# Customary tenure institutions and good governance

## A case of peri-urban customary Ghana

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## Outline

- Why 'good' governance in customary tenure institutions?
- Study area and context
- Methods
- Framework for assessment
  - A few results
- Conclusions

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## Why good governance?

- Since the declaration of the MDGs, governance occupy central stage of development discourse (Zimmermann 2006)
- Governance is considered an important dimension of sustainable development (Burns&Dalrymple, 2008)
- Quality of land governance has direct link with eradicating poverty and achieving sustainable development goals
- Governments that give attention to good governance are likely to benefit from the international organizations and donors
  - Compare the LGAF presented on Tuesday

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## Why 'good' governance in LA?

- Bribery and corruption
- Inequity and unfairness
- Land conflicts
- Insecurity of property rights…….

- Since LA aims at providing tenure security …… governance should be of great concern

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## Why governance in LA?

**'Weak' governance in LA is linked with:**

- Lack of comprehensive regulatory framework governing security of tenure;
- Insufficient or incoherent and improperly enforced legal provisions (conflicting legislation);
- Lack of transparency;
- Inaccessibility to information;
- Lack of accountability;
- Bureaucracy;
- Irresponsiveness of institutions to the plight of land users; and
- Inability for citizens to participate in land governance (UNDP, 1997; FIG, 2004; UNDP, 2006; FAO, 2007; UN-HABITAT, 2007)

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## Approach to addressing governance in LA

- No universally accepted indicators for assessing and evaluating good governance in LA (now LGAF)

- Commonly used indicators in LA:
  - World Bank Governance and Doing Business Index;
  - UNDP Governance indicators;
  - UN Habitat Governance indicators;
  - FAO guidelines on land tenure and administration;
  - Wold Bank and FAO indicators of success of in LA reform

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## Approach to addressing governance in LA

- **Indicators can be grouped under governance dimensions**
  - Equity
  - Transparency and accessibility
  - Rule of law
  - Participation
  - Accountability
  - Efficiency and effectiveness
  - Responsiveness
  - Legitimacy
  - Integrity
  - Sustainability, etc

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## Approach to addressing governance in LA

- Indicators place more emphasis on the civil society; the performance of statutory institutions and regulations that establish them;
- Attention is given to how LA institutions can be reorganized through:
  - policy reforms;
  - institutional developments; and
  - new technologies to address issues related to weak governance
- Little attention has been given to good governance in indigenous institutions (ie. no systematic guidance available for assessing CTIs)

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## Why governance in CTIs?

- 80 -90% of land in sub-Saharan Africa is under customary/indigenous tenure systems
- Many people still rely on customary tenure delivery
- Customary institutions virtually administer all the lands in these areas - including urban/peri-urban land
- Change in focus on secure property rights:
  - Decentralization of LA functions to the local institutions - indigenous/customary tenure institutions
  - Adapting ADR mechanisms

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## Question

- Do these indigenous/customary tenure institutions have the capacity to govern land?
- Will the institutions meet good land governance objective in LA?

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## Context and study area

### Study design

- Case study design
- Qualitative and quantitative
- Framework for assessment – literature/field studies
- Fieldwork – three customary areas
- Exploratory nature - more discursive data collection tools which provide a deeper understanding of the subject under study.
- Analysis – Descriptive and statistical analysis based on community status of respondents – indigenes and settlers

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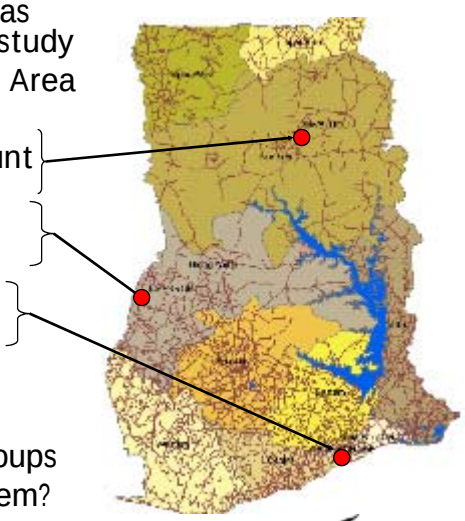
## Context and study area

- Three peri-urban areas were chosen for the study
  - Tamale Paramount Area (skin land)
  - Japekrom Paramount Area (stool land)
  - Gbawe Kwetei (family lands)
- Choice
  - Diversity of tenure
  - Land ownership groups
  - Countrywide problem?



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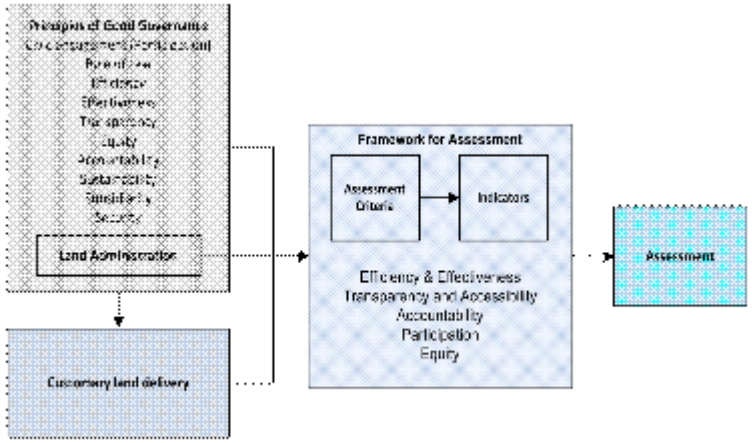
## Conceptual framework

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## Key land governance issues in customary areas

- Growing incidence of landlessness for urban poor and vulnerable group;
- Eviction of farmers in peri-urban areas
- Abuses of equal rights women and other vulnerable groups to own and inherit to land;
- Fluidity of customary laws give room to manipulations;
- Abuse of power - some chiefs exercise “landlord powers” over group members;
- Diminishing stewardship;
- Land grabbing, informal land markets and conflicts;
- Struggle for land among people in the commons

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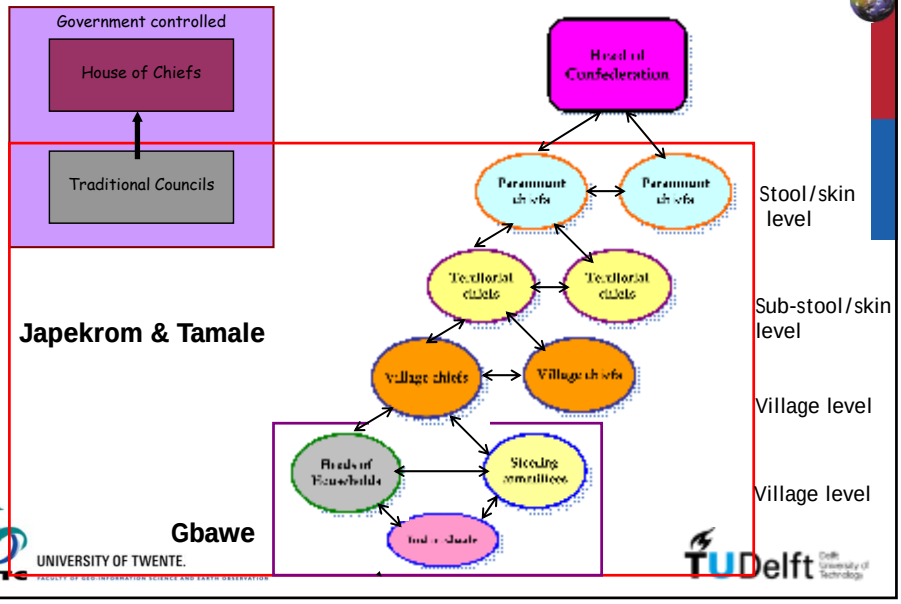
## Key land governance issues in customary areas

- Inaccessibility to land information and services;
- Lack of transaprency and equity in the distribution of community resources;
- Inability of CTIs to cope with the volume and speed of peri-urban communities –especially when tenure arrangements are weakened by transition and commercialisation;
- Autonomous nature of CTIs breed corruption – not subject to external audits

## CTIs –governance structure

More than the chief and elders

## CTI - governing structure

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## Framework for the assessment

- Choice of Six from long list of governance dimensions
  1. Common in literature on key governance issues;
  2. Touch on issues of critical importance in customary land delivery in peri-urban areas;
  3. Adequate bearing in customary land administration;
  4. Ensure a wider spectrum of governance issues considered;
  5. To some extent, these dimensions overlap (eg. Responsiveness, rule of law …effectiveness)

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## Framework for the assessment

- Indicators of other qualities may be important
  - Participation
  - Equity
  - Transparency
  - Accountability
  - Efficiency
  - Effectiveness

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## Framework for the assessment

| Dimensions | Indicators |
|---|---|
| **Participation** *(representation and involvement)* | ▪ To what extent are community members represented; and how are they involved in the selection of community leadership? *<br>▪ To what extent are community members involved in the decision making process with regard to land use and management?<br>▪ What is the level of collaboration and coordination with statutory land agencies and other land professional institutions? |

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# Participation

- **Community members involvement in the selection of leadership**
  - Actor representation – restricted to operational members
  - Families or groups constituting the land owning are represented
  - Women are represented (except Tamale)

*Community members' involvement in selection of leadership*

| | Japekrom (stool) | | Tamale (skin) | | Gbawe (family) | |
|---|---|---|---|---|---|---|
| **Community leadership** | **indigene** | **settler** | **indigene** | **settler** | **indigene** | **settler** |
| Chiefs/Family Head | P | N | N | N | P | N |
| Council of Elders | N | N | N | N | N | N |
| Land Committees | P | P | N | N | P | P |
| Local Council Members | S | S | S | S | S | S |

Key: S= significantly involved, P= partially involved, N= not involved

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# Framework for the assessment

| Dimensions | Indicators |
|---|---|
| **Equity** *(fairness)* | ▪ Is land accessible to all community members, men and women alike?<br>▪ Are access to land information and dispute resolution handled in non-discriminatory manner?<br>▪ Do indigenes and settlers have equal security of tenure?<br>▪ To what extent do CTIs guarantee intergenerational equity? |

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## Framework for assessment

| Dimension | Indicators |
|---|---|
| **Transparency** *(accessibility, clarity and openness)* | ▪ How accessible are institutions and information to community members and the general public?<br>▪ How open is the decision-making processes to community members?<br>▪ How clear are customary laws on land delivery to community members? |
| | |

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## Transparency

- Institutions are accessible
- Information is accessible
- Decision-making is open to community members
- Customary laws are somehow clear

*Respondents' views on clarity of customary laws and the extent to which they are implemented in land delivery*

| | Japalaam (stool) | | Tamale (skin) | | Cbawe (family) | |
|---|---|---|---|---|---|---|
| *Response* | Indigene (n=90) | Settler (n=80) | Indigene (n=110) | Settler (n=70) | Indigene (n=50) | Settler (n=50) |
| *Clarity* | | | | | | |
| very clear or clear(%) | 86 | 73 | 40 | 32 | 72 | 79 |
| neither clear nor unclear (%) | 11 | 24 | 38 | 59 | 26 | 18 |
| unclear (%) | 3 | 3 | 22 | 9 | 2 | 3 |
| *Implementation* | | | | | | |
| Good (%) | 70 | 54 | 70 | 54 | 79 | 46 |
| Satisfactorily (%) | 19 | 42 | 11 | 9 | 17 | 38 |
| Bad (%) | 9 | 3 | 10 | 20 | 2 | 15 |
| Very Bad (%) | 2 | 1 | 9 | 7 | 2 | 1 |

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## Framework for assessment

| Dimension | Indicators |
|---|---|
| | |
| **Accountability** *(stewardship)* | ▪ To what extent do customary tenure institutions report on their stewardship to community members?<br>▪ How adequate is the financial accountability? |

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## Accountability

- Weekly meeting by community leaders
- Annual gathering and special meetings for feedback
- Weak financial accountability
  - Not all transactions are recorded
  - No external auditing

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## Framework for assessment

| Dimension | Indicators |
|---|---|
| **Efficiency and Effectiveness** *(tenure security)* | ▪ How clear is the land allocation processes?<br>▪ To what extent are conflict resolutions enforced?<br>▪ How adequate are the human resources for land governance?<br>▪ To what extent are customary laws implemented in the land delivery processes?<br>▪ How adequate are the mechanisms for providing certainty and security of land rights? |

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## Efficiency and effectiveness

- Clear land allocation procedures
- Less time to access land
- Innovations in land recording and allocations
- Good land conflict resolution mechanism
- Inadequate human resources (except Gbawe)
- Weakened implementation of customary laws
- Inadequate payment of compensations

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## Conclusions

- We acknowledge that indicators of other qualities may be important but measures of participation, equity, transparency, accountability, accountability, efficiency and effectiveness are essential to any complete assessment of good governance in CTIs
- Further work: Testing these indicators in 3 customary areas of Ghana → done
- Diversity of tenure systems requires that more investigations to test these dimensions to improve them or investigate into other governance dimensions

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## Thanks for your attention

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