Evaluating Some Major Assumptions in Land Registration: Insights from Ghana's Context of Land Tenure and Registration

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Abstract: A discussion of the assumptions that underlie efforts to register land enables us to not only evaluate their validity across different contexts, but most importantly, to further understand how the low incidences of land registration might derive from very fundamental sources outside of differences in technology and approaches of recording. Building on existing literature and previous research in Ghana, this study has identified and evaluated three such assumptions, namely, land rights registration is desirable, all land rights are registrable, and access to the registration system is an administrative event. We analyzed each assumption in order to find out how they manifest in conventional approaches as well as what they imply for emerging fit-for-purpose (FFP) approaches. In the context of Ghana, we find that (a) there are variations in desirability across space (urban vs. rural) and among landholders; (b) many land rights are registrable, but not all, unless we accept a loss in meaning; and (c) access to the registration system can be an administrative event between surveyor/surveyed, but it is often a process of connecting multiple actors and practices. We conclude that close attention needs to be paid to scenarios where these fundamental assumptions fall short, in order to finetune them and redirect associated implementation strategies.

Keywords: land registration; conventional land registration; fit-for-purpose land administration

1. Introduction and Approach

Land registration is underpinned by some fundamental assumptions, which are implicit, but tend to drive implementation practices and approaches. How these underlying assumptions manifest in practice changes across time as approaches and rationales to land registration evolve. Since the early 1980s, efforts for land registration have witnessed an increase across the globe. The World Bank and other development agencies as well as local governments have made interventions on legal and administrative reforms that seek to improve land rights recording [1]. This has been encouraged, on the one hand, by positive outcomes of land registration observed in the global north, and on the other hand, by economic theory that highlights a causal relationship between land registration and asset capitalization. The economic theory suggests that similar outcomes of registration as observed in the global north could be achieved in the global south [2]. Although not without critique, De Soto's argument renewed the push for the formalization of land rights in many countries at the beginning of the 21st century. In response to these calls, many countries with emerging land registers have increased the tempo of land rights recording since the early 2000s [3].

In spite of the manifest desire and attempts to document land rights, coverage of and access to formal systems of registration have remained very low. It is argued that the majority of land holders

still do not have access to land registration systems, mostly in the global south [4]. Explanations relate to how the earlier attempts of land registration in the global south were conceived and implemented. These so-called conventional systems [5–7] were merely a transplant of the western systems of land registration [8] underpinned by technological solutionism and mostly implemented in a top-down fashion. The focus on land tenure reform through technocratic and legal solutions, rather than finding ways to represent tenure in its socio-cultural complexity, for example, has been one of the landmark commitments of the World Bank and other international donor agencies as part of the contemporary neoliberal development agenda in Africa [9]. However, given the limited impact of this approach in terms of cost, flexibility, and speed, the agenda on land registration for the developing world, including Africa, has shifted considerably in favour of approaches that are more flexible, representative, and context-driven. The new approaches come under the banners of pro-poor land recordation since 2007 and fit-for-purpose land administration (FFP-LA) since 2014 [4,10–12]. The term "pro-poor land recordation" refers to initiatives of land rights recording that seek to address the needs of the poor, because it has been recognized that poor and marginalized groups have been neglected or negatively impacted by land rights documentation efforts in the past [11,13]. Tendencies of further marginalization are even higher in contexts with low literacy rates [14]. FFP-LA refers to land rights recording approaches that are flexible and focused on serving the purpose of a land administration system rather than focusing on the deployment of top-end technical standards [4]. FFP-LA also advocates the recording of diverse land rights, including those held by the poor and marginalized such as secondary rights [10]. Thus, the scope of FFP-LA implicitly reflects the essence of pro-poor land recordation as it seeks to address, among other things, the needs of the poor and marginalized.

In terms of implementation, both conventional and FFP-LA approaches of land registration are interlaced and play in different and common ways towards the delivery of land registration services. Both approaches are often combined as most of the existing cadasters are built on conventional approaches [10]. Therefore, the operationalization of FFP-LA approaches takes two forms. On the one hand, they serve as substantive approaches in contexts where fresh land registers are compiled like in the case of the Rwandan land register [10]. On the other hand, they serve as complementary approaches when they are integrated into existing conventional approaches to enhance coverage and to catalyze the rate of recording.

Although FFP-LA explicitly seeks to remedy the problems and sometimes negative effects of earlier conventional systems of recordation, these newer approaches seem to run into a set of problems and challenges [13,15] that are not unlike those of conventional systems. Uptake and scaling remain difficult, documentation processes become biased through stakeholder politics and lack of interest on the part of land holders, and financing and data protection pose further challenges.

These observations led us to wonder if the reasons for the difficulties to register land lie, at least partially, outside of the realm of differences in technology or procedures and even outside of the debate regarding top-down state-driven versus bottom-up citizen-led approaches. Instead, our study aims to explore whether there are assumptions at work at a more fundamental level that cut across and hence mess with approaches regardless of technological and institutional details and differences. Drawing on existing literature on land registration in conjunction with empirical research on land transfers and registration in Ghana over the past four years, we identify and discuss three such generic assumptions underlying conventional land registration systems. They also have implications for newer fit-for-purpose (FFP) approaches, albeit in a different form. Although the assumptions are simple enough, we argue that a renewed reflection and a critical re-engagement with them increase the chances for success in land rights registration across a variety of approaches from conventional to FFP [16].

To identify the assumptions, we first posed three cardinal questions on land registration that we find overarching and topical in the literature: (a) why land registration, for whose interest, and when is it suitable? [2,4,10,17–20]; (b) to what extent can land rights be represented in the land register? [21,22]; and (c) how is access to a land registration system gained or denied? [23–26]. From these questions, we extract the themes, "desirability", "registrability", and "accessibility" of land

registration, respectively. We then put each theme into a simple expression that reflects conventional land registration thought as shown in the literature. Moreover, through our previous studies in Ghana over the past four years [26–28], we used interviews to gather information on existing land rights, landholdings, transfers, and practices of registration from landholders, traditional authorities, and actors within the hybrid administrative scene (both customary and statutory). Ghana's land registration started in the colonial era and evolved as a deed registration system until 1986 when the Land Title Registration Law (PNDCL 152) was passed and piloted for a limited part of Ghana alongside the existing deed registration system [29]. Land governance structures in Ghana are patterned into centralized (where land control rests with chiefs) and decentralized (where land control rests with earth priests and family heads) [30]. Both the state and traditional authorities own and control land, although that of the latter is dominant [29].

The paper is structured as follows. In Section 2, we describe the three assumptions in land registration and how they manifest in conventional land registration approaches, in how far there are reasons to doubt the general applicability of the assumptions and what they imply for newer FFP approaches. In a second step, in Section 3, we play the assumptions against the empirical details based on a four-year research in Ghana's land registration context. This allows us to fine-tune the assumptions based on empirical realities; and to make this explicit, we add small, simple qualifications to each assumption that may serve as sort of "prompts" to make the implementation team and promoters aware of and explore possible context-specific deviations from oft-held assumptions. In a final step, in Section 4, we highlight the main implications of our study for FFP-LA. To explicate the implications more clearly, we provide a number of questions that may allow other researchers and stakeholders in registration projects to re-engage with some of the fundamental assumptions in land rights registration in a constructive manner.

2. Major Assumptions in Land Registration

Assumptions are implicit premises for thought and action that may be unconscious, or at least unnoticed, and that people can consciously attend to [31]. In other words, they are unstated reasons that a person actually used consciously (or subconsciously) as a basis of argument or action [32]. Assumptions, therefore, exhibit subtlety of a mental orientation that directs or induces action consciously, but often unconsciously. Assumptions evoke the impression of incomplete information based upon which we fill in the blanks with our own interpretation using fore related knowledge and experiences.

With respect to land registration, we discuss here three general assumptions that underlie conventional land registration approaches and also show what such assumptions imply for the emerging FFP approaches. These assumptions include the following: (a) land rights registration is desirable, (b) all land rights are registrable, and (c) access to a registration system is an administrative event. We first explain each of these assumptions as they manifest in conventional land registration approaches. Second, we discuss arguments that shed doubt on the general validity of each assumption, and thirdly, we briefly discuss what it might imply for FFP-LA approaches.

2.1. Assumption 1: Land Rights Registration Is Desirable

Many scholarly arguments have been advanced on the potential benefits of land registration for both state and citizen including tenure security, credit access, investments, and economic development [2,33–35]. For example, in the capitalist economies of the global north, De Soto [2] has argued that land registration has strengthened wealth creation through a seamless integration of real property and the financial and juridical systems, which in combination unlock the capital value of property. These arguments characterize and underpin conventional land registration thought and, at a very fundamental level, imply an assumption of general desirability of land registration. The assumption of a general desirability underlies many conventional top-down approaches pursued by donor agencies and national governments through state agencies involved in land registration.

As a result, the desirability of registration for a particular locality is often predetermined by either the donor and/or the government [36].

However, given the variations in the rules of land tenure and associated political structures across communities in most parts of the global south, including Africa, uniform top-down strategies hardly meet local needs. Contextual differences are important, and account for variations in the desirability and outcomes of land registration. Key context-dependent variables, which influence the desirability of registration, include the following: differences in terms of groups of society, the relative effectiveness of systems without registration, and at what point in time registration is supposed to or takes place [17]. These variables change as needs for registration at the individual and community levels change through time as a community develops [37]. Hanstad [18] outlines five conditions that make land registration desirable in an area: (a) where land tenure insecurity restrains development, (b) where there is early development of a land market, (c) where there is high incidence of land disputes, (d) where a need to establish a credit base emerges locally, and (e) where a redistributive land reform is contemplated. These conditions give an indication of the moment in time when a land registration intervention may be desired. However, many land registration programs on customary land in Africa have failed because they did not take into proper consideration the local conditions necessary to make them effective [38]. For instance, contrary to the optimistic arguments that suggest a general desirability of land registration, counter arguments have been made regarding how land registration in certain contexts engenders marginalization and landlessness of the poor and vulnerable in society [39]. As mentioned by Atwood [39], land registration could engender marginalization and landlessness when individuals appropriate for themselves exclusive ownership rights on lands that were previously accessible to community members as communal lands. Even some commentators who argue strongly for the universal desirability of land registration acknowledge the existence of tenure security among indigenous people in the absence of registration [34]. It is important to recognize that the effectiveness of land registration systems, like other information systems, increases when people see the need to interact with them and use them as a basis for transactions and defense of tenure security [40,41].

For bottom-up FFP approaches of land registration, which tend to emphasize local relevance, it is important to reflect on the question of desirability not only in relation to potential benefits, but also in relation to the readiness of general local conditions [17]. Given the pronounced role of non-state actors in FFP approaches and the need for contextualization, it is crucial to allow the needs for registration to naturally emerge locally to some reasonable extent before a registration intervention. When this happens, landholders are more willing to undertake registration on account of personal awareness, which helps to keep the register up-to-date [40]. Assuming a general desirability for registration potentially leaves a gap between the local reality of landholders on the one hand, and administrative expectations on the other. The incorporation of the notion of "sensitization" in FFP approaches signals the existence of such gaps [8,19,42]. The notion of "sensitization" implicitly suggests that land registration is, generally speaking, desirable, and here, care has to be taken to weigh the potential pros and cons of such endeavors on a case-by-case basis. Although the FFP implementation guideline is elaborate and comprehensive, it is somewhat silent on these critical success factors necessary to drive and maintain land rights recording at the community level such as political, economic, and socio-cultural contingencies [16].

In sum, the desirability of land registration for a given socio-political space is evolutionary and needs to be assessed to ascertain that epochal moment when the prevailing circumstances are ripe for registration [17], that is, the moment when registration makes sense socially and economically. Migot-Adholla [43] made a similar argument that the timing of the deployment of land registration, among other things, determines the economic viability of land registration.

2.2. Assumption 2: All Land Rights Are Registrable

One of the purposes of land registration is to provide an inventory of land rights in terms of both ownership and occupation [44]. Such endeavors of recording signal the pursuit for full knowledge

of territory, which lies at the heart of the modern state's legibility making processes [45]. The very concept of the modern state presupposes a vastly simplified and uniform property regime that is legible, and hence governable from the center [45]. Accordingly, the desire for full cadastral coverage is seen as an end goal for many countries, especially those with emerging cadasters. More importantly, in recent times, full cadastral coverage even serves a bigger function as a global benchmark for the exploration of business opportunities. For example, the World Bank in its flagship Doing Business Report (2019) designates cadastral coverage as one of the five dimensions for measuring the quality of land administration index. To attain full cadastral coverage, some form of law is needed as a reference and basis for the identification and recognition of land rights, as noted by McAuslan [46] in his study of the role of law in land rights documentation. McAuslan indicates that attempts at facilitating the formalization of land rights in Africa by donor agencies often begin with the development of an appropriate legal framework. A similar argument is made by the Food and Agriculture Organization (FAO) [47] in the Governance of Tenure Technical Guide 9 as well as The International Federation of Surveyors (FIG) in its publication 60 on FFP-LA [4]. These arguments, therefore, suggest the assumption that all land rights can be defined clearly in law and accordingly registered, for example, through adjudication. Such thoughts align closely to the context of a strong state, and reflect the Western conception of property and ownership as relatively definitive.

In plural cultural and legal contexts, however, the perfect representation of all land rights would inevitably imply the incorporation of other sources of law into statutes, because land rights are constructed based on different sources of law. Such an endeavor can be both extraordinarily difficult to draft and practically difficult to implement owing to the overly dynamic nature of some land relations [22]. As observed by Kingwill [48], social property regimes display characteristics that are not easily quantifiable as property relations hinge on localized kinship and community networks that defy the Western conceptualization of ownership. Knight [22], therefore, cautions that codification should allow a space for custom to freely evolve in a way that addresses the changing land-related needs of community members.

As FFP approaches seek to address the shortfalls of conventional approaches, they advocate for inclusivity of diverse rights both in law and in practices of recording. Here, the focus is not so much on primary rights only, but it is about recording the totality of socio-spatial relations, whether primary or secondary and regardless of formality. As argued by UN-Habitat [8], the existence of a recorded primary right should not alter the ability to record an existing secondary right that is acknowledged by the community. This new conceptualization of land rights opens more opportunity for the acknowledgement and recognition of diverse land rights, especially in contexts of pluralism, and underscores the need for contextualization. Thus, what might be considered FFP depends on the needs of a particular context. However, the FIG Publication 60 on FFP-LA [4] calls for the enshrinement of the FFP approach in law in the following wording: a country's legal and institutional framework must be revised to apply the elements of the fit-for-purpose approach. This means that the fit-for-purpose approach must be enshrined in law. While changes in legal and institutional framework might allow for more flexibility in the manner in which land rights are recorded, attempts to enshrine the FFP approach in law may be somewhat self-defeating. This is because the FFP approach is not one coherent set of strategies that apply uniformly across a jurisdiction (say a country), as law is usually applied. It is important to recognize that strict codification might strip FFP approaches of the flexibility required to record the ever-changing customary land rights that are held by the majority of landholders in Africa. Moreover, because of the fact that customary law (including land relations) evolves and is not static, codification would imply a foreclosure of further evolution, which in itself defeats any FFP agenda.

In sum, while a certain degree of codification is required to give direction, a strict form of it might entail a transformative effect that might engender exclusion. Additionally, the processes of legal change are daunting, and may take very long to achieve [46]. Therefore, a balance is required to determine in how far codification will still keep the FFP rationale relevant.

2.3. Assumption 3: Access to the Registration System Is an Administrative Event

As a process of legibility making, cadastral development is largely a state-dominated endeavor that is used to achieve many aims of the state. The state assumes the role of an implementor and uses its administrative machinery to map and simplify its territory into administrative grids [45]. While the endeavor of land registration manifests differently across strong and weak states, it is essentially regarded as an encounter between citizen and state [37], the success of which is influenced by the behavior of both actors. From the point of view of most conventional land administration, we could think of these two macro actors [49] in abstract terms as "the surveyor" and "the surveyed". "The surveyed" responds differently depending on the nature of the activities of the "surveyor" in terms of time, cost, and complexity. Observing such a cause-effect relationship between "the surveyor" and "the surveyed", both scholars and implementing agencies have focused on how to make land registration organizations more efficient through the proper configuration of their internal working protocols [4,12,50–52]. The internal processes of land registration organizations are viewed as the focus for necessary changes to facilitate both access and productivity of land registration services. Thus, conventional systems of land registration assume that causality runs from administrative efficiency to accessibility of land registration services. A very tangible reflection of such an assumption is online portals that grant access to state-held information and services, but also offline portals, such as one-stop-shops for citizen service delivery.

However, it is vital to recognize that access to registration is not entirely a technical question that administrative ease would resolve. More importantly, access to land rights and subsequent registration also derives from and is underpinned by socio-political struggles and strategies, for example, across gender and between hierarchies of actors within land governance structures (e.g., chiefs vs. subjects). In this sense, the ability of a landholder to undertake land registration, say, at a one-stop-shop, is only the "tip of the iceberg", and represents a myriad of exchanges and interactions between varied actors in the governance scene. For example, many studies have found that females in many contexts of tenure are denied or given weaker land rights based on customs, social constructs, and local politics [26,34,53,54], and this is relatively worse for females with low levels of literacy [14]. Such studies explicate the position that access is partly determined by socio-cultural practices of land holding aside administrative ease.

Although FFP approaches seek to enhance accessibility by bringing registration to the doorstep of landholders in ways that are mostly labeled as "bottom-up" or "participatory" [13], not much can be achieved if the social processes that produce land rights are in themselves exclusionary. This draws attention to the fact that access in a broader sense goes beyond proximity and participation. The idea of grassroot participation hinges on the assumption that land holders at the grassroot have limited access to formal registration, which holds to a greater extent, but not entirely [55]. Therefore, there is a need to consider critically the dynamics of land access when thinking of grassroot participation in land registration.

In sum, the ability of a land holder to get his/her rights registered hinges on access to the right itself within the social group, and subsequent access to the system of registration, and the latter depends on the former [56]. Furthermore, as land holding practices evolve, land rights allocation to different categories of people might be an instigated response to the effects of registration observed over the years. For fear of creating proprietary rights and exclusion, certain categories of land holders may not be allowed to register land that they are permitted to use in practice [23]. Conventional approaches of land registration over the decades have produced individual exclusive rights as outcomes [57], and these thoughts remain with land holders even when they encounter FFP approaches that might have different outcomes, like the recording of collective rights. Fears of land rights conversion in the event of registration (i.e., secondary to primary) need to be allayed. This might require that the sensitization programs in FFP approaches go beyond emphasizing the need to register, and make explicit the fact that secondary rights can be acknowledged and recorded as such, along with subsisting primary rights without transforming the former to the latter [8].

3. An Evaluation of the General Assumptions for Inherited Property Registration in Ghana

In this section, we evaluate each of the assumptions outlined in Section 2. We do this through a meta-interpretation of our research conducted in Ghana between 2016 and 2019 on land transfer and registration, particularly the practices of holding, transferring, and registering inherited property [26–28]. By interpreting our findings through the lens of the three assumptions, we explain in the following how the outlined assumptions relate to the Ghanaian context in order to illustrate both convergences and divergences.

3.1. Land Rights Registration Is Sometimes Desirable to Some, While Not to Others

As shown in the literature and land registration interventions across the globe, registration is generally regarded as a desirable endeavor for all [2,17,34]. In our study in Ghana, however, we observed a variation in the desirability of land registration across urban and rural areas and across different types of landholdings [28]. For rural areas, the need to register land hardly arises, neither from the point of view of tenure security, nor from points of view of economic benefits. Through local structures of authority, which are sometimes shrouded in spirituality (e.g., the institution of earth priests in Bongo), landholders can ascertain ownership and settle land disputes locally without the need to call upon the state through registration or court [26]. Additionally, given the relatively higher indigenous population composition of rural areas, dwellers are able to use existing social networks and shared local spatial knowledge to identify and testify ownership and use of land for one another. Such intervening socio-cultural structures alleviate the need for registration. This scenario demonstrates the land registration usage theory [58] and shows how alternative strategies are used to secure land rights, and thus highlights the ineffectiveness of existing recording systems in these rural areas as background reference [40,58]. Moreover, the interrelationships between different land rights that coexisted more or less peacefully under customary norms come into dispute when they encounter registration. For example, the registration of individual primary rights for males in patrilineal communities of the Upper East region excludes females who have secondary rights on the land of a deceased male. Thus, while the actual benefit of registration in the eyes of landholders in these areas may be very little, if any [38], it tends to heighten sensitivity in land claims among landholders within families and communities [28]. This transforms the hitherto complementary relationship between holders of primary and secondary rights into one of competition and hostility, which can have dire consequences for the livelihood of secondary right holders. Therefore, in the eyes of these rural communities, registration is less desirable and the benefits are less perceivable. However, as time goes on and these rural communities develop, the needs for registration are likely to increase as population and economic activities increase. This expectation is based on observations in urban areas.

For urban areas (Kumasi and Bolgatanga), the needs for registration are generally high owing to high property values and likelihoods of adverse claim of property from within and outside one's family. Although such high stakes suggest the general desirability for registration in urban areas, the desirability of registration at the micro scale of individual successors of inherited property still hinges on the counter-weighting of legitimacies from within the family (non-registration) or with the state through registration [26]. These processes of legitimization are avenues that successors explore to secure tenure depending on the happenings within the patri/matrilineage after the sharing of inherited property. They engage in strategic choice making to figure out whether or not to register. In this way, successors do not see registration inherently as desirable. Rather, it is seen as a situational and reactionary response that is called upon relative to intra- and inter-family dealings. For instance, in Bolgatanga and Kumasi, when heirs inherit different rooms across different buildings or different sections of the same building, they see little need for registration as the collective ownership serves as a form of tenure security against external claims. However, the desirability for registration among successors increases when they inherit a whole property [26]. In this sense, registration helps them to delineate the property from the family circles.

What we then see across both rural and urban areas is that landholders, including successors of inherited property, are constantly searching for tenure security from sources that best serve their interest at given points in time. They strategically negotiate between the family/community and the state, with the former being the default consideration and the latter serving more as an alternative when the former fails. Whether, when, and for whom registration is desirable is thus highly context-dependent.

3.2. Many Land Rights Are Registrable But Not All, unless We Accept a Loss in Meaning

The assumption that all land rights are registrable is closely tied to the notion that land rights can be perfectly represented in law as basis for registration or that law can give definition to existing land rights. The situation in Ghana reflects this assumption. Prevailing land registration laws in Ghana provide some level of diversity in the recognition of land rights. The Land Registry Act deals with deed registration and covers most parts of the country, while the Land Title Registration Act deals with title registration so far only in certain areas. Given the diversity in customary land rights in Ghana, the laws implicitly and explicitly recognize and allow the registration of diverse land rights. For example, the Land Registry Act provides room for the registration of documents covering land rights. The law, however, does not specify the types of land rights by name, but refers to such documents covering land rights collectively as instruments [27]. Such a generalization creates ambiguity, but at the same time, opens room for interpretative flexibility during implementation. This can be regarded as an implicit recognition of diverse land rights. In a more explicit way, the Land Title Registration Law, which sought to improve deed registration, specifies the types of registrable land rights in Section 19(1), ranging from allodial rights (highest inalienable corporate right) to customary tenancies, and also made provisions for overriding interests.

Whereas these laws embrace diversity, there are still some rights that are not captured, such as communal and secondary rights, which are highly dynamic in nature [26]. For example, the rights of females in the patrilineal practices of the Upper East region are of a special character. They are neither fixed in time span, nor flexible in terms of use and disposition, but are subject to conditionalities such as the time of marriage, whether or not an unmarried daughter would stay at the natal home and give birth to children outside marriage, and whether a widow would stay or remarry within the matrimonial home or elsewhere. Similarly, rights over property held by family heads (in the Upper East region) and customary successors, nephews (in the Ashanti region), are fiduciary rights that cannot be appropriated in any way by the individual holder, but are subject to broader family discretion and cultural orientation. Some other rights are associated with spiritual connotations as for the spiritual sites (sacred groves and the paths of the gods) held by the Earth priest, which are in themselves fuzzy in extent and vary across time. These rights do not relate to specific geometric parcels of land, but are subject to the movement of the gods. Their nature is characterized by changes in a manner that cannot be captured at certain nodes or instances across linear time. As such, they contradict the notion of rights as stable at a given point in time. Therefore, their fluidity makes them unregistrable in the sense that recording them would inevitably change their nature or discard them altogether, despite their relevance in the community as source of spirituality and identity [26]. In sum, the codifying of such types of land rights cannot be achieved without altering the social functions and meaning that they hold in a given context.

3.3. Access to the Registration System Can Be an Administrative Event between Surveyor/Surveyed, But It Is Often a Process of Connecting Multiple Actors and Practices

In Ghana, the Lands Commission represents the statutory side of land governance. Within the Lands Commission, so called CSAUs (Client Service Access Units) have been established in order to provide an interface for interaction with landholders. However, the supposed official activity (event) that is envisaged to take place at this interface turned into a series of encounters between Lands Commission officials (in their informal role) and landholders, which in itself determines ease of access to land registration services for landholders apart from official procedures [28]. Aside activities at the

Lands Commission, evolved land governance structures (centralized and decentralized) also influence accessibility to land registration.

Within each land governance structure, different sets of actors play varying roles. These actors include traditional authorities, Customary Land Secretariats (CLSs), individual landholders and groups, as well as estate agents and legal professionals. Here, we already see that the scene of administration in itself is hybrid, stretching across the state's bureaucratic space and that of the customary [27]. This dichotomy, however, is still much too simplistic. The cross-cutting of statutory/customary and centralized/decentralized binaries is further differentiated by the workings of different sets of norms: the official and social, respectively. This debunks the assumption of a monolithic state (that surveys its territory). Rather, the "surveyor" here is a constellation of state and non-state actors, who coproduce agency in land registration.

The emerging processes and practices of registration are also different and patterned by region (centralized in Ashanti region and decentralized in the Upper East region). Under the centralized land governance structure, the role of the CLSs is relatively stronger because they exclusively prepare deed documents for onward submission to the Lands Commission. However, under the decentralized land governance structure, there is an undefined constellation of actors who engage in the preparation of deed documents, namely, the CLSs, estate agents, legal professionals, and Lands Commission officials (informally) [27]. These variations at the initial stages of registration explain how access to land registration services is gained, restricted, or denied outside of the Lands Commission's bureaucratic space. For example, in the Ashanti region, the exclusive role of preparing deed documents by the CLS has been used as a tool by the traditional authorities to grant selective access to registration. They do this by reducing registrable deeds to only purposely allocated leaseholds, neglecting all other rights that are greater or lesser than a leasehold, which naturally accrue through one's membership to the corporate land-owning group such as usufructuary rights. The potentially perpetual rights of usufructs are either truncated to leaseholds or denied altogether, because they are seen to constitute a threat to the land control of traditional authorities. To legitimize these tactics, traditional authorities interpret article 267 (5) of the 1992 Constitution of Ghana to imply the prohibition of freehold interests and other potentially perpetual rights such as the usufructuary rights. Therefore, the CLSs' role of preparing deed documents for customary land now feeds into a political strategy that seeks to foment land control in the traditional authority, helping them to strategically shift and redraw the boundaries of inclusion and exclusion.

In the Upper East region, however, while there is no concerted effort to engender selective access to registration, the reliance on existing deed templates and low capacity of CLS officials has similarly resulted in the registration of leaseholds, truncating usufructuary rights, and neglecting lesser rights. In this sense, access to registration in itself is more of a negotiated process. The unevenness of outcomes of such "access-ing" is shaped and can be explained by both administrative inefficiencies (in the Upper East region) and political strategies (in Ashanti region). Rather than a straightforward exchange at a one-stop-shop between the "surveyor" and the "surveyed", gaining access to land registration services and the eventual registration consist of dynamically changing relationships between multiple governance actors. To them, access is not merely an event, but consists of a process of negotiations within governance structures that serve varied interests and capacities.

4. Implications and Key Questions for the Implementation of FFP-LA

In this section, we draw insights from Sections 2 and 3 to discuss the main variables that can inform a reflection and debate of the outlined general assumptions as FFP-LA together with conventional approaches moving forward. While the highlighted assumptions in land registration continue to serve as positive push factors and justifications to enhance proactive thinking and action, they have the tendency to alleviate the need to zoom into empirical realities, and this can make them problematic to the success of implementing land rights registration practices and technologies. When an assumption is discussed in light of the given empirical situation, it can be modified or finetuned to closely reflect

reality [59]. Applying this argument to the context of land registration, we discuss some general assumptions in light of specific contexts for intersubjective acceptability. Scrutinizing each assumption against the realities of a given empirical situation or implementation scenario in the field can not only be a tool to avoid problems in the long-run owing to (partially) faulty assumptions, but can help finetune the process of implementing conventional as well as FFP approaches or a combination thereof.

To engage in the scrutiny, we provide here a number of questions that may allow researchers and stakeholders in land registration projects to re-engage with some of the fundamental assumptions in land rights registration in a constructive manner. The three sets of questions discussed below are meant to serve as entry points into the empirical scene from the point of view of each of the three assumptions that we have discussed in this paper.

First, for desirability, we suggest asking the questions, what are the socio-political reasons to register/not register for different groups, and how do they change through time?

Often, the desirability of land registration is discussed in more generic ways, unshaped by different perspectives and interests. It is especially important to consider variations in desirability especially in contexts where the state does not have absolute control over land and where registration is voluntarily sporadic. There is a further paradox in these situations, where some agencies of the state may envisage the need to have land registered, but at the same time, leave the initiative to the landholder, who by his/her circumstance does not see the need to register [38]. At the micro level of individual landholders, the need for land registration might be occasioned following the occurrence of certain events such as intra-family contestations. However, if such needs do not arise, little/no effort is made to undertake registration. This shows that land registration might not be seen as inherently desirable by land holders, especially in rural contexts. It is thus important to identify the reasons why different groups of landholders might be interested in registration or not, and the factors that drive change in such decisions. This helps in finding out the appropriate time and manner to intervene with land registration. Sewornu [60] argues that, without understanding the underlying reasons why landholders choose to use land registration systems or off-register strategies to secure their land, it is difficult to target aspects of the land registration system for improvement. At the macro level of the state, it is understandable that governments are sometimes torn between their local realities and the requirements of donor agencies, which add a second layer of political twist beyond the state's own political agenda to promote registration [46]. This political twist has been at play in many land registration interventions in developing countries as they are mostly funded by donor agencies [46]. For FFP-LA, there is the need to keep a balance between the state's desire to undertake land registration and the reality of landholdings and local economy within a community. If the local economic circumstances are ripe, it might be sufficient to entice people to undertake registration after an initial register is compiled [40]. Figuring out the right time to deploy land registration can go a long way to promote sustainable land registers. However, it is important to mention that, where local conditions do not appear to be ripe for mainstream land registration interventions, local systems of recording can be relied upon for upscaling later on, using flexible standards and gateways [61]. For Ghana in particular, the Customary Land Secretariats (CLSs) can be instrumental in recording land rights at the local level for mainstreaming at a later time.

Second, for registrability, we suggest asking the questions, how do rights change through codification? What are the pros and cons, for whom? What rights cannot or should not be codified and hence need to be protected (if they need to be protected) by other means than registration?

Registrability of land rights has been topical in both conventional and FFP approaches and has dominated discourses on land rights recording for decades, especially for customary land rights [2,4,16,19,34]. While mapping land itself might be straightforward, mapping land relations can be complex and difficult to fit into predesigned administrative schemas. The difficulty lies in keeping a balance between recording and transformation, which is characteristic of land registration endeavors. It is vital to recognize that registration not only "maps what is there", but changes or catalyzes changes in the social relations (family, clan, and tribe) by changing people's and group's relations to space [48], especially where both private and communal rights of landholders overlap. As noted by Scott [45],

the cadastral map does not merely describe a system of land tenure, it creates such a system through its ability to give its categories the force of law. Thus, for FFP-LA, it is important not to obstruct relevant locally constructed land relations, but to record them as is, so as to alleviate the transformative effect of land registration. For example, in the Upper East region of Ghana, we find highly dynamic rights for female heirs and Earth priests, which by their nature are difficult to record, and if at all any such efforts are made, they more or less result in transformation rather than representation of the existing rights, which might create the very problem that registration in itself sought to solve: insecurity of tenure. Therefore, land law, which is often used to redefine land rights in most land registration campaigns, can be used to make express definitions of de facto land rights where possible, while allowing alternative means of protection for highly dynamic land relations that bear local relevance even if no recording is done.

Third, for accessibility, we suggest asking the questions, what are the current practices and underlying norms that provide access? What are the variations in such practices across a territory in question (e.g., a nation state) and different forms of access and involved actors?

Access to land registration is embedded in socio-cultural practices of land allocation, practices of landholding, as well as practices of land registration, unlike some Western contexts where access to land registration is contingent on the nature of interactions that ensue between state and citizen during registration [37]. To conceive access purely as a state-citizen encounter appears narrow, and this needs to be broadened especially for contexts where there are multiple layers of actors in the registration process owing to the nature of land tenure. Where traditional authorities (non-state) play a substantial role in land control and registration, access to registration then becomes an encounter of differential powers embedded in socio-cultural structures of land governance and social stratification [27]. For example, intra-family arrangements such as the definitions of who qualifies as a permanent or temporary lineal member by far determine how secondary and ownership rights to property are allocated [26]. By limiting certain groups of people to secondary rights, their ability to benefit from land in certain ways, including registration, is hindered [24]. Socio-cultural strategies like the allocation of secondary rights to female heirs in the Upper East region result in non-registration as male members (holders of ownership rights) do not allow them to register such rights for fear of transforming them into exclusive individual rights. Even during the processes of registration, we see the effect of power differentials in the Ashanti region, where chiefs foment land control by barring the allocation and registration of potentially perpetual rights like the usufructuary rights. Thus, the socio-political or cultural forces that produce land rights differentiation between chiefs and subjects, and male and females, for example, can be deemed in themselves as determinants of accessibility aside administrative bottlenecks. Therefore, for FFP-LA, it is important to focus on the influence of power differentials in the process of surveying and registration, for example, by ensuring that different types of actors are included in both the design and implementation stages.

In sum, for land registration to really meet the objectives of being FFP, we need to look critically into contextual realities and evaluate the specific needs or constraints thereof within communities. Why registration is needed, as well as when and from whose perspective, needs to be understood hand in hand with the underlying social structures through which land rights are accessed or denied. A clear understanding of these variables is useful in setting the foundation for recording practices that closely reflect the empirical context. A reconsideration of some of the major assumptions running across various registration approaches can be part of a constructive way forward in the manner in which land registration programs are designed and carried out.

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