

Reforming Land Administration through Market-Oriented Interventions- Mapping Out Emerging Lessons from Ghana’s Journey towards Private Sector Participation

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SUMMARY

Ghana’s land administration reform interventions which were pursued between 2003 and 2018 achieved mixed results. While there was notable advancement in areas of customary land management, gender mainstreaming and social inclusion, adjudication of land cases by the Courts and general improvement in the equipment base of land sector agencies among others, the structural challenges of lack of modern maps, inadequate digitized land records and human resource capacity constraints means, delays and title insecurity remain a major feature of land service delivery across the country. In response, government is exploring new policy alternatives which seek to leverage the potential from the private sector to augment government’s efforts in order to expedite the land administration transformational processes. This paper seeks to distill some key lessons which continue to emerge since this new policy direction in 2018.

Across the developing and emerging economies, Private Sector Participation in land administration is an emerging area of public policy. There is therefore limited existing experiences and lessons to inform the process. In turn, managers of the process have combined the policy processes which have been respectively described as ‘muddling through’ and ‘gradual incrementalism’ approach by Flach et al (2017) and Lerner (2010). This approach enables learning lessons, reflecting on these lessons and refining implementation based on key emerging issues from the implementation process. In this paper, the authors, who are central in the implementation of Ghana’s new land administration paradigm draw from their collective experiences on the subject since 2018 to highlight a five-point check list which could help to inform similar interventions in a comparable context.

1.0 Introduction

Effective and efficient land administration is critical to Ghana's socio-economic advancement. However, land administration in Ghana has historically been characterized by various challenges. As a result, Government of Ghana (GoG) developed the National Land Policy in 1999 which was largely seen as the roadmap for land administration reform in Ghana. The National Land Policy outlined a plethora of constraints which inhibit effective and efficient land administration. These include multiple land sector agencies with conflicting and overlapping roles, multiplicity of land related laws which created incoherent legal environment, land disputes, multiple sale of land, dysfunctional land markets and general indiscipline among others. This document further provided a roadmap for implementing interventions which would help in addressing the identified bottlenecks.

In 2003, Government commenced the implementation of this roadmap through the Ghana Land Administration Project (LAP) in partnership with various Development Partners, with the World Bank playing a lead role. The Project was designed to be implemented between 15 to 25 years. The first phase of LAP (LAP-1) was implemented between 2003-2011 with the objective to develop a land administration system that is fair, efficient, cost effective, decentralized and that enhances tenure security (World Bank, 2003). The second phase of the Project (LAP-II) was implemented between 2011 and 2018 with the objective to consolidate the gains made under the first phase of the project (LAP-I) in order to strengthen land administration and management systems for efficient and transparent land service delivery.

Land administration reform interventions is a financially demanding endeavour and the Ghanaian case was not an exception. An estimated US\$130 million was spent over the 15 years of the project-on-project implementation (World Bank, 2018). This investment has undoubtedly resulted in improving key and critical aspects of land administration in the country as will be highlighted in the ensuing sections. It is however important to concede that LAP was not the panacea to the broad ranging challenges which had become deep-seated in the Ghanaian land administration space. Therefore, despite the recorded gains of the land administration reform process, some structural challenges continue to exist.

The considerable capital and technological investment in Ghana's Land Administration Reform have not resulted in commensurate results. This has resulted in the situation where policy makers and land administrations are exploring other alternative vehicles to drive the remaining aspects of the land reform. In this regard, the idea that capital, technology and skill can be leveraged from the private sector to enhance land administration is increasingly gaining traction in developing countries such as Ghana. Since the end of the second phase of the land administration project in 2018, the Ministry of Lands and Natural Resources, the Lands Commission and other land sector agencies have been working closely to bring on board the private sector (MLNR, 2018). While private sector collaboration in public sector investment in Ghana is not new, its application in the area of land administration reform is a novelty in the Ghanaian case. Therefore, the entire process has been framed along the concept of 'learning by

doing'. In effect, there is continuous reflection of ongoing processes in order to map our emerging lessons. As an iterative process, lessons learnt then inform subsequent direction. In this paper, authors draw from their central role in this process and distil the key and critical lessons which could help to inform similar initiatives in comparable contexts.

The remaining paper is segmented into three broad thematic sessions. The next session examines the outcomes and impact of the 15 years of implementing the World Bank led Ghana Land Administration by highlighting the achievements and outstanding bottlenecks. This will then be followed by analysis of private sector, including the various typologies which may be employed. This then sets the scene to discuss the opportunities and potentials of the private sector involvement in the land administration reform processes as well as bringing to the fore ongoing interventions in Ghana. the final session then highlights the emerging lessons before reflecting and concluding this paper.

2.0 Overview of Land Administration Reform in Ghana

Ghana has a complex mix of land ownership categories and this complexity has had direct and profound implications for land administration in the country. This land ownership mix includes customary, state and vested lands with each category having its own specific challenges. As indicated earlier, the National Land Policy of 1999 sought to answer the questions- what are the key bottlenecks of land administration in Ghana and how can these be addressed on a cost effective and sustainable manner? The diagnosis identified issues of institutional pluralism without proper coordination, multiple sales, minimal use and application of technology, resulting in manual operations and old base maps which were barely fit-for-purpose among others. All these culminated in multiple sale of land, conflicts, delays in land registration, tenure insecurity and weak land markets (Bugri, 2012; 2016).

The Ghana Land Administration Project was fashioned out as the tool to operationalize the various recommendations in the Policy. Ultimately, it was expected that the project will result in simplifying the process for accessing land and making it fair, transparent and efficient, developing the land market, installing sanity and orderliness in property development and fostering prudent land management.

The implementation of the first phase of LAP resulted in some achievements. For example, the hitherto overly fragmented institutional arrangement for land administration was consolidated with the Lands Commission, Survey Department, Land Valuation Department and Land Title Registry all becoming a new entity with the passage of the Lands Commission Act, 2008 (Act 787). The backlog of land cases at the Courts were significantly cleared through the establishment of automation land Courts. There was general improvement in volumes of land instruments registered nationwide, largely as a result of decentralization of institutions. Issues of gender and social inclusion were mainstreamed, resulting in increasing number of lands registered by women and categories of people considered vulnerable (for a detailed discussion

of results of LAP-I see World Bank, 2011- Implementation Completion and Results Report, Ghana Land Administration Project).

The Second Phase of the Project commenced in 2011 with the objective to consolidate and strengthen land administration and management systems for efficient and transparent land service delivery. Designed on the foundation built during the first phase of the project, the LAP-2 focused on completing outstanding legal and institutional reforms, removing business bottlenecks, promoting transparency and addressing the various land administration challenges in the country. This was to speed up land registration and delivery of titles and deeds, improve human resource capacity and security of tenure, strengthen the settlement of land disputes and provide reliable maps to support various land administration components such as spatial planning (World Bank, 2011b).

The implementation of the Second Phase of the Project resulted in achieving milestones such reducing the turnaround time for deed registration from 3 months to a maximum of 1 month. There was the development of the Ghana Enterprise Land Information Systems (GELIS) which set the scene for the uptake of digitization (Deane et al, 2017). There was the establishment of the Client Service and Access which in effect is a ‘One-Stop-Shop’ for accessing land services. There was the passage of the Land Act, 2020 (Act 1036) which effectively consolidated the over 160 laws which affected land. There was the passage and implementation of Land Use and Spatial Planning Act, 2016 (Act 925) which effectively aligns land use and spatial planning to the decentralization system of Ghana and ensures that there is clear channel for vertical integration of planning activities at the national, regional and local levels in a more coherent and coordinated manner.

In the area of customary land management, there was scaling up of the Customary Lands Secretariat to 87 from the initial 37. There was considerable progress with the Ascertainment and Codification of Customary Law on Land and Family in Ghana (ACLP) in order to improve the certainty in customary practices governing land administration. Indeed, the Supreme Court of Ghana has been relying on outcome from this exercise to aid in judicial decision-making processes. The case with suit (number) No: J4/6/2016 Yakubu Awabego (Head of Family, suing on behalf of himself and the Awure Family of Kalbeo) Vrs Tindana Agongo Akubayela (Tidana of Tindonsobligo) is illustrative. In this case, parties were contesting who was the rightful owner of a parcel of land and thus entitled to receive compensation after compulsory acquisition of the subject parcel of land. In arriving at its decision, the Supreme Court made reference to the Report on the pilot phase of the Ascertainment and Codification of Customary Law on Land and Family in Ghana (ACLP) Vol. III, joint research by National House of Chiefs and the Law Reform Commission published in March 2011 under the auspices of the Ghana Land Administration Project (World Bank 2018). In effect, the implementation of the project has had positive outcomes for many spheres of land administration across the country.

3.0 The Unresolved Bottlenecks in the Ghanaian Land Administration Space

Despite the progress recorded, significant components of the land challenges which are required to bring wholistic transformation remain unresolved. For example, despite mapping out isolated areas, there is lack of comprehensive base map for the country and this continues to serve as a major setback for many development projects. Indeed, the last comprehensive nationwide base map is at least 45 years old and hardly ever fit-for-purpose. There is therefore the need to map the entire country, including the use of Light Detection and Ranging (LIDAR Technology) in selected areas. In addition, it is estimated that 90 percent of all land records nationwide remain in hard copy/ paper format. This means, turnaround time for land transactions remains significantly longer, despite the recorded marginal gains. The Ghana Enterprise Land Information System which was developed under the project is commendable but it has increasingly demonstrated that it lacks the robustness to provide the anticipated digitally-enabled working environment. There are only 10 Geodetic Reference Network/Continuously Operating Reference Stations (GRN/COR Stations) which are currently in operation. However, based on the GRN Architecture, a minimum of 50 COR Stations is required to effectively and efficiently support surveying and mapping activities across the country. There is therefore the need to ensure densification by installing 40 new COR Stations while ensuring effective maintenance of existing ones in order to achieve optimal outcomes (MLNR, 2018).

In addition, there is the need to augment the information technology base for land administration through investment in modern digital infrastructure as well as equipment such as laptop computers, software and surveying instruments among others. These improved technologies require adequate training and capacity building to help staff appreciate the use and application of these modern methods as well as fashioning out work culture and corporate governance systems which support modernized land administration system. All these are expected to be put in place alongside the need to develop additional decentralized regional offices to provide decent and enabling working environment. In all, it is estimated that additional US\$ 150 million is expected to be invested over the next 5 years in order to achieve the desired outcomes.

The combination of exogenous factors such as the COVID-19 Pandemic, The Russia Invasion of Ukraine, global commodity price shocks and internal challenges means, Ghana's economy has taken a considerable tumble. Therefore, the fiscal space has tightened and it is increasingly obvious that government cannot finance the outstanding components from its own resources or through debt. In this regard, the need for alternative financing pathways becomes even more critical, hence government's search for suitable Private Sector Model to finance the outstanding tasks of the land administration reform process.

4.0 Private Sector Participation - Concept and Typologies

Private sector participation arises when a private partner collaborates with a public agency with the aim of jointly investing in an agreed project so that risks and benefits are shared in an agreed ratio. There are various types of private sector participation in public service and infrastructure delivery. These include Concession Agreement, Build Operate Transfer (BOT), Build Own Operate Transfer (BOOT) and Build, Own and Operate (BOO) among others (World Bank, 2020; UNECE, 2021).

A concession agreement is a contract that gives a company the right to operate a specific business of government for a period of time based on agreed terms (UNECE, 2021). With Build, Operate and Transfer arrangements, the private investor acquires the right to develop a project and operate it over a specified time after which ownership reverts to the state. Under this arrangement, the private investor is expected to recoup both investment and return on investment during the period of operation by the investor. Similar to BOT arrangement is the Build-Own-Operate-Transfer (BOOT). Under this, the government entity grants to a private sector party the right to finance, design, construct, own and operate a project for a specified number of years. The distinguishing element is that, with BOOT, the private investor obtains ownership of the assets during the period when the private investor operates the asset. This is not the case in BOT where ownership remains with government during the currency of the arrangement. The common thread that runs through all the variants of private sector participation is that, private capital is invested into public projects in a way that generates returns for the private investor and utility for the public institution (World Bank, 2020).

Although private sector participation has been employed extensively in financing public infrastructure, its application in the area of land administration has been limited. For more advanced economies, private sector participation in land administration has been employed in Ontario, Canada and New South Wales in Australia with some encouraging outcomes (World Bank, 2020). In the Maharashtra and Kanartaka regions of India, Malaysia and Philippines, private sector continues to play significant role in land administration through some form of public-private sector collaboration. Despite these instances, private sector participation along the lines of public-private partnership for land administration remains generally low.

5.0 Exploring Private Sector Participation for Land Administration reform in Ghana

When the second phase of the land administration project ended in 2018, there was the general expectation that the consideration of leveraging private sector capital and technical/technological competence to drive land administration reform in Ghana is largely seen as a departure from the status quo, especially after 15 years of donor led initiative.

Ghana's move towards private sector participation could be traced to recommendation of the Project Implementation Report of LAP-II which provided that:

Consider private sector participation to scale up the [Ghana Enterprise Land Information System] GELIS across the country if Government funding is constrained. The private sector could particularly play a critical role in digitising legacy data, establishing decentralised and satellite offices which will bring land service delivery closer to the public. Public Private Partnership (PPP) models could be explored where private capital is invited to scale up the GELIS to be paid by end service users through a component of service charges (World Bank, 2017, pp. 17)

Although this recommendation focused on GELIS which is a limited aspect of the outstanding reform tasks, policy makers employed a more elaborative approach by expanding the scope.

The need for private sector participation as a catalyst for Ghana's land administration received high level political support. For example, during a Market Sounding Event held in Accra on 20th April, 2018, the Vice President of the Republic delivered the keynote address where he emphasized that;

For the past 15 years, the country has been trying to reform land administration through the Ghana Land Administration Project. Sadly, this journey has not yielded much result. The structural challenge of unreliable land registry, which constitute the spine for land administration, remains unfixed..... Government is looking at a new paradigm to improve our land administration system. Government is creating space for the Private Sector to be involved in land administration service delivery. This is not merely because of allegiance to a political philosophy but because of our genuine belief that the Private Sector will add considerable value to our land administration reform processes.

The Market Sounding even attracted over 100 prospective investors from 21 countries and this highlighted the extent of interest.

Flowing from the Market Sounding event, the Ministry of Lands and Natural Resources and the Lands Commission have been working to operationalize this change in direction. The processes are ongoing and it is expected to be completed in the coming months. As a result of the commercial sensitivities, excessive detailing of the processes has been avoided. Rather, we examine the key lessons which have been learnt and these are analyzed in the next section.

6.0 Key Lessons from Ghana's Journey so far

For the past four years, the process of securing private sector participation in land administration along the tenets of Public-Private Partnership has resulted in the learning of many lessons, some of which include the following;

- i. It takes time to structure and conclude a private sector participation agreement. It is therefore important to allow for adequate time. This is because there are various components which come together under such arrangement. Whiles some may be independent activities, others are dependent on others. The culminative effect is that, activities must be well sequenced. In addition to the many components, institutional inertia and administrative bottlenecks which may all result in additional delays. Therefore, it is important to allow enough time so that the processes can evolve organically.
- ii. Clearly defining the scope and the extent of the private sector involvement is key and this must be prioritized from the onset. This is because, the scope of work and involvement of the private is the crux of the public-private contracting arrangement. The scope will define the cost and required capital outlay, the tenure of the investment and to a considerable extent, the skill sets required for effective and efficient project implantation. Poorly defined score is likely to result in scope creep and this may be a source contestation
- iii. There are various options of private sector participation in land administration and each has its unique peculiarities. These may include Build-Operate-Transfer, Build-Own-Operate-Transfer, Concession Agreement, Management Service Contract and Build-Maintain-Transfer among others. Which comes with its own strengths and constraints. Therefore, it is key to conduct careful appraisal and preliminary needs assessment in order to identify the most appropriate typology of market-oriented vehicle for the reform process
- iv. Private Sector Participation in Land administration must be situated in the broader context of public administration which are guided by many laws and regulations. It is therefore important to undertake a diagnostic review of national financial management, legal and regulatory architecture in order to align the arrangement within the appropriate context
- v. Structuring a Private Sector Participation in land administration is a complex intellectual and technical process that requires broad range of cutting edge skills in financial modelling, economic forecasting, legal analysis, public procurement, institutional reform and public administration among others. It is important to ensure that the relevant skills set is available in order to ensure arms-length negotiation

between the parties involved. In effect, there is the need to augment and enhance capacity in a cross sectorial manner to facilitate negotiations and procurement

- vi. Make adequate budgetary allocation for project preparation as initial cost may be significant, especially if the required competencies are not available inhouse and must thus be outsourced. Depending on the prevailing legal regime, the process of outsourcing may be subjected to procurement regulation and this may further cause additional delays. There is therefore the need to undertake skill gap analysis for managing the process ahead of time in order to ensure effective planning.
- vii. Prioritize Multi-stakeholder management consultations with stakeholders, including addressing apprehension among staff of state land sector agencies as part of change management process. This is key because, as a novelty in land administration, its introduction represents considerable change and this often results in apprehension and anxiety especially as a result of fear of retrenchment. It is however important to carry every stakeholder along in order to avoid internal discontent and passive resistance which may undermine the intervention. In this regard, there is the need to develop and implement internal communication strategy, such as the establishment of a multi-stakeholder platform to ensure timely dissemination of information while allowing for feedback so that the concerns and challenges could be addressed.
- viii. Greater flexibility is required in order to ensure optimal outcomes and results. This is because, the entire concept of leveraging the private sector for land administration reform along public-private partnership arrangement is a new and emerging area. Therefore there is limited guiding experience despite the emerging of critical literature on the subject. A lot of the processes require the muddling through approach which demands flexibility and fast learning in order to adapt adequately to emerging issues.

7.0 Conclusion

PPP in land administration is an important option which can serve as a viable alternative or complement to donor funded land administration reforms in developing economies. Private sector offers opportunity to inject capital and enhanced technology in a way that does not add additional pressures to the fiscal space. This is particularly critical in the post COVID-19 pandemic era where developing and emerging economies are confronted with rapidly increasing public debt levels. Notwithstanding the inherent potential of private sector involvement, there is the need to note that, the processes leading up to may be slow as a result of the complexities and the political, administrative, legal and public sector financing architecture which should be navigated. The paper recommends that the processes leading to private sector participation in land administration should be anchored on flexible and adaptive approach of strategic management.

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