INNOVATIONS IN LAND TENURE SYSTEMS AND LAND TITLING

During its transition from racial apartheid to democracy in 1994, South Africa's government announced it would strengthen the tenure rights of the estimated 16 million citizens who lived on communal land. By 2012, however, the government's own reports concluded that the country had made little progress in the area of communal tenure reform. Moreover, decision-makers wrestled with how to handle the hundreds of thousands of people who had moved to shanty towns on city outskirts—and to regularize the rights of people who once had formally recognized individual tenure but unwittingly undermined the security of their claims by passing land "off the register" to family members or other members of their communities.

South Africa's predicament embodies the kinds of land tenure and property rights challenges many countries confront today. This cross-cutting brief sketches several approaches to solving some of these problems, the subject of six Princeton ISS Case Studies on innovations in land tenure and titling. In each instance, the innovators had to address a variety of legal and technical challenges, and persuade both community members, civil servants, and politicians to accept and sustain the new property rights systems they created. The brief provides a few key takeaways from these experiences and highlights issues that require further innovation. Interested readers will find more detail in the cases linked to the text.

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THE COMMON GOAL

Why should we pay attention to land tenure? In all of the countries profiled here, inability to secure land rights sparked conflict within communities or triggered protest against land-grabbing. Population growth increased these challenges. But mitigating conflict and limiting land-linked injustice were not the only reasons to take action. In the view of all of the governments involved, tenure insecurity also had profound effects on livelihoods. When households did not know from one month to the next whether they would continue to have access to the plots where they lived or farmed, they had no reason to invest in improvements or maintain the fallow periods required to sustain fragile soils. Economist Hernando de Soto, whose ideas some of the reformers took to heart, also highlighted the costs of "dead capital." Without clearly delineated rights, the urban and rural poor could not use their property as collateral for loans to create businesses or scale-up their enterprises. Finally, in some parts of the world access to government agricultural credit, as well as drought or disaster relief, hinged on proving rightful ownership.

In each of the case studies, the goal of decision-makers was to supply a legal framework that would provide increased security for both communities and individuals. However, the decision-makers profiled in the case studies sought to address these problems in particularly distinctive contexts. In their countries, where land was often governed by customary rules, rights often overlapped and boundaries were unmapped. In other situations, where people squatted on public lands, the ambition was to provide enough recognition, short of absolute ownership, that the government could provide basic amenities, such as water, and households would have some ability to protect themselves against dispossession.

All of these situations came together vividly in South Africa, where multiple forms of land tenure, ongoing redistribution of government land, and restitution of territory seized during the apartheid era were all in play at once.

DELIVERY CHALLENGES

Across the cases in this series, innovators had to address several common delivery challenges:

- convince politicians to amend national or municipal law in order to allow titling to move forward.
- persuade communities to participate, a difficult task where there was a legacy of distrust or some members had already secured privileged claims to land.
- devise ways to help communities define membership and delineate boundaries, as well as resolve disputes—and do so in a cost-effective way (while technology could boost efficiency and clarity, it did not

replace the need for high capacity support teams at the national or regional level).

- increase recognition and inclusion of women's rights to land.
- improve access to registries and persuade households to keep future transfers or improvements on the books.
- link landholders to extension services that could help them derive increasing benefit from their properties.

Each project profiled met some of these challenges effectively, while it struggled with others.

SIX STORIES AND TAKEAWAYS

Six recent examples of innovations reveal impressive accomplishments as well as some lessons learned.

1. South Africa's Communal Land Tenure Experiment, Ebenhaeser 2012-2017
Following the 1994 transition from racial apartheid to democracy, South Africa's government aimed to provide tenure security for the estimated 16 million black South Africans living in communal areas. But the lack of a clear legal framework applicable in most of these settings meant that progress was slow. The seed of a workable alternative lay in a different law, which applied to smaller communal areas formerly known as "coloured reserves," where the earlier apartheid governments had settled people of mixed race. In 2009, land reform Minister Gugile Nkwiti designated one such area—Ebenhaeser, on the country's west coast—as a rural "flagship" project. The aim was both to transfer land held in trust by the government to Ebenhaeser community members and to settle a restitution claim arising from the dispossession of households during the racially restrictive apartheid era. Provincial officials from Nkwinti's ministry, working with private consultants, organized a communal association to serve as landowner. In March 2017, the community adopted a land administration plan that set rules for residents' use and transfer of the parcels they acquired, paving the way for Ebenhaeser residents to become the legal owners of their communal territory. (For the details see ISS Case Study "Putting Justice into Practice: Communal Land Tenure in Ebenhaeser, South Africa, 2012-2017.")

Three Quick Takeaways:
- In many countries, the key question is whether traditional leaders should become legal landholding entities. Community Property Associations (CPAs) on Ebenhaeser's model offer an alternative approach.
- A strong, high-level project steering committee is critical for driving implementation because these projects require cooperation among many different stakeholders.

- For a transitional period, new CPAs need economic services such as agricultural extension and marketing assistance, as well as capacity building, in order to help their land generate a livelihood. Documentation of land ownership was not enough to immediately enable the Ebenhaeser CPA to use its land productively or access credit.

2. *Tanzania's Village Land Titling Programs, 2008-2017*

In the early 2000s, Tanzania struggled to protect the land rights of the 75% of its citizens who lived in rural areas. Rapid population growth and rising investment in commercial agriculture had increased land scarcity and created the potential for violent conflict in parts of the country. In accordance with the provisions of a new law, the national lands ministry launched a pilot project in 2004 to title 158 villages and more than 1,000 individual parcels. Building on lessons from the project, the government passed a new land-use planning act, created an implementation program, and drew up a strategic plan to title rural land throughout the country. Starting in 2008, the lands ministry worked with community leaders to grant villages and their residents title documents that protected them from land grabbing. Villages also decided how they would use communal land and set up committees to resolve boundary disputes. Officials constructed registry buildings in villages and districts to house title documents before surveying individual land parcels and handing over titles to village residents. By 2017, more than 11,000 of Tanzania's approximately 12,500 villages had mapped their outer limits, and about 13% of villages had also adopted land-use plans. Of the approximately 6 million households located within rural villages, about 400,000 also had obtained individual title documents. (For more detail, see the ISS Case Study "Registering Rural Rights: Village Land Titling in Tanzania, 2008-2017.")

Three Quick Takeaways:
- Sit down with communities and talk through the pros and cons of registration in a changing economy. In many rural communities, there are overlapping claims to land or to some features, such as a path, forest, or water source. Moreover, some land may be regarded as communal, while individual households control other plots for periods the community defines and a few areas remain available for families temporarily affected by misfortune. It is important to sit down with communities and talk through the pros and cons of registration in a changing economy. Once a community is on board, start with land use mapping to help people perceive and understand overlapping claims.
- Tanzania enacted a law that established elected community-level land adjudication committees that resolved disputes and led the process of land use planning. Under these laws, women held four of the nine

seats on each committee. Tanzania employed a highly decentralized approach to titling that required investment of significant time and resources in capacity building. Other country experiences offer ways to benefit from economies of scale.

- The country's highly decentralized approach to surveying and titling land came at a cost in terms of time and resources. The Mozambique and Rwanda cases profiled here illuminate ways to realize economies of scale

3. *Mozambique Puts Rural Communities on the Map, 2007- 2016*

In April 2006, six international donor agencies established a program to help Mozambique's government register community land rights and improve tenure security for rural residents. Under Mozambique's constitution, the state owned all land. A 1997 law, adopted after a 15-year civil war, sought to recognize rural communities' customary tenure rights while encouraging commercial investment through the issuance of 50-year leaseholds. But many communities failed to register their holdings with the central government, leaving their rights vulnerable to powerful state and corporate interests.

To address the problem, the donor group established the Community Land Initiative (iniciativa para Terras Comunitárias, or iTC), a program to register community parcels in the government cadastre and empower communities to negotiate with potential investors. The iTC coordinated with national and local governments as well as nongovernmental organizations to map the borders of community lands. The program informed community members about their land rights and how to use and protect them. It also established natural resource committees, which enabled communities to receive shares of the natural resource taxes paid by commercial investors working on communal lands. The iTC further created producer associations to support budding commercial farmers, resolved boundary disputes, and worked with provincial cadastral offices to issue certificates that specified property boundaries.

By mid 2016, the program had registered 655 communities in the government cadastre—nearly four times the estimated 171 community registrations carried out before the iTC was established. The registrations covered 6.9 million hectares and 10% of the country's rural population. (For more detail, see the ISS case study "Putting Rural Communities on the Map: Land Registration in Mozambique, 2007–2016.")

Three Quick Takeaways:
- Training elected community committees to adjudicate disputes enhances legitimacy and makes progress easier. Mozambique also provided community mechanisms for providing individual members longer-term access to particular parcels in order to encourage agricultural enterprises and other income-generating activity.

- Highly participatory, community-based approaches to boundary delineation can counter the risk that titling will privilege politicians or the socially powerful, though it does not guarantee that outcome. Requiring higher-level political approvals may increase the risk.
- In communal areas, defining who is a member of the community is a process that can spark "retribalization" if the eligibility rules privilege long-term historical ties.

4. *Making Land Titling Work in Rwanda, 2012-2017*

In June 2012, Rwanda's national land registry completed a nearly four-year project that mapped every one of the country's 10.4 million parcels and prepared title documents for 8 million landholders. It was an unprecedented accomplishment in a country in which lack of land titling had weighed on the economy and led to escalating conflict over access to land. The mapping program promised to reduce tensions by establishing an orderly system for registering and transferring land ownership. However, the system could work only if Rwandans registered every transaction, and in 2012, a survey found that only about one of every eight landowners had even bothered to pick up their official titles. The registry urgently had to both make it easier to register transactions and build public awareness about the importance of keeping the land database up-to-date. A registry team launched a nationwide campaign to raise awareness about the importance of titling and of reporting all land transactions. Managers simplified procedures and registration forms. And to provide greater access in rural areas, where titling was nearly unknown, the registry decentralized services and introduced a new software platform to speed transactions. By mid 2017, more than 7 million people had collected their titles, and registrations of sales, purchases, and other kinds of transfers had begun to improve. Still, the number of transactions reported in 2016 fell short of the registry's target, indicating that further work lay ahead. (For more detail see the ISS case study "[Securing Land Rights: Making Land Titling Work in Rwanda, 2012-2017](#).")

Three Quick Takeaways:
- Rwanda's experience highlights the value of a strong communication program and easy access to registries. Without these, people may not benefit from mapping and titling campaigns. Rwanda ended up decentralizing aspects of registry functions in order to bring the service closer to people, and it launched periodic national registration days to highlight why it is important for households and communities to work with the system.
- As part of its effort to decentralize, Rwanda thought hard about how to automate and streamline its processes in order to make them more effective. Others could borrow some of the systems it developed to make remote data entry accurate and easy to process.

- Making the agency partly dependent on the fees it collected for processing transactions, as some higher income countries did, was sustainable only where there was an active land market. Without a high transaction volume, the fees charged to process titles could easily exceed the ability of many households to pay. It risked of keeping transactions on register unaffordable.

5. *Kyrgyzstan Builds from Scratch, 1999-2009*

In 1999, eight years after emerging from decades of Soviet domination, Kyrgyzstan began an ambitious effort to officially recognize property ownership throughout the country and lay the groundwork for a vibrant real estate market. During five and a half decades of rule by the Soviet Union, citizens were not allowed to own land. After independence in 1991, the question was how to register and document property rights so that people could transact efficiently in a new land market.

Although the privatization process involved many institutions and various levels of government, most activity took place locally. Land committees at the *rayon* (district) and village levels drew up lists of plots and determined who would receive rights to use them. In a second phase, the land registry, Gosregister, sent teams of specialists house to house to confirm parcel boundaries and ownership. If a household had an ownership certificate, that was sufficient. It if did not, then the team dug through archives to try to discern the identity of the real owners, drawing heavily on municipalities' "household books," which listed who lived where and who was responsible for bills like electricity. The teams publicly posted the information for three months so that anyone who objected could dispute the claim at the land commission.

Rapidly, many people acquired individual titles to land. But the country faced additional challenges. Seeking economic opportunities unavailable in rural areas, thousands of Kyrgyzstanis migrated to cities, especially the capital, Bishkek, during the 1990s and early 2000s. As the numbers of migrants grew and the supply of land shrank, some settled informally on land that was not zoned for housing and that lacked government services. Without an official residence, people had only limited access to schools and utilities. Despite impressive success overall, this problem remained unresolved, as did a growing problem of land grabbing by cartels and the politically powerful in some parts of the country. (For more detail, see the ISS case study "[Cementing the Right of Ownership: Land Registration in Kyrgyzstan, 1999–2009](.)")

Three Quick Takeaways:
- Kyrgyzstan used both community forums, land commissions, and formal courts to resolve disputes about boundaries and ownership. The community forums proved central to resolving disputes quickly and easily, however.

- The land agency made a point of creating offices in every district to limit travel times, even when transaction volumes were low. They also used mobile services to reduce the costs of registration for individual households in remote areas.
- The sticky problem of informal settlement on the urban fringe went unsolved, but a few years later Cape Town, South Africa began an experiment that might hold promise (see below).

6. *Legal innovation in Cape Town, South Africa*

In 2009, South Africa's second-most populous metropolitan area, Cape Town, adopted a new strategy to usher the rule of law into shantytowns that had sprung up on its outskirts, on municipal land. Without legal property rights, most of the residents of those communities were vulnerable to eviction and had access to neither municipal services nor home addresses they could use to obtain cell phone contracts or other basic goods. Lacking both the space to relocate households and the money to build enough new houses, the city partnered with a program called Violence Prevention through Urban Upgrading to pilot an in situ settlement upgrade that allowed people to remain in their homes. The city agreed to issue occupancy certificates that recognized residents' rights to remain on the land, that protected against arbitrary eviction, and that laid the groundwork for eventual access to the services enjoyed by city residents living in legal housing.

The pilot project focused on Monwabisi Park, a community of about 25,000 on the southeastern edge of Cape Town. Beginning with a full enumeration of land, structures, and occupants, the project helped construct a community register, issue occupancy certificates, and extend electric power throughout the area. By November 2016, the first phase of the project had been completed, and hundreds of residents visited the community registration office every month to update their details. Using their occupancy certificates, residents could obtain cell phones, register their children in schools, receive medication from the health department, and open furniture store accounts.

The second phase of the project—rezoning and physically upgrading the settlement—stalled in late 2016, as Cape Town officials wrestled with the basic question of how to install water and sewerage infrastructure in situ without moving any households. Even with that pause, though, Monwabisi Park offered important lessons for other cities and countries about how to provide poorer, more-transient citizens greater stability and financial access. (For more detail, see the ISS Case Study, "[Land Rights in the Township: Building Incremental Tenure in Cape Town, South Africa, 2009–2016](#).")

Three Quick Takeaways:
- It takes strong commitment on the part of successive mayors and city managers to make this approach work. Leaders must encourage realism and persuade skeptical citizens that this use of municipal land

is preferable to the status quo and to other alternatives. They must also build credibility with distrustful residents. The big breakthrough was when the city allowed the community to stay where it was and apply for occupancy certificates, which took skillful advocacy by the community organizations and municipal officials, as well by the mayor.

- Community-led land surveys take time and a support team whose members develop strong relationships with residents, especially in a complex urban environment where trust is low. Rushing the process can scuttle the project. Further, visible administration—having the project team physically working in the settlement on a regular basis— is key to maintaining an organized tenure administration system. At this level it is possible to help new holders of occupancy certificates understand their rights and the consequences of off-registry transfers.

- Securing upfront agreement with city engineers on infrastructure plans is vital. Failure to approve a design plan after the program has launched frustrates residents and undermines the progress already made.

FRONTIERS FOR FURTHER INVESTIGATION & INNOVATION

Learning and adaption are part of the modern credo. In that spirit, these examples provide plenty of fuel for further innovation.

- To address the challenges of communal areas, what can we learn about how best to create and structure community property associations or their equivalents, in different contexts? What can we learn from emerging experience in Mozambique and South Africa as well as from Mexico's somewhat related ejido system?

- Is it possible to build technical/support teams that can lend their skills to many communities and help achieve economies of scale in the mapping and titling process, or does extreme decentralization— training local NGOs or community members to carry out these activities—have enduring value and increase speed? This issue is distinct from community engagement and participation, which universally underpinned success in the cases highlighted.

- Can software design developed by countries like Rwanda help facilitate effective operation of decentralized registries in other parts of the world? What modifications would prove necessary? Rwanda also secured its registry in important ways. Would these same steps be effective in other environments?

- How do incremental tenure systems or occupancy systems affect violence and economic well-being in informal settlements on the urban fringe? Long-term tracking of the Cape Town experiment and of analogous arrangements in Brazil and other settings would help

city councils elsewhere decide whether this potentially controversial legal device brings promised benefits.

- Improvement in livelihoods requires more than security of tenure. New landowners must still have the know-how, networks, and infrastructure access to market what they produce effectively. What steps could we take to link agricultural extension or business services more to land registration more effectively?

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