other peri-urban areas on how to respect and protect the usufruct interests of local people.

Certain community development projects in the primary case study areas were financed with money received from land transactions (sections 6.3 – 6.12). A primary school was constructed in Esereso with money received from land sales. The local people of Adumasa now also have access to drinkable water from a communal standpipes provided through money received from land sales. The Yasore redevelopment project, which restored spatial order, was partly funded through money realised from land sales. These interesting cases may serve as lessons for dysfunctional customary areas where traditional leaders have selfishly used land resources to enrich themselves at the expense of community development, as observed in literature (Ubink, 2008; Akrofi, 2013). The Savings Scheme in peri-urban Oshakati provides access to land and housing for its members. It could not be determined in the other secondary case study areas (Tlokweng, Olukonda and peri-urban Mocuba) whether any community projects were funded through land sales.

Fairness also requires that people who have legally and rightfully acquired land should be compensated when such land is expropriated for public purposes. It was observed in all the case study areas that landholders are compensated when their land is expropriated. All the case study areas provide fair access to public open spaces, which may be used for playgrounds and other public gatherings (sections 6.3 – 6.12). Table 7.2 indicates how land administration processes in the case study areas comply with the equity and fairness indicators.

**Table 7.2: Equity and fairness in land administration**

CASE STUDIES	EQUITY AND FAIRNESS CRITERIA			
	Land accessibility by both men and women	Land accessibility by both indigenes and non-indigenes	Compensation for land expropriation	Community projects funded through proceeds from land sales
Esereso	Both men and women have equal access to land	Both indigenes and non-indigenes have access to land. Non-indigenes, however, pay a higher amount of money to use land	Compensation is paid to landholders when their land is expropriated	A school building constructed with money realised from the leasing of land
Adumasa	Both men and women have equal access to land	Both indigenes and non-indigenes have access to land. Non-indigenes, however, pay a higher amount of money to use land	Compensation is paid to landholders when their land is expropriated	Communal standpipe developed with money realised from the leasing of land
Yasore	Both men and women have equal access to land	Both indigenes and non-indigenes have access to land. Non-indigenes, however, pay a higher amount of money to use land	Compensation is paid to landholders when their land is expropriated	Layout developed with money realised from the leasing of land
Tlokweng	Both men and women have equal access to land	Both indigenes and non-indigenes have access to land. Non-indigenes, however, pay money to use land	Compensation is paid to landholders when their land is expropriated	Data could not be obtained

**Table 7.2: Equity and fairness in land administration**

CASE STUDIES	EQUITY AND FAIRNESS CRITERIA			
	Land accessibility by both men and women	Land accessibility by both indigenes and non-indigenes	Compensation for land expropriation	Community projects funded through proceeds from land sales
Olukonda	Both men and women have equal access to land	Both indigenes and non-indigenes have access to land. Non-indigenes, however, pay money to use land	Compensation is paid to landholders when their land is expropriated	Data could not be obtained
Peri-urban Oshakati	Both men and women have equal access to land	Only members of the Savings Scheme can access land	Compensation is paid to landholders when their land is expropriated	Provision of housing units for members of the Savings Scheme
Mocuba	Both men and women have equal access to land	Both indigenes and non-indigenes have access to land. Non-indigenes, however, pay money to use land	Compensation is paid to landholders when their land is expropriated	Data could not be obtained

## **7.4 ASSESSING TRANSPARENCY AND ACCOUNTABILITY**

Transparency in land administration requires proper recording of land transactions and accessibility to land information (Arko-Adjei, 2011). Accountability, on the other hand, requires independent adjudication structures to assess the decisions taken by land administrators. Accountability further requires that land decision-makers report back to stakeholders on the outcome of land decisions (Akrofi, 2013).

### **7.4.1 Recording of land transactions**

Land transactions in all the case study areas are recorded. This is facilitated by community land organisations in the various case study areas. For instance, the Esereso Land Allocation Committee and the Adumasa Unit Committee receive and record all money received for land allocation in Esereso and Adumasa respectively (sections 6.3 – 6.12). A similar function is performed by the Yasore Development Committee and all the community development organisations in the secondary case study areas (Tlokweng, Olukonda, peri-urban Oshakati and peri-urban Mocuba) (sections 6.3 – 6.12). The recording of land transactions helps to curb land administration problems such as land disputes and multiple sales of the same land in the case study areas. For instance, proof of payment is issued to people who pay money for land in all the case study areas (sections 6.3 – 6.12). The community land organisations consult their records to determine if a particular piece of land has not already been allocated before an application for such land is processed. The recording of land transactions also helps land administrators in the case study areas to account to their community members in respect of how much money they have

received from land transactions, and how they spend such money. This may further help to avoid corruption, as people may demand proof of payment for the money they pay for land. The practice of recording land transactions in the case study areas is foreign to dysfunctional customary areas (Awuah and Hammond, 2013). In such areas, chiefs and other land administrators receive money from developers without keeping any record of such money. This has resulted in corruption, land disputes and multiple sales of the same piece of land in such areas (Antwi, 2002). Anti-customary land administration and tenure systems writers argue that lack of proper record keeping of customary land transactions leads to multiple land administration challenges, which render customary land administration and tenure systems irrelevant (De Soto, 2000). The primary case study areas, however, present good cases of effective record keeping in terms of customary land transactions. Nevertheless, there is always room for improvement and allied improved tenure security.

#### **7.4.2 Accessibility to land information**

Transparency requires free access to land information. Land information is easily accessible in all the case study areas. Community land organisations and state land agencies in the different case study areas provide land information to community members. Some of the case study areas have land information infrastructure that provides up-to-date land information for people. For instance, the Tlokweng Land Board has a computer register, used to search for land information regarding the name of the landholder, plot number, whether the plot has been transferred, and where document in the records offices can be found (Van Asperen and Zevenbergen, 2012). In Olukonda and peri-urban Oshakati, the Namibia

Communal Land Administration System (NCLAS) (a national land information system) assists in the provision of land information for the people (Wubbe, 2008). Although the primary case study areas do not have land information infrastructure (at the local level), the national land information systems provide information about land in these areas (sections 6.3 – 6.12). However, such land should first be registered with the state land agencies. For instance, the Lands Commission (in Ghana) can have land information about the primary case study areas only when such land has been registered with it (Lands Commission) (sections 6.3 – 6.12). In peri-urban Mocuba, however, land information may not be accessed through the national land information system. Land information in peri-urban Mocuba can mainly be accessed through the testimonies of neighbours (Norfolk and Tanner, 2007).

#### **7.4.3 Openness in land allocation processes**

Transparency requires openness in land allocation processes. This requires community members to be involved in land allocation processes. It was observed in all the case study areas that land allocation processes are open to the public. For instance, all land applications in the case study areas are advertised, and individuals are given the opportunity to comment on such applications (sections 6.3 – 6.12). In Tlokweng, the applicant, neighbours, local leaders and other stakeholders are invited to a meeting to discuss all land applications (Bornegrim and Collin, 2010). A final decision on the land application can be made only after all comments from the community members have been considered (Bornegrim and Collin, 2010). Land allocation processes in peri-urban Mocuba are even more transparent, as the

entire community has to vote on any land application (Norfolk and Tanner, 2007). In Olukonda, all land applications are displayed on notice-boards for a minimum of seven (7) days. The Olukonda Communal Land Board sometimes uses the local radio to reach the majority of the local people on land applications (Kapitango *et al.*, 2008). Weekly meetings are held in peri-urban Oshakati to discuss land allocation and development in the area (Van Asperen and Zevenbergen, 2012). These observations are contrary to Akrofi's (2013) observations regarding dysfunctional customary areas in Ghana. In such areas, community members remain ignorant of land allocation and development processes (Akrofi, 2013). This may lead to corruption and lack of accountability as community members may not have any information to question the decisions of land administrators.

#### **7.4.4 Reporting back to community members**

Accountability requires that land administrators report to community members on land related matters (Arko-Adjei, 2011). The community land organisations in the case study areas provide periodic reports on all land related matters to community members. The community land organisations also account to the community members on the amount of money realised from all land transactions (sections 6.3 – 6.12). This is usually done through periodic community meetings, organised by the community land organisations. For instance, weekly community meetings and bi-annual meetings are held in peri-urban Oshakati and peri-urban Mocuba respectively to discuss land related issues (sections 6.3 – 6.12).

#### **7.4.5 Independent land adjudication structures**

Accountable land administration implies that land decisions taken by land administrators can be scrutinised by an independent structure and, if necessary that such decisions can be rescinded (Kapitango *et al.*, 2008). The availability of independent adjudication structures is therefore necessary for accountable land administration. All the case study areas have independent adjudication structures that consider land decisions taken by land administrators (sections 6.3 – 6.12). For instance, individuals who are not happy about any land administration process in the primary case study areas may appeal to the Asantehene's Secretariat or to the Court (Ubink, 2008). Chiefs and other land administrators in the primary case study areas may be cautious of land decisions, as they (the decisions) can have legal consequences. Both Tlokweng and Olukonda have land tribunals that scrutinise the land decisions taken by the land boards. The land tribunals may rescind any land decision by the land boards that are found to be inconsistent (Kapitango *et al.*, 2008). This implies that the land boards are not a law unto themselves. Disgruntled individuals in peri-urban Mocuba may appeal to the Local District Administrator to reconsider any land decision made by the Mocuba Land Management Committee (Knight, 2010). The operations of the Oshakati Savings Scheme are monitored by the Namibia Housing Action Group (NHAG). People who are not satisfied with the outcome of any land administration process may appeal to NHAG for such a decision to be reconsidered (Christensen, 2004). Table 7.3 indicates how land administration processes in the case study areas comply with the transparency and accountability indicators.

**Table 7.3: Transparency and accountability in land administration**

CASE STUDIES	TRANSPARENCY AND ACCOUNTABILITY CRITERIA				
	Method of recording land transactions	Feedback mechanism	Independent adjudication structure	Accessibility of land information	Community involvement in land administration processes (Openness in land allocation process)
Esereso	Land transactions are recorded in a notebook	Reports on land related matters are communicated to community members through local radio stations and at monthly meetings	Asantehene's Secretariat and the Court	Land information can be accessed at both the offices of the Esereso Land Allocation Committee or at the Lands Commission.	Community members are consulted on all land applications
Adumasa	Land transactions are recorded in a notebook	Reports on land related matters are communicated to community members through local radio stations and at monthly meetings	Asantehene's Secretariat and the Court	Land information can be accessed at both the offices of the Adumasa Unit Committee or at the Lands Commission.	Community members are consulted on all land applications
Yasore	Land transactions are recorded in a notebook	Reports on land related matters are communicated to community members through local radio	Asantehene's Secretariat and the Court	Land information can be accessed at both the offices of the Yasore Development Committee or at the Lands	Community members are consulted on all land applications

**Table 7.3: Transparency and accountability in land administration**

CASE STUDIES	TRANSPARENCY AND ACCOUNTABILITY CRITERIA				
	Method of recording land transactions	Feedback mechanism	Independent adjudication structure	Accessibility of land information	Community involvement in land administration processes (Openness in land allocation process)
		stations and at monthly meetings		Commission.	
Tlokweng	Land transactions are recorded in a computer register	Reports on land related matters are communicated to community members through local radio stations and at monthly meetings	Gaborone Land Tribunal	Land information can be accessed at the offices of Tlokweng Land Board	Community members are consulted on all land applications
Olukonda	Land transactions are recorded in a notebook	Reports on land related matters are communicated to community members through local radio stations and at monthly meetings	Olukonda Communal Land Tribunal	Land information can be accessed at the offices of the Olukonda Communal Land Board and the Windhoek Deeds Registry offices	Community members are consulted on all land applications
Peri-urban Oshakati	Land transactions are recorded in a notebook	Reports on land related matters are communicated to	The Namibia Housing Action Group	Land information can be accessed at the offices of the Oshakati Savings Scheme	Community members are consulted on all land

**Table 7.3: Transparency and accountability in land administration**

CASE STUDIES	TRANSPARENCY AND ACCOUNTABILITY CRITERIA				
	Method of recording land transactions	Feedback mechanism	Independent adjudication structure	Accessibility of land information	Community involvement in land administration processes (Openness in land allocation process)
		community members through local radio stations and at weekly meetings		and the Windhoek Deeds Registry offices	applications
Peri-urban Mocuba	Land transactions are recorded in a notebook	Reports on land related matters are communicated to community members through community meetings	The Local District Administrator	There is no written land information (for indigenous landholders). Such land information can be obtained from neighbours and the Mocuba Land Management Committee. Land information for developers is, however, documented.	Community members are directly involved in land administration processes through voting

## **7.5 ASSESSING EFFICIENCY AND EFFECTIVENESS**

Efficient and effective land administration requires clear and defined processes for land delivery. Land administrators require regular training to provide an acceptable level of service to the people. Land application and dispute resolution processes should be completed within a minimum timeframe and there should be proof of land allocation to protect the land rights of local people. Effective and efficient land administration processes may lead to cost-savings in land administration, which may benefit the peri-urban poor.

### **7.5.1 Outline of land allocation processes**

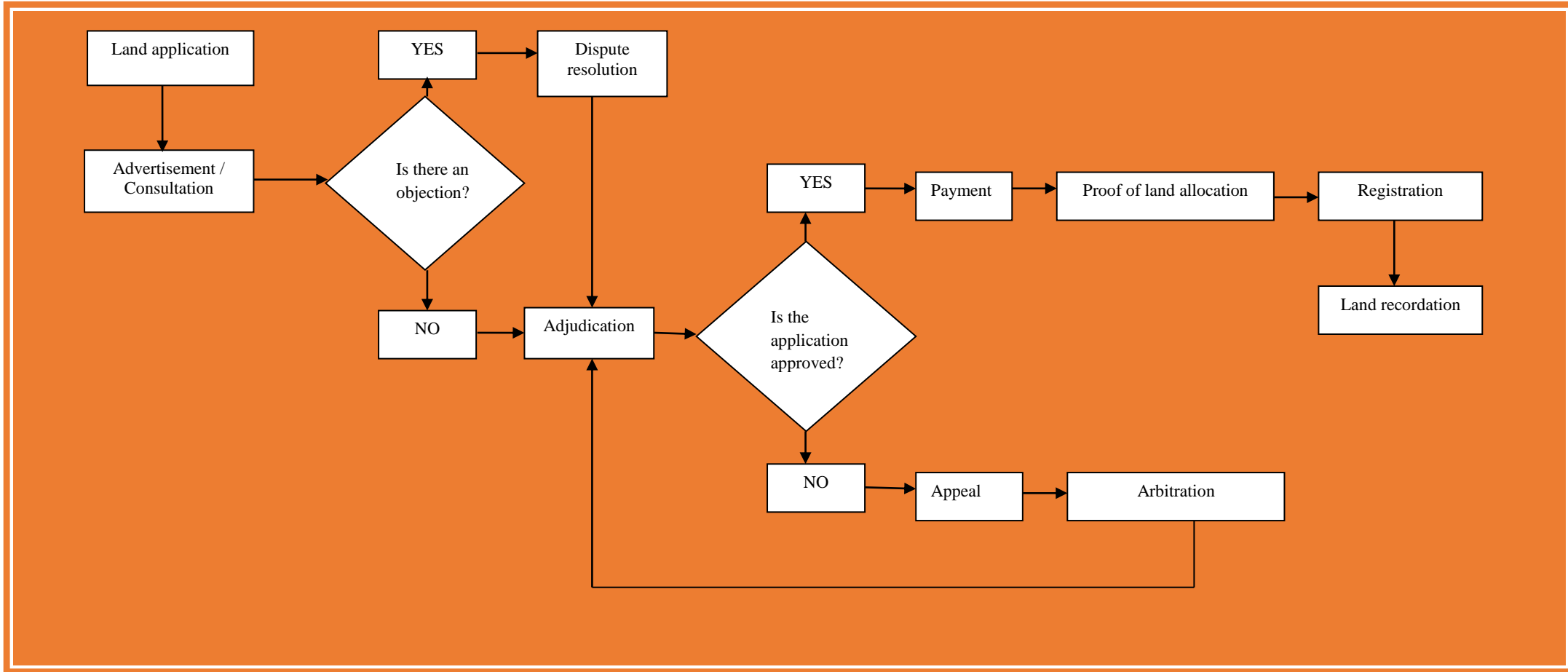
There are clear processes for land delivery in the primary case study areas. In all the primary case study areas, individuals first apply to the community land organisations for vacant land. Such applications are advertised for public comment. Any concerns raised by stakeholders in respect of the applications are addressed by the community land organisations before the applications are either approved or rejected. The applicant pays for the land and commences with statutory registration process (sections 6.3 – 6.12).

The secondary case study areas follow similar processes to those in the primary case study areas. It is only peri-urban Oshakati that follows a different process of land allocation. People do not apply for land in peri-urban Oshakati. This is because land in peri-urban Oshakati is not accessible to non-members of the Oshakati Savings Scheme. A block of land is first issued to the Savings Scheme, demarcated and shared among its members. The Savings Scheme concludes land

right agreements with members who are allocated plots of land (Christensen, 2004).

Clear land delivery processes may reduce land disputes. This was evident in all the case study areas, as no land disputes were found in any of the case study areas (section 6.3 – 6.12). Sambian (2015), however, found in certain parts of Ghana that, the District Courts are inundated with large number of land dispute cases, which take longer time to settle. Abdulai (2010) equally found in some parts of Ghana that land disputes have affected the livelihoods of local people. The various structures responsible for land allocation in the various case study areas help to avoid the multiple allocation of the same piece of land. In instances where land disputes arise, they are resolved timeously as part of the land allocation process. For instance, in Olukonda, the Communal Land Board refers all objections in respect of land applications to traditional authorities for resolution (Kapitango *et al.*, 2008). The processing of land application is halted, pending the resolution of any objections raised. Figure 7.1 indicates the common nature of land administration practices in all the case study areas except in peri-urban Oshakati. As depicted in Figure 7.1, land allocation processes in all the case study areas (except peri-urban Oshakati) commence with a land application. The application is then advertised for comments. After consultation with stakeholders, the application is either approved or rejected. In all the case study areas, individual applicants can appeal land decisions to an independent structure for arbitration. When such appeal is granted, the initial decision may be rescinded and the application is re-adjudicated.

**Figure 7.1: Common processes of land allocation in the case study areas**



### **7.5.2 Turnaround time for the processing of land applications**

A clear process of land allocation facilitates land delivery processes in the case study areas, and ensures that such processes are finalised within reasonable timeframes. For instance, the average turnaround time from the date of application to the conclusion of a lease agreement in the primary case study areas is two months (sections 6.3 – 6.12). This is relatively better than the average land application processing time of five months reported by Akrofi (2013) in some peri-urban customary areas in Ghana. The timeous completion of land delivery processes may lead to a reduction in land administration costs and promotes development in peri-urban customary areas. The turnaround time for dispute resolution could not be determined, as all disputes are resolved as part of land delivery processes. In all the case study areas, the concerns of people in respect of every land application are addressed prior to the conclusion of such application (sections 6.3 – 6.12).

### **7.5.3 Proof of land ownership**

Efficient and effective land administration requires that proof of land ownership be issued to landholders (Mireku *et al.*, 2016). This may protect their (the landholders') land rights and enable them to raise mortgage loans to support their livelihoods. It was observed in all the case study areas that landholders are given proof of allocation, which also serves as proof of land ownership. For instance, landholders in the primary case study areas are given allocation notes, and those who register their land transactions with the Lands Commission further conclude lease agreements with the customary landowners (sections 6.3 – 6.12). Individuals

who acquire land in Tlokweng are given a Certificate of Customary Land Grant, which protects their land rights (UN-HABITAT, 2010). A Certificate of Registration serves as proof of land ownership in Olukonda (Kapitango *et al.*, 2008), whilst a Land Right Agreement seeks to protect the land rights of people in peri-urban Oshakati (Amoo and Haring, 2009). Although no proof of allocation is issued in Mocuba, people's land rights are protected through the verbal testimonies of neighbours, which are acceptable in terms of the Constitution of Mozambique (Knight, 2010).

Although Mireku *et al.* (2016) opine that an allocation note alone is not able to secure the land rights of the local people, households in the primary case study areas with just allocation notes did not indicate any sense of threat to their land rights. Land tenure security is not only determined by documentation proof of land possession as argued by proponents of land title registration (Peters, 2009), but also credible and transparent processes of land allocation. When land allocation processes are as credible and transparent as those observed in the case study areas, they may guard against multiple allocation of the same piece of land, which is the main cause of land litigation cases (Deininger *et al.*, 2010). The reason why landholders in the case study areas perceive allocation notes as enough proof of landownership (contrary to the assertion by Mireku *et al.*) is that, they (landholders) are not faced with any land litigation cases, where they would be required to provide proof of their ownership of land beyond the allocation note. It could be argued from this perspective that, transparent and credible processes of land allocation can provide a better tenure security than just documentation proof. This argument is supported by the fact that in corrupt environments, it may be

possible for the elite to buy documentation proof of land they did not properly acquire (Delville, 2007). Would land tenure security in this sense mean the ability of the elite to defend their 'ownership' of land at the expense of the poor? Certainly not. Although the poor may not be able to present a 'legal document' in terms of their land ownership, at least the transparent and credible customary processes through which they acquired the land should be accepted as evidence of ownership by the court. This assertion also seeks to support Abdulai and Owusu-Ansah's (2014) observation in Ghana that land litigation cases are not simply ruled in favour of landowners with title registrations at the state courts, and that, it is possible for registered landowners to lose their ownership of land at the state courts. Notwithstanding the above argument, it was discovered at the primary case study areas that a lease agreement administered at the court offer a better security of tenure. However, such lease agreement does not serve as a title registration. It only serves as statutory proof of a land transaction between the lessor and the lessee. Advocates of land title registration argue that it is only land title registration that provide a basis for landholders to access credit from financial institutions (De Soto, 2000; Peters, 2009). De Soto (2000) is of the opinion that customary tenure systems lock up capital and serve as a disincentive for accessing loan. It was, however, discovered from the primary case study areas that a lease agreement (not title registration) could serve as mortgage to access loan. This was made possible because national land laws in Ghana recognise customary land administration and tenure systems and government land institutions work together with customary institutions in land allocation processes (Asante, 1997).

#### **7.5.4 Capacitation of land administrators**

Training and capacitation of land administrators should be considered when pursuing efficient and effective land administration systems. This may provide them (land administrators) with the necessary skills that may enhance land delivery processes. Members of the community land organisations in the primary case study areas, together with their customary leaders, receive regular training through the Land Administration Programme (LAP) (sections 6.3 – 6.12). Members of the Tlokweng Land Board are trained by the Ministry of Agriculture, Commerce and Industry and the Ministry of Local Government (UN-HABITAT, 2010). In Olukonda, land board members and traditional authorities receive training from the Ministry of Lands and Resettlement (Kapitango *et al.*, 2008). The Oshakati Town Council trains members of the Oshakati Savings Scheme on land administration (Amoo and Haring, 2009), whilst members of the Mocuba Land Management Committee are trained by the Local District Administrator (Knight, 2010). Akrofi (2013) also found in some functional customary areas in Ghana that chiefs and other customary land administrators receive training, and that some of them possess formal qualifications. The findings of this research thus corroborate his findings. The good land administration practices in the case study areas could be attributed to the regular training received by the land administrators. Arko-Adjei (2011) further found that the implementation of the Land Administration Project (which seeks to capacitate traditional leaders in customary land administration) has improved customary land delivery in many peri-urban customary areas in Ghana. Table 7.4 indicates how land administration processes in the case study areas comply with the efficiency and effectiveness indicators.

**Table 7.4: Efficiency and effectiveness in land administration**

CASE STUDIES	EFFICIENCY AND EFFECTIVENESS INDICATOR				
	Land allocation procedure (Steps)	Proof of land allocation	Training of people involved in land administration	Land dispute resolution structures	Average turnaround time for the processing of land application
Esereso	1. Land application 2. Advertisement 3. Adjudication 4. Approval 5. Payment 6. Registration	Allocation Note and lease agreement	The Chief and members of the Esereso Land Allocation Committee are trained through LAP	The Asantehene's Secretariat The Court	3 months
Adumasa	1. Land application 2. Advertisement 3. Adjudication 4. Approval 5. Payment 6. Registration	Allocation Note and lease agreement	The Odikro and members of the Adumasa Unit Committee are trained through LAP	The Asantehene's Secretariat The Court	1.5 months
Yasore	1. Land application 2. Advertisement 3. Adjudication 4. Approval 5. Payment 6. Registration	Allocation Note and lease agreement	The chief and members of the Yasore Development Committee are trained through LAP	The Asantehene's Secretariat The Court	2 months
Tlokweng	1. Land application 2. Advertisement 3. Adjudication 4. Approval	Certificate of Customary Land Grant	Members of the Tlokweng Land Board are trained by the Ministry of Agriculture,	Gaborone Land Tribunal	Data could not be obtained

**Table 7.4: Efficiency and effectiveness in land administration**

CASE STUDIES	EFFICIENCY AND EFFECTIVENESS INDICATOR				
	Land allocation procedure (Steps)	Proof of land allocation	Training of people involved in land administration	Land dispute resolution structures	Average turnaround time for the processing of land application
	5. Payment 6. Registration		Commerce and Industry and the Ministry of Local Government		
Olukonda	1. Land application 2. Advertisement 3. Adjudication 4. Approval 5. Payment 6. Registration	Certificate of Registration	The chief and members of the Olukonda Land Board are trained by the Ministry of Lands and Resettlements	Ministry of Lands and Resettlement	Data could not be obtained
Peri-urban Oshakati	1. Issue of block of land 2. Demarcation of plots 3. Development of land right agreement	Land Right Agreements	Members of the Saving Scheme are trained by the Oshakati Town Council	Namibia Housing Action Group	Data could not be obtained
Peri-urban Mocuba	1. Land application 2. Gathering of information/Consultation 3. Public declaration	No written proof of allocation (neighbours' testimonies)	Members of the Mocuba Land Management Committee are trained by the Local District Administrator	Local District Administrator	Data could not be obtained

## **7.6 INSTITUTIONAL ARRANGEMENTS**

Effective institutional arrangements are critical in ensuring effective land administration systems (Arko-Adjei, 2011). These arrangements require clear definition of the roles of the central government, customary authorities and community land organisations. All the case study areas exhibit decentralised statutory land administration systems, with legal recognition of customary systems. However, different forms of institutional arrangements are in place in the various case study areas (sections 6.3 – 6.12).

### **7.6.1 Primary case study areas**

The Bosomtwe Atwima Kwanwoma District Lands Commission is responsible for all statutory land administration functions in both Esereso and Adumasa, whilst the Kwabre District Lands Commission is responsible for formal land administration functions in Yasore. Both district offices are supervised by a regional office (the Regional Lands Commission in Kumasi – the regional capital). All decisions taken at both the district and regional offices are, however, ratified by the national head office in Accra (sections 6.3 – 6.12).

Even though the Esereso, Adumasa and Yasore cases may not represent completely decentralised systems (as all decisions taken at the local levels have to be ratified by the central government), they provide some level of accessibility to the local people. The local people can access land information at the district offices. The roles of the various institutional structures – central government, community land organisations and customary authorities are well defined in Esereso, Adumasa and

Yasore. The Bosomtwe Atwima Kwanwoma District Assembly is responsible for the drafting of Planning Schemes that guide land use development in Esereso and Adumasa. In Yasore, the Kwabre District Assembly drafts the Planning Scheme (sections 6.3 – 6.12). The Esereso chief and land-owning families in Adumasa (as custodians of customary land) are responsible for the allocation of land in Esereso and Adumasa respectively (in line with the approved planning scheme). The regional Lands Commission is responsible for the drafting of lease agreements between lessors and lessees, and the registration of land transactions. The national Lands Commission is responsible for the concurrence of all recommendations made by the regional office (section 6.3 – 6.12).

The clarification of the roles of the respective institutional structures is critical in understanding the integration between customary and statutory land administration systems in the primary case study areas. The Esereso Land Allocation Committee, Adumasa Unit Committee and the Yasore Development Committee play a coordinating role in the integration process. The committees bring both the state land agencies and the customary authorities together in land allocation processes. For instance, the committees obtain site plans from the district survey offices and introduce land applicants to the chief for land transaction to commence. When the applicant has paid the customary *drink money*, the committees direct the applicant to the regional Lands Commission for the registration of the land transaction, and further assist the applicant in obtaining a development permit (from the District Town and Country Planning offices) (sections 6.3 – 6.12).

### **7.6.2 Tlokweng**

The Tlokweng case represents a ‘complete’ decentralised land administration system. The Tribal Land Act of 1968 confers full authority in respect of customary land administration (in Tlokweng) to the Tlokweng Land Board (Government of the Republic of Botswana, 1968). The Tlokweng Land Board has the power to grant and cancel land use rights; resolve land disputes; and impose restriction on the use of customary land. Although individual disgruntled land applicants can appeal a decision taken by the Land Board to the Gaborone Land Tribunal (UN-HABITAT, 2010), decisions taken at the local level do not need to be ratified by a regional or national office (UN-HABITAT, 2010), as is the case in Esereso, Adumasa and Yasore.

A completely decentralised land administration system should seek to relinquish decision-making powers to the local people. This can be achieved when local authorities are allowed to take final decisions in matters that directly affect the lives of local people, as is the case in Tlokweng. However, the institutional arrangements for land administration in Tlokweng exclude customary authorities. The Tribal Land Act of 1968 transferred authority over land from customary leaders to land boards (Government of the Republic of Botswana, 1968). The exclusion of customary authorities may not be encouraged in hybrid land administration systems, as they (customary authorities) are the embodiments of the customs, culture and the values of the people (Lentz, 2010).

### **7.6.3 Mocuba**

The Mocuba case exhibits an advanced form of decentralised land administration system. In Mocuba, customary land administration is vested in the local people (Knight, 2010). The local people have the power to grant land use right to investors and other people who want to acquire land in Mocuba. A person who has been granted a land use right by the local people enjoys full legal recognition in terms of his/her right in the land. Under no circumstances can anyone (including the national government) forcefully eject that person from that piece of land (Knight, 2010). As in the case of Tlokweng, customary leaders have no authority in land administration in Mocuba (Knight, 2010).

### **7.6.4 Olukonda**

The case of Olukonda presents another set of institutional arrangements in land administration. In Olukonda, the central government, the local authority (communal land boards) and the customary authority work together to administer land (Kapitango *et al.*, 2008). Although the Communal Land Reform Act tasks the Communal Land Board with customary land administration in Olukonda, it gives the primary power to allocate or cancel any customary land right in Olukonda to the chief. Such an allocation, however, has no legal effect, unless it is ratified by the Communal Land Board (Government of Republic of Namibia, 2002). The roles of both the customary authority and the Communal Land Board are clearly defined in communal land administration in Olukonda. The role of state land agencies in communal land administration is also defined. For instance, the Ministry of

Environment and Tourism ensures that development applications meet certain environmental requirements (Kapitango *et al.*, 2008).

#### **7.6.5 Peri-urban Oshakati**

Effective institutional arrangements can ensure effective land administration, even in informal settlements. This is evident from the case of peri-urban Oshakati. A joint effort between a community-based organisation (Oshakati Savings Scheme), the Oshakati Town Council and the Namibia Housing Action Group has ensured effective land administration in peri-urban Oshakati (Amoo and Haring, 2009). The joint effort between the various institutions has ensured integration between informal and statutory land administration systems in peri-urban Oshakati. The land administration systems in peri-urban Oshakati have since been transformed from purely informal to quasi-formal (Christensen, 2004).

It is evident from the above case studies that effective institutional arrangements are key in ensuring integration between various land administration systems. The case studies exhibit different forms of institutional arrangements. Institutional arrangements for land administration should include the integration of different institutional structures and define the levels of decision-making for each structure.

### **7.7 SUSTAINABLE LIVELIHOODS AND TENURE SECURITY**

It was argued in chapter 5 that good land governance is likely to enhance sustainable livelihoods and tenure security. Under this section, the livelihoods and the land rights of households in the case study areas are analysed. Peasant farming

is the main source of employment in all the case study areas. To sustain this, particular attention is paid to arable land in allocating land for development in the case study areas. For instance, none of the case study areas allows arable land to be used for residential developments. Households whose arable lands have been targeted for residential development can oppose such a development application. In drafting land use plans for the case study areas, community members are consulted to indicate which areas they would want to keep for agricultural use (sections 6.3 – 6.12). Households in the primary case study areas grow many of their staple foods themselves (cassava, plantain, yam and cocoyam). The local production of such staple foods has ensured sustainable food supply in the case study areas. It is common to see cassava, yam and plantain being sold along main streets in the primary case study areas (sections 6.3 – 6.12).

The land rights of households in the case study areas are protected and are transferable. In each of the case study areas (except Mocuba), it was discovered that there is proof of land allocation. Mocuba's case, however, does not pose any threat of tenure insecurity, as the community and the national government of Mozambique accept oral testimonies as proof of land ownership. Individuals may, however, choose to register their customary land rights with the state and be given proof of registration. However, this does not add anything to the tenure security enjoyed in customary areas in Mozambique (Norfolk and Tanner, 2007).

There is a link between the principles of good land governance (as adopted in this research) and sustainable livelihoods and tenure security in the case study areas. For instance, the good land governance principle of participation ensures that local communities are involved in determining land uses in line with their livelihood

strategies. It also ensures that local communities become watchdogs in land allocation processes to prevent arable lands from being used for physical developments (such as residential), which may deprive peasant farmers of their livelihoods. Equity and fairness may ensure that land becomes accessible to all community members. They further require that landholders are compensated should their land be expropriated. This implies that community members can use land and its resources to support their livelihoods, without being prejudiced. Transparency and accountability may ensure visible and open land allocation processes. This may promote land tenure security, as land transactions are recorded. Efficiency and effectiveness, similarly, require that proof of land allocation is given to landholders. They also require clear steps to be followed in land allocation processes. This may promote land security and the transfer of land rights, as individuals can have proof of tenure.

## **7.8 CONCLUSION**

Chapter 7 presented an analysis of the case study narratives presented in chapter 6. The analysis reveals some innovative land administration practices in the case study areas, contributing to knowledge about hybrid land administration systems. It is observed that in all the case study areas, land administration practices are not directly aligned to either the conventional statutory or customary systems. Different structures and actors, which have hitherto not been known, have been introduced to land administration systems in the case study areas. It is unusual to find a purely customary or statutory land administration system in any of the case study areas. Different land administration systems work together in the case study areas. The

analysis revealed good land administration practices in all the case study areas, and the hybrid land administration systems in the case study areas adhere to the principles of the good land governance framework developed in chapter 5. This can be attributed to the fact that the research design purposely includes good land administration cases to learn good practices. In addition, the results from these cases are intended to be generalised to theory and should not be generalised to other cases in which many aspects of good governance may be poor. Adherence to the good land governance framework enhances sustainable livelihoods and land tenure security, which are the main objectives of improving land administration in peri-urban customary areas in Ghana (Antwi-Boasiako, 2017). Chapter 8 presents a proposal on improving local hybrid land administration and tenure practices in Ghana.

## **CHAPTER 8: IMPROVING LOCAL HYBRID LAND ADMINISTRATION AND TENURE PRACTICES IN GHANA**

### **8.1 INTRODUCTION**

An analysis of the land administration practices in the case study areas was presented in chapter 7. It was observed that all the case study areas comply with the good land governance framework. Chapter 8 discusses integration of statutory and customary land administration systems in an attempt to reduce and potentially resolve conflicting rationalities in land administration in Ghana. It is argued in this chapter that a joint land development process between customary and statutory land institutions will go some way to address conflicting rationalities (section 3.3). A joint land development process informed by the Land Management Paradigm (section 3.2.7), the Land Governance Assessment Framework (section 5.8.2), and the fit-for-purpose approach to land administration (section 5.7.1) can promote pro-poor land administration systems (e.g. pro-poor land recordation) in peri-urban customary areas. A joint land development process also seeks to improve land tenure, land use, land value and land development, which serve as the core land administration functions, as indicated by the Land Management Paradigm (Williamson *et al.*, 2010). The main argument here is that hybrid land administration systems improve the core land administration functions, as they (the hybrid land administration systems) encourage both customary and statutory land institutions to work together. A joint land development process promotes minimalism in the design of land administration systems for peri-urban customary areas in Ghana (section 3.4). To this end, only the fundamental functions of both the statutory and customary land institutions are integrated (Figure 8.1). There

should be no complications that may discourage the local people from participating in the joint process of land development.

Chapter 8 is divided into seven sections. Section one is an introductory section. Section two discusses possible improvements in the core land administration functions of land tenure, land use, land value and land development in peri-urban customary areas. Section three outlines a joint land development process. The main argument in this section is that a joint land development process is required to reduce conflicting rationalities in land administration. Section four discusses factors to be considered in reducing conflicting rationalities in land administration. Section five discusses the institutional framework for hybrid land administration systems. The argument in this section is that institutional framework for land administration at the peri-urban interface should incorporate both customary and statutory land institutions. Section six discusses the role of community land organisations in integrating land administration systems and section seven concludes the chapter.

## **8.2 IMPROVEMENTS IN LAND ADMINISTRATION FUNCTIONS**

The attempt to reduce conflicting rationalities in land administration is also geared towards improving the core land administration functions. The main argument in this chapter is that the integration of customary and statutory land administration systems will reduce conflicting rationalities and improve the core land administration functions.

### 8.2.1 Improving land tenure

It was observed in the case study areas that customary land is vested in chiefs (in Esereso, Yasore and Olukonda); specific families (in Adumasa); community land organisations (in Tlokweng and peri-urban Oshakati); and the community (in Mocuba) (chapter 6). These institutions determine the land rights of the local people. The function of land tenure is, however, not concerned only with the determination of land rights, but also with the responsibilities, restrictions and risks associated with the use of land (Williamson *et al.*, 2010). To this end, land tenure security may not only mean that landholders are free from eviction and expropriation of land. It may also include how the landholder understands and mitigates potential risks associated with the use of the land, as well as how he/she adheres to the conditions of his/her rights (responsibilities and restrictions) (Williamson *et al.*, 2010).

Customary land institutions and state land agencies in the case study areas work together to ensure secure land tenure for the local people. This seeks to reduce the conflicting rationalities between customary land institutions and state land agencies in terms of customary land administration in the case study areas. Land rights, risks, responsibilities and restrictions are managed by the various land institutions in the case study areas. For instance, the Town and Country Planning Department (TCPD) in the primary case study areas ensures compliance with town planning laws that stipulate the responsibilities and restrictions attached to a piece of land. Environmental impact assessments are undertaken as part of the development of land use plans to determine possible inherent risks associated with the use of a piece of land in the case study areas (chapter 6). The contents of lease agreements,

which are issued as proof of land allocation in the primary case study areas, also include the lessee's rights, responsibilities as well as restrictions and risks associated with the use of the land (sections 6.3 - 6.12). The joint effort between customary and statutory land institutions has ensured a good level of tenure security in the case study areas. The role of community land organisations, such as land committees and land boards, is crucial in bringing both customary and statutory land institutions together to promote tenure security in peri-urban customary areas in Ghana. This is confirmed through the analysis of the case studies (chapter 7).

The LGAF identifies an effective legal and institutional framework as a tool for improving the land rights of the local people. It was observed in all the case study areas that customary land laws and institutions are recognised by statutory land institutions. Such recognition has led to the protection of existing (mostly customary) land rights in all the case study areas (section 6.3 - 6.12). No existing customary landholder may lose his/her land due to expropriation without adequate compensation in the case study areas. For instance, in Mocuba (in Mozambique), customary landholders can defend their land rights through the court if necessary (section 6.9). This implies that customary land laws are not only recognised in the case study areas, but are also enforced. A joint land development process seeks to create a common platform for both statutory and customary land institutions to work together to improve tenure security for local people in peri-urban customary areas in Ghana.

### 8.2.2 Improving land use planning

Effective land administration is not concerned only with ensuring land tenure security, but also with the orderly use of land to ensure sustainable development. Lack of land use planning in peri-urban customary areas may lead to haphazard developments, which may encroach on sensitive environments and viable agricultural land (Ubink, 2008). It may also result in the lack of land for public use in peri-urban customary areas (e.g. public open spaces, land for schools and clinics). For instance, it was observed in Yasore that prior to the development of land use plans for the area, there was no land for public purposes, as all the land was allocated for residential uses (section 6.5.2). All the case study areas have institutions that promote proper land use planning in their land administration processes, and this has advanced orderly physical developments in the case study areas (sections 6.3 - 6.12).

The LGAF is also concerned with how to improve land use planning to ensure that public goods are efficiently provided in line with resource availability. This can be achieved when both statutory and customary land institutions work together. Land use plans and regulations should make provision for future land demands. Land use planning standards in peri-urban customary areas should not be too stringent to force the local people into informality. Such standards should be designed in line with the needs of the local people (fit-for-purpose). For instance, in peri-urban Oshakati, land use planning has been extended to informal settlements (section 6.12). Land use planning standards should be within the reach of the poor, who are mostly informal dwellers (Deininger *et al.*, 2010: p.7). It will require a joint effort

between customary and statutory land institutions to improve land use planning in Ghana.

### **8.2.3 Improving land development**

The development of infrastructure such as roads, bulk water and sewerage systems should be extended to peri-urban customary areas. Customary landowners should work together with the government in the development of infrastructure in peri-urban customary areas in Ghana. Land should be allocated for development after bulk infrastructure and other rudimentary services have been provided. This may ensure that people who acquire land in peri-urban customary areas have access to basic services, such as roads, water and sanitation. These services may also have a positive impact on local economic development. It was observed in Esereso that land is allocated for development after such services have been provided (section 6.3).

### **8.2.4 Improving land value**

The value of customary land may be influenced by the other three functions (i.e. land tenure, land use and land development). The availability of mechanisms to ensure land tenure security, proper land use planning and the provision of basic infrastructure (such as roads, water and sanitation) in peri-urban customary areas may lead to an increase in land value. Both customary and statutory land institutions should work together to ensure that the land tenure, land use and land development functions of land administration are effectively performed in peri-urban customary areas in Ghana. There should be mechanisms to ensure effective

land taxation. Two forms of land taxation (i.e. stamp duty and ground rent) were observed in the primary case study areas. The stamp duty goes to the central government, whilst the ground rent is allocated to local government and the traditional institutions (section 6.3.2). The Land Valuation Board of the Lands Commission (in Ghana) assesses every piece of land and determines the amount of tax (stamp duty) to be paid before any land is registered with the Lands Commission. In addition, the Administrator of Stool Lands determines the ground rent to be paid on each piece of land in the primary case study areas (section 6.3.2). Land taxation is part of the statutory land registration process in the primary case study areas, and landholders cannot avoid it. This may ensure that the government receives money (through land taxation) to undertake land administration projects, which may in turn improve the value of land in peri-urban customary areas. It was observed in the primary case study areas that community development projects are funded through money received from land transactions. Customary institutions and community land organisations require a source of income to fund community development projects, and the ground rent may provide support in that regard. However, land taxation should not be too exorbitant so as not to put an unmanageable financial burden on the peri-urban poor.

### **8.3 FACTORS TO CONSIDER IN REDUCING CONFLICTING RATIONALITIES IN LAND ADMINISTRATION**

The following factors should be considered in an attempt to reduce conflicting rationalities in land administration. The factors discussed below may also promote effective hybrid land administration systems. The implementation of hybrid land administration systems, however, should not compromise existing legal and

institutional frameworks. In addition, there should be a conscious effort to address any prejudice which traditional leaders may hold against statutory land administration practices.

### **8.3.1 Mutual recognition of perspectives**

Statutory land administration systems have some principles that may be contrary to customary systems, and *vice versa* (section 3.2). To reduce such conflicting rationalities, the two systems should recognise each other's perspective of land. For instance, the values and customs of the people in relation to land should be recognised by the statutory systems. It was observed in all the case study areas that state land agencies that employ statutory systems to administer land also recognise customary land administration systems. For instance, customary land rights in Mocuba are as secured as statutory land rights (Knight, 2010).

### **8.3.2 Definition of functions**

The functions of customary and statutory land institutions should be defined and agreed upon in hybrid land administration systems. For instance, it should be agreed from the onset whether customary leaders will still have the final authority to allocate land (as in the case of Ghana and Namibia) (Mundia, 2007; Ubink, 2008), or whether independent community land organisations (such as land boards) should take over this function (as in the case in Botswana) (Nkwae and Dumba, 2009). There should also be clarity in terms of shared functions and those that will be independently performed. For instance, there is a shared land administration function in Olukonda (Namibia). Both the Communal Land Board and the chief of

Olukonda are responsible for land delivery in Olukonda (section 6.11). The definition of functions of the various land agencies in the case study areas has ensured effective land administration in all the case study areas (chapter 7). This observation supports Ubink's (2008) assertion that lack of definition and clarity of land administration functions has resulted in contention between land administrators in certain peri-urban customary areas in Ghana.

### **8.3.3 Outline of land development process**

In hybrid land administration systems, both customary and statutory land institutions are involved in customary land development process. Customary land development processes may involve surveying, planning, allocation, registration (of land transaction) and development. Both customary and statutory land institutions should agree on the order of the above stages. In some peri-urban customary areas in Ghana, land is developed without planning and registration of land transaction (Ubink, 2008). This may not be the right order. The case of Esereso may present a better order of land development. In hybrid land administration systems, land should first be surveyed, mapped and planned. After planning, customary landowners can lease land for development, based on the land use plan (scheme) for the area. Individuals who acquire customary land should register the land transaction with the statutory land institutions before commencing development. These processes are followed in customary land development in Esereso and have ensured effective land administration in the area (section 6.3). Some researchers have recorded incidents of land disputes in Ghana where landholders have not been able to provide sufficient documentary proof in respect

of their land rights (Ubink, 2008; Akrofi, 2013). If land transactions are registered with the statutory institutions, individuals will know if there is any challenge associated with the land that may impede its development or tenure security. Such issues could be addressed prior to investing in that piece of land.

#### **8.3.4 Identification of funding sources**

Funding for statutory land administration functions in hybrid land administration systems should be determined. For instance, surveying and land use planning functions normally reside within the statutory systems in Ghana (Berry, 2013). Although these functions may be regarded as essential and should be funded by the central government, many governments in sub-Saharan Africa do not have enough financial resources to perform these functions regularly (Arko-Adjei, 2011). For this reason, some of the proceeds from customary land sales should be used to pay for statutory land administration functions. This should be negotiated between statutory land bodies and customary land institutions to reach consensus (i.e. what percentage of customary land sales should be used to fund statutory land administration functions). It was observed in Adumasa that customary landowners allocate some of their land to pay for surveying and planning functions (section 6.4).

#### **8.3.5 Establishment of community land organisations**

Community land organisations should be established to coordinate the functions of both the statutory and customary land institutions in hybrid land administration systems. The community land organisations should assist the customary institutions in terms of record keeping and the issuing of initial documentation (such as the

allocation note), which may serve as the basis for statutory registration of land transactions in Ghana. Community land organisations may also assist in implementing land use schemes by ensuring that land reserved for public use and environmentally sensitive areas are not leased for physical development, and that development is in line with approved land use schemes. They should also educate and encourage people who acquire customary land to register their land rights with the statutory land institutions. These functions are performed by the Esereso Land Allocation Committee (a community land organisation) and have improved land administration in the area (section 6.3.2).

It was observed in both the primary and secondary case study areas that community land organisations play a vital role in ensuring effective hybrid land administration systems (chapter 6). Community land organisations assist customary landowners in recording customary land transactions and keeping proper records. Since such organisations are within the local communities in Ghana, they help the Town and Country Planning Department to enforce land use regulations in their areas. Like the case of Esereso, community land organisations ensure that land parcels allocated for development are developed timeously to avoid such land parcels being used as hideouts for criminals. Community land organisations facilitate community participation processes in the joint customary land development process (Figure 8.1). It was observed that community land organisations in Tlokweng and Olukonda enjoy statutory recognition and that, their role in customary land administration is stipulated in legislation. Community land organisations in Ghana should have statutory recognition to give them some level of power in customary land administration.

### **8.3.6 Establishment of independent adjudication structures**

It was further observed that all the case study areas have independent adjudication structures that may rescind any land administration decision that is found to be inconsistent. This practice is encouraged in hybrid land administration systems. Independent adjudication structures such as the land tribunals in Tlokweng and Olukonda (section 6.7), should be established to monitor the operations of both customary and statutory land institutions in peri-urban customary areas in Ghana.

## **8.4 JOINT CUSTOMARY LAND DEVELOPMENT PROCESSES**

Customary and statutory land institutions should be involved in customary land development processes, as observed in both the primary and secondary case study areas (chapter 6). For instance, customary land development processes in Esereso begin with land use planning, the provision of basic infrastructure, the selling (leasing/allocation) of land, registration of land transactions and development of land. These processes were also noted in Adumasa (section 6.4) and Yasore (section 6.5), as well as the secondary case study areas.

Both customary and statutory land institutions should work together in all the stages in the land development processes. For instance, it was observed in Olukonda that a team of land use planners, surveyors, civil engineers, members of the Communal Land Board and the chief ensures a smooth land development process (Kapitango *et al.*, 2008). It was, however, observed in Tlokweng that chiefs are not involved in customary land development processes (Bornegrim and Collin, 2010). This may pose a problem in Ghana, as traditional authorities (e.g. chiefs) are

regarded as the embodiment of the custom and culture of the people of Ghana (Akrofi, 2013). Chiefs may therefore not be excluded from the joint land development processes in Ghana. The Department of Town and Country Planning together with the Surveying and Mapping Division, may lead the joint land development process in Ghana by surveying and drafting the land use plans for peri-urban customary areas, as was observed in Esereso (section 6.3).

Rudimentary services should be extended to areas earmarked for development. Customary landowners may allocate land for development after the land has been surveyed and planned, and services have been extended. State land agencies (i.e. the Department of Town and Country Planning and the Surveying and Mapping Division) should ensure that land is allocated for the right uses. Customary landowners should issue proof of allocation (e.g. allocation note) to developers. The Lands Commission should register land transactions and/or the land rights of people and issue proof of tenure security (e.g. lease agreement). These recommendations are based on the observations from the primary case study areas. A joint land development process may involve the following stages:

#### **8.4.1 Surveying, mapping and planning**

Customary landowners should meet with the Lands Commission (Surveying and Mapping Division) and the Town and Country Planning Department to agree on the process and cost of surveying, mapping and planning the customary land. Customary landowners should be willing to sell portions of their land to defray the surveying and planning costs, as observed in Adumasa (section 6.4), where the

central government might not have enough funds for this purpose. In many developing countries, such as Ghana, governments can survey and map land only when they receive foreign donations (Arko-Adjei, 2011). This implies that customary land may not be surveyed or mapped if such donations are not received. This may be the reason why many customary areas have not been surveyed in Ghana (Ubink, 2008). This problem may be resolved if customary landowners are willing to contribute to the cost of surveying and planning their land. This initial stage of the customary land development process is necessary, as customary land transactions can be registered in Ghana only when such land is surveyed and falls within an approved planning scheme (Biitir and Nara, 2015).

#### **8.4.2 Customary land allocation**

Both customary and statutory land institutions should be involved in customary land allocation. The Surveying and Mapping Division should help in boundary demarcation during customary land allocation in Ghana. In Olukonda, surveyors and land use planners are involved in the allocation of customary land, to avoid any possible boundary dispute (Kapitango *et al.*, 2008). Many land conflicts in Ghana are as a result of boundary disputes (Blocher, 2006). The problem of boundary disputes may be resolved if the Surveying and Mapping Division is involved in the allocation of land. The Town and Country Planning Department should also be involved during land allocation to inform the prospective developer of what the piece of land has been zoned for. The land use plan and zoning scheme for the area should be made available to the prospective developer prior to the conclusion of the lease agreement. The LGAF advocates for “public provision of land information in a way that is broadly accessible, comprehensive, reliable and cost-effective”

(Deininger *et al.*, 2010: p.5). This may help the prospective developer to be aware of what he/she can or cannot use the land for.

#### **8.4.3 Registration of customary land transactions and rights**

The registration of customary land rights should commence with the customary landowner who leases the land. There should be documentary proof that the land is held under customary law. It was observed in all the case study areas (except in Mocuba) that there is a form of documentary proof that seeks to protect the land rights of landholders (Table 7.4). This is also in line with the pro-poor land recordation approach as proposed by Simbizi (2016). In Mocuba, customary landholders may not register their customary land rights (Norfolk and Tanner, 2007). Individuals may, nevertheless, apply for Certificates of Delimitation. However, such certificate does not add anything to the security of land tenure in Mozambique (Norfolk and Tanner, 2007). This practice may not be encouraged in Ghana due to frequent disputes over land in certain dysfunctional peri-urban customary areas (Akrofi, 2013). Currently, in Ghana, allocation notes are issued by customary landowners to people as proof of land allocation (Arko-Adjei, 2011). The Lands Commission should assist customary landowners in developing an allocation note that can be authenticated to avoid fraudulent documentation in respect of customary land allocation. Land disputes as a result of multiple allocation of land can be attributed to the issuing of fake documentation by some customary landowners (Ubink, 2008). This problem can be resolved if there are mechanisms in place to verify the authenticity of an allocation note. Customary landowners should be informed about the statutory land registration process and

encourage landholders to register their land rights with the Lands Commission after receiving the allocation note. It was observed in Esereso that the community land organisation (Esereso Land Allocation Committee) assists developers and households in registering their land rights with the Lands Commission. People who have not registered their land rights with the Lands Commission in Ghana might not be aware of the need to do so (Ubink, 2008). In many cases, they may think that the allocation note is sufficient proof of land ownership (Arko-Adjei, 2011). However, a lease agreement administered by the Court may offer much better tenure security (Mireku *et al.*, 2016).

#### **8.4.4 Development of customary land**

Customary landowners, the Surveying and Mapping Division and the Town and Country Planning Department should come together to ensure that the allocated land is developed on time, that the right parcel of land is developed, and that development is in line with the planning scheme for the area. In many peri-urban customary areas in Ghana, people may acquire land and leave it undeveloped for decades (Boamah, 2011). Many such land parcels may become hideouts for criminals. To overcome this challenge, the Esereso Land Allocation Committee concludes a Memorandum of Understanding (MoU) with people who acquire land in Esereso. The MoU commits landholders to develop the parcel of land within an agreed period of time, failing which the land may be transferred to another person (section 6.3.2). Mechanisms should be in place to ensure that people who acquire land in peri-urban customary areas develop it within a convenient period of time. The Surveying and Mapping Division should periodically undertake surveying and

mapping exercises in peri-urban customary areas to determine the pattern of spatial growth, to guide policy formulation. Figure 8.1 depicts the conceptual framework of a joint customary land development process.

Figure 8.1: Proposed customary land development process in Ghana

1

**SURVEY, MAP AND PLAN**

- SMD surveys and maps land
- TCPD develops planning scheme
- SPC approves plan
- Chief pays for surveying and planning costs
- CLO facilitates public participation

**ALLOCATE**

- SMD demarcates boundary
- TCPD confirms land use
- Chief leases land
- CLO coordinates land allocation process

2

**GOOD LAND GOVERNANCE  
FRAMEWORK**

**DEVELOP**

- TCPD issues development permit
- CLO concludes an MoU with the applicant
- Chief monitors development

4

**REGISTER**

- Chief issues Allocation Note
- CLO educates the applicant on statutory registration processes
- TCPD issues site plans
- LVB determines stamp duty
- OASL determines Ground Rent
- LRD registers the land

3

**CLO:** Community Land Organisation  
**LRD:** Land Registration Division  
**LVB:** Land Valuation Board  
**MoU:** Memorandum of Understanding  
**OASL:** Office of the Administrator of Stool Lands  
**SMD:** Surveying and Mapping Division  
**SPC:** Statutory Planning Committee  
**TCPD:** Town and Country Planning Department

## **8.5 INSTITUTIONAL FRAMEWORK**

Williamson (2001: p.21) argues that “successful land administration systems have all the land administration functions within one government organisation”. An institutional framework that incorporates both customary and statutory land institutions (as observed in the case study areas) is required to promote effective peri-urban customary land administration in Ghana. The Lands Commission in Ghana has brought three land sector agencies (Land Registry, Land Valuation and Surveying and Mapping Division) together to improve land development processes (Bugri, 2013). The Office of the Administrator of Stool Lands also seeks to bring together all customary land institutions in Ghana (Cashnoba, 2013). The Department of Town and Country Planning is another land sector agency responsible for land use planning and development in Ghana. The functions of the above land administration institutions (Town and Country Planning Department, Lands Commission and Administrator of Stool Lands) should be integrated to promote effective land administration in peri-urban customary areas in Ghana. The UN-FIG Bathurst Declaration (1999) places emphasis on a coordinated approach to surveying and mapping, land valuation, physical planning and land registration processes. This may be achieved through the establishment of a hybrid land institutional framework.

## **8.6 CONCLUSION**

A joint land development process between customary and statutory land administration institutions has been identified as a way of promoting an effective hybrid land administration system in peri-urban customary areas, whilst also

reducing conflicting rationalities in land administration. Through a joint land development process, the four land administration functions will be performed together by both customary and statutory land institutions. Land tenure, land use, land development and land value in peri-urban customary areas will improve through a joint land development process. This is evident in all the case study areas (chapter 6). The improvement of the above land administration functions is fundamental for sustainable development. Effective land administration can address poverty and food insecurity in sub-Saharan Africa (African Union, 2009). For this to materialise, however, both customary and statutory land institutions need to work together in customary land development. When customary land institutions work in isolation or in parallel with state land agencies, it perpetuates conflicting rationalities that further creates dichotomy between customary and statutory land administration and tenure systems. Land administration challenges experienced in many peri-urban customary areas can be attributed to such dichotomy between customary and statutory systems (section 1.2). To address the problem of conflicting rationalities, and bridge the gap between customary and statutory land administration systems, there should be mutual respect for the different perspectives held by both customary and statutory land administration systems theorists and scholars. For instance, the idea that customary land administration and tenure systems are primitive (as espoused by the evolutionary theories) should not be tolerated in hybrid land administration systems. In the same vein, the assertion that statutory land administration systems are vestiges of colonisation should not be promoted. The focus of promoting effective land administration systems in peri-urban customary areas should be geared towards the amalgamation of the positive elements of both customary and statutory systems to

form a hybrid system. This will be possible if both customary and statutory land institutions work together in the customary land development process. For both customary and statutory land institutions to cohesively work together, there should be clarity of functions. The role of community land organisations is vital in ensuring integration between customary and statutory land administration systems in peri-urban customary areas. Chapter 9 presents the main conclusions and answers to the research questions, and suggests possible future research to promote effective hybrid land administration systems in peri-urban customary areas in sub-Saharan Africa.

## CHAPTER 9: CONCLUSIONS AND FUTURE RESEARCH

### 9.1 INTRODUCTION

Land administration challenges in peri-urban customary areas in Ghana were discussed in chapter 1. It was identified that the root cause of land administration problems in peri-urban customary areas in Ghana is the dichotomy between customary and statutory land administration systems (Figure 1.1), resulting in conflicting rationalities. For instance, in some peri-urban customary areas in Ghana, land is allocated without going through the statutory processes. This has culminated in land tenure insecurity and livelihood challenges, as certain landholders do not have documentation proof for the land they occupy (Mireku *et al.*, 2016). The haphazard allocation of land in such peri-urban customary areas is likely to threaten the livelihood sustainability of the local people (UN-HABITAT, 2012).

The primary objective of this research was to examine the appropriateness and effectiveness of hybrid land administration systems in sub-Saharan Africa, and to recommend ways of improving local hybrid land administration practices in Ghana to reduce conflicting rationalities (section 1.4). To achieve this, a range of secondary objectives was set (section 1.4). This chapter links the research findings to the objectives of the research. The chapter further presents recommendations for future research in addressing the dichotomy between statutory and customary land administration systems at the peri-urban interface in Ghana. Chapter 9 is divided into four main sections. Section one is an introductory section. The research

questions are answered in section two. Section three discusses the contribution to knowledge and section four puts forward the need for future research.

## **9.2 CONCLUSIONS**

### **9.2.1 Land administration systems frameworks**

*Research question: What are the existing frameworks for assessing land administration systems?*

Some existing frameworks used by researchers to assess land administration systems were identified in chapter 5. The frameworks include evaluation, benchmarking, bookkeeping and accounting systems, a performance measurement framework and good governance and its associated frameworks (e.g. good enough governance, LGAF and VGGT). In addition, some new pro-poor land administration approaches (e.g. fit-for-purpose, pro-poor land recordation, the continuum of land rights model, the opportunity cost valuation and the social tenure domain model) were discussed. These frameworks were discussed in detail in chapter 5, and a précis of each is provided under this section.

#### **9.2.1.1 Evaluation and benchmarking frameworks**

Evaluation adopts a standardised method in assessing land administration systems. To this end, any land administration system that does not comply with the set standard is regarded as ineffective and inefficient. The challenge with the evaluation method is that there may be no internationally accepted methodologies to evaluate and compare the performance of land administration systems (section 5.2).

Benchmarking is used to determine if a particular system of land administration is effective (section 5.3). Benchmarking involves searching for, and incorporating international ‘best practices’ into a country’s land administration systems. The challenge with the benchmarking framework is the heterogeneous environments in which land administration systems operate. Hence, what is ‘best practice’ for one country may not necessarily be best practice for another (Whittal, 2014).

Land administration systems reflect different cultural and social contexts relative to the country in which they operate. It is therefore difficult to compare the land administration systems of one country with those of another (Whittal, 2008). This also explains why land registration may not be appropriate in sub-Saharan Africa. It reflected in literature that land title registration has made some remarkable improvements in land administration in certain developed countries (Kieyah and Kameri-Mbote, 2010). Land administration systems theories such as the replacement theory, the De Soto theory and the evolutionary theories are informed by the western experience of land title registration (Shaw, 2013). Many scholars who believe in benchmarking have argued that land title registration is the antidote to land administration challenges experienced in sub-Saharan Africa (Peters, 2009). Such scholars often fail to recognise the different environments in both the developed countries and sub-Saharan Africa (Whittal, 2014). For instance, the analysis of the case studies reveals different contexts in which land administration systems operate. For example, both Esereso and Adumasa are in Ghana. However, it was observed that the Esereso land is held in trust by a chief, whilst land in Adumasa is owned and managed by individual families (sections 6.3 – 6.4). Although both areas have made remarkable efforts to improve land administration,

their distinctive contexts need to be recognised. In addition, it was observed that land administration practices in the case study areas are informed by different legislative and regulatory frameworks, although they are all located in sub-Saharan Africa (sections 6.3 - 6.12). In Ghana, where the primary case study areas (Esereso, Adumasa and Yasore) are located, traditional leaders (e.g. chiefs) are constitutionally recognised in customary land administration (Ubink, 2008). Traditional leaders are, however, not legally recognised in customary land administration in Botswana (where Tlokweng is located) (Adams *et al.*, 2003). Land laws in Namibia recognise both traditional leaders and land boards in customary land administration (Kapitango *et al.*, 2008), whilst land laws in Mozambique give land administration control to citizens (Christensen, 2004). The different legislative and legal frameworks determine the nature of land administration practices in the case study areas. This distinction helps researchers to understand why chiefs may have control over customary land in one area (e.g. Ghana) and may not be involved in customary land administration in another country (e.g. Botswana). The evaluation or benchmarking of land administration systems across countries should therefore be undertaken with caution. However, useful lessons from one country may be recommended for another.

#### **9.2.1.2 Good governance and performance measurement frameworks**

A good governance framework has been used by some researchers to assess land administration systems in peri-urban customary areas (Arko-Adjei, 2011; Akrofi, 2013). Good governance principles, such as participation, equity, fairness, transparency, accountability, efficiency and effectiveness, are used to assess the functionality of land tenure and administration systems (section 5.8.5). This study

adopted a good land governance framework to assess land administration systems in selected case study areas. The good governance framework should not be viewed in isolation from the concepts of good enough governance, LGAF and VGGT. Performance measurement framework is also found to be linked to good governance framework. Both performance measurement and good governance frameworks use a set of principles and indicators to assess land administration systems (Whittal, 2008; Arko-Adjei, 2011). The good enough governance, LGAF and VGGT define the good governance framework and make it applicable to the sub-Saharan African situation. For instance, the good enough governance framework shifts the focus of governance to key relevant governance principles for assessing land administration and tenure systems in sub-Saharan Africa (Grindle, 2005). The LGAF seeks to address institutional and legal challenges associated with land administration. It further emphasises the need for effective land use planning and taxation, public land management, access to land information and land dispute mechanism (Deininger *et al.*, 2010). The VGGT focuses on food security and poverty eradication. It further seeks to ensure sustainable livelihood, social stability, housing security, rural development, environmental protection and sustainable social and economic development (FAO, 2012).

The good land governance framework developed in this study is informed by the above three concepts of governance (i.e. good enough governance, VGGT, LGAF) as well as a performance measurement framework. As argued by Grindle (2005), pre-determined and prescriptive list of good governance principles may not be appropriate for all situations and circumstances. In promoting good land governance in sub-Saharan Africa, care should be taken not to also perpetuate

benchmarking and the transplanting of certain good governance principles that may be of little value to the sub-Saharan African development agenda. The relevance of each good governance principle should be questioned before they are applied in sub-Saharan Africa (Grindle, 2004). The most strategic principles that are likely to improve good governance in sub-Saharan Africa should be applied. This argument also seeks to support the concept of minimalism (Meyer, 2010). Many interventions introduced to address development issues in sub-Saharan Africa are marred by complications in their implementation (UN-FIG, 2001). In many instances, such interventions are adopted verbatim without questioning their applicability to the local situation (Whittal, 2008). The focus of this study was to use the most relevant principles of good governance to assess land administration systems in peri-urban customary areas across sub-Saharan Africa.

Land administration challenges in sub-Saharan Africa can be attributed to non-participatory and lack of transparent land delivery processes, inequitable and unfair land access, ineffective and inefficient land administration infrastructure and unaccountable land institutions (Berry, 2013). Good governance principles such as participation, equity, fairness, transparency, accountability, efficiency and effectiveness are therefore relevant for determining the functionality of land administration systems in sub-Saharan Africa. The above good governance principles were used to assess land administration systems in the case study areas and were found to be useful. The case studies in this research are regarded as good because they performed well against the above principles. Whittal (2008), Arko-Adjei (2011) and Akrofi (2013) also used the above good governance principles to ascertain the functionality of land administration systems. For instance, Akrofi

(2013) describes land administration systems that comply with the above principles as functional. It is argued in this research that the above list of good governance principles is enough to assess the functionality of land administration systems in sub-Saharan Africa. However, new principles may be added to this list based on the context of analysis of a particular land administration situation.

### **9.2.1.3 Bookkeeping and accounting systems**

Bookkeeping and accounting systems can be used to assess land administration systems (section 5.6). Bookkeeping and accounting systems use defined rules, principles and systematic processes to assess the effectiveness of land administration systems. The main shortcoming of the bookkeeping and accounting systems is that they assess land administration systems based on access to reliable information only, and may not consider institutional, legal and land policy developments, which are critical to effective land administration (Antwi-Boasiako, 2017). In addition, lack of land information infrastructure in many peri-urban areas in sub-Saharan Africa makes it almost impossible to assess land administration systems in such areas by using bookkeeping and accounting systems (Benjaminsen *et al.*, 2009). For instance, only Tlokweng and Olukonda out of the seven case study areas had computers to record land information. Four of the case study areas (Esereso, Adumasa, Yasore and peri-urban Oshakati) record land information in a notebook, whilst Mocuba relies on community members for land information (chapter 6). This may explain why bookkeeping and accounting systems have not been widely used to analyse land administration systems in sub-Saharan Africa. Since its development in 2000 (Kaufmann, 2000), the bookkeeping system has not been widely used in land administration systems research in sub-Saharan Africa.

For instance, none of the recent research on land administration systems (see Ubink, 2008; Whittal, 2008; Arko-Adjei, 2011; Akrofi, 2013; Van Asperen, 2014; Antwi-Boasiako, 2017) in sub-Saharan Africa considered in this study used the bookkeeping and accounting systems in analysing land administration. In contrast, a good land governance framework remains popular among land administration researchers in sub-Saharan Africa (see Arko-Adjei, 2011; Akrofi, 2013).

#### **9.2.1.4 Re-engineering framework**

Ting and Williamson's (2001) framework for re-engineering land administration systems may be used to assess land administration systems. The framework assesses how a land administration system design takes into consideration global drivers (i.e. sustainable development, urbanisation, globalisation, economic reform and environmental management), which arguably influence humankind-land relationship. Tan (1999), however, argues that internal factors (rather than global drivers) are likely to cause a change in land administration and cadastral systems. The humankind-land relationship is dynamic, and such, relationship is influenced by certain factors, whether globally (as asserted by Ting and Williamson, 2001) or internally (as argued by Tan, 1999). Researchers need to understand the above factors and how they influence land administration systems. For instance, sustainable development has become a global agenda and effective land administration systems can contribute to its achievement (United Nations, 2015). Many African cities experience urbanisation, and this has led to land administration challenges in such areas (Akrofi, 2013). Irrespective of the form of the analytical framework used to assess land administration systems, factors of change (both internally and globally) should be considered. However, such factors of change

should be considered within the local context, to find an appropriate corresponding solution to local land administration challenges.

#### **9.2.1.5 Pro-poor land administration approaches**

Alternative approaches to land administration have been introduced in land administration research (Zevenbergen *et al.*, 2015). Such approaches have become necessary as a result of the failure of conventional land administration approaches to improve livelihood sustainability and the tenure security of people in sub-Saharan Africa (UN-HABITAT, 2012). Conventional land administration systems continue to promote a land administration divide favouring the rich, while the poor continue to suffer tenure insecurity (Bennett *et al.*, 2008; Lemmen, 2010). The fit-for-purpose approach, the continuum of land rights model, opportunity cost valuation of customary land, social tenure domain model, pro-poor land recordation and pro-poor rural land tenure security (Zevenbergen *et al.*, 2013; Enemark *et al.*, 2014; Simbizi *et al.*, 2014) are a few of such new ways of viewing land administration in sub-Saharan Africa. These approaches have been collectively described by Zevenbergen *et al.* (2016) as the pro-poor land administration approach. Pro-poor land administration approaches seek to address core land administration issues in sub-Saharan Africa (tenure security and livelihood sustainability) (UN-HABITAT, 2012). They promote the use of simple but effective land administration tools and flexible land management (Williamson *et al.*, 2010; Arko-Adjei, 2011; Zevenbergen *et al.*, 2013; Enemark *et al.*, 2014; Van Asperen, 2014).

Land administration systems in sub-Saharan Africa should be approached within the context of specific local situations. Enemark *et al*'s (2014) fit-for-purpose approach is thus relevant for improving land administration and tenure systems in sub-Saharan Africa. Land administration systems and practices in the case study areas are designed to meet the needs of the local people. To this end, community land organisations, customary and state land institutions work together to deliver effective land administration services to the local people (section 6.3). The local people are allowed to use simple and traditional tools to keep land records at the primary case study areas (section 6.3). Whilst conventional land administration systems are prescriptive in terms of what land administration infrastructure needs to be developed to allow effective land administration systems to operate, the fit-for-purpose approach allows local communities to employ affordable means of administering their land (Enemark *et al*, 2014). State land agencies in the case study areas allow local land administration practices to be incorporated into state land administration systems. For instance, in the primary case study areas, individuals who acquire land through customary means are also allowed to enter the statutory land administration system. This practice is also in line with the continuum of land rights model. It allows people to migrate from a less secure tenure to a more secure one. For instance, in the primary case study areas, landholders with allocation notes have some level of security in the land they occupy. Since the allocation note is recognised by state land institutions, landholders with allocation notes can obtain lease agreements from the Lands Commission, which offers a higher level of tenure security (Mireku *et al.*, 2016). The continuum of land rights model cannot be implemented in areas where local land administration practices are not recognised by state land institutions. This is

because in many sub-Saharan African countries, lower levels of tenure security are normally offered at the local levels, whilst higher levels of tenure security are normally offered by the state (Alden Wily and Hammond, 2001). Lack of recognition of local land administration practices may imply that there could be no transition from a lower level of tenure security to a higher level of tenure security, as is the focus of the continuum of land rights model (Whittal, 2014).

Like the fit-for-purpose approach, the social tenure domain model allows simple tools to be used to administer land at the local level, whilst the continuum of land rights model allows such local land administration practices to pass through formal processes to guarantee a higher level of security (Whittal, 2014). Anderson's (2006) opportunity cost valuation of customary land is useful in securing the rights of customary landholders. As observed in the case study areas, hybrid land administration systems allow both customary and statutory land administration systems to work together to offer tenure security and sustainable livelihoods for the local people. Hybrid land administration systems is thus vital for the implementation of the pro-poor land administration approaches.

## **9.2.2 Good land governance requirements**

**Research question:** *What are the good land governance requirements for hybrid land administration systems?*

The good land governance requirements for hybrid land administration systems were discussed in chapter 5. Although there may be different good land governance principles, the following good land governance principles were observed as

requirements for hybrid land administration systems in the analysis of the case study areas: Land allocation processes in the case study areas were found to be participatory, fair, transparent and equitable, efficient, effective and equitable. In addition, land institutions in the case study areas were found to be accountable (based on the criteria used for assessing the good land governance principles) (Table 5.1). The selection of the good land governance requirements for hybrid land administration systems was based on the concept of good enough governance, which allows for specific good governance principles to be used in assessing certain development conditions (Grindle, 2005). The following good governance principles were noted to be necessary requirements for hybrid land administration systems in Ghana.

#### **9.2.2.1 Participation**

Hybrid land administration systems require that all stakeholders are involved in land allocation and delivery processes. Land remains the most valuable means of addressing the problem of unemployment, poverty and hunger in sub-Saharan Africa (FAO, 2012). The focus of the 2030 Sustainable Development Agenda to address the above challenges (United Nations, 2015) can be realised if local people are given the skills to administer their own land. Such skills can be acquired through community involvement in land administration processes.

The study identified a number of stakeholders in hybrid land administration (e.g. traditional leaders, households, community land organisations and state land agencies). All the stakeholders are involved in land allocation and delivery processes in the case study areas (section 7.2). It was observed in Yasore and

Adumasa that 70% and 80% of households respectively support their livelihoods through subsistence farming (Tables 6.3 and 6.6). This has been possible, as community members are involved in land allocation and delivery processes to protect their viable farmlands from physical developments in these areas (sections 6.2 – 6.12). The involvement of stakeholders in land administration processes in the case study areas ensures an integrated process of land development between customary and statutory land institutions. Without effective participation, some customary leaders may monopolise customary land administration, at the expense of the local people. Akrofi (2013) discovered this in certain dysfunctional customary areas in Ghana. The case studies demonstrate that the most effective form of participation is citizen power (Arnstein, 1969). This form of participation seeks to empower the local people by giving them the authority to make their own land decisions (Arnstein, 1969).

#### **9.2.2.2 Equity and fairness**

By using land as a tool to address unemployment, poverty and hunger in sub-Saharan Africa, it is necessary to ensure that women, disadvantaged people, young adults and the unborn generation have access to land and its resources (FAO, 2012). This may be achieved when equity and fairness are considered in land allocation and delivery processes. Hybrid land administration systems require that both women and men of all ages, both indigenes and non-indigenes, the present and future generations, have access to land. In addition, all community members should benefit from land resources. The land administration practices in the case study areas promote equity and fairness (section 7.3). No one is excluded from land

allocation and delivery processes in the case study areas based on their gender or background (indigene or non-indigene). In all the case study areas, landholders are duly compensated when their land is expropriated (Table 7.2). In some areas (such as Esereso, Adumasa, Yasore and peri-urban Oshakati), community development projects have been funded through proceeds from land sales. These lessons from the case study areas are pre-conditions for effective hybrid land administration systems that seek to suitably manage the land rights of the poor and marginalised at the peri-urban interface in Ghana.

### **9.2.2.3 Transparency and accountability**

Hybrid land administration systems require that processes of land allocation and delivery are open to scrutiny by the public. To this end, there should be free access to land information. Although some of the case study areas do not have sophisticated land information infrastructure, they all have some means of providing land information to the local people (Table 7.3). Even in Mocuba, where there are no written records of land information, individuals can access land information via the testimonies of neighbours (Knight, 2010). No record of land dispute was found in Mocuba, as land ownership information is easily available (albeit unwritten) (Knight, 2010).

Hybrid land administration systems further require land administration institutions to be answerable to community members. To achieve this, all the case study areas have independent adjudication structures, which consider the decisions made by land administration institutions (Table 7.3). For instance, Tlokweng has a land tribunal, which may rescind any inconsistent decision made by the Tlokweng Land

Board (Nkwae, 2006). It was further observed from the case study areas that land administration institutions give feedback to community members on all land transactions (Table 7.3). The community land organisations in the various case study areas give periodic reports to community members on all land related matters in their communities (Table 7.3).

#### **9.2.2.4 Efficiency and effectiveness**

Hybrid land administration systems require clear and defined processes of land allocation and delivery. Clear and defined processes of land allocation improve the timeliness for land delivery and dispute resolutions (Bennett *et al.*, 2008). This was observed in the primary case study areas (section 7.5). The average turnaround time, from the date of application to the conclusion of a lease agreement in the primary case study areas, is two months, which is relatively shorter than the average turnaround time in many peri-urban customary areas in Ghana (Akrofi, 2013). No land disputes were found in any of the case study areas, thanks to the clear processes of land delivery (chapter 6). This implies that the many land disputes found in certain peri-urban customary areas in Ghana may be as a result of unclear and undefined processes of land delivery in such areas (Berry, 2013). Hybrid land administration systems further require that proof of allocation is issued to landholders to protect their land rights, as observed in the case study areas (Table 7.4). Efficient and effective land administration systems can be achieved when land administrators receive regular training. This is amply demonstrated in the case study areas, where people involved in land administration receive regular training (Table 7.4). For instance, the Land Administration Project implemented in

Ghana has capacitated both customary and statutory land administration institutions to deliver efficient land administration services to the local people (Arko-Adjei, 2011). It is, however, acknowledged that the attitude of the role-players may influence land delivery processes, irrespective of their levels of training (Ubink, 2008).

### **9.2.3 Local hybrid land administration and tenure practices**

*Research question: What are the existing local hybrid land administration and tenure practices in Ghana that are consistent with national laws whilst also reducing conflicting rationalities?*

A case study analysis of novel and hybrid land administration practices in Esereso, Adumasa, Yasore (peri-urban areas in Ghana), was undertaken in chapter 7.

#### **9.2.3.1 Esereso**

In many peri-urban customary areas in Ghana, customary landowners/chiefs allocate land for development without proper land use planning and development of services (section 1.2). It was, however, observed in Esereso that the chief proactively involved state land agencies during the initial stages of the land delivery process. This initiative by the chief has ensured a smooth land allocation process in Esereso and has implications for customary land delivery in other peri-urban customary areas in Ghana. The involvement of state land agencies from the inception of a customary land delivery process lead to secure land tenure, proper land use planning and improved service development. This has been evident in Esereso (section 6.3.2).

Economy-based land administration systems theories (e.g. De Soto, evolutionary theories, modernisation theory and utilitarian property theory) regard customary land administration and tenure systems as hindrance to economic growth. Advocates of economy-based land administration and tenure systems argue that customary land administration systems lack the proper tools for effective land administration (De Soto, 2000; Peters, 2009). They argue that land surveying and land use planning and proper record keeping of land transactions are virtually absent in customary areas (De Soto, 2000; Peters, 2009). The Esereso case study, however, indicates that customary land administration and tenure systems can make use of statutory land administration tools to improve customary land delivery. Land privatisation and title registration is not the way to go. Customary land institutions need to engage the services of state land institutions to ensure effective administration and management of customary land. As argued in chapter 2 and substantiated through the analysis of the case studies, hybrid land administration systems that allow both customary and state land institutions to work together in customary land development processes, are likely to service the land needs of people living in peri-urban customary areas.

### **9.2.3.2 Adumasa**

Land administration problems in many peri-urban customary areas in Ghana are especially evident where the land belongs to individual families without a chief (Asiama, 2004; Akrofi, 2013). The Adumasa case, however, presents a novel approach to effective land administration in such areas. The coordinating role played by the Adumasa Unit Committee in promoting an effective land administration system in a customary environment susceptible to land

administration problems is considered novel. The Adumasa Unit Committee serves as the first point of contact to investors and other people who want to acquire land in Adumasa. To this end, each piece of land is allocated in line with the approved Planning Scheme. Land use does not endanger the livelihoods of the local people (section 6.4.2). It was also observed in Adumasa that individual landowning families contribute to the cost of surveying and planning customary land (section 6.4.2). This initiative may not be common in many peri-urban customary areas in Ghana (Akrofi, 2013). Lack of planning schemes in many peri-urban customary areas in Ghana may be attributed to insufficient funds to undertake surveying and planning exercises (Ubink, 2008; Arko-Adjei, 2011). Although customary landowners may be able to contribute to the surveying and planning costs, they may not be willing to sacrifice portions of their land to be sold for such purposes (Akrofi, 2013). The case of Adumasa has some lessons to share in terms of self-funded land administration projects in peri-urban customary areas in Ghana (section 6.4.2). Advocates of land registration argue that customary land tenure constraints economic growth due to fragmentation of land parcels (De Soto, 2000; Peters, 2009). In many customary areas where land belongs to individual families, there is usually a problem with consolidated land for public purpose or large scale investment (Ubink, 2008). In Adumasa, however, land use requiring consolidation of small pieces of land owned by different families are made possible through land use planning. Hybrid land administration systems which allows state land institutions to work together with customary land institutions will go some way to address many of the problems of customary land administration and tenure systems. This further implies that customary land administration and tenure systems only require some support to effectively deliver the required land

administration services to the local people, and not a complete replacement as advocated by proponents of economy-based land administration systems theories (Hardin, 1968).

### **9.2.3.3 Yasore**

Physical developments in many peri-urban customary areas in Ghana remain uncontrolled, due to land administration problems (Boamah, 2011). In Yasore, however, the chief and the Yasore Development Committee took the initiative to redevelop the area despite the past land administration challenges (section 6.5.2). The chief, the Yasore Development Committee and the whole community realised the need to promote orderly physical development in the area. Although there was no land use plan for the area prior to land delivery, the community developed a land use plan for the area with the help of state land agencies (section 6.5.2). Households whose properties were expropriated during the redevelopment project were compensated (section 6.5.2). The Yasore case indicates that certain peri-urban customary areas in Ghana that are faced with the challenge of uncontrolled and disorderly physical developments can turn such situations around (Akrofi, 2013).

All the primary case study areas display hybrid land administration systems and are consistent with national laws in Ghana. Customary land institutions and community land organisations in both the primary and secondary case study areas partner with state land agencies in land delivery processes. The authority of customary landowners (traditional leaders) to lead customary land delivery processes in the primary case study areas are in line with Article 267 (1) of the 1992 Constitution of Ghana, which states that “all stool lands in Ghana shall vest in the appropriate stool on behalf of, and in trust for the subjects of the stool in accordance with customary

law and usage”. In many peri-urban customary areas in Ghana, traditional leaders and other customary landowners abuse the above stipulation and therefore, do not comply with other statutory requirements in terms of customary land development. In the primary case study areas, however, it was observed that traditional leaders and customary landowners employ statutory tools in administering customary land. For instance, in Esereso, Adumasa and Yasore, customary land can be allocated only when the land in question has been planned and the planning scheme approved by the local council (section 6.3.2). This is in line with Article 267(3) of the 1992 Constitution of Ghana which states that, “there shall be no disposition or development of any stool (customary) land unless the Regional Lands Commission of the region in which the land is situated has certified that the disposition or development is consistent with the development plan drawn up or approved by the planning authority for the area concerned” (Government of Ghana, 1992). The failure by many customary landowners to comply with the above stipulation explains why customary land transactions in many peri-urban customary areas are not able to enter the statutory processes of registering customary land transactions. The primary case study areas have done well by following all statutory requirements that allow landholders to obtain statutory forms of tenure security for the land they occupy.

In addition, the consultation that takes place between the state land agencies and customary land institutions in customary land delivery processes in the case study areas, is in line with Article 267 (7) of the 1992 Constitution of Ghana which states that “the Administrator of Stool Lands and the Regional Lands Commission shall consult with the stools and other traditional authorities in all matters relating to the

administration and development of stool land and shall make available to them all relevant information and data”. It was observed in all the primary case study areas that, state land institutions such as the Surveying and Mapping Division and the Town and Country Planning Department consult with the local people (including traditional leaders) and other stakeholders in the surveying and planning of customary land.

It was further observed that the Office of the Administrator of Stool Lands manages the rents received from the leasing of customary land in the case study areas and disburses same for community development projects. Article 267(2) of the Constitution of Ghana makes provision for the above responsibility of the Office of the Administrator of Stool Lands. Customary land institutions partner well with state land institutions in the primary case study areas, and customary land transactions are able to be registered in the national land administration systems. This has been made possible as a result of compliance with customary land administration processes with national land laws in Ghana. If customary landowners fail to obey national land laws in Ghana in customary land administration processes, it will be impossible for such processes to be integrated with the statutory land administration processes. A key lesson from the primary case study is the conscious effort by customary landowners to comply with statutory requirements in customary land administration processes, which has subsequently made it possible for customary land administration processes to be integrated with the statutory systems. This has also sought to reduce conflicting rationalities that usually exist between customary and statutory land administration and tenure systems – the two systems work together and there is no need for any

competing interests. If customary landowners are not willing to obey the statutory requirements for customary land administration, it will be impossible for both customary and statutory land administration systems to be integrated.

#### **9.2.4 Novel and hybrid land administration practices applicable to Ghana**

*Research question: What novel or hybrid land administration practices in other sub-Saharan African countries are applicable to Ghana?*

##### **9.2.4.1 Tlokweng**

Some chiefs have become the main hindrance to effective land administration in many peri-urban customary areas in Ghana (Ubink, 2008). Although customary land procedures and processes may be clearly known by customary institutions, and customary laws are enshrined in the Constitution of Ghana (Government of Ghana, 1992), some unscrupulous chiefs defy all processes and allocate customary land to serve their own selfish interests (Ubink, 2008; Akrofi, 2013). The case of Tlokweng provides some direction in addressing customary land administration challenges associated with inefficient customary leadership. In Tlokweng, chiefs and all traditional authorities have been excluded from customary land administration due to the problems cited above (Adams *et al.*, 2003). Powers to grant and cancel land rights have been given to independent land boards in an attempt to eliminate corruption in customary land administration in Tlokweng, and Botswana as a whole (Government of the Republic of Botswana, 1968). Although the introduction of independent land boards in customary land administration is regarded as novel, the exclusion of customary leaders from customary land administration is not recommended for Ghana. Customary leaders are highly

respected in many parts of Ghana, and their communities may not support their exclusion from customary land administration processes (Amanor, 2010).

#### **9.2.4.2 Olukonda**

The land administration practice in Olukonda is recommended for Ghana. Although there are community land organisations in all the Ghanaian cases, it was observed that none of them is legally recognised. In Olukonda, however, the Communal Land Board has statutory recognition (section 6.10.1). This study found that community land organisations play an important role in promoting effective hybrid land administration systems in both the primary and secondary case study areas (chapters 6 and 7). It is therefore recommended that community land organisations be statutorily recognised in Ghana to give them some level of authority in hybrid land administration processes.

#### **9.2.4.3 Mocuba**

The case of Mocuba constitutes a novel land administration practice as it seeks to empower local people through land administration. In Mocuba, local households vote on all land applications (Knight, 2010). This democratic approach to land administration may be explored in Ghana to give some land decision-making powers to the local people (without excluding traditional leaders, as is in the case of Tlokweng). Arnstein's classification of participation reveals how participation can be used as a clandestine tool by the elite to control certain development processes. In many cases, participation processes have remained manipulative and do not capacitate majority of the local people (Arnstein, 1969). The novelty in the Mocuba case study is reflected through the application of the highest level of

participation (citizen power) in its land administration processes. This has promoted effective hybrid land administration in Mocuba, which has culminated in tenure security and sustainable livelihoods of the local people (Knight, 2010). With the highest level of participation in customary land administration processes, the local people can manage customary land effectively (with the help of state land agencies). This implies that title registration is not the antidote to customary land tenure challenges, but effective participation can help addressing the challenges of customary land administration and tenure systems in sub-Saharan Africa.

#### **9.2.4.4 Peri-urban Oshakati**

The peri-urban Oshakati case displays a novel land administration practice. Informal households in peri-urban Oshakati enjoy tenure security through a joint land administration process between state land agencies and a community land organisation (section 6.12.2). In many informal areas in Ghana, landholders are faced with threat of eviction, due to lack of proof of tenure (Awuah and Hammond, 2013). In peri-urban Oshakati, however, informal dwellers are given proof of tenure and some level of basic services to support their livelihoods. The extension of rudimentary services to informal areas and the improvement of tenure security of informal households (as observed in peri-urban Oshakati) are regarded as novel, and may be a good lesson for Ghana. The peri-urban Oshakati case also resonates with the continuum of land rights model and the social tenure domain model. Informal dwellers in peri-urban Oshakati are allowed to use simple tools to administer land and are provided with some basic level of tenure security, which can subsequently be improved.

All the above case studies performed well against the good land governance framework (chapter 7). There may be other cases in sub-Saharan African countries that have implemented novel or hybrid land administration systems, which are not covered in this study. Current literature is heavy on the flaws of customary land administration and tenure systems, and the need to find alternative ways of administering customary land. Some scholars have gone to the extent of proposing a complete extinction of all customary land administration and tenure practices. Land administration systems theories have been economically biased and ignores the socio-cultural implications of customary land tenure systems (Hardin, 1968; De Soto, 2000; Peters, 2009). Land administration systems theories such as De Soto, evolutionary theories, modernisation theory and utilitarian property theory, suggest that customary land administration and tenure systems have no place in contemporary development trajectory (Hardin, 1968; De Soto, 2000; Peters, 2009). The above case studies, however, prove that customary land administration and tenure systems can still offer the required land administration services to the local people. Nevertheless, the position held by extremist adaptation theorists to exclude statutory land administration systems from customary land management is not supported (Njoh, 2006; Okpala, 2009). It was observed from the case studies that a collaborated effort between customary and statutory land administration institutions offers effective land administration systems. The case studies do not just show dual or parallel land administration systems, which are not integrated. Both customary and statutory land administration systems are integrated in the case study areas. It is not enough to have dual customary and statutory land administration systems operating side by side without integration. Dual land administration systems, without integration could perpetuate conflicting

rationalities due to possible competition between the two systems. The case studies combine the strengths of existing local tenure practices with aspects of statutory tenure systems that are consistent with customary land tenure systems (Mulolwa, 2002). This is in line with the consensus-building approach to the formalisation of customary land tenure systems (as associated with the adaptation theory).

#### 9.2.4.5 Linking the non-Ghanaian cases to Ghana

The Table below indicates whether the land administration practices in the non-Ghanaian cases may be applicable to Ghana or not.

**Table 9.1: Linking the non-Ghanaian cases to Ghana**

<b>CASE STUDY AREA</b>	<b>LAND ADMINISTRATION PRACTICE</b>	<b>APPLICABLE / NOT APPLICABLE</b>
Tlokweg	<ul style="list-style-type: none"> <li>• Statutory recognition of community land organisation</li> <li>• Exclusion of traditional leaders in customary land administration governed by customary laws</li> </ul>	<ul style="list-style-type: none"> <li>• Applicable</li> <li>• Not applicable</li> </ul>
Olukonda	<ul style="list-style-type: none"> <li>• Statutory recognition of community land organisation</li> <li>• Statutory recognition of customary land institutions</li> </ul>	<ul style="list-style-type: none"> <li>• Applicable</li> <li>• Applicable</li> </ul>
Mocuba	<ul style="list-style-type: none"> <li>• Citizen control of customary land</li> <li>• No documented proof of tenure required</li> </ul>	<ul style="list-style-type: none"> <li>• Applicable</li> <li>• Not applicable</li> </ul>
Peri-urban Oshakati	<ul style="list-style-type: none"> <li>• Improving tenure security in informal areas through the establishment of community land organisations</li> </ul>	<ul style="list-style-type: none"> <li>• Applicable</li> </ul>

### 9.2.5 How hybrid land administration systems operate

*Research question: How do hybrid land administration systems operate in terms of land access, land tenure, land use and land development?*

This question is answered in chapters 7 and 8. In chapter 7, it was found that both customary and statutory land institutions work together in land allocation processes in the primary case study areas. To this end, customary landowners consult with state land agencies to survey and plan customary land prior to its allocation (chapter 7). Statutory land institutions, such as the Lands Commission and the Town and Country Planning Department, work together with customary institutions to survey, plan and register land in the primary case study areas (section 7.2). In the secondary case study areas, individual community land organisations partner with state land agencies to allocate land for development (chapter 7). Chapter 8 further explained how hybrid land administration systems should operate in customary land development processes.

The land development process in the primary case study areas brings together both customary and statutory land institutions in performing the land administration functions (sections 6.3 - 6.5). In terms of land tenure, hybrid land administration brings both customary and statutory land institutions together to determine rights, restrictions, responsibilities and risks in customary land development processes (Williamson *et al.*, 2010). Although land rights in customary areas may be determined by customary land institutions, statutory land institutions should determine the restrictions, responsibilities and risks associated with the use of customary land through appropriate legal and policy frameworks (Williamson *et*

*al.*, 2010). In hybrid land administration systems, tenure security is not only determined by the security of one's right in a piece of land, but also how the landholder adheres to the restrictions and responsibilities associated with the use of the land in question (Williamson *et al.*, 2010). Tenure security is also determined by how state land agencies assist landholders in mitigating against potential risks associated with the land they occupy (Williamson *et al.*, 2010).

In hybrid land administration systems, land is first surveyed and planned, and the planning scheme is approved by a statutory body before land is allocated. Land allocation is guided by the approved land use plan (planning scheme). The land use planning process involves both customary and statutory land institutions, as well as the local people, to determine the land uses that will support their livelihoods. This was observed in Esereso (section 6.3.2). Customary landowners contribute to the costs of surveying and planning customary land in hybrid land administration systems. This was observed in Adumasa (section 6.4.2). In hybrid land administration systems, land is developed (in terms of the provision of rudimentary services) prior to the allocation of land. This seeks to ensure that the local people have access to roads, water and sanitation services. Customary landowners agree to wait until such services are extended before they allocate land for development (section 6.3.2).

#### **9.2.6 The role of community land organisations**

***Research question:*** *What is the role of community land organisations such as land allocation committees, land boards, unit committees, development committees and resident associations in hybrid land administration systems?*

The role of community land organisations in hybrid land administration systems is indicated in chapters 6 and 7. It was found in the case study areas that community land organisations such as land allocation committees, unit committees and land boards facilitate participation processes in customary land allocation. They bring all stakeholders together in the land allocation process (chapter 7). They advertise all land applications and solicit public views. They provide land information to stakeholders. The community land organisations record all land transactions to ensure transparency and accountability in land delivery processes. They serve as a link between customary and statutory land institutions (chapter 7). For instance, the Esereso Land Allocation Committee directs people who acquire land in Esereso to the Lands Commission for the registration of their land rights after receiving Allocation Notes from the chief (section 6.3.2).

### **9.2.7 Improving local hybrid land administration and tenure practices in Ghana**

**Primary research question:** *How can local hybrid land administration and tenure practices in Ghana be improved to reduce conflicting rationalities between customary and statutory land administration systems?*

A proposal on how to improve hybrid land administration practices to reduce conflicting rationalities was put forward in chapter 8. The proposal is based on the good land governance framework and the Land Management Paradigm (Williamson *et al.*, 2010) to promote integration between customary and statutory land institutions in performing the land administration functions. Findings from both the primary and secondary case studies indicate that a joint land development

process by customary and statutory land institutions avoids conflicting rationalities and may lead to improvement in land tenure, land use and land development (chapter 7).

Conflicting rationalities in land administration can be reduced through joint customary and statutory processes in customary land development as well as joint processes in conferring land rights in peri-urban customary areas in Ghana. These joint processes protect viable agricultural land, which is the main source of livelihood for the peri-urban poor (Forkuor *et al.*, 2013). This was observed in both Esereso and Adumasa (sections 6.3 and 6.4). The joint processes further protect the land rights of the peri-urban poor. This was observed in all the case study areas (chapter 7). Effective legal and policy frameworks, as well as institutional arrangements, promote secure land tenure, proper land use and land development, which may lead to sustainable land administration (Deininger *et al.*, 2010).

The literature review and land administration systems theories revealed two sides of opposing views on land administration and tenure systems. Whilst the economy-based theories advocate for land registration and modern methods for administering customary land, the adaptation theories argue for the continuous existence of customary land administration systems (Delville, 2010). Some scholars and theorists have, however, remained neutral and suggested that both customary and statutory systems can co-exist without any interference from each other (Enemark *et al.*, 2014). Such dual approach is found not to be useful, as it does not seek to integrate the two systems. The case studies show a hybrid approach to land administration in peri-urban customary areas. The hybrid approach to land

administration offers a better option for administering peri-urban customary land as they seek to improve land tenure, land use, land development and land value, and also reduces conflicting rationalities between customary and statutory land administration systems. The following proposals are made to improve local hybrid land administration practices in Ghana to reduce conflicting rationalities.

Land administration systems design in peri-urban customary areas in Ghana should be informed by the Land Management Paradigm. This will shift the focus of peri-urban customary land administration from only promoting economic development to improvement in the four main functions of land administration (i.e. land tenure, land use, land development and land value) (Williamson *et al.*, 2010). Improvement in the land administration functions will culminate in tenure security and sustainable livelihoods of the local people. This is evident in the case study areas where hybrid land administration practices have contributed to the protection of land rights and livelihoods of the local people (chapter 6). What the study recommends for improvement in terms of tenure security in Ghana is a shift from 1R (rights only) to 4Rs (rights, responsibilities, restriction and risks) focus of ensuring tenure security. As argued by Williamson *et al.* (2010), land tenure comprises of rights, responsibilities, restrictions and risks (4Rs). In many instances, however, attention is placed on conferring and securing land rights only (1R). Tenure security will not be complete if landholders and land institutions cannot perform their legislated tenure responsibilities; use land within its stipulated restrictions and people are not protected from potential risks associated with the use of land. It was observed from the case studies that much attention is placed on conferring and protecting the land rights of people more than any other of the 4Rs

(chapter 6). It is recommended that customary and state land institutions continue to work together to determine rights, responsibilities, restrictions and risks associated with every piece of land and ensure their management. This can be achieved through the application of both customary and statutory land administration tools (e.g. landuse planning tools).

A joint approach to customary land development and delivery can help in reducing possible conflicting rationalities in land administration. To this end, both customary and statutory land institutions are required to be involved in the customary land development cycle (see Figure 8.1). Each of the institutions has a role to play at each stage of the customary land development process. For a joint customary land development to be possible, however, there should be mutual recognition of perspectives on land; clear definition of functions; outline of land development process; identification of funding sources; establishment of community land organisations and independent adjudication structures. Community land organisations also play crucial role in ensuring effective hybrid land administration systems. It was observed in Ghana that such community land organisations have no statutory recognition. Learning from the experience of Namibia and Botswana as well as the great role community land organisations play in the primary case study areas, it would be appropriate for such organisations to be given a legal status.

### **9.2.8 Summary of research questions and findings**

Table 9.2 summarises the research findings in relation to the individual research questions.

**Table 9.2: Summary of research questions and findings**

NO	EMBEDDED RESEARCH QUESTIONS	RESEARCH FINDING
1	What are the existing frameworks for assessing land administration systems?	Evaluation, benchmarking, bookkeeping/accounting, performance measurement, framework for re-engineering land administration systems and good land governance and its associated frameworks. <b>NB:</b> The good land governance and its associated frameworks (e.g. LGAF, VGGT) were used to analyse land administration systems in the case study areas.
2	What are the good land governance requirements for hybrid land administration systems?	Participation, equity, fairness, transparency, accountability, efficiency and effectiveness.
3	What novel or hybrid land administration practices in other sub-Saharan African countries are applicable to Ghana?	<ol style="list-style-type: none"> <li>1. Reclaiming of land decision-making powers from abusive traditional leaders to promote effective customary land administration in Tlokweg</li> <li>2. Statutory recognition of community land organisation and customary institution to enhance communal land administration in Olukonda</li> <li>3. Granting of land decision-making powers to local people in peri-urban Mocuba</li> <li>4. Promoting tenure security and land rights registration in informal areas in peri-urban Oshakati.</li> </ol>
4	How can local hybrid land administration and tenure practices in Ghana be improved to reduce conflicting rationalities between customary and statutory land administration systems?	Through a joint land development process by customary and statutory land institutions that promote a holistic improvement in the four functional components of land administration (i.e. land tenure, land use, land value and land development).
5	How do hybrid land administration systems operate in terms of land access, land tenure, land use and land development?	Both customary and statutory land institutions work together in land development processes in the primary case study areas. In the secondary case study areas, individual community land organisations partner with state land agencies to allocate land for development. Both customary and statutory land institutions determine

NO	EMBEDDED RESEARCH QUESTIONS	RESEARCH FINDING
		rights, responsibilities and risks through appropriate legal and policy frameworks. In terms of services development, customary institutions wait until rudimentary services are provided before land can be allocated for development.
6	What is the role of community land organisations such as land allocation committees, land boards, unit committees, development committees and resident associations in hybrid land administration systems?	Facilitation of participation processes in land allocation and registration. Community land organisations also help in ensuring proper record keeping during land allocation and serve as a link between customary and statutory land institutions in customary land development processes.
PRIMARY RESEARCH QUESTION		RESEARCH FINDING
What are the existing local hybrid land administration and tenure practices in Ghana that are consistent with national laws whilst also resolving conflicting rationalities?		<ol style="list-style-type: none"> <li>1. The involvement of state land agencies from the inception of customary land allocation in Esereso</li> <li>2. An effective coordination of land allocation process by a community land organisation in a customary environment of different landowning families and self-funded surveying and planning project in Adumasa</li> <li>3. A redevelopment project to turnaround a previously ‘chaos’ physical environment in Yasore</li> </ol>

### 9.3 CONTRIBUTION TO KNOWLEDGE

The need for new ways of administering and managing peri-urban customary land has been echoed in much recent literature (section 3.3). Two schools of thought have emerged from recent literature on peri-urban customary land administration. One school of thought posits that customary land administration systems can no

longer cope with the current complex and dynamic nature of peri-urban development, and should thus be abolished (section 2.3). This anti-customary (as referred to in this study) movement argues for a complete replacement of all customary land administration practices in peri-urban customary areas (De Soto, 2000; Peters, 2009). Anti-customary theorists argue that title registration and other statutory land administration tools may go a long way to solve the current peri-urban customary land administration problems (section 2.3). Evidence from countries (such as Lesotho) where this recommendation has been implemented indicates that customary land administration systems still have a place in peri-urban customary land administration and management. In such areas, statutory land administration practices have not been accessible and convenient to the people they intend to serve (Johnson, 2013).

Another school of thought argues that statutory land administration systems are foreign, and their presence in peri-urban customary land management symbolises colonialism and is a negative colonial legacy (Njoh, 2007). This pro-customary (as referred to in this study) movement further argues that sub-Saharan Africa presents unique land administration problems, unlike those in the developed world. Therefore, it is not appropriate (fit-for-purpose) to transplant land administration practices from the developed world into sub-Saharan Africa (Njoh, 2007). However, the inefficiencies found in customary land administration in certain peri-urban customary areas in sub-Saharan Africa is an indication that customary land administration systems alone, may not cope with the current land demand in peri-urban customary areas (Ubink, 2008; Akrofi, 2013).

Based on the above two conflicting land administration viewpoints, the study introduced the concept of ‘conflicting rationalities’ in land administration to explain how people view land administration systems differently. The study cautioned against the practice of taking a normative theoretical position at the expense of the rationalities held by the local people in administering their land. The study emphasises the need to acknowledge the contextual-related diversity in peri-urban customary land administration, despite the desire by contemporary land administration theorists to promote normative land administration theories (Schernbrucker, 2010). The effort made through this study to explain the tension between customary and statutory land administration systems may help researchers and land administrators to understand why attempts to formalise customary land administration systems meet with resistance by the local people. Such understanding may help in designing appropriate (fit-for-purpose) land administration systems for sub-Saharan Africa.

Many researchers have sought to find ways of bridging the anti-customary and pro-customary land administration systems divide (Arko-Adjei, 2011; Akrofi, 2013; Van Asperen, 2014). Some of them have made some meaningful contributions by developing conceptual models for adapting land administration systems to the institutional framework of customary tenure (Arko-Adjei, 2011). Others have identified some innovative land administration tools that can be implemented in peri-urban areas in sub-Saharan Africa (Van Asperen, 2014). A framework for assessing functional land administration systems in peri-urban customary areas has also been developed (Akrofi, 2013). In this study, a proposal on how to improve local hybrid land administration and tenure practices in Ghana, to reduce

conflicting rationalities between customary and statutory land administration systems is put forward. A joint land development process in peri-urban customary areas in Ghana was further proposed. The study introduces the concept of minimalism into the land administration formalisation debate. The need for minimal, but strategic statutory intervention to improve customary land administration systems was echoed in this study.

The good land governance principle of participation has been used to assess land administration systems by a number of researchers (Arko-Adjei, 2011; Akrofi, 2013). This study, however, assessed participation in peri-urban customary land access using the Arnstein's ladder of participation (Arnstein, 1969). This participation theory has scarcely been used to analyse land administration systems. This contribution is significant, as it may assist land administration researchers in understanding the different levels of people's involvement in land administration processes. In many cases, what may be regarded as participation may only be a tool by the elite to advance their personal interests under the guise of public consultation. It was argued in this study that participation could be manipulative, and that, the form of participation that should be encouraged in land access is the one that relinquishes power to citizens to control and manage their own land. This form of participation is found to be practised in Mocuba (section 6.9.2).

The results of the study collaborate the findings of past land administration research projects (see Arko-Adjei, 2011; Akrofi, 2013; Van Asperen, 2014). These past research projects reveal that effective land institutional arrangements and participation in peri-urban customary land delivery are essential for improving

customary land administration systems. This research equally found that all the case study areas (which are regarded as good land administration cases) promote effective land institutional arrangements and participation in customary land development processes.

#### **9.4 FUTURE RESEARCH**

Both the primary and secondary case study areas are relatively successful examples of land administration, chosen deliberately to learn good ways of managing peri-urban customary land. However, there may be many dysfunctional areas that could potentially benefit from the intervention suggested in chapter 8. It is therefore recommended that future research be undertaken on the applicability of the suggested interventions in dysfunctional peri-urban customary areas in Ghana.

Integrating customary and statutory land administration systems in peri-urban customary areas may imply that statutory land administration systems need to intervene in customary land delivery processes. However, many researchers continue to grapple with the appropriate level of statutory intervention in customary land administration processes to effectively manage peri-urban customary land (Forkuor *et al.*, 2013). The debate continues to swing between a complete take-over by statutory land administration systems (replacement) and a complete exclusion of statutory land administration systems from peri-urban customary land delivery. The concept of minimalism (as adopted in this study) postulates that statutory bodies (such as state land agencies) may strategically intervene in customary land administration processes to improve peri-urban

customary land delivery. What this study has not investigated, is the extent of statutory intervention required for effective hybrid land administration systems. It is recommended that future research be undertaken to investigate what constitutes a minimum strategic intervention which customary land administration systems require, to improve land delivery in peri-urban customary areas in Ghana.

The outcome of the recommended research may, however, vary, depending on the context and extent of functionality of the existing customary system. A dysfunctional customary land administration system may need almost a complete takeover, while a functional customary land administration system should largely be left alone. In areas where only certain aspects of the customary systems are dysfunctional, the replacement of such aspects may be needed, and not the entire customary system (as in the case of Botswana) (Adams *et al.*, 2003). Certain customary land administration systems will only require collaborative support to thrive, without tempering with the existing customary land administration structures and processes of land delivery (as in the cases of Esereso, Adumasa, Yasore and Olukonda) (Mundia, 2007).

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APPENDICES

APPENDIX 1 ETHICS FORM

13

**EBE Faculty: Assessment of Ethics in Research Projects (Rev2)**

Any person planning to undertake research in the Faculty of Engineering and the Built Environment at the University of Cape Town is required to complete this form before collecting or analysing data. When completed it should be submitted to the supervisor (where applicable) and from there to the Head of Department. If any of the questions below have been answered YES, and the applicant is NOT a fourth year student, the Head should forward this form for approval by the Faculty EIR committee; submit to Ms Zulpha Geyer ([Zulpha.Geyer@uct.ac.za](mailto:Zulpha.Geyer@uct.ac.za); Chem Eng Building, PO 221 650 4791). NB: A copy of this signed form must be included with the thesis/dissertation/report when it is submitted for examination

This form must only be completed once the most recent revision EBE EIR Handbook has been read.

Name of Principal Researcher/Student: WILLIAMS OBEENG Department: GEOMATICS  
 Preferred email address of the applicant: williams.obeng@gmail.com  
 If a Student: Degree: PhD Supervisor: A. Prof. S. WHITTAL

If a Research Contract indicates source of funding/sponsorship:

Research Project Title: INTEGRATING LAND ADMINISTRATION SYSTEMS TO ENSURE EFFECTIVE LAND MANAGEMENT IN PERI-URBAN AREAS

**Overview of ethics issues in your research project**

Question 1: Is there a possibility that your research could cause harm to a third party (i.e. a person not involved in your project)?	YES	NO <input checked="" type="checkbox"/>
Question 2: Is your research making use of human subjects as sources of data? If your answer is YES, please complete Addendum 2.	YES <input checked="" type="checkbox"/>	NO
Question 3: Does your research involve the participation of or provision of services to communities? If your answer is YES, please complete Addendum 3.	YES	NO <input checked="" type="checkbox"/>
Question 4: If your research is sponsored, is there any potential for conflicts of interest? If your answer is YES, please complete Addendum 4.	YES	NO <input checked="" type="checkbox"/>

If you have answered YES to any of the above questions, please append a copy of your research proposal, as well as any interview schedules or questionnaires (Addendum 1) and please complete further addenda as appropriate. Primarily that you refer to the EIR Handbook to assist you in completing the documentation requirements for this form.

I hereby undertake to carry out my research in such a way that

- there is no apparent legal objection to the nature or the method of research; and
- the research will not compromise staff or students or the other responsibilities of the University;
- the stated objective will be achieved, and the findings will have a high degree of validity;
- limitations and alternative interpretations will be considered;
- the findings could be subject to peer review and publicly available; and
- I will comply with the conventions of copyright and avoid any practice that would constitute plagiarism.

Signed by:

	Full name and signature	Date
Principal Researcher/Student:	<u>WILLIAMS OBEENG</u>	<u>26/01/2012</u>

This application is approved by:

Supervisor (if applicable):	<u>S. Whittal</u>	<u>21/01/2012</u>
HOD (or delegated nominee): Final authority for all assessments with NO to all questions and for all undergraduate research.	<u>S. Whittal</u>	<u>31/01/2012</u>
Chair: Faculty EIR Committee For applicants other than undergraduate students who have answered YES to any of the above questions.	<u>[Signature]</u>	<u>16/9 [2011]</u>

Approved, but needs to be carefully supervised for ethical aspects

## **APPENDIX 2 INFORMATION SHEET AND CONSENT FORM**

### **INTEGRATING LAND ADMINISTRATION SYSTEMS IN PERI-URBAN CUSTOMARY AREAS IN GHANA**

My name is Williams Obeng and I am conducting research towards a doctoral degree. I am researching the integration of positive aspects of customary and formal land administration systems, as applied in peri-urban areas, and would like to invite you to participate in the project.

#### **What the project is about**

The research seeks to explore whether positive aspects of customary land administration systems and formal systems, as applied in peri-urban areas, can be combined in such a manner as to form a hybrid system. The research also seeks to align this hybrid system with the good governance framework in land administration. The hybrid system should be dynamic and responsive to evolving needs in managing the humankind to land relationship, while also addressing issues of sustainable use of resources.

I am interested in finding out about cases in African countries, which display a practice of novel, hybrid or mixed formal and customary land administration systems. I want to understand how a formal system of land administration can include both customary land administration aspects and non-customary land administration aspects in order to service the needs of a rapidly urbanising population at the peri-urban interface characterising traditional and non-traditional land practices. I would like to interview people who are directly or indirectly involved in carrying out the functions of land management in this area. Please understand that you do not have to participate, i.e. your participation is voluntary. The choice to participate is yours alone. If you choose not to participate, there will be no negative consequences. If you choose to participate, but wish to withdraw at any time, you will be free to do so without negative consequence. However, I would be grateful if you would assist me by allowing me to interview you.

Participants will be required to give response (according to their understanding) to open-ended questions during the interview. It may require 45 minutes to complete a set of

questionnaire. No cost will be incurred by you as the interview venue will always be at your convenience. There will be no consequences of participation, such as stigmatisation, as you will remain anonymous and your comments will remain confidential, and shall be used for academic purpose only. This will seek to mitigate the possibility of stigmatisation should a participant accidentally divulge any confidential information. Narratives will be created from the data obtained from the interview. First draft of the narration will be made available upon participant's request to verify the accuracy of information given and avoid any misinformation.

I (*name*).....have opted to willingly participate in this research. I am aware that this research will not have any consequence on me, based on the information that the researcher has given me.

.....

SIGNATURE

.....

DATE

## ANNEXURE 3 SAMPLE QUESTIONNAIRE

### 1. PRIMARY DATA COLLECTION: WILLIAMS OBENG PHD STUDY Integrating Land Administration Systems to Ensure Effective Land Management in Peri-Urban Areas

This research seeks to explore how a formal system of land administration can include both customary land administration aspects and non-customary land administration aspects in order to service the needs of a rapidly urbanizing population at the peri-urban interface characterizing customary and non-customary land practices.

### 2. Header to all Primary Data Collection Files:

Case: Peri-urban Kumasi (Ghana)

Date: 15 September 2013

Time: Evening

Place: .....

Interviewee: anonymous

Position: .....

Interviewer: W Obeng

Translator: .....

Language .....

Ethics Approval:

Audio record: N/Y

Participant gave permission to use his/her name: N/Y

Participant wishes to remain anonymous: N/Y

Participant wishes to remain anonymous, but with pseudonym: N/Y

Pseudonym: N/Y

Participant gives permission to be quoted and identified: N/Y

Photograph approval & understood: N/Y

Photograph of interviewee: NA

### 3. General information to be conveyed to all interviewees:

- All information is controlled in terms of ethics policy of the University of Cape Town
- No information will be published which will lead to your harm (anonymity)
- All information is used for research purposes and the interviewer is a student or collaborator with the University of Cape Town (not government)
- You may refuse to answer any question and may also withdraw any information provided at any stage (provide contact details)
- You may refuse to let a recording be made of the interview. If you agree to a recording, this will only be used for the purposes of accurate data collection and will be reviewed to add detail to written notes and to make corrections.

- Communicate the purpose of the study and relevance to the participant – why they should be involved
- For Key Informant Interviews only: A copy of the interview summary will be provided to you so that you can verify or refute any information and add to the information recorded.
- This interview will take about (A: 1 hour; B: 45 min; C: 15 min)

## **A. FORMAL INSTITUTIONS (National/local government: housing, land, planning, services, valuation)**

### **Part 1: Formal system**

1. Organisation:
  - a. What is the name of organisation?
  - b. In which branch do you work?
  - c. Is there an organogram available?
2. What is your role in this organisation?
3. Formal administrative structure and processes
  - a. How is land development (building plans, subdivisions) managed?
  - b. How is land tenure security delivered?
  - c. How is land use controlled?
  - d. How is land valued and taxed?
  - e. What are the main laws governing these elements?
4. What are the links and processes between this organisation and other organisations in land administration (land and housing delivery and management)?
5. What are the links and processes between your branch and other branches in this organisation with respect to land administration?
  - a. What are the links and processes between your organisation and customary structures with respect to land administration?
6. In what ways do residents have a voice in land management?
7. How do poor people acquire land?
8. What proof do they have of tenure?
9. Are women treated the same as men in land management?
  - a. Are married women co-owners of property in your processes?
10. How is land transferred
  - a. Processes of sale?
  - b. Processes of inheritance (do people have a will)?
  - c. Is land transferred informally (avoiding formal processes)? If yes, why?
11. How are disputes over land ownership managed?
  - a. How does land administration in your organisation and other government departments contribute to or impede livelihoods and poverty alleviation?

### **Part 2: Customary system and hybrid/mix/novel aspects**

12. What customary systems are in place (e.g. chiefdoms and hierarchy)
13. What is the local economy (livelihoods) in this/these customary area(s)?

14. Are there any customary processes of
  - a. land development (building plans, subdivisions) management?
  - b. land tenure security delivery?
  - c. land use control?
  - d. land valuation and taxation?
15. What are the customary laws that govern these elements?
16. What are the links between your organisation and formal structures and what land administration processes are undertaken collaboratively?
17. In your experience, what aspects of the interface between customary and formal land administration are
  - a. Good?
  - b. Bad?
18. What are the reasons why customary systems still survive?
19. What are the challenges of integration between formal and customary processes?
20. How can the integration between formal and customary processes be improved?
21. Are there any new land administration tools that have been developed here to cope with the interface between customary and formal land processes/management?
  - a. If yes, what are these?
  - b. How were they developed and by whom?
  - c. What was the reason for their development?
  - d. Are they still being developed further?
  - e. What is good/bad and why?
22. What are the links and processes between different customary institutions with respect to land administration?
23. In what ways do customary land occupants/owners have a voice in land management?
24. How do poor people acquire land in customary areas?
25. What proof do they have of tenure?
26. Are women treated the same as men in customary land management?
  - a. Are married women co-owners of customary property?
27. How is customary land transferred?
  - a. Processes of sale?
  - b. Processes of inheritance (do people have a will)?
  - c. Is land transferred informally (avoiding formal processes)? If yes, why?
28. How are disputes over land ownership managed?
29. How does land administration in your organisation and other government departments contribute to or impede livelihoods and poverty alleviation?

## B. CUSTOMARY INSTITUTIONS (Chiefs/heads/elders)

### Part 1: Customary system and hybrid/mix/novel aspects

4. Customary System:
  - a. What is the name of customary area/system?
  - b. What is the structure of the customary system (e.g. chiefdoms and hierarchy)?
5. What is your role?
6. What is the local economy (livelihoods) in this/these customary area(s)?
7. Are there any customary processes of
  - a. land development (building plans, subdivisions) management?
  - b. land tenure security delivery?
  - c. land use control?
  - d. land valuation and taxation?
8. What customary laws govern these elements?
9. What are the links between customary structures and government/municipality and what land administration processes are undertaken collaboratively?
10. In your experience, what aspects of the interface between customary and formal land administration are
  - a. Good?
  - b. Bad?
11. What are the reasons why customary systems still survive?
12. What are the challenges of integration between formal and customary processes?
13. How can the integration between formal and customary processes be improved?
14. Are there any new land administration tools that have been developed here to cope with the interface between customary and formal land processes/management?
  - a. If yes, what are these?
  - b. How were they developed and by whom?
  - c. What was the reason for their development?
  - d. Are they still being developed further?
  - e. What is good/bad and why?
15. What are the links and processes between your customary institution and other customary institutions with respect to land administration?
16. In what ways do customary land occupants/owners have a voice in land management?
17. How do poor people acquire land in customary areas?
18. What proof do they have of tenure?
19. Are women treated the same as men in customary land management?
  - a. Are married women co-owners of customary property?
20. How is customary land transferred?
  - a. Processes of sale?
  - b. Processes of inheritance (do people have a will)?
  - c. Is land transferred informally (avoiding formal processes)? If yes, why?
21. How are disputes over land ownership managed?

- b. How does land administration in your organisation and other government departments contribute to or impede livelihoods and poverty alleviation?

## **Part 2: Formal system**

22. Formal systems:
  - a. What government departments do you work with in managing land?
23. Do you have to work with government in
  - a. land development (building plans, subdivisions)?
  - b. Delivery/giving land tenure security?
  - c. Controlling land use?
  - d. Valuing land and taxing land? If land is taxed, do the customary structures benefit from that income?
  - e. What laws govern the government's management of land in your area?
24. In what ways does the community have a voice in government processes of land management?

## **OPEN-ENDED LANDHOLDER INTERVIEWS**

- Will be identified in the field using a process of purposive sampling. Where problems are identified snowball sampling may be used. Interviews will be conducted until saturation is reached with a representative sample of both male and females. Estimate of 15 - 20 household interviews for each case study area.
- Will be prompted by the following questions:

### **C. CUSTOMARY LANDHOLDERS (Occupant/owner/trader)**

1. Are you a member of this customary society?
2. How long have you lived here?
3. How did you get this property?
4. Do you have any rights to this land/house?
5. How do you make a living here?
6. Are there any issues that you face in accessing land in this area and holding onto your rights?
7. Are women and men treated equally in this area in terms of land and housing?
8. Are you allowed to sell this land?
9. Are you allowed to pass this land on to your children/spouse? Do you have a will?
10. Can you sell this land without dealing with the government and lawyers?
11. Are there any issues with management of land here?
12. Are there any disputes over land and how are these resolved?
13. Are there any good aspects to living in a customary area in terms of your rights to land and housing?
14. In your opinion, does government partner well with customary leaders? How/why?
15. Do you trust your customary leadership? Why?
16. Do you trust the government officials? Why?

## APPENDIX 4 INTERVIEWEES

### INTERVIEWS AT LOCAL LEVELS (CASE STUDY AREAS)

CODE	CASE STUDY AREA	INTERVIEWEES
ES1, ES2, ES3, ES4, ES5, ES6, ES7	Esereso	Households, a sub-chief, Representative: Esereso Land Allocation Committee
AD1, AD2, AD3, AD4, AD5, AD6	Adumasa	Households, Odikro, heads of land-owning families, Representative: Adumasa Unit Committee
YS1, YS2, YS3, YS4	Yasore	Households, a sub-chief, Representative: Yasore Development Committee

### INTERVIEWS AT NATIONAL, REGIONAL AND DISTRICT LEVELS

CODE	INSTITUTION	INTERVIEWEES
KM1, KM5	Lands Commission	Senior officials at the national and regional Lands Commission
KM2	Asantehene's Secretariat	An official at the Asantehene's Secretariat
KM3	The Office of the Administrator of Stool Lands	An official at the Office of the Administrator of Stool Lands
KM4	Land Evaluation Board	An official at the Lands Evaluation Board
KM6	District Assembly	An Official at the Bosomtwe Atwima Kwanwoma District Assembly
KM7	Surveying and Mapping Division	An official at the Regional Surveying and Mapping Division
KM8	Town and Country Planning Department	An official at the Regional Town and Country Planning Department

**NOTE:** The positions and names of the interviewees have been purposely concealed to protect the respondents from any potential harm.

# Plagiarism Declaration

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