



## Land information management and landed property ownership security: Evidence from state-sponsored court system



Raymond T. Abdulai<sup>a,\*</sup>, Anthony Owusu-Ansah<sup>b</sup>

<sup>a</sup> School of the Built Environment, Liverpool John Moores University, Byrom Street, Liverpool L3 3AF, United Kingdom

<sup>b</sup> School of Business, Ghana Institute of Management and Public Administration (GIMPA), Accra, Ghana

### A B S T R A C T

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It is commonly argued that land information management via land registration guarantees landed property ownership security in the developing world. This has, therefore, triggered various studies into the relation between land registration and ownership security. The findings from these studies are divergent. Whilst some studies claim that it is land registration that guarantees ownership security, others have established no discernible link between registration and ownership security. This ground-breaking study contributes to the debate by investigating the nexus between land registration and ownership security from a new dimension. It focuses on the perspective of the State-sponsored court system on ownership security. Data from a High Court in one of the cities in Ghana covering a period of 10 years was extracted and analyzed. The evidence adduced shows that land registration per se is incapable of guaranteeing security as landed property ownership can be contested whether or not it is registered and owners of registered landed property can lose their ownership via civil litigation in the State-sponsored court system – cases are not automatically decided in favour of owners of registered landed property when disputes are brought before the courts for resolution. Thus, the argument that land registration guarantees ownership security is unsustainable – land registration is made to serve the wrong purpose. The paper, therefore, defines the right and critical role of land registration. It is concluded that land title or ownership insurance, albeit may appear to be expensive, is a tool that can potentially address the problem of landed ownership insecurity. The findings provide useful lessons for international donor organisations like the World Bank and United Nations that are supporting land registration programmes as a panacea to the problem of ownership insecurity in the developing world.

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### Introduction

The importance of landed property<sup>1</sup> in the economies of nations cannot be over-emphasized. For instance, land provides the space for various socio-economic activities and as Lund (2008), USAID (2005) and Deininger (2003) note, it is the most basic and vital aspect of subsistence for many people around the world and, therefore, a strategic socio-economic asset, especially in poor societies where wealth and survival are measured by control of, and access to land. It is, thus, not surprising that in many developing

countries, land accounts for about 50%–75% of the national wealth (Bell, 2006). Regarding the developed world, the immense contribution of landed property to its development has been well documented by economic historians like Goldsmith (1995), Torstensson (1994), and Rosenberg and Birdzell (1986). Due to the critical role that landed property plays in human societies, insecurity of its ownership is a major concern to the citizenry and governments in the developing world as well as international donor agencies like the World Bank and United Nations.

Landed property ownership security refers to the certainty that a person's property rights will be recognized by law and, especially, by community members and protected when there are challenges or disputes over the property (Abdulai & Domeher, 2012, chap. 3; FAO, 2005). It implies that if a person's ownership is secure, that person should be able to exercise rights over his property peacefully or devoid of contestation and where disputes do occur, the ownership of the property should be protected so that it cannot be

\* Corresponding author. Tel.: +44 7903 107947; fax: +44 1512312815.

E-mail addresses: [R.Abdulai@ljmu.ac.uk](mailto:R.Abdulai@ljmu.ac.uk), [talinberay@yahoo.com](mailto:talinberay@yahoo.com) (R.T. Abdulai), [aowusu-ansah@gimpa.edu.gh](mailto:aowusu-ansah@gimpa.edu.gh) (A. Owusu-Ansah).

<sup>1</sup> Landed property is a term that connotes land and/or the developments/buildings attached to the land. The other terminology for landed property is real property and in American parlance, it is known as real estate.

lost. Absence of landed property disputes as well as enforceability and clarity of ownership rights are, thus, parameters of security. The concern about landed property ownership insecurity referred to above is premised on the negative effects of land disputes/insecurity, which are manifested in two main areas as follows.

Firstly, there is a direct link between, for example, land disputes and civil strife. Even though in the developing world, not all wars are caused by land disputes, because of the very important role that land plays, contestation over land has often led to some of the most damaging forms of civil strife, including large-scale wars. Indeed, population growth, globalization and environmental stresses have tended to exacerbate many people's perception of land as for them an essential but dwindling resource, tightening the connection between land disputes and violent conflicts (USAID, 2005). Thus, as aptly observed by FAO (2005), the origins of many conflicts in the developing world can be traced to land disputes. Civil strife arising from land disputes and control over land, with devastating human and economic consequences, has been reported in many countries like Uganda, Angola, Tajikistan, Kyrgyzstan, Uzbekistan, Kazakhstan, Namibia, Papua New Guinea, Peru, Brazil, East Timor, Kosovo, Mozambique, Mexico, Iraq, Nigeria, Ethiopia, Nepal, Venezuela, Zimbabwe, Guatemala, Columbia, El Salvador, Ghana, Kenya and Sierra Leone (Abdulai, 2010, chap. 6; Deininger, 2003; Lumumba, 2004; Richard, 2003; USAID, 2005). Disputes over land also provide fodder for conflict entrepreneurs who use them to manipulate the emotional, cultural and symbolic dimensions of land for personal political or material gain, thereby fomenting civil strife, as in Rwanda and Burundi (Andre & Platteau, 1998; USAID, 2005).

Secondly, land disputes impact negatively on infrastructure and other development or construction projects. When a dispute arises over a plot of land that a development project is to be carried out, the development cannot progress until the land dispute is effectively settled. This, therefore, constitutes a source of major risks to investors. The negative impact is even more pronounced where there are delays in settling the land dispute. A study from Uganda, for example, established that land disputes reduced the output on a plot of land by at least 30% (Deininger & Castagnini, 2002). Thus, security of land rights is considered to be critical in establishing a structure of economic incentives for investing in land-based activities (Deininger, 2003). Potential investors are unlikely to invest in land related activities unless they are certain that their land-ownership will be protected. It is, therefore, not surprising that the World Bank has identified land disputes together with poor governance as a major factor inhibiting development in the third world (World Bank, 2007, chap. 3) and the Millennium Development Goals give prominence to the role of secure land rights in helping to reduce poverty and achieve development (Payne, Durand-Lasserve, & Rakodi, 2007).

Though there is an assertion that landed property ownership insecurity is equally an incentive to invest in land-related activities, a critical examination of the basis of such an assertion shows that it is completely unsustainable. Sjaastad and Bromley (1997) argue that investments in trees, irrigation furrows, buildings or other fixed structures may provide a litigant in a land dispute with an unassailable case and that even though insecurity is a disincentive to invest, it is paradoxically often also an incentive to invest for security. Obviously, this argument assumes that the legal framework guarantees the protection of investors in land-based activities whether or not they truly own the land or the legal framework guarantees payment of compensation to investors who eventually lose their investment in land-based activities whether or not they truly own the land.

Admittedly, undertaking visible investment on land may demonstrate an individual's presence or occupation of the land, which associates the investor with the land but this association

with the land cannot be equated to recognition as the rightful owner by the community and by the legal system, which is what landownership security is about. Indeed, investing in a plot of land that one does not rightfully own will in itself trigger disputes or insecurity rather than reduce or eliminate the disputes. Thus, investment in land-based activities per se cannot provide the investor with indefeasible/guaranteed land rights - the mere fact that a disputant has constructed buildings or any other permanent structures on a disputed plot of land cannot in any way provide him with an unassailable case.

It is premised on the role of landed property ownership security as a determinant of land-related investments that insecurity is a major concern as earlier indicated. This has, therefore, triggered the search for a system that will establish landed property ownership security. There is a considerable body of literature on the link between land registration and landed property ownership security. At one end of the spectrum is a school of thought that claims that it is land registration, which guarantees security. The apologists of this school of thought include Wannasai and Shrestha (2007), MacGee (2006), Bloch (2003), Feder and Nishio (1998) and Larsson (1991). Larsson (1991), for example, even argues that land registration prevents the occurrence of disputes over land, which significantly reduces the work of the State-sponsored courts. Extending this school of thought it is asserted that land registration provides a secure form of collateral for mortgage purposes and, therefore, guarantees access to formal capital for investment, wealth creation and development (Derban, Derban, Ibrahim, & Rufasha, 2002; de Soto, 2000). At the other end of the spectrum is a school of thought that argues that land registration per se cannot guarantee landownership security (Abdulai & Domeher, 2012, chap. 3; Benerjee, 2002; Bromley, 2008; Durand-Lasserve & Payne, 2006; Fitzpatrick, 2005; de Janvry, Platteau, Girdillo, & Sadoulet, 2001; McAuslan, 2000; Sims, 2002).

There is, thus, an ambivalent literature on the nexus between land registration and landed property ownership security. However, the arguments of the apologists of the above two schools of thought are based on studies that have concentrated on the views of purchasers and suppliers of land regarding ownership security. Using Kumasi in Ghana as a case study, the object of this is to contribute to the current debate by investigating the link between land registration and security from a completely different dimension. It focuses on the perspective of State-sponsored courts on landed property ownership security.

To intimate what follows, the next section describes Ghana's landholding systems. Sections three and four discuss the land registration systems and sources of legal validity of landownership in Ghana respectively. The penultimate section presents and discusses the data collected from the State-sponsored courts whilst the last section deals with conclusion.

#### *Salient features of Ghana's landholding systems*

In Ghana, there are mainly two systems of landownership, viz, private and State landownership systems. Private land refers to traditional land (land vested in communities represented by chiefs and families) whilst State land refers to land that has been acquired by the State from the private land sector using various enactments. Sandwiched between the State and private land is vested land, which is a form of split ownership between the State and traditional owners. Traditional land constitutes about 90% of the total land area in Ghana (Abdulai, 2010, chap. 6), implying that accessibility to land is mainly through the traditional land sector.

The traditional system of landownership in Ghana has been extensively described in the work of Abdulai (2010), chap. 6, which is encapsulated as follows. The country has over 30 different ethnic

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