Driving Change, Securing Tenure
Innovations in Land & Property Rights

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List of Case Studies

1. Putting Justice into Practice: Communal Land Tenure in Ebenhaeser, South Africa, 2012–2017


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PUTTING JUSTICE INTO PRACTICE:
COMMUNAL LAND TENURE IN EBENHAESER, SOUTH AFRICA, 2012–2017

SYNOPSIS
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 to most communal areas meant that progress was slow. In contrast, a viable legal framework did exist to guide tenure reform in smaller communal areas formerly known as “coloured reserves,” where a series of apartheid laws 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. Provincial officials from Nkwinti’s ministry, working with private consultants, organized a communal association to serve as landowner. They helped negotiate an agreement with white farmers to return land that had originally belonged to coloured residents. The community also developed a land administration plan that would pave the way for Ebenhaeser’s residents to become the legal owners of their communal territory.

Leon Schreiber drafted this case study based on interviews conducted in the Western Cape, Gauteng, and Eastern Cape provinces of South Africa, in March 2017. Professor Grenville Barnes of the University of Florida-Gainesville assisted with interviews and drafting. Case published May 2017.

INTRODUCTION
At a 2009 press conference, Gugile Nkwinti, South Africa’s new land reform minister, acknowledged that the government had a long way to go to secure property rights for millions of black and mixed-race citizens previously dispossessed or blocked by law from owning land. Earlier whites-only apartheid governments had sought to confine 70% to 80% of South Africans to 13% of the country’s territory. Even after 15 years of democracy, much of that racial disparity persisted.

Jacob Zuma, who had won the presidency in the 2009 election, had pledged to put more land in the hands of the rural poor during the campaign. On taking office, he set up a new Ministry of Rural Development and Land Reform and appointed Nkwinti, a former provincial traditional affairs and agriculture minister, to lead it.

Nkwinti had no time to lose. A 2008 report by the respected Institute for Poverty, Land and Agrarian Studies at the University of the Western Cape shone a harsh spotlight on the post-
apartheid government’s failure to meet the targets of its own land reform program after the 1994 transition to democracy. The report highlighted the lack of progress toward strengthening the tenure rights of the estimated 16 million citizens who lived on communal land in the former blacks-only Bantustans (later known as homelands), as well as in former so-called coloured reserves (the term “coloured” referred to South Africans of mixed-race). It concluded that “little progress was made in the area of communal tenure reform.”

Determined to inject fresh momentum into the program, the land reform ministry asked provincial officials to help identify rural “flagship” projects that could begin right away and produce meaningful results. Michael Worsnip, the chief director for restitution support in the Western Cape province, recalled: “The minister asked me which projects he should prioritize, and without hesitation I said, ‘Ebenhaeser.’”

The Ebenhaeser community on South Africa’s arid west coast was the Western Cape’s biggest tenure reform and restitution project, covering a total of 23,755 hectares. The project had been stalled since the late 1990s. Nkwinti’s new land reform ministry set out to turn Ebenhaeser into a success story.

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**Box 1. Tenure and traditional leadership in the former homelands of the Eastern Cape**

It was easier to improve land tenure security in the former coloured reserves of the Western Cape than in homeland areas of the Eastern Cape partly because of the distinct histories of these regions. While most of the country’s 23 former coloured-only reserves were located in the Western Cape, the province had none of the 10 communal blacks-only homelands that had existed under apartheid. And because coloured reserves were much smaller than homelands, communal land accounted for only 0.5% of the Western Cape’s total land area.\(^1\) In neighboring Eastern Cape, by contrast, communal land covered nearly a third (31%) of the province.\(^2\)

The apartheid government created reserves like Ebenhaeser in the western half of the country to hold the local Afrikaans-speaking coloured people, who were descended from mixed-race parents as well as from the indigenous Khoisan and Malay slaves. The British colonial government originally created the Eastern Cape’s communal homelands, the Ciskei and the Transkei, as reserves for the black isiXhosa speaking people whom the European settlers had encountered in the southeastern part of South Africa.

Owing to the arid natural conditions, the areas designated as coloured reserves were far less populated than the fertile Ciskei and Transkei homelands. Because coloured South Africans enjoyed relatively more freedom of movement than black people under apartheid, many flocked to the urban centers in search of work. The combination of more rapid urbanization and a drier climate drained the coloured reserves of people, while stricter controls on movement and better climatic conditions sustained much higher numbers of people in the homelands.

A further crucial difference was that the colonial and apartheid governments did not recognize traditional leaders in the coloured reserves. However, in homelands such as the Eastern Cape’s Ciskei and Transkei, the government actively co-opted the traditional leaders, putting them on the government payroll, and granted them near-total control over land administration.

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THE CHALLENGE

The difficulties confronting officials from the ministry reflected Ebenhaeser’s complex history, which was not unlike that of many rural communal areas in South Africa. In the mid-1920s, the apartheid government had earmarked the fertile lands of the lower Olifants River Valley, four hours’ drive north of Cape Town, for occupation by white South Africans and built a canal system to support the development of commercial farms. However, a community of mixed race, or coloured, people occupied some of the most fertile lands in the valley, which was surrounded by a semi-desert. (See Textbox 1)

In 1925, the government had evicted the community, resettled its members 30 kilometers down river at the mouth of an estuary, and designated the new settlement, Ebenhaeser, as a coloured reserve. Sandy soil made the land poor for grazing and agriculture, and the salty water in the estuary was unsuitable for consumption and irrigation because of the Atlantic tide. Under apartheid-era laws, neither the community nor its residents could own any of the 18,288 hectares of the reserve. The national government held the territory in trust, through the Ministry for Coloured Affairs.

Following the country’s transition to democracy, the government had enacted the 1998 Transformation of Certain Rural Areas Act, sometimes referred to by its acronym Trancaaa, to serve as a guide for transferring land in former coloured reserves such as Ebenhaeser from the national government to the community. But the
six-page law established only broad principles, and assigned significant discretionary powers to the land reform minister to prioritize projects. Before Nkwiti’s new ministry came together in 2010, none of the 23 former coloured reserves identified in the act had received land. (See Textbox 2)

The legal intricacies did not end there, however. In 1996, two years earlier, a community member named Peter Love had secured help from the Legal Resources Centre, a land-rights NGO, to lodge a claim under the 1994 Restitution of Land Rights Act for the return of some of the farms from which Ebenhaeser’s residents had been forcibly relocated in 1925. (The restitution law enabled any individual or community to submit a restitution claim for land lost between 1913 and 1994 as a result of racially discriminatory legislation.)

“The government initially offered us a cash settlement of 20 million rand (South Africa’s currency) back in 1998” (equivalent to about US$3.6 million at that time), Love said. “But the community rejected that, because they wanted the original land back.”

Another complicating factor was that in the decades after the community’s relocation the lower Olifants River Valley had become one of South Africa’s major commercial wine-grape producing regions, with an annual harvest of 48,000 tons of fruit. Although South African law gave the government the authority to expropriate land for restitution subject to paying “just and equitable compensation,” taking this step was politically sensitive and rarely pursued. Since 1994, the land reform ministry usually employed a “willing buyer, willing seller” policy. This meant that the restitution commission, which was part of the ministry, had to offer the existing owners fair market value for their properties and persuade them to accept the deal. But it also meant that those owners could potentially hold up the restitution process or demand exorbitant prices for their land.

Worsnip and his team at the Western Cape’s land claims commission thus had to negotiate a deal with the commercial farmers, many of whose farms were worth hundreds of thousands of dollars on the open market, to sell their land to the restitution commission, which would then transfer that property back to the displaced community.

The difficulties were operational as well as legal. Finding a solution required collaboration among many people and several levels of government. Interested parties included Ebenhaeser residents, different parts of the land reform ministry at both national and provincial level, the land registry, the agriculture department, and commercial farmers, as well as the local Matzikama municipality, with a population of about 67,000, including Ebenhaeser’s residents.

On top of these challenges, the new land reform ministry also lacked the capacity to lead all aspects of the project itself. Nkwinti recalled, the ministry had “insufficient capacity to administer functions mandated by the constitution, such as proper research and verification of land claims and deal making; information and records management; communication with claimants regarding their claims; and, constantly monitoring the state and functionality of the communal property institutions.” The ministry had job vacancy rates of 18% and 23% in its land reform and restitution departments, respectively. And both units had important roles to play in the Ebenhaeser project.

The administrative tasks were complex. Working with the community, officials had to survey the land and decide on the most appropriate ways to register the parcels in the deeds registry, and build a system for administering the communal land after Ebenhaeser became the owner. For the land that came to the community as part of the restitution claim, the community would need to draw up business plans for how the residents of Ebenhaeser—many of whom earned less than the poverty rate of 3,500 rand (US$250) per month—
would access capital to manage sophisticated farming operations.

FRAMING A RESPONSE

The first task was to create a forum for coordination and negotiation. Worsnip, the head of the provincial office of the restitution commission, and land reform officials worked together on this step, with the help of consultants they hired.

Henk Smith, an attorney from the Legal Resources Centre, South Africa’s largest public interest and human rights law organization, explained that the law regarding coloured communal areas prescribed no clear procedures. “It was wide open, which was a strength, because it could adapt to realities on the ground,” he said. (See Textbox 3)

The restitution law also allowed the provincial restitution commission to negotiate between the government and communities during any land reform project. Worsnip, who was appointed to lead the commission in early 2012, found that land reform ministry officials had already created an Ebenhaeser steering committee in 2005. But the committee had made slow progress in bringing Ebenhaeser residents together with other stakeholders.

Worsnip began to chair the steering committee meetings himself in order to improve coordination. A former priest who had founded a land rights NGO in KwaZulu-Natal and worked for the land claims commission as the director for research, he breathed new life into the body.

The project started to take off. Working together with David Mayson, whom the ministry re-appointed as the project’s lead consultant in 2012, the committee managed to get key groups to commit to the goals. Meetings included not only Ebenhaeser community representatives but also officials from the restitution commission, the provincial land reform office, various divisions of the Western Cape agriculture department, the provincial housing department, Cape Nature (the provincial environmental protection agency), the national department of water affairs, the local Matzikama municipality that included the Ebenhaeser community, as well as a number of white commercial farmers and representatives from the local Lutzville Vineyards. (Lutzville was the third largest wine producer by volume in South Africa and purchased almost all the wine grapes produced in the valley).

The steering committee “had all sorts of people who were part of it, and it was a really active committee where everyone could be kept up to speed on what was happening and take joint decisions where necessary,” Worsnip said. The group met every six weeks, hosted by the Matzikama municipality at the nearby Vredendal hotel.

Importantly, the committee was able to align the two overarching challenges: restituting the commercial farms back to the community, on the one hand, and giving the community ownership over their existing communal lands through tenure reform, on the other. “Officials working on tenure reform sat together with [the restitution commission], discussing the settlement of the claim and all other aspects of land reform in Ebenhaeser. It was a very useful vehicle to keep it all together,” said Ben Mars, a legal adviser for the Western Cape restitution commission. Mayson, the consultant from Phuhlisani Solutions, which focused on land reform and rural development, emphasized: “You couldn’t separate the Trancraa land from the restitution land, because they were adjacent to each other. They had to be viewed as one entity.”

With a joint forum for coordination and a project plan in place, the hard work of implementation began in mid-2012.
Box 3. The (incomplete) legal basis for communal tenure reform

In selecting Ebenhaeser for its rural flagship project in the Western Cape, land reform officials chose to focus their where the potential for progress was greatest. Despite the lack of precedent for tenure reform projects and the complications introduced by the restitution claim, there was a firm legal basis for transferring land in and around former coloured reserves to their residents.

It was nearly impossible to make meaningful progress on tenure reform in other types of communal areas, such as the former homelands, where there was no law in place, however. The legal void was the result of a ruling by the Constitutional Court on May 11, 2010—exactly one year after the creation of the land reform ministry—that confirmed a lower court decision to strike down the Communal Land Rights Act. Enacted in July 2004 to facilitate tenure reform in the communal areas of the former homelands, the act was never applied.1

Controversy and legal challenges had dogged the Communal Land rights Act since its inception. Land rights NGOs such as the Legal Resources Centre, as well as representatives of four traditional communities who brought the original court challenge, argued that the act “undermined their security of land tenure because it undercut all the layers of decision-making around land, except that of chiefly power … [It] gave traditional councils (‘tribal authorities’ under apartheid) wide-ranging powers, including control over the occupation, use and administration of communal land.”2 Affected communities also complained that the act reinforced “apartheid-era tribal units” and “rendered the tenure of women more insecure in the same way that colonial and apartheid laws gave rights exclusively to men.”3 However, the courts ultimately ruled the act unconstitutional on the grounds that the process of creating the law had involved inadequate consultation.4

The new land ministry suddenly found it had no legal basis for undertaking communal tenure reform outside of the 23 former coloured reserves. Taken together, these 23 areas amounted to only 1% of the 17.2 million hectares of communal land in the country.5

The government’s failure to replace the communal land act with a new law that was consistent with the constitution was a painful blow to the country’s most vulnerable citizens. More than 90% of South Africa’s poorest municipal regions (known as wards) were located in former homelands, while more than 73% of former homeland residents earned less than 604 rand ($47) per month, compared with 46% for the rest of South Africa.6

GETTING DOWN TO WORK

Together, the committee had to create a democratic entity to define the legitimate participants of the project, represent the Ebenhaeser community during meetings with land reform officials, and become the legal landholding entity. It also had to determine the precise parameters of the restitution claim and communal land, and then work to settle the restitution claim, formalize ownership, and create a land use plan for how the Ebenhaeser community would manage its communal land going forward. Several of these steps proceeded simultaneously.

Empowering the community

The first step was to ensure that the Ebenhaeser community itself had a significant and legitimate role in negotiations and decision making. Although local leaders, including Peter Love, had represented Ebenhaeser informally during meetings, it was important to create an organization that could officially act on behalf of the community and elect its members democratically.

In addition to establishing an elected leadership structure, this new body—known as a communal property association, or CPA—also would serve as the legal owner of land acquired through restitution as well as tenure reform. The purpose of the Communal Property Associations Act, promulgated in 1996, was to “enable communities to form juristic persons…in order to acquire, hold and manage property on a basis agreed to by members of a community in terms of a written constitution.” Although CPAs had been widely used for land restitution cases since the mid-1990s, land-reform officials like Mayson were aware that infighting often undermined the associations’ ability to use its land productively.

The task of dealing with sensitive local political matters, including tensions between community leaders aligned with the ANC and those of the opposition Democratic Alliance party, fell to Mayson, the consultant. According to Worsnip, “Mayson was worth his weight in gold. He personally had community connections that nobody else had [based on previous work in the community during the early 2000s], and because of his measured personality, he was able to pull things together like nobody else could.”

In contrast to communal areas in the former homelands, Ebenhaeser’s residents did not live under a system of traditional leadership. David Smit, a land restitution official, described it as a “cohesive” community with a group of dedicated informal local leaders who were determined to see the land reform project implemented. “Unlike in some other cases, it was luckily a community where there was a common understanding that this was one unified community,” he said. “That part made it a little easier.”

A key prerequisite for creating the CPA was to specify, in a written constitution, who the members of the Ebenhaeser community were, as this step ultimately determined who would benefit from the tenure reform and restitution processes.

“The fundamental issue was that no community is stagnant over time,” Smit said. “In some cases, people who weren’t currently staying there still regarded themselves as part of the community.” He added that Ebenhaeser learned from the experience of the Elandskloof community, about 250 kilometers distant, which was the first restitution claim in post-apartheid South Africa. “There, people who lived in Cape Town would show up to vote during meetings of the CPA. When they left, the people who actually lived there had to deal with the consequences,” he said.

After a series of negotiations with the steering committee and communitywide meetings facilitated by Mayson, residents decided through a vote that only people who were living in Ebenhaeser at the time would be included on the beneficiary list. Following the agreement, representatives of the ministry visited each of the community’s 800 households—2,100 people in late 2012. (Most of Ebenhaeser’s residents lived on the communal land in a cluster of houses that constituted a “town section”). “We were able to...
verify each address, and it included both homeowners and people paying rent,” Smit said.

The final CPA constitution was written in Afrikaans, the primary language of 97% of Ebenhaeser’s inhabitants.14 It declared that anyone who was older than 18 qualified for membership in the CPA if “regularly resident in and committed to the community.” The document specified that regular residence involved “the place where a person physically settled her or himself, from where she or he is only temporarily absent for work, study, illness or holiday. If someone is absent for work for longer than a year, they are not regarded as ‘regularly resident.’”15

The final constitution also allowed the CPA management committee to grant membership to individuals from outside the community, on the condition that the individuals “had proven their willingness to make a valuable contribution to the business of the association and the welfare of its members.”16 Using the information from the earlier survey and based on the constitution’s definition, Smit compiled a list that contained the name and national identity number of every CPA member, each of whom received a membership certificate. The membership list was attached as an annex to the constitution.

Residents also decided to provide a once-off payment of 7,500 rand (about US$570) to all residents older than 60 on the date of the restitution claim’s finalization. Smit explained the logic: “The idea was that older people wouldn’t benefit the same as other people, as the benefits of land reform would accrue over a period of time. Since the lifetime stream of benefits would be lower for older people, residents decided that it would be fair to provide them with a portion of the settlement in cash. To finance the cash tradeoff, the community voted to remove a portion of commercial farmland from the restitution claim.

The constitution also set up a management committee to run the day-to-day affairs of the association. It provided for a minimum of nine and a maximum of 17 members, four of whom had to be women and two of whom had to be younger than 30.17 The community would elect 15 members, while the Matzikama municipality and the national land reform ministry would each appoint one.

Through a community referendum, residents adopted the final constitution in late 2013.

For the association’s first election, conducted in early March 2014, the community was divided into seven wards, each of which would elect two committee members to four-year terms. On the day of the election, Mayson as well as Johnny Slingers, deputy director for land reform in the Western Cape, and his colleagues from the provincial land reform office distributed ballot papers to everyone on the membership list and oversaw the election process.

The initial committee members had the option to seek reelection once. The association’s constitution called for elections every two years, with half the seats up at any given time. On March 19, 2014, after the land reform ministry signed off on the fairness of the electoral process, Ebenhaeser’s communal property association registered with the ministry.

Investigating the restitution claim

The ministry’s newfound political commitment to resolving the restitution claim—first filed in 1996—spurred action. Worsnip’s commission first required Ebenhaeser to submit a Community Development and Land Acquisition Plan, in line with the commission’s mandate to empower claimants to make productive use of the restitution land.

“[With 800 total households in Ebenhaeser], we were talking about a substantial number of people and large tracts of commercial land that was going to be released,” Smit explained. “So we needed them to submit a business plan to ensure that we increase productivity. [A few years down the line,] nobody should be able to say, ‘You spent all this money, but there’s nothing going on and the claimants are worse off.’”

Mayson and EcoAfrica Environmental Consultants, a Cape Town-based firm, worked
In October 2013, Ebenhaeser residents adopted the final version of the plan during a community meeting. In the document, the community sought a total of 5,467 hectares of farmland—of which 1,606 hectares were on 53 privately-owned commercial farms. The national government held the remaining 3,861 hectares. (This land was in addition to the existing 18,288 hectares of communal land that the community would own.)

In addition to detailing the land claim, the plan also proposed to establish a development trust “to be the operational arm of the affairs of the community and to address the developmental aspects in the community.”18 The trust, which was a limited liability corporation based on the U.S. model, would manage commercial farms obtained through the restitution process on behalf of the CPA. The trust would have five members that were elected by the community, two of whom were not allowed to be members of the CPA.

The plan called for trustees with “a variety of skills and experience… On the one hand, there must be trustees that have a good understanding of the issues in the community… On the other hand, there must be trustees who are technically capable and have an understanding of financial matters, of business, of commercial agriculture, of the wine market and the structure of the international wine industry. The trustees must all be persons of high integrity and an excellent sense of fairness.”19 In order to register with the government through a branch of the High Court, the trust also had to adhere to strict financial management requirements. In essence, the trust was a mechanism to inject skills into the project and to protect the financial interests of the community.

Importantly, the plan included a request for financial support from the ministry. The document noted that “the acquisition of these farms without the necessary additional capital for operational needs, for the acquisition of machinery, equipment and for additional infrastructure needed to run the farms acquired, is tantamount to setting the newly established businesses up for failure.” In response, the plan “provides that over and above the funds made available for the acquisition of the land, a support (or recapitalization) fund [should be] established which is used proportionately for these purposes.”

Based on data from Vinpro, South Africa’s largest association of wine producers, the request called for the ministry to provide a total of 121 million rand ($9.6 million) in upfront support funding over a period of three years.

While the community development plan was taking shape, the provincial restitution commission researched the validity and accuracy of the original 1996 claim Ebenhaeser residents had filed. Smit said that, compared to many other claims, “it actually wasn’t such a difficult case to research.” The existence of extensive historical land ownership records in South Africa’s well-established system of surveying and deeds registration played a decisive role.

In the provincial deeds office, located in Cape Town, “we found the property description for who owned the land before 1925,” Smit recalled. “We also tracked down the original legislation which declared that the Ebenhaeser community had to be relocated. So all the documentation was there.”

The commission found that Ebenhaeser’s forebears, mixed-race members of the Rhenish Missionary Society, had the right to reside on and graze the fertile land in the valley under a Crown
Land Deed issued by the government of the then British-ruled Cape Colony in 1837. The Van Rhynsdorp Exchange of Land Act 14 of 1925, passed by the parliament of what had become the Union of South Africa, ordered that 3,168 hectares of the land occupied by Ebenhaeser should become part of a farming plan designed to aid poor white people. That was when the government evicted the community’s residents.

In 2014, Worsnip’s commission ruled in favor of the claimants. Smit said that an important factor in the commission’s decision was the racially discriminatory legal context. “They didn’t have any choice but to accept their removal [from fertile land to inferior land]. It was 1925—it wasn’t like they could say no. They just had to move.” When the land exchange originally took place, the community received no financial compensation to make up for the difference in the quality of their lands.

**Negotiating and settling the restitution claim**

The commission’s next move was to try to negotiate a settlement between the community and the 53 white commercial farmers whose lands were under claim. Importantly, the existence of the well-functioning steering committee meant that the farmers who regularly attended the meetings were continually kept abreast of the commission’s findings. Smith, of the Legal Resources Centre, recalled that there initially was a cooperative atmosphere in the meetings and that many farmers accepted the concept of restitution.

But by late 2013, Worsnip said, the mood began to change as Ebenhaeser’s representatives took a hard-line stance during negotiations. “You had the community that was so incredibly unbending in its view” that its members did not want a cash settlement in cases where white farmers refused to sell their land, he said. “It had to be all or nothing”—the community wanted all their land back. When some of the commercial farmers argued that the inferior land to which Ebenhaeser residents had been moved in 1925 should be taken into account when calculating the extent of the restitution settlement, “the community representatives got upset and didn’t want to hear anything about it,” Worsnip recalled. On the other hand, “there were some [white] farmers who didn’t really believe the claim could be in their interest at any level,” he added.

The deteriorating relationship came to a head during a meeting between Worsnip and some commercial farmers on December 6, 2013. “[Former President Nelson] Mandela had just died, so we had two minutes of silence for him,” Worsnip said. “ Afterwards, I just let them have it. I asked, ‘Tell me what Mandela stood for? Do you think it is really possible that things can just stay the same? That we can just carry on like normal? There was this shocked silence.’ About half the farmers formed an opposition group and threatened to take the restitution commission to court.

The commission eventually persuaded 22 farmers to become “willing sellers.” On June 13, 2015, almost two decades after the original claim was filed, Nkwinti, the minister, attended a ceremony in Ebenhaeser and signed a 350 million rand ($26 million) settlement agreement with the CPA. In addition to promising to transfer 1,919 hectares of government-owned land (down from 3,861 hectares in the original claim), the agreement committed the ministry to use a portion of the $26 million to buy and transfer 44 commercial farms covering 1,566 hectares to the community (down from the original claim’s 53 farms covering 1,606 hectares).

While 22 farmers agreed to sell their land, the remaining 22 decided to challenge the validity of the claim in court. Under the willing buyer-willing seller model, the landowners had the right to refuse to sell their land. And, while nothing in the country’s constitution prevented the government from expropriating land with fair compensation when it was “in the public interest,” this exercise of government power was a controversial option that was rarely used.

The group of farmers who opposed the claim argued that the commission should have assigned
greater significance to the fact that the Ebenhaeser community had received compensatory land as part of their move in 1925, even if the quality was inferior to their original land and the transaction took place without their consent. Worsnip said that, “[Although] I’m absolutely sure that it was a just claim and that it was quite right that the community should get recompense for what they lost … I think the farmers actually have a point, legally speaking.” From Smit’s point of view, “the only thing that could happen as a result of the case is that the court says we must reduce the size of the restitution land somewhat, because the [initial] exchange of land itself was obviously not fair.”

In early 2017, the case remained in the hands of the land claims court.

**Formalizing ownership via the land registry**

Despite the pushback from half of the affected commercial farmers, the ministry moved to start purchasing farms from the 22 willing sellers. But in order to legally register the land in the name of the CPA, the ministry had to work closely with the Western Cape Surveyor-General and Registrar of Deeds, located in Cape Town.

The country had a well-developed land registration system with clear rules for how land should be transferred. The land reform ministry undertook to purchase nine out of the 22 available farms, and the transfer process started after a farmer formally accepted the ministry’s purchase offer.

John Obree, the former Surveyor-General for the Western Cape, explained, “The cadastral process is made up of four different elements, the first of which is for a private surveyor to ensure that the land has been correctly surveyed and to prepare a diagram for the registration of that parcel.” The survey process benefited from the existence of a national control framework developed in the 1800s, which meant that most property boundaries were referenced to a national coordinate system. By using the descriptions and coordinates on old survey diagrams, surveyors could easily locate and confirm the boundaries of any land parcel in South Africa. In the case of Ebenhaeser, the nine farms earmarked for transfer already had official survey diagrams, held in the Surveyor-General’s Cape Town office.

After confirming the accuracy of the property boundaries, the Surveyor-General’s office sent the diagrams to the deeds office. Coordination between the two registration agencies functioned smoothly. “The Cape Town land registry is the oldest in the country—the Surveyor-General and the deeds office have been in the same building for over 100 years,” Obree said.

In the third step of the transfer and registration process, the land reform ministry hired a private conveyancing lawyer, who was legally responsible for ensuring that the new deeds contained all applicable conditions, that illegal conditions (such as those based on racial discrimination) were removed, and that all transfer duties and taxes were paid (See Textbox 4).

After confirming that the government had paid the first nine out of 22 farmers who had agreed to sell their land, the conveyancer submitted the deeds to the deeds office. The Registrar of Deeds then checked and registered the property in the name of the new Ebenhaeser CPA.

According to George Tsotetsi, the head of legal support in the office of the Chief Registrar, the cadastral system “is based on the principle that the state cannot be both player and referee.” Private surveyors and conveyancers were legally liable for any mistakes on the survey diagrams or deeds, with the government’s role limited to verifying compliance. Tsotetsi credited this separation for “South Africa having one of the world’s best land registries” when it came to registering freehold tenure. He said 994,566 deeds were registered in 2015-16, “and it was only once in a blue moon that they were challenged.”

The Registrar of Deeds was also entirely self-funding, and used a sliding scale in determining the prices for its services to ensure that fees were not excessive.

At the end of the process, in December 2016, the Ebenhaeser CPA obtained the title deeds for the first nine commercial wine farms. In
accordance with the community development plan, the CPA began renting out the land to the Ebenhaeser Development Trust to manage the farms and turn the justice of restitution into an economic payoff for the community.

Creating a land use management system

Although the development plan served as a roadmap for how the property association and the trust would run the commercial farms, CPA leaders wanted to have a detailed land use management plan to guide allocation of use rights in the communal areas. They also insisted on developing this second plan before they were willing to take ownership. Love explained that the CPA learned from the example of Mamre, a community about 300 kilometers south of Ebenhaeser, which had not decided how to allocate use rights before assuming ownership and had quickly collapsed.

Allocating use rights was a multi-stage process. Mayson explained that, in Ebenhaeser, “first of all, we had to do a land rights enquiry to determine who currently had which rights to the

Box 4. South Africa’s unique land registration system

South Africa’s novel land registration system melded parts of the “registration of title” system (found Australia and parts of Europe) with the classic “registration of deeds” system found in the United States and many other countries around the world.

The key question in any registration system is how title is proved. A registration of deeds system achieves this goal by tracking back through previous deeds to establish what is known as a “chain of title.” In some countries, the chain is traced back to the origin of the parcel (the grant of land from the government to the first owner), but some jurisdictions reduce the search requirement to a fixed timeframe. For example, in Florida and many other U.S. states, the requirement is 30 years.

By contrast, in a registration of title system, title holders’ names are on a single register and are updated as new transactions occur. Retrospective searches are not necessary, except when land is brought onto the registration system for the first time. Title is simply established by identifying the most recent owner on the property register.

At the time of the Ebenhaeser project, the South African system used deeds, but instead of requiring a search to prove title the most recent “active” deed was regarded as sufficient proof. Private attorneys, with additional qualifications as conveyancers, were responsible for checking that the new deed was consistent with the terms of the previous deed.

South African deeds consisted of a legal and a spatial component. The legal part, drawn up by conveyancers, defined the parties to the transaction, the rights being transferred, and other contractual requirements such as terms of execution and delivery.

The spatial component, known as a diagram, was usually created by a private land surveyor and established the parcel boundaries (including coordinates, distances, and azimuths) as well as a description of the physical corner monuments, known as beacons. The diagram, once approved by the Surveyor-General’s office, was collated with the legal component of the deed, and from that point onward became an integral part of the deed. The deeds office (usually at the provincial level) then examined and recorded the document, in effect providing public notice of the transaction.

George Tsotetsi, the head of legal support in the office of the Chief Registrar of Deeds in Pretoria, called South Africa’s unique hybrid system “one of the world’s best land registries.”

However accurate and efficient it was, the system nonetheless focused almost entirely on individual freehold tenure, not on communal tenure. If South Africa successfully met the challenge of recording communal land, it would provide a model for other countries in Africa, where an estimated 70% of the land remained unregistered.
 communal land.” Although the community used most of the land for grazing, there were 153 parcels that individual farmers tended. Following the community’s resettlement in 1925, the local district council had allocated the two hectare sized, irrigated plots to 153 coloured men in Ebenhaeser. Problems emerged after 1925 when the original beneficiaries began transferring their rights without officially registering those transactions with the local government.

“Ebenhaeser had every conceivable complication you could have,” said Roger Chennells, a lawyer and conflict resolution expert hired by the CPA to help establish who had legitimate rights to the 153 individual plots. “Over the years, for example, people had died, gotten married, had favorites who got the land, had mistresses, or someone had gone fishing and leased out the land. But then the lessee farmed so well that they started thinking the land was theirs, and they acted like they owned it.”

Chennells held a series of hearings at which he attempted to resolve disputes by melding statutory and customary law. “It was a bit like trying to be Solomon,” he said. “But that’s what you have to do if you’re a government: You have to make tough decisions which you can justify.” Although the majority of the complainants accepted Chennells’ decisions, “there were about 20 people who were probably still unhappy at the end. But the important thing is that the CPA was the one who asked me to make the rulings, so that gave the process a lot of authority,” he said.

Mayson next assembled the results of this process with details on use of communal grazing lands, experts’ assessments on archeological and botanical findings on the communal land, a report by CapeNature on a potential estuary conservancy area, and a proposal from the provincial agriculture department for a new irrigation system. This report provided the basis for developing the land administration plan.

Over a period of nine months, the CPA invited Ebenhaeser residents to a series of meetings to discuss a draft. The final version had several key provisions.

The plan called for all CPA members who held a right to one of the 153 plots to receive freehold title deeds. (The holder of a freehold title became the outright owner of a piece of land in perpetuity, or until he or she decided to sell.)

This provision did not mean automatic ability to sell the land to any willing buyer, however. The plan also stipulated that during the initial ten years, the deeds would restrict transfer of the land, permitting only transfer to a member of the CPA, or to the CPA itself. Such a sale would not include the water usage rights, which the CPA would own. After the ten year moratorium, a resident could sell land on the open market (including to non-residents) if individual community members and the CPA both refused to buy the parcel. The open market sale would include both the land and the water use rights.

Further, the plan proposed to convert additional parcels of communal land into new two-hectare plots. CPA members who did not currently have access to the 153 individual plots could apply and obtain title once they had proven themselves to be capable farmers.

The idea was that the farmers could use this new freehold title to access financing. The aim was to persuade the banks that “this is a much stronger right than the old ‘permission to occupy,’” Mayson said. “Even though the land cannot be [transferred] on the open market, the bank could force a sale within the community. This means they can provide some small loans to the landowner.” The ability to secure loans from banks was, in theory, important for boosting investment and development.

In accordance with national Trancraa legislation, the Matzikama municipality, the relevant local government authority, transferred title deeds to the houses of the 60% of Ebenhaeser’s residents who lived in the formally-declared “town section” of Ebenhaeser. The land use plan resolved that other densely-populated sections of the communal land should be declared part of the town, so that the owners in those areas also could obtain title deeds too.
The land use plan also called for resizing the areas used for grazing (known as “camps”) and limiting the number of small livestock to 13 per rights holder. (The community’s total grazing land encompassed 16,726 hectares that was divided into eight large camps that were in-turn subdivided into at least four camps each to allow for rotational grazing.) Because the soil and vegetation were in a poor condition from decades of overgrazing, the plan denied grazing rights to anyone who was not a member of the CPA.

Residents who had access to communal grazing land would be required to pay a monthly fee to the CPA to cover the cost of maintaining infrastructure (such as roads and fences) and providing medicine for the animals. (Because diseases could easily spread on communal land when one farmer failed to treat a sick animal, the CPA assumed responsibility for providing medicine). Going forward, the grazing lands would be administered by an elected land manager and camp coordinators.29

Finally, the plan resolved that, as the entity responsible for administering land allocation, the CPA would set up a system for recording land use information. The registry would include detailed information about each land portion and allow the CPA executive committee and community members to access information on the location of the different parcels, who currently has which rights, as well as information about any outstanding fees.30

Although an initial community meeting during March 2017 failed to reach the attendance quorum necessary to formally adopt the plan, Mark Mannel from the development trust was hopeful that the plan would be approved during a subsequent meeting in mid 2017.

OVERCOMING POST-RESTITUTION OBSTACLES

By early 2017, the Ebenhaeser project had made significant progress since the 2012 project start date, breaking years of deadlock. With established vineyards on the restitution farms, the Ebenhaeser trust planned to continue producing wine grapes. But soon after the first farms were transferred to the CPA, promised national financial support failed to materialize, casting doubt on the ability of the developmental trust to manage the nine commercial wine farms productively.

As part of the $26 million settlement agreement, the land reform ministry had pledged in excess of $7 million to enable the CPA to use the land productively by providing money for salaries and supplying tractors, pickup trucks, and other equipment. “We soon found that it was incredibly difficult to access those funds,” said Mark Mannel, the head of the Ebenhaeser Development Trust, which was responsible for operating the farms.31

Under the settlement agreement, the farms would receive some initial assistance to become profitable enterprises, drawing on help from the land reform ministry’s Recapitalization and Development Program, called Recap. The program began in November 2010, when Nkwinti, the minister, acknowledged that, of the 5.9 million hectares of commercial farmland the country had redistributed at that point, “90% of [the farm enterprises on that land] are not functional; they are not productive.”32 Recap responded to the collapse of redistributed farms by providing “black emerging farmers with the social and economic infrastructure and basic resources required to run successful agricultural business.”33 Decisions about how to administer Recap funding were made at the highest level in the national land reform ministry.34

But getting the timing and sequencing right proved difficult. According to Mayson, “our position during the negotiations around the settlement agreement was that the Recap money should be made available three months before any commercial land is transferred. When the ministry wouldn’t go for that, we tried to get the funds released concurrently.” However, the ministry rejected both proposals because the Recap policy determined that funds could be made available only to beneficiaries who already owned land. In practice, this meant that the
money allocated to post-settlement support in the settlement agreement was not guaranteed—the community would have to apply for Recap funding anew after the CPA became the landowner. The result, Mayson said, was that “the CPA got those [first nine] farms without having a single cent in their bank account.”

After the December 2016 transfer of the farms, the trust immediately presented their business plan and request for Recap funding. “But that was our only opportunity to personally present and defend our business plan,” Mannel said. As the plan made its way up the bureaucratic ladder, a succession of officials modified it. “The result was that they made decisions about what Ebenhaeser needed without getting direct input from us,” Mannel said.

Love said “it all slowed to a crawl due to bureaucratic red tape.” One example was a rule that Recap would not fund the purchase of tractors, ploughs and other tools older than five years. This meant that when some of the nine farmers who sold their farms to the CPA offered to include their implements in the sale—which were specifically customized to suit their farms—the ministry refused.

Mark Mannel added that applying for credit from a commercial bank was not yet an option. “At the moment, the Ebenhaeser Development Trust’s rules understandably prohibit the trustees from using the newly obtained land as collateral, because we cannot put the community’s property at risk. We did, however, try to get a small loan using the upcoming harvest as collateral, but the banks said no. They were only willing to accept the land as collateral.” By early 2017, with very little money flowing from Recap, the Ebenhaeser trust had to find a way to manage its first harvest.

Dirk Trotskie, an agricultural economist and director for business planning and strategy at the Western Cape’s agriculture department, pointed to the urgency of the situation: “A farm is a biological system. You can’t just switch it off and wait for the transfer [of Recap funding] to happen.” In addition to a lack of capital, Trotskie said the CPA “is still in the process of developing the capacity to manage a business of this magnitude with reference to things like water usage and supplier contracts right away.”

In order to prevent disaster, the trust entered into a short-term agreement with other commercial farmers in the region to assist with the summer 2017 harvest in exchange for a share of the income generated by the sale of the produce. “The fact that they haven’t yet lost all the crops on those farms is entirely due to the resilience of the community,” Mayson said.

Mogale Sebopetsa, the Western Cape’s chief director for farmer support and development, explained that the provincial agriculture department attempted to fill some of the shortfall.

In response to the problems with the national government’s post-settlement support, the provincial department launched its own agriculture support program in 2009, which was based on a partnership with the private sector called the “commodity approach.” Sebopetsa explained that, through the program, Ebenhaeser’s farmers would be incorporated and assisted through a regional commodity committee. The committee “brings together the government, the new farmers, and existing private-sector farmers who farm with the same commodities. They then sit together and, with funding from the department and guided by the department’s terms of reference, decide on what projects are funded. The commercial farmers also provide mentoring and facilitate linkages to markets, which is crucial for success” Sebopetsa said.

Sarlon Mannel summarized the impact on the community of the failure to provide immediate post-settlement support: “When the government signed this agreement, they knew that we needed support. We had submitted comprehensive plans. And they told us that we were a flagship. But we don’t feel like a flagship now; we feel more like the Titanic. How are we supposed to keep this ship afloat when we can’t plug all the holes?”

The efforts to adapt at the local and provincial level might help, but the project’s
success continued to hinge partly on expediting the promised support from the ministry to help build skills and develop the capital and networks to run the farms profitably.

ASSESSING RESULTS

By March 2017, the Ebenhaeser project had made significant headway in restoring the community’s ownership rights over both historical and communal lands. The development trust was busy harvesting wine grapes on its nine commercial farms. According to the settlement agreement, another 35 farms were scheduled to be transferred to the CPA. But the court case brought by 22 commercial farmers held up the process.

Defining and creating the CPA had also provided Ebenhaeser’s 2,100 residents with a democratically constituted and legally registered entity to be the communal landowner. With strong management, the CPA was ideally positioned to serve as a vehicle for ensuring that every community member had a say over how their shared lands were managed—an ability that they did not enjoy for at least eight decades.

In its determination to avoid the mistakes made by other communities that obtained ownership over communal lands formerly designated as coloured reserves, the Ebenhaeser community also developed a detailed land use management plan to formalize the process of allocating land use rights on communal land before they assumed formal ownership. After decades of off-register transactions that generated significant conflict in the community, the land rights inquiry that Mayson and Chennells led identified who had access to which irrigated plots.

A further milestone of the process was the signing of the restitution settlement agreement. After years of slow progress, under Worsnip’s leadership and with political support the restitution commission was able to get the process moving by ruling on the legitimacy of the claim. The resulting $26 million settlement agreement provided the community with a legally enforceable commitment from the government that they would restore the CPA’s ownership over the 44 identified commercial farms in the lower Olifants River Valley.

But the decision by 22 affected farmers to challenge the decision in court introduced renewed uncertainty to the project, as did the lack of adequate start-up capital for the new landowners.

While the ministry’s flagship Ebenhaeser project demonstrated its commitment to speeding up tenure reform, the disconnect between the process of securing land ownership and post-settlement support threatened overall success in boosting prosperity.

REFLECTIONS

Despite the threat posed by the lack of post-settlement support, by early 2017, Ebenhaeser held the most promise for success of any communal tenure reform project pursued by the South African government since the arrival of democracy in 1994. When viewed in a national context, however, the project highlighted a number of serious obstacles that stood in the way of expanding the Ebenhaeser approach into other communal areas, including the former homelands, which accounted for 99% of South Africa’s 17.2 million hectares of communal lands.

Ebenhaeser highlighted the desperate need for further legal reform in other communal areas, however. The 1998 Transformation of Certain Rural Areas Act was a crucial pre-condition for the project. Similar progress in the former homelands depended on replacing the Communal Land Rights Act, which was struck down in 2010, with a new law that provided clear guidance for how rural communities in the former homelands could obtain greater tenure security.

The complexity created by the 153 individual plots that existed on communal land in Ebenhaeser further illustrated the need for the land reform ministry to consider creating a new form of title specifically designed for communal areas. While the South African land registration system generally was held in high regard for its ability to register and protect individual freehold
ownership rights, “the country didn’t have any tenure options other than freehold ownership and leases, which the [Ebenhaeser] CPA didn’t have the capacity to manage,” explained David Mayson, a consultant from Phuhlisani Solutions who worked closely with the CPA. In the absence of a communal tenure form that could be registered in the deeds office, “we attached conditions to the [freehold] title deeds for the 153 plots as a way to work around that” void, Mayson said.

The lack of a legal framework for communal reform, as well as the need for the land reform ministry to introduce new forms of legally recognized communal tenure, highlighted the urgent need for lawmakers and policymakers to go back to the drawing board to design a land administration system capable of putting justice into practice.

**EPILOGUE**

**ROADBLOCKS TO REFORM IN THE RURAL EASTERN CAPE**

By 2017, only two of the 23 former coloured reserves (Ebenhaeser and Mamre, in the Western Cape) had benefited from meaningful tenure upgrading efforts. But the government’s track record was even more dismal in the former homelands, which accounted for 99% of the country’s communal land. The question was whether the Ebenhaeser model held promise in these areas—and was politically feasible.

The former homelands of the Eastern Cape offered a microcosm of the land tenure challenges in other parts of the country. After apartheid was introduced in 1948, the government formally established homelands for the region’s Xhosa people: the Ciskei and Transkei (the names respectively referred to “this side of the Kei River” and “that side of the Kei River”). As part of a doctrine of separate development, the South African government declared the Transkei a quasi-independent territory in 1976. It did the same in the Ciskei five years later. While the South African government held the land in trust, it incorporated local chiefs and headmen as salaried employees to make decisions over land allocation and exercise control over homeland populations.

According to Lungisile Ntsebeza from the University of Cape Town, the system “gave both chiefs and headmen enormous powers at the local level, the main powers being land administrative and judicial powers … [Traditional leaders] became extended arms of the apartheid state…”

In cases where traditional leaders refused to conform to the wishes of the apartheid government, it had the power to create and impose new “traditional leaders” on local communities. No rural person living in a homeland could obtain a “permission to occupy” document without the approval of the tribal authority.

Given the ANC’s emphasis on bringing an end to this system of indirect rule and the fact that about a third of the country’s population resided in the former homelands, there was “an expectation that dismantling the [homelands] would be central to a post-apartheid South African project,” said Ntsebeza. At the height of the anti-apartheid struggle during the mid-1980s, the ANC-aligned United Democratic Movement had declared, “Chiefs must go, and the people must run the villages.”

After coming to power in 1994, the ANC government initially tackled the project of tenure reform on communal lands with zeal. It adopted an Interim Protection of Land Rights Act in 1996 to defend informal occupation rights, and two years later passed the Transformation of Certain Rural Areas Act to guide the process of transferring land ownership to coloured communities. A legal framework that would guide
tenure reform in the former homelands did not seem far off.

But by the early 2000s the government had shifted gears. Instead of expanding the legal framework to dismantle the artificial powers of traditional leaders over land administration and allocation, the land affairs ministry had taken systematic steps to reinforce the positions of traditional leaders—sometimes in direct contravention of the country’s newly adopted democratic constitution.

Mazibuko Jara, an activist and executive director of Ntinga Ntaba ka Ndoda, an NGO that worked on land rights in the Keiskammahoek region of the former Ciskei homeland in the Eastern Cape, ascribed the change of direction to the increased influence of traditional leaders over senior ANC officials. “After 1994, many of the chiefs got organized and formed the Congress of Traditional Leaders of South Africa” (CONTRALES), he said. “They began to align with and lobby the ANC to protect their power.”

In a 2004 paper, Christina Murray, the director of the Bingham Centre for the Rule of Law, who had advised the writers of South Africa’s constitution, identified three reasons for traditional leaders’ success in consolidating their power after 1994. First, government leaders regarded powerful traditional leaders as important for maintaining peace and security in volatile areas like KwaZulu-Natal. They also believed that traditional leaders had the power to shape voters’ choices at the ballot box, making it important for the ANC to accommodate them. Finally, Murray pointed to the perception that “government by chiefs” could be more effective in delivering services than some rural local municipalities.

The result was the adoption, in 2003, of the Traditional Leadership and Governance Framework Act, which “reintroduced the tribal boundaries from apartheid almost exactly as they were,” said Jara, who was also a land rights researcher at the University of Cape Town. The act changed the name of apartheid-era tribal authorities to “traditional councils” but left much of the institution’s structure and powers in place.

Jara added that subsequent provincial legislation passed by the Eastern Cape legislature also reestablished the headmanship. In fact, he said, “it went even further [than under apartheid], making headmanship a royal position that could only be inherited by birth. This while, traditionally, many communities had actually elected their leaders!” The government also continued the practice, established under apartheid, of having traditional leaders on the civil service payroll.

The process of reasserting the power of chiefs culminated in the 2004 adoption of the Communal Land Rights Act. Although the law provided the first legal blueprint for how to transfer communal land in the former homelands from the government to communities, it also gave wide-ranging powers to the traditional councils, including the ability to register the community’s land in the name of the council and impose decisions over land use and allocation on communities. The legislation passed despite numerous objections during parliamentary hearings, including from women’s groups who feared that it would perpetuate a “profoundly unequal system that often excluded them from decision making.”

Paradoxically, some traditional leaders also rejected the legislation because they felt it did not give them enough power.

Following a series of legal challenges against the Communal Land Rights Act, the Constitutional Court in 2010 struck down the entire act, because the parliament had not adequately consulted affected groups when it wrote the law. Although civil society groups welcomed the decision as a victory against creeping retribalization, it also meant that there was no legal instrument in place for improving tenure security for poor people in these communal areas.

In 2017, Siyabulela Manona, a land rights consultant from Phuhlisani Solutions who worked extensively in the Eastern Cape,
described the prevailing situation as an “absolute free-for-all.” He said, “The toughest person wins. As long as you have money or power, you can do whatever you want. If the chief is able to, he simply does as he pleases.”

Manona pointed to the example of a proposed titanium mining project on the land of the Xolobeni community on the Eastern Cape’s ecologically sensitive Wild Coast. Despite fierce resistance from residents, the local chief there had approved the mining application after receiving a luxury off-road vehicle from the prospecting company. In the Eastern Cape, “there are all kinds of things going on, because there are no rules. Although there is a tapestry of incoherent laws, there is no one law that is enforced,” Manona said.

The legal void was the heart of the deadlock in the Eastern Cape’s communal areas. From the perspective of the deeds registry, most of the land in the former homelands simply continued to be classified as “unregistered state land, [although] some people had letters giving them permission to occupy” explained Waterson Mketshane, the deputy registrar of deeds in Mthatha, the former capital of the Transkei. The legislation that guided the work of the deeds registry dated from 1937, and was mainly geared to register land under freehold ownership. Since the legislation did not cater for any form of customary or communal tenure, “different versions of freehold and some leaseholds are the only forms of tenure we are legally empowered to register,” Mketshane said.

Mketshane, who grew up on communal land in the former Transkei and worked his way from being a messenger in the Mthatha deeds office to becoming the deputy Registrar of Deeds, explained how the deadlock affected rural residents. Out of desperation “rural people often come [to the deeds office in Mthatha] to ask us to issue them a title deed,” he said. “Then we have to explain to them that we can’t help them. It has been happening since I joined this office in 1998, and it doesn’t stop.”

Ebenhaeser offered potential clues on how a legal framework for the homelands could work. One of the central constitutional objections to the Communal Lands Right Act was that it “would have enabled unelected traditional leaders to become the registered owners of communal land in the former homelands,” explained Jara. By contrast, Ebenhaeser showed that it was possible to create a democratically elected CPA to own communal land and make joint decisions over land use. The question facing lawmakers in the former homelands was how to combine the political and social significance of traditional leaders with the democratic legitimacy of elected CPAs.

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In March 2016, the South African parliament passed a new bill that would move the land reform process away from the willing buyer-willing seller model and towards a system based on expropriation of white-owned land subject to just and equitable compensation.


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SYNOPSIS

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 state-owned 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. Through an incremental tenure approach, the city issued 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. However, 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.

Leon Schreiber drafted this case study with Professor Michael Barry of the University of Calgary based on interviews conducted in Cape Town and Johannesburg, in July and August 2016. Case published February 2017.
INTRODUCTION

In 2016, Senza Kula recalled growing up in a self-described “shack” in the township of Khayelitsha, 30 kilometers from Cape Town’s central business district. Neither he nor his neighbors had any claim to the land on which they lived—nor protection from being ousted at a moment’s notice.

Millions of impoverished South Africans lived under similar circumstances, squatting on government-owned land not authorized for residential occupation. For residents of those so-called informal settlements, the lack of legal recognition was in keeping with lives balanced on the edge of law and order. Violent crime, poverty, unemployment, and lack of basic municipal services made everyday life difficult.

Following the end of apartheid policies, which had denied land ownership to most nonwhites, the national government built 2.8 million homes under South Africa’s Reconstruction and Development Program. The eligibility requirements for those greenfield developments were strict, however, and in 2014, two decades after the end of apartheid, 2.3 million poor South Africans remained on the public housing waiting list. The housing shortage persisted—despite a constitutional provision that read, “Everyone has the right to have access to adequate housing” and “the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of this right.”

With 35.7% of the population living below the poverty line of 3,500 rand (about US$250) per month, the situation in Cape Town mirrored the national picture. In 2007, 109,000 households—representing about 13% of the city’s total population of 3.7 million people—still lived in units classified as makeshift structures. Their dwellings were spread across 204 informal settlements on land not zoned for residential use. According to figures from the country’s national statistics agency, Statistics South Africa, the situation was exacerbated because Cape Town’s population was growing at a rate of 2.6% per year—an annual increase of about 96,000 people.

Many of the newcomers moved into shacks; shack residents lacked basic services and faced the constant threat of eviction whether by the city government or by local bosses.

As the informal settlements grew, the city ran out of suitable land for permanent housing anywhere close to economic hubs. Located on a peninsula and surrounded by mountains and ocean, Cape Town had no room to grow. Moreover, few informal settlers could participate in the existing housing programs. Some had previously been given subsidized houses and had sold or rented them out and moved back into informal settlements. Others earned more than the subsidy threshold of R3,500 per month (about US$250), or they were international migrants who did not qualify for state assistance.

Noahmaan Hendricks, a civil engineer who served as director of development services and housing in Cape Town’s Human Settlements Department, said that by 2009, it had become clear that existing policy wasn’t working. “We can’t try the same failed solution a thousand times and expect a different result every time. That drove us to look at other philosophies,” he said. Hendricks stressed that the most important requirement for a new solution was to think differently about informal settlements and the people who live there. “These settlements are simply the people’s solution to the government’s failure to deliver, he said. “Normally, we reject the people’s solution by saying that informal settlements are unacceptable. Instead, we needed to recognize the settlements and support them as the people’s solution.”

Hendricks and his colleagues turned to an existing €7.5-million partnership that Cape Town had with the German Federal Ministry for Economic Cooperation and Development and the German Development Bank. Under the auspices of the partnership, called Violence Prevention through Urban Upgrading (VPUU), the municipality proposed a new solution and conducted a pilot to upgrade informal settlements in situ—where people already lived. A key part of the initiative was the creation of an occupancy certificate, which would serve as recognition by the
city that residents were allowed to live on the land occupied by the informal settlements. Although the certificate would be short of an outright ownership right, it could offer residents stronger tenure security and stronger protection against arbitrary eviction. It also made residents eligible to receive improved basic municipal services. Gradually, the city could grant stronger legal recognition of residents’ interests in the land they lived on, thereby regularizing the tenure of poor residents over time.

THE CHALLENGE

Several circumstances shaped the challenges Hendricks and the VPUU would have to meet in order to put an incremental tenure program into practice. One was simply lack of experience—worldwide—at applying such a strategy for improving land tenure security. The International Federation of Surveyors, among others, considered that the trend was toward flexible legal formulas for increasing security of tenure and away from the idea that only individual rights on the fee simple (ownership) model were adequate. But few countries had implemented that approach.

The cities of Rio de Janeiro and São Paulo had done something similar in Brazil and could offer a few lessons. They had declared informal settlement areas as special zones with flexible regulations to facilitate slum upgrading. Leaders there stressed the importance of having a committed and flexible city government and of building intra- and extramunicipal partnerships to make the projects work. South Africa’s biggest

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Box 1. Greenfield Development and Deed Registration in South Africa

The principal aim of the traditional greenfield approach to informal settlement upgrading was to ensure that by the end of the process, beneficiaries possessed registered ownership deeds to their formal, state-subsidized houses. The steps involved in a typical greenfield procedure were to (1) identify or purchase suitable vacant land and subdivide it into plots of 125 to 250 square meters, (2) install municipal services, (3) identify residents of a selected informal settlement who were eligible to receive the R140,000 (US$10,500) housing subsidy, (4) construct a house for each beneficiary using the subsidy, (5) relocate people into their new houses, and (6) issue deeds of ownership.

In addition to lack of vacant land suitable for greenfield development in Cape Town, a strict regulatory framework excluded many people who had previously benefited from state-housing assistance and many who could not meet income or citizenship requirements.

Charles Rudman, who was Khayelitsha district manager of the Cape Town Planning and Building Development Department, characterized the prevailing housing subsidy approach as one “of everything or nothing”—either you get a subsidy for a formal house in a greenfield development or you get no housing subsidy at all. To qualify for the subsidy, Rudman said, “the first requirement is a household income of less than R3,500 [then about US$250] per month.” But that threshold dated from 1994, when R3,500 was a lot of money. Rudman added that with an average inflation rate of around 6% per year since 1994, “R3,500 was no longer a lot of money in 2016” because even very poor people earned more. Further, the system also excluded anyone who had previously received a housing subsidy.

Relocating families to new housing sites, which was central to the greenfield approach, was also politically fraught and socially destructive. Black South Africans remembered forced removals from government land during the apartheid era and how it had frayed the social fabric of affected communities. But post-apartheid relocations, designed to improve people’s lives, often had a similar effect. Consequently, as Kula pointed out, “once people got formal houses in different areas, they would sometimes erect another shack [in their original informal settlement] . . . and rent out or sell the [formal] house. It would become part of the problem.”
city, Johannesburg, had also started to experiment with that approach, though it had made little progress. Within the national context, the Urban Land Markets Southern Africa regional program (Urban LandMark), a Pretoria-based research group funded by the UK Department for International Development, provided a conceptual template for incremental tenure upgrading following a 2007 investigation into how the poor access, hold, and trade land in three South African cities.13

A second challenge was that international migrants, who accounted for a large proportion of the people living in informal settlements, were not legally entitled to receive formal state housing support.14 The awful conditions migrants lived in presented the city with a practical problem. “In communities where foreigners hold power, you won’t be able to work with them if you don’t give them a carrot. And if you ostracize foreigners, xenophobia follows,” said Marco Geretto, senior urban designer in Cape Town’s Spatial Planning and Urban Design Department.

The third challenge was to improve tenure security in a way that did not entail moving people to other areas. Monwabisi Park, the area the municipality had chosen for the pilot in 2009, presented a host of difficulties. One of the biggest was that without earthworks and relocation—at least temporarily—it would be hard to install the infrastructure for services. Geographically, the settlement was located on undulating dune fields less than one kilometer from the ocean and adjacent to the environmentally sensitive Wolfgat Nature Reserve.

FRAMING A RESPONSE

Lauren Royston, an urban land tenure security expert and advocate for incremental upgrading who became a key adviser on the project, stressed that official recognition was the crucial element in the incremental tenure approach. There were normally two ways authorities could recognize the existence of a residential settlement, she said: administratively, through the maintenance of registers of people who occupied the land and through the provision of municipal services, or legally, through the formal zoning and subdividing of land for residential use and registration of formal rights such as ownership in the deeds registry. But in Cape Town, at that time, the government did not recognize most informal settlements in either way.

Hendricks lobbied like-minded thinkers within the municipality to develop a practical solution to the lack of recognition in informal areas. Together with Alastair Graham from the city manager’s office and Catherine Stone, director of spatial planning and urban design, he started to develop a plan and reached out to the VPUU as a partner.

Launched in 2005 as a jointly funded development program between the city and the

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Box 2. The Deeds Registry

South Africa has an improved deed registration system. A buyer’s lawyer is responsible for checking the accuracy and truthfulness of information. Unlike many other deed systems, however, the registrar of deeds performs a quality control function while reviewing current documents for errors when documents are submitted for registration.

A lawyer has to prepare the application for registration and check that the person(s) transferring rights in land and the persons(s) receiving those rights is(are) entitled to dispose of those rights and receive those rights, respectively. The contract of sale has to be in writing; otherwise, it was not a valid contract, and registration will not proceed.

The South African deed system is generally held in high regard by international registration experts. However, it is ill-suited to the needs of the poor because it requires the services of a lawyer to ascertain whether all of a parcel’s earlier transactions were valid—a process that involves extensive research, which is expensive.

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German government, VPUU’s central aim was to “build safe and integrated communities by upgrading the existing settlement from essential service levels to basic service levels without relocations to areas outside the settlement.” The VPUU program had already developed a track record in Khayelitsha.

Hendricks said that “even though VPUU’s other projects in Khayelitsha focused on physical safety, their philosophy and methodology pertaining to community engagement could be transferred to [tenure security improvement]. We wanted to use the VPUU principle of community-based design for our project.” After getting approval from the mayoral committee and Cape Town’s mayor at the time, Helen Zille, the city formally contracted VPUU to pilot a new solution predicated on enhancing tenure security for residents of informal settlements where they already lived.

Michael Krause, an urban designer, led the VPUU effort. Krause, who had lived in South Africa since 1995, was director of Sustainable Urban Neighborhood Development, a South African company involved in the field of negotiated development in low-income areas. The company was hired to develop and manage the initiative.

The team assessed the difficulties of working in Monwabisi Park, the location of the pilot project. Situated on the southern outskirts of a larger low-income community called Khayelitsha, Monwabisi Park had appeared on the map in late 1996, when residents from neighboring areas invaded then vacant land owned by the city and provincial government. The area was originally named Endlovini, meaning to take by force like an elephant. During its early days, the settlement housed a thousand structures and was often used as a dumping ground for stolen goods. The city later renamed the community Monwabisi Park, a reference to hope rather than force.

Two decades after it was first settled, the area was the home of approximately 25,000 people living in 6,470 households on 64 hectares of land. Monwabisi Park sprawled across four different parcels: three owned by the City of Cape Town and one owned by the Western Cape provincial government, which meant that the VPUU had to secure buy-in from both government spheres before it could proceed with the project.

Like in many informal settlements, the residents of Monwabisi Park were distant from the city’s economic heartland—located 32 kilometers away from Cape Town’s central business district—and from enterprises clustered near the airport: 23 kilometers distant. The 2011 census showed that in the Greater Khayelitsha area, of which Monwabisi Park was part, more than 44% of residents either were unemployed or had given up entirely on finding work, whereas 74% of households earned less than the poverty line of $230 per month.

Monwabisi Park’s residents lacked any formal documents or rental agreements to serve as evidence of their right to occupy a structure and disagreements among residents often led to violence. A 2014 inquiry into policing in Khayelitsha showed that the region had the highest murder rate in the country, with 62% of people reporting they felt unsafe in their own homes during the day, in part because of pervasive gang warfare.

To explore options, Krause consulted Royston, who was with the Urban LandMark consultancy. Urban LandMark laid out a four-step process to address the lack of official recognition in Monwabisi Park. The first step was to work with residents to identify any property registers the community itself had created, map where people lived, issue occupancy certificates based on community deliberation and consent, and identify any implicit administrative recognition arising from municipal service delivery already in place. The second step involved blanket recognition of the whole area through rezoning. In step three, the municipality would introduce formal tenure options such as leases, enforce building codes on structures, and improve service delivery. At the end of the process, the settlement would become a legally recognized township in a step that would authorize the municipality to award individual or group ownership to all residents who held
occupancy certificates recorded in the community registry.

According to the Urban LandMark consultants, providing residents with either individual or group ownership at the end of the process offered several potential benefits: It made land investment more secure because the government could enforce legal protection of tenure. It offered a recognized address and property claim that helped the poor secure loans. And it promoted the inclusion of previously unrecognized informal settlements as part of the municipality.

The VPUU project team decided to embark on the first step in the process—even without a guarantee that the city would rezone and without agreement that the program would grant stronger tenure security in the future. Mapping of the area and the issuance of occupancy certificates endorsed by the municipality and linked to geospatial data (i.e., the location of an occupant) could help create the basis for administrative recognition. Occupancy certificates would enhance tenure security by making evictions, which required court orders, more difficult. Even though a parcel “would still remain city land, [the certificate is] basically saying you have the right to occupy it,” said Katherine Ewing, head of the built environment unit at VPUU whose doctorate focused on spatial occupation of informal households.

A potential pitfall of the proposed system was that the certificates would entrench existing inequalities within Monwabisi Park; in other words, people living on bigger plots of land would be at an advantage compared with people living on smaller plots. The first arrivals would claim larger parcels of land, and later arrivals would have to make do with what they could negotiate. That approach stood in clear contrast to the greenfield approach, which strongly emphasized equity with regard to plot and house sizes.

In addition to strengthening residents’ security against eviction, Krause pointed out, possession of official occupancy certificates and an associated logical numbering system “would help, for instance, in disaster risk management or in security agencies’ responses to specific calls or in the health department’s identification of a person’s location for the distribution of drugs, because now you’d have people’s identity numbers linked to specific locations that are logical. Even if you don’t know the correct address, you would know from the neighborhood number and the lettering where in the settlements the person lives.”

Because official proof of address was a requirement for obtaining a cell phone contract in South Africa, the certificates could link people into the country’s communication networks by providing evidence of a fixed address without “people’s having to pretend they live somewhere else,” Krause said. “Some network operators accept the occupancy certificate as proof of address.” Krause added that the team hoped the certificates would further enable people to obtain credit at furniture stores and, potentially, even home loans. Finally, occupancy certificates that were endorsed by the city could become “big negotiating tools in the hands of the community when they meet with the mayor or city officials, because it sends a clear message that the occupancy certificates are inclusive tools that define a community” Krause said.

Hendricks conceded that some politicians were initially skeptical about the occupancy certificates. “I was told that I lived in a fantasy world if I thought the city’s political leadership would approve a project that would take long to bear fruit,” he said. Officials appointed by a new mayor, Patricia de Lille, who assumed office in 2011, initially questioned whether to continue a project her predecessor, Zille, had started, even though both mayors belonged to the Democratic Alliance, the country’s major opposition party. The team feared that De Lille would withdraw support. But Zille, the Democratic Alliance’s leader, became premier of the Western Cape province in mid 2009 and was eventually able to convince the city’s political leadership to buy into the plan, Hendricks added.
Box 3. Johannesburg’s Attempt to Regularize Informal Settlements

In early 2008, then mayor of Johannesburg Amos Masondo undertook a site visit to an informal settlement on the outskirts of the city. According to Philip Harrison, head of the Development Planning and Urban Management Department in the City of Johannesburg, Masondo was appalled by the living conditions in the settlement. He instructed city officials to “bring dignity to the poorest citizens of the City of Johannesburg by providing decent housing and eradicating informal settlements by 2014.”

Like their colleagues in Cape Town, officials in Johannesburg struggled to keep up with the growth of informal settlements. “The rate of delivery of formal houses is not sufficient to make a significant impact on the existing level of informality. Formal housing schemes [also] generally don’t address the historical nonqualifiers, and they lack flexibility,” Harrison said. At the time, Johannesburg had 183 informal settlements housing 220,000 people.

Royston said, “The planning department took up the mayor’s challenge . . . It was a good coincidence of political will with technical [skills].” Following a visit to Brazil to learn from that country’s experience with in situ upgrading of favelas, Harrison’s department submitted a report to the mayoral committee in April 2008. The report outlined a new approach to informal settlement upgrading, dubbed regularization. The mayoral committee adopted the report on April 25, 2008, and the city set up a high-level Informal Settlements Formalization and Upgrade Steering Committee to coordinate the regularization process.

The planning department’s response was to “look at how rezoning . . . could provide enough security for the utilities to invest. That was the key thing: what was needed for development [to take place],” Lauren Royston, who worked on the project as an Urban LandMark technical adviser, pointed out. Through a series of workshops facilitated by Abrahams of Urban LandMark, it emerged that Johannesburg’s existing zoning scheme did not have a category for informal-settlement upgrading. As a result, planners worked through the city’s legislative process to amend the town’s planning scheme. They developed a new zoning category called transitional residential settlement areas.

Royston emphasized that “What was the important part for tenure security was that they attached conditions that included the issuing of occupancy certificates to people living in these zones.” The regulations also stipulated that the state own the land or obtain permission from the landowners to officially recognize informal settlements slated for regularization and that each settlement have access to basic municipal services. At that point, “We thought it had all the right things around the rules,” Royston added.

But the project stalled in the implementation phase. By early 2012, “regularization in Jo’burg had lost its institutional momentum,” Royston said. In order to regularize an informal settlement, the planning department intended to engage the community in a full enumeration process, followed by the creation of a community register and the issuing of occupancy certificates. Of the city’s 183 informal settlements, 20 had been originally earmarked for regularization. But it was in only one settlement—the small community of Happy Valley—that an enumeration took place—by an external service provider contracted by the city. No occupancy certificates were issued under the project.

Royston pointed to lack of a stable institutional home as the main reason the project stalled. “When the project was moved [from the planning department] to housing [in 2012], it lost momentum.” Harrison also resigned as head of the planning department in late 2010, and the project’s political champion, Mayor Masondo, was replaced by the African National Congress in May 2011. Despite its limited success, “it was quite innovative in trying to . . . bring tenure security into land-use management, which is not how the law usually works here,” Royston said. The project provided a precedent to use “special zones . . . to legally declare an informal settlement, thereby legalizing the land use,” she added.

On the other side of the country, officials of the Violence Prevention through Urban Upgrading partnership used the Johannesburg experience as a reference point in designing their own approach in Monwabisi Park.
In addition to tensions between politicians, Krause noted, some city officials were initially “not in favor of [the certificates] because they feared the certificates would give occupants legally enforceable ownership rights to land that belonged to the city and would thereby complicate an engineering-led informal settlement upgrading project.” Past policy had already assuaged some of those concerns, however. Notably, during the 1990s, local authorities in Cape Town had used a similar system of site allocation cards to regularize tenure in several settlements, so there was a precedent. Further, everyone had already agreed that the Monwabisi occupancy certificates would contain clear language indicating that the city remained the sole landowner. Geretto explained that “the certificates just recognized people’s presence on the site. It is a political gesture, a gesture of goodwill. It was all part of the negotiations [between the community, the city, and the VPUU]. The focus was on building trust in the community.”

Geretto added that officials also came to view the certificates as a way to “understand who would be a participant in the upgrade . . . The city was concerned that once the project gained momentum, there would be rapid movement into the settlement.” And to prevent “those with political or social power from simply pushing out the most-vulnerable inhabitants [in order to benefit from the planned upgrades], the city could use the certificates and registry to fall back on, to ensure a more equitable outcome,” Geretto said.

Legal recognition was the other important component of the project. To make the system work, Cape Town would have to rezone the area selected for the pilot. Royston said that Johannesburg, South Africa’s biggest city, had tried to “regularize” informal settlements through rezoning a few years earlier, in 2008. A special zone for informal settlements—called a transitional residential settlement area—could provide enough security for the local government’s utilities departments and the national electricity provider, Eskom, to invest. In order to lay the foundation for legal recognition, “the key thing was creation of the zoning conditions required for development,” Royston said. But Cape Town did not yet have a special zoning category for informal settlements earmarked for upgrading.

The project team decided to focus on preparing a municipal rezoning application so that Monwabisi Park could carry out in situ upgrading of service infrastructure. The VPUU would have to submit a formal land-use management application to subdivide and develop the land on which the settlement was to be built. They aimed to develop a proposal whereby no more than 5% of households would be relocated out of the area, and only an additional 4 or 5% of structures would require “alteration.”

This part of the plan hit a bump. As part of the process, the team needed data on the topographic and geologic features of the settlement, but the team could not access the data at the time. Because there were as yet no plans for major infrastructure development requiring city approval, however, the team decided it could postpone the rezoning application and instead move forward with enumerating the community and issuing occupancy certificates. This part of the process could begin quickly, although the enumeration survey would take time in the context of Monwabisi Park, which did not have an organized layout or a land parcel numbering system.

GETTING DOWN TO WORK

With Monwabisi Park selected as the pilot site by late 2009, the VPUU project team’s initial focus was on establishing a strong working relationship with the community before any of the technical processes could begin. Development of a community action plan would follow, including conducting a full enumeration, assessing eligibility, creating a community registry, and enabling official recognition by expanding service delivery, issuing occupancy certificates, and submitting a rezoning application for the area to attain formal residential status. The rezoning application would be ready for submission to the municipal planning department only by late 2013.
Community Engagement

Kula explained that the first step, taken in mid 2009, was to meet with community stakeholders, explain the purpose of the project and the grounds for selecting Monwabisi Park, and then invite conversation about the idea and how it might be useful. Kula said, “We always preach that we are there as partners and that we need to find ways to work together.” Civic groups had emerged as a form of alternative government to the state during the apartheid era. They continued to exist as local political units but with different mandates after the demise of the apartheid system. In Monwabisi Park, the civic groups belonged to the African National Congress (ANC)—aligned South African National Civic Organisation (SANCO).

Following a series of town hall meetings with Monwabisi Park’s community-based organizations and elected political leaders, known as ward councillors, the VPUU aimed to set up a 16-member Safe Node Area Committee (SNAC) as a vehicle to foster community engagement. The emphasis on safety reflected in the title of the group stemmed from the VPUU’s general focus on violence prevention. SNAC was an approach the team had used previously in other communities in Khayelitsha. “The process of setting up a representative local leadership group is a conscious and participatory one. We acknowledged the local structures by specifying that 50% of the members of SNAC would be representatives affiliated with existing civic organizations,” Krause said.

The project team also had to be sensitive to the often violent power dynamics in the settlement, which included tension between local branch members of the ANC and the Democratic Alliance. Whereas the ANC had governed South Africa at the national level since 1994, the Democratic Alliance had won elections in the Cape Town municipality since 2006. And in order to avoid politicizing the project, people directly representing any political party were not allowed to serve on SNAC.

The other half of the 16-member SNAC would be elected from among representatives of task-based organizations working in the community, such as early childhood development forums, health forums, or other use-groups with existing mandates, Krause said, adding that the 16 representatives were not elected directly by community members but by existing civic and other community-based organizations. “The idea is that whatever happens on SNAC, those [representatives from community-based organizations] would then take the responsibility to filter and report back to their constituencies,” Krause said. Monwabisi Park’s 16 SNAC representatives were duly elected in August 2009, which was followed by an eight-week leadership training course. Thereafter, the VPUU and SNAC commenced the community planning process.

According to Kula, “The planning starts with a series of consultative workshops in which we ask SNAC to tell us what’s going on in your community . . . We ask them: What are the issues? What do you have in this area? What do you know about Monwabisi Park?” One of the key insights revealed during the workshops was the existence of a rudimentary SANCO-maintained community register, which contained a partial database of Monwabisi Park’s residents.

To expand the scope of the planning exercise beyond monthly SNAC meetings, the VPUU conducted a community survey in August 2009 that, among other things, opened a conversation on an action plan for improving conditions. The project’s first important landmark occurred with formal adoption in February 2010 of a community action plan by then mayor Dan Plato during a public ceremony in Monwabisi Park.

The document laid the foundation for the rezoning proposal that the VPUU planned to submit once the new Cape Town zoning scheme had been adopted. The community action plan consisted of five pages of practical suggestions to improve Monwabisi Park. Residents were concerned primarily about infrastructure delivery such as electricity, toilets, and roads; improved safety and security; and enhancement of economic opportunities. Kula pointed out that “the community action plan is an overview of what communities want. It is also a lobbying tool.
whereby we could meet with specific departments within the city to try to get them to include these plans in their budgets.” The mayor’s endorsement of the plan served as an important signal from the city to the community that the mayoralty was prepared to officially support the upgrading project.

Enumerating Monwabisi Park

Building on the momentum generated through the process of community engagement, the team pivoted to the next phase in May 2011: conducting a full geospatial enumeration of the settlement. The municipality had neither an address, numbering, or registration system for dwellings in Monwabisi Park, but informally, the community itself had created some of the elements.

Ewing explained that “there was this beautiful old Book of Life that looked like something out of Harry Potter.” (Harry Potter was a globally popular children’s book series set in a wizards school.) The Book of Life was in fact an informal register created in 1996 by the local SANCO branch. New arrivals in Monwabisi Park had to pay R50 (about $3) to SANCO in order to get registered in the book and to occupy a site. The VPUU also discovered that some residents possessed municipal service cards dating back to 1998, when the city had installed the first rudimentary communal toilets and water connections in the area. Residents referred to them as WP cards because they contained the letters WP (which stood for Western Province), followed by a series of numbers—for example, WP-123. But few of the original recipients still had the cards, and later arrivals never received them. The cards were also “totally not spatial, with no relationship to the physical location of households,” Ewing said. “So, for example, mail carriers would have no understanding of how to deliver a letter to that WP number.”

The Book of Life’s association with a political organization also raised questions about equity and inclusion. “One can assume that if you were affiliated with SANCO, “it didn’t contain any transactions or reflect changes if a shack burned down. It was just a chronological list of names based on when people arrived,” he added.

Realizing that the book was political, Ewing said they were very careful to choose the right words to explain what they wanted to do. Instead of framing the planned enumeration process as something totally new, the VPUU team resolved to “update” the existing book, and instead of using the WP cards, they promised residents they would receive new, updated numbers that would be linked to their residential locations and integrated into the municipal system as a service number.

After consulting with SNAC and municipal line departments from March to May 2011, the VPUU settled on shared language to explain the purpose of a community survey: to establish an agreed list of residents currently living in Monwabisi Park and “to record information that is important proof in processes of rights determination.”24 The group then designed the survey instrument and recruited and trained community volunteers. And a full community enumeration got under way in June 2011.

Clearly communicating the purpose of the enumeration was of utmost importance. From the outset, “we emphasized in all of our interactions with the community that the purpose of enumeration is not to advocate for [residents to get] title deeds [and therefore ownership],” Kula stressed. The VPUU made it clear it was not conducting the enumeration in order to build houses or give residents ownership over the land. Instead, the group explained that the goal was to gather information on the settlement so that it could develop a plan for settlement development.

Stage one of the enumeration procedure, from June to August 2011, focused on the geolocation and mapping of all of the 6,470 structures in Monwabisi Park by using handheld GPS devices. The VPUU recruited 30 local volunteers through SNAC to do the fieldwork and compensated them for daily expenses, Kula said. In addition to those SNAC-recruited volunteers, the enumeration team...
included VPUU staff, a contracted geographic information system specialist, and university students to train volunteers and oversee the enumeration. The process of physically geo-locating the 6,470 structures lasted from June to August 2011.25

The second stage of the enumeration exercise—face-to-face interviews with the head of every household in the settlement—was decidedly more difficult. The aim was to obtain information on the number of people in each household, as well as the household head’s name and identity number.

Although the VPUU partnership’s ongoing engagement with the community through SNAC meant that staff members had begun to win residents’ trust, the group still had to train volunteers to interact effectively with residents during the interviews, which lasted 20 to 30 minutes.

The VPUU split volunteers into teams of four and assigned each member responsibility for one task: One team member spoke with respondents in the household. A second took photographs of the structure and the head of the household. A third captured the household’s GPS coordinates, which established a universally recognizable location. And the fourth stuck an interim survey number on the side of the shack upon completion of the interview.26 According to Kula, “It was a quite intensive process. The questionnaire had four sections: demographic information, services in the household and surrounding area, safety, and the residents’ levels of awareness about the VPUU project.” In order to paint a comprehensive picture of residents’ living conditions in Monwabisi Park, the interview went beyond the types of questions normally required for a housing application.

Krause said, “We ended up doing repetitive rounds of surveys because initially, we weren’t convinced of the accuracy of the geolocation data.” He added that after the first attempt, “we realized that the training of field-workers had to be improved to ensure that all houses got covered.” During the two subsequent rounds, the VPUU also “developed stronger systems and included a map book that subdivided the settlement into much smaller sections that were easier to manage,” Krause said. They also decided to paste stickers on all surveyed houses so as to visualize whether houses had already been surveyed. Only trained community members, under supervision by Khayelitsha-based research group Sikho, conducted surveys. The first round of interviews, conducted from June to October 2011, reached 90% of households in the settlement.

To reach the missing 10%, SNAC and VPUU resolved to extend the surveying process. They intensified their efforts to advertise the enumeration by hosting a number of community meetings across Monwabisi Park’s four residential sections and put up posters throughout the settlement. They also divided the volunteers (eight of whom agreed to stay on after the first round of interviews) into two teams. The first team went door-to-door using GPS’s to contact missing household heads. The second remained at a permanent VPUU site office in Monwabisi Park to be accessible to residents.

According to a VPUU report published in 2014, following the intensification of advertising efforts, “Residents started visiting the enumeration office in significant numbers to ensure that they were included in the enumeration database. This showed that enumeration was being recognized as an important process by the residents.”27 By May 2012, 97% of households in Monwabisi Park had participated in the enumeration survey. In total, the geolocation and interview process together lasted 11 months, from June 2011 to May 2012.

The existence of the on-site VPUU office enabled residents to easily verify their data. From June to November 2012, residents could visit the office to check their information and request changes when necessary. Once residents had reviewed their information, they received printouts indicating their names, surnames, identity numbers, and the locations of their structures. By November 2012, more than 30% of residents had visited the office to verify their information.28

Despite the challenge of reaching every household in the confusing geographic context of
Creating a numbering system and community register

With detailed data on the position of each structure, as well as information about 97% of the settlement’s residents, the VPUU next evaluated avenues for pursuing official recognition from the municipality. In late 2012, the project team took the first step toward harnessing such data by creating a new numbering system for Monwabisi Park. “Right from the beginning, one of the intentions behind the enumeration was to use it to create a [plan to install services and infrastructure in the settlement] . . . But we first needed to get a logical numbering system that would let us be flexible in future,” Krause said. Whereas in the past, “different institutions would come and put a number on the shacks, we wanted one number per shack to serve all service providers.” A single numbering system would reduce the potential for confusion when different organizations supplied services to a community.

To create a visual map of the area, the VPUU entered the enumeration data into a geographic information system. Due to the richness of the global positioning and social survey data collected, the VPUU team could use existing walkways between the shacks to demarcate individual blocks. Krause said, “Working from east to west, what we did was to have 32 superblocks going from one side to the other. Those were further subdivided into 159 neighborhood blocks.”

Individual households within each neighborhood block were then assigned a number from 1 to 100. The result “was like a chessboard,” Krause said. In the east, “it would start with superblock 1, neighborhood block A, house number 1.” The new address simply read 1A-1. By August 2013, VPUU field-workers were stenciling the new addresses onto shacks throughout the area. The result was that for the first time, “people in Monwabisi Park got permanent numbers,” Krause said.

With a coherent numbering system in place, the focus shifted to consolidating all of the information into a comprehensive registry that would be accessible to the community. The VPUU printed three physical copies of a map book containing all of Monwabisi Park’s registry information: one copy was kept in the on-site office, another was kept in the VPUU’s Cape Town head office, and a third was provided for the city’s Strategic Development Information and Geographic Information System Department’s research hub for sharing with other municipal line departments.

But the new registry was not fully integrated into the city’s housing waiting list because the housing list kept track only of city residents who were eligible for housing subsidies. By contrast, the Monwabisi Park data included everyone living in the settlement—even people who did not qualify for subsidies. Krause argued that ideally, “the city could compare the housing list with the Monwabisi list to look for matches, especially because—to our knowledge—the municipality doesn’t have a citywide database for people living in informal settlements.” In Krause’s view, the failure to integrate the data reflected “fear of exposing the city to risk [through acknowledgment of residents who did not qualify for housing subsidies], as well as an unwillingness to potentially give up a bit of power” to the community by endorsing the register. Krause stressed that the Monwabisi Park enumeration data “was some of the most accurate in Cape Town, because it combined per-household GPS data with identity numbers and unique household information.”

Krause said that when they submitted the registry to the city, he emphasized that it would soon become outdated. “People are born there, people die, people move, and people marry. We’re still struggling with causing the city to understand that it’s not a static system, so we have to be very fast and very efficient in keeping it up-to-date.” To try to stay on top of changes despite the city’s hesitance to fully integrate the data, the on-site VPUU office in Monwabisi Park was converted...
into a registry office. The VPUU employed full-time community facilitators to enable residents to continually verify and update their information. When residents moved out of the settlement or when new tenants moved in, they were encouraged to update their details at the site office.

Each month, 20 to 30 people visited the office to update their registry information, Krause said, but many more residents undoubtedly had changes in status that they did not log. Part of the problem was the fact that geographically “there was no ideal location for the registry. We had only one office but should probably have had four: one for each section in the settlement. But that would not have been financially viable,” Krause pointed out.

**Determining eligibility and issuing official documents**

Despite its limitations, by late 2013 the completed community registry provided the project team with an opportunity to take the biggest step to date on the road toward administrative recognition: the issuance of formal occupancy certificates to residents of Monwabisi Park. But before the VPUU could pursue the idea with city officials, it had to define which members of the community would be eligible to receive the certificates.

Based on the city’s legal framework, the key requirements for a person to receive an occupancy certificate were to be resident in Monwabisi Park and to have a South African identity number. That meant that non–South African residents were not eligible to receive the documents, but unlike the standard housing subsidy system, the system did not discriminate based on household income or whether residents had previously qualified for state housing assistance.

The community registry remained open so that people could go to a Home Affairs office to get an identity document and then return to apply for a certificate. Although the VPUU could not help people get their identity documents, it could explain how to apply and could provide advice. For that purpose, “we had a community facilitator on site, on the ground,” Ewing said.

The team also decided that the occupancy certificates would be issued in the name of the household head. As revealed by the enumeration survey, women headed about 46.2% of the households in Monwabisi Park. And whereas the protocol meant, therefore, that almost half of the occupancy certificates would automatically be issued to women, VPUU ensured that coregistration was also possible for women living in male-headed households by including space to list on the certificate the names and identity numbers of two additional registrants. Ewing emphasized that tenants, who were often transient, weren’t entirely excluded from the upgrading process because “they were also included in the community register.”

Under the earlier agreement that the VPUU had reached with the city, only residents included in the community register would be eligible to receive certificates. According to Geretto, “Once your name was on the certificate, you had a right to participate in the process, provided that you met the other criteria for housing.” The city also printed the following on the occupancy certificates: “Selling, renting, or subletting of the land is unlawful and will not be tolerated. The land is not transferable to relatives, friends, or any other person, as the city remains the only competent authority to exercise the right to authorize any change of occupancy.” The city government also required that the dominant use of the dwelling remain residential.

On February 20, 2014, Cape Town executive mayor de Lille officially endorsed the occupancy certificates during a public ceremony in Monwabisi Park. In her speech, she said she regarded “the issuing of tenure certificates [as a] milestone.” She explained that the certificates could be used as proof of residence and as an address, thereby “opening the door to financial and other opportunities.” Most significantly, she proclaimed, “These certificates provide the assurance to each household in Monwabisi Park that they are an acknowledged part of the upgrading of the area and that the city
acknowledges that Monwabisi Park residents are authorized to reside on city-owned land.”

In a major step toward securing administrative recognition of the area, Mayor de Lille handed over 6,470 occupancy certificates—one for every registered household—to the on-site registry office. Executive Director Seth Maqetuka of the municipality’s Human Settlements Department signed each one.

By July 2016, the city and the VPUU registry had distributed 85 to 90% of the occupancy certificates, Krause said. “If the certificate wasn’t collected, we would visit the house three times and leave a slip under the door asking them to come to the office. But we would issue it only to the registered person.” When recipients arrived at the office to collect their certificates, “We made copies of their identity documents and took a photograph of them,” Krause said.

**Linking the settlement with municipal services**

The city’s official endorsement of the community register provided an opportunity to expand municipal services in Monwabisi Park. In Cape Town, local and national legislation required the municipality to provide a set of “free basic services” for “indigent households.” The Municipal Systems Act of 2000 covered any “municipal service that is necessary to ensure an acceptable and reasonable quality of life and, if not provided, would endanger public health or safety or the environment.”

In 2001 and 2002, the municipality installed 30 communal taps along the main road running through Monwabisi Park. In 2006 and 2007, the city also installed 358 communal toilets in Monwabisi Park and provided basic solid-waste-removal services whereby field-workers collected refuse from across the settlement and stored it in containers until trucks came to collect it. In 2011, as part of the new upgrade, the city’s Water and Sanitation Department began working with the VPUU on plans to provide a further, 153 standpipes with two taps per pipe.

Electrification remained a pressing need. Although 41% residents made use of informal electrical connections in 2009, the connections were often illegal and unsafe. As a result, in a series of five meetings from March 2011 to March 2012, representatives of the municipality, the national electricity provider (Eskom), the VPUU, and SNAC, as well as other interested community members, assembled to develop a plan that would expand electrification in the settlement by using data from the community register.

While the community register was being created during 2012 and 2013, Eskom undertook a phased electrification process in Monwabisi Park. By the end of three phases of electrification in 2013, “we got 100% coverage,” Krause said, stressing the fact that “Eskom electrified on the basis of the enumeration [data]. And it was also a good example for us, because the phased approach meant that we got the community to self-regulate” in terms of deciding which structures would be electrified first, he said.

The community register potentially provided a basis for collecting municipal rates (property taxes) and service fees. However, the fact that the city’s indigent policy exempted properties valued at less than R88,000 (US$6,126) meant that people did not have to pay municipal rates. Krause said that if incomes rose in the future, residents could help pay for services. “The fact that there’s now one unique number linked to your identity number means we’re setting up the system for the city [to
potentially collect municipal rates in the future],” he added.37

Assessing and mitigating environmental impacts

By mid 2013, the project’s focus had shifted toward formally rezoning Monwabisi Park in preparation for the installation of major infrastructure. Krause said that whereas the earlier challenge had been to find ways to coordinate with the community, the VPUU now had to coordinate with municipal line departments with regard to requirements for submitting the rezoning application. “What was important at that time was that we had an informal settlement working group with senior management all together. They had a mandate to work in selected settlements, including Monwabisi Park.”

One prerequisite for submitting a land-use management application was approval from the provincial environmental affairs department. Janet Bodenstein, head of environmental management frameworks and review in Cape Town’s Environmental Resource Management Department, said, “The need for an environmental impact assessment arose primarily from the fact that 13 hectares of critically endangered indigenous vegetation would have to be cleared in the process of developing Monwabisi Park.”

The VPUU planned to use the area of cleared vegetation as a zone that would be transitional to the Wolfgat Nature Reserve and would serve as an emergency access point, a sports field, a road, and a settlement area for the 5% of households that would have to undergo temporary relocation as part of the planned future development.38

The VPUU first submitted to the provincial Department of Environmental Affairs and Development Planning a notification of intent to develop the area, said Daleen van Zyl, a project officer in the city’s Environmental Resource Management Department. The partnership then launched a public-participation process. “The big thing was that we had to notify every single household on the site,” van Zyl explained. “We got help from the city’s Human Settlements Department, which went out over a weekend to drop off letters at every single structure.”

The next step was to process comments about and objections to the proposed rezoning and development of the area. Bodenstein pointed out that the primary objection came from Cape Nature, the provincial government agency that maintained wilderness areas and public nature reserves in the Western Cape. “They were not at all keen on losing 13 hectares of indigenous vegetation.”

Although “it was not an easy process to get them to agree,” van Zyl recalled, Cape Nature eventually acquiesced after the VPUU agreed to accept three conditions: The first was to cordon off the area next to the Wolfgat Nature Reserve before construction so as to prevent people from entering the reserve or just moving there, said Bodenstein.

The second condition involved conducting a search and rescue of local fauna in the affected area before any work took place. “So the biodiversity branch of the Environmental Resource Management Department would go in, have a look at the vegetation, and see whether it could remove some of it and use it in a different nature reserve,” Bodenstein added.

Finally, Bodenstein said, “Cape Nature recognized that benefits would be obtained for the adjacent Wolfgat Nature Reserve from there being a defined boundary between Monwabisi Park and the Reserve in the form of a road that would act as a firebreak as well.” The more-secure boundary would provide a management edge and enable an additional piece of land to become a formal part of the Wolfgat Nature Reserve. It had not been previously proclaimed as part of the reserve largely due to the uncertain boundary with Monwabisi Park. Cape Nature’s third condition was that the additional piece of land be added to the reserve.

With those conditions in place, the provincial Department of Environmental Affairs and Development Planning granted environmental authorization for the project on May 27, 2016.

Hitting an Impasse over Zoning and Services

By late 2016, the rezoning effort remained in limbo for a number of reasons. Normally, it would
make little sense to invest in an incremental tenure system without assurances that the city would zone the area for residential use. But when the Urban LandMark workshops took place in 2010 and 2011, Cape Town did not yet have a special zoning category to cover informal settlements earmarked for upgrading. Gemey Abrahams, an Urban LandMark consultant who participated in the workshops, explained that at the time, Cape Town was planning to introduce a new zoning category designed specifically for informal settlements and to be called Single Residential Zone 2, or SR2.

Abrahams described the proposed zoning as “flexible” and designed to “take a settlement from being very informal, with no specific individual plots identified, to more-individualized, single plot rights.” The SR2 zone would facilitate upgrading and incremental housing “from an informal settlement to a formal settlement [with] development rules that are not very restrictive,” an African Centre for Cities report said.

Although at the time it was unclear when the city council might approve the proposed zoning, the VPUU resolved to wait for adoption and then submit a formal application to rezone Monwabisi Park under the SR2 category. According to Abrahams, “It simply didn’t make sense to rezone it under other legislation or the old zoning scheme if new regulations were on the way.” The new Cape Town Zoning Scheme, which contained the SR2 provision, was adopted in December 2012.

In the meantime, the project team focused on preparing the application documents that would be needed to rezone Monwabisi Park to SR2. To facilitate the upgrading of service infrastructure in the settlement and thereby subdivide and develop the land on which the settlement was built, the VPUU had to submit a formal land-use management application that included the proposed rezoning plan. The plan called for the land occupied by the settlement to be rezoned to SR2 from “agricultural” and “limited-use” zones, neither of which allowed (1) buildings to be altered or (2) the installation of services. The team aimed to propose that no more than 5% of households be relocated out of the area and that only 4 to 5% of structures would require “altering.”

Because the settlement was spread over four properties—three of them owned by the city and the other owned by the provincial government—the VPUU joined an existing “intergovernmental relations forum on area-based approaches,” which included city and provincial officials. Through the forum, the participants drew up a proposal that called for the land taken up by Monwabisi Park to be spun off (subdivided) from the four land parcels and consolidated into two separate properties owned by the City of Cape Town. Because of the extensive consultation process with the community and the detailed planning work required to draw up the plans, the rezoning and subdivision application was submitted to the municipality only in November 2013.

With the rezoning application, the VPUU also requested approval of a comprehensive development plan that had emerged from community-based workshops during 2013, Hendricks said. And at that point, troubles began to arise. Practical considerations stymied the VPUU’s proposal to upgrade service infrastructure without significant changes in the tightly sewn patchwork of buildings in Monwabisi Park. The application called for installing roads as well as sanitation, water, and storm-water services to ensure that every household had individual street access, as well as its own water tap, toilet, and electrical connection. But the city’s line departments and engineering consultants said doing so without changing the existing layout of houses and other buildings would be extremely difficult and inordinately expensive.

Charles Rudman of the city’s Planning and Building Development Department described the problems of installing infrastructure in a “chaotic layout” like Monwabisi Park’s. “You have to follow a grid if you want each individual structure to connect to water, for example,” he said. “The more we start to bend [pipes] and the more junctions you create, the more potential you have for blockages.” Geretto, who was with the city’s Spatial Planning and Urban Design Department,
said that estimates on the VPUU’s in situ infrastructure-upgrading proposal could cost 30% more than a standard greenfield services installation and would result in additional operational expenditure due to more-onerous maintenance requirements.

Johan Gerber, who headed the city’s informal settlements division, was blunt: “When I put on my engineering hat, I cannot see it working. The problem is the definition: If you have to relocate even one household [out of the settlement], then it’s no longer in situ. But you cannot ignore commonsense engineering standards just to do an in situ upgrade.” Gerber also pointed out that in the existing informal layout of Monwabisi Park, informal property sizes were exceedingly unequal because the biggest lots had been taken by those who came first, and the proposed in situ upgrading would permanently entrench that inequality.

Instead of steadfastly refusing to relocate any residents while installing municipal services, Gerber was in favor of a physical upgrading approach called reblocking, which the city had piloted in other, smaller settlements. Under reblocking, dwellings are dismantled and residents relocated into temporary housing so that “we can do earthworks under normal engineering standards,” Gerber said. “Reblocking means people accept that they would have to take down their structures while we go in and do the engineering, create an orderly and equal layout, and put in services. And then they move back in and rebuild their structures according to the new layout—preferably with new materials donated by [nongovernmental organizations].”

But Krause argued that to meet the city’s requirements for the installation of municipal services following the traditional engineering approach, “you would [need to relocate] 40% of the people [to areas outside Monwabisi Park]. That would undermine the original task, which was to work within the existing footprint with agreed modifications at the edges.” If the city decided to take the reblocking approach of relocating residents, leveling and servicing the land, and then moving many of the original residents back, “you start a completely new argument about plot sizes—outside the context of the original footprint—which is a political argument.”

Ewing said that the VPUU had envisioned a cooperative effort by the community and the government. “If we could get legal and administrative recognition together, then we’d have an officially recognized settlement with a community that is willing to be part of the development,” she said.

Lack of communication between the VPUU and municipal officials when the project began in 2009 had given rise to the stalemate, Geretto observed. “The municipal planning department didn’t immediately have a detailed plan [from the VPUU] because it understandably took them a long time to do things like topographic surveys,” he said. The VPUU also had to wait until late 2012 for the city to adopt the new zoning scheme. As a result, “We didn’t get into the details of how to install services; we saw the plan for the first time in late 2013,” he said. By that time, “the softer, social engagement process had gotten ahead of the harder, rezoning and physical-development-planning process, and the VPUU had already made a commitment to the community” that residents would not be relocated.

By mid 2016, after three years, the rezoning remained stuck. Some predicted the plans would be rejected. Rudman declared: “You can’t go into a context like that and say you won’t move people at all. That is just as wrong as engineers’ dogmatically sticking to standards and not being prepared to innovate. People were not prepared to say, ‘Let’s make trade-offs.’”

OVERCOMING OBSTACLES

Rezoning was not the only challenge. Periodic community disputes and a threatened land invasion in 2014 required the VPUU and SNAC teams to periodically resolve disputes to protect their gains.

The project team’s desire to keep the registry updated meant it had to be prepared to sort out competing claims to land. According to Ewing, certain challenges started to emerge during the verification phase of the enumeration process. “In
some instances, people were assigned the same number.” Another challenge involved “intrafamily claims against the same [structure]: the boyfriend would come and take the number, or an unmarried couple with children would break up and both partners would claim the same structure.”

The VPUU’s solution was to train registry office staff in conflict resolution. Ewing said, “We brought in conflict mediation experts from the University of Cape Town to train our team of community representatives and local leaders on-site.” Even though such “intrafamily claims are by no means an easy thing,” the presence of trained mediators played an important role in preventing the escalation of disputes, Ewing said.

In early 2014, the magnitude of the challenge presented by community disputes intensified. One of the conditions the municipality had attached to the occupancy certificates was that no new residents would be allowed to settle in Monwabisi Park. But in the run-up to the 2014 national elections, a group of 200 homeless people affiliated with the Economic Freedom Fighters (EFF), a newly formed radical political party that advocated land invasions across the country, threatened to launch an invasion of the little remaining vacant land in Monwabisi Park. With the project gaining momentum, the EFF saw an opportunity to force its way into the settlement in order to benefit from the upgrades. “The people were waiting in backyards across the road from Monwabisi. They had drawn lines on open land in the settlement to show where they wanted to erect their structures, and they said: ‘Tomorrow we’re coming,’” Krause said. The EFF targeted areas at the edge of the settlement to build new structures for people to live in.

The attempted invasion led to tense standoffs between the EFF on one side, and residents, the VPUU, and the city on the other. According to Krause, when the attempted invasion happened, the registry office had already handed out 60% of the occupancy certificates, but “a local highly politicized group” threatened to burn the office and steal and distribute everything that remained. Krause’s staff moved not-yet-issued certificates to individual households so that they were out of harm’s way. “We had people literally standing in a closed circle around the office [to protect the documents],” Krause said.

With tensions escalating, the VPUU turned to local SNAC leaders for support. The VPUU mobilized help from SNAC, senior city officials like Human Settlements Department director Maqetuka, and the city’s anti-land-invasion unit. “We were on-site every day, and for two or three months we had intensive negotiations [with the invaders],” Krause said, stressing that it was ultimately the community’s ownership over the project that enabled them to convince the invaders to back down. “The community leadership didn’t drop us. They safeguarded it.” The would-be invaders backed down in the face of community opposition.

ASSESSING RESULTS

By mid 2016, the project in Monwabisi Park had yielded significant achievements in the quest to upgrade tenure security in the settlement. The most noteworthy achievement was that 85 to 90% of the 6,470 household heads in Monwabisi Park acquired occupancy certificates under the program. The officially endorsed occupancy certificates amounted to administrative recognition by the city that residents were permitted to stay on the land.

For those households, the certificates had practical utility. In addition to being able to get cell phone contracts, “[Residents] could comply with the legal requirement to provide proof of address,” Krause said. “This enabled residents to apply for furniture store accounts.” The certificates also enabled the city health department to administer medication more accurately and enabled residents to enroll their children in nursery schools and public schools. “Those are real benefits to the community,” Krause said. There was also a psychological aspect to possessing an occupancy certificate. “People are very proud to have one,” he added.

The community enumeration was also a key milestone in the initial community engagement phase of the project. Mayor Patricia de Lille
acknowledged during her speech to the community in February 2014 that “this enumeration process is the largest the city has ever undertaken, with 6,470 households, or 25,000 people, interviewed. The enumeration process is absolutely critical because it enables the city and its partners to have an up-to-date, accurate, and locally accepted list of who currently lives in the area and under which conditions.”

A follow-up evaluation conducted two years after completion of the enumeration revealed that the registry was still accurate for 97% of the physical structures in the settlement. An important, tangible outcome of the municipality’s access to that information was the fact that the entire settlement had become electrified in 2013.

Krause explained that “the register was updated on a regular but voluntary basis.” Figures from 2016 revealed that after a slow start, Monwabisi Park’s register had experienced a surge of updates by late 2016. In July 2016, only 35 community residents visited the registry office to update their information on the system. But by November, the number had grown to 1,135. In addition to reflecting beneficiaries’ trust in the system, for Krause the surge in updates was proof of residents’ desire to push the upgrading project forward. It took place at about the time the city was starting to talk to residents about a site-and-service project for roughly 150 families in Monwabisi Park. “So, people came [to the registry] to verify their information in the database [in anticipation of the project],” Krause said. “It is good evidence that, once [upgrading] opportunities are brought into the settlement, community members use the established local [register]. It’s a wonderful example of how locally developed and owned systems respond to development opportunities.”

City officials also lauded the project team for its ability to engage with the community. In Gerber’s view, “The VPUU is simply great with public participation, with building relationships, talking to people, doing surveys and enumeration, and creating a social compact. They are absolutely brilliant with that.” Bodenstein agreed: “The social consultation process was very thorough.”

While the project was thus making significant headway in terms of administrative recognition, VPUU’s attempt to use that recognition to develop

<table>
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<tr>
<th>Table 1. Resident interaction with the Community Registration Office</th>
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<td>(number of visits to the Monwabisi Park registration office)</td>
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<tr>
<td>Total visits to the registration office</td>
<td>35 (100%)</td>
<td>24 (100%)</td>
<td>48 (100%)</td>
<td>304 (100%)</td>
<td>1144 (100%)</td>
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<tr>
<td>Update existing household record (e.g., cell number, address, surname, new household member)</td>
<td>34 (97%)</td>
<td>7 (29%)</td>
<td>21 (44%)</td>
<td>287 (94%)</td>
<td>1135 (99%)</td>
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<tr>
<td>Register a new household</td>
<td>0 (0%)</td>
<td>0 (0%)</td>
<td>0 (0%)</td>
<td>0 (0%)</td>
<td>0 (0%)</td>
</tr>
<tr>
<td>Remove an existing household (i.e., the household moves out of the settlement)</td>
<td>1 (3%)</td>
<td>10 (42%)</td>
<td>8 (17%)</td>
<td>3 (1%)</td>
<td>0 (0%)</td>
</tr>
<tr>
<td>Check personal information on record (e.g., the resident forgot their ID number)</td>
<td>0 (0%)</td>
<td>7 (29%)</td>
<td>19 (40%)</td>
<td>14 (5%)</td>
<td>9 (1%)</td>
</tr>
<tr>
<td>Obtain a City of Cape Town occupancy certificate (Monwabisi Park residents only)</td>
<td>0 (0%)</td>
<td>0 (0%)</td>
<td>0 (0%)</td>
<td>0 (0%)</td>
<td>0 (0%)</td>
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</table>

Source: Violence Prevention through Urban Upgrading, Monwabisi Park Community Registration Office
the settlement’s infrastructure faced significant obstacles. Even though a detailed rezoning and land-use-management application had been submitted in November 2013, disagreements over the plan’s technical engineering aspects as well as the need to relocate people outside the settlement meant that the application ran the risk of rejection. If the two sides became unable to reach a compromise, the project would likely stall before many of the tangible results of official recognition, such as improved infrastructure and service delivery, got secured.

REFLECTIONS

Despite the challenges it faced, Monwabisi Park offered lessons—some positive and some negative—for other cities contemplating incremental tenure upgrading in informal settlements.

On the enumeration process, a 2014 report by Violence Prevention through Urban Upgrading (VPUU) included three lessons. The first was that because of the importance and sensitivity of the information collected, the process should not be rushed; project leaders “should dedicate a significant amount of preparation, especially when applying an innovative methodology and when implementing in a complex urban context.” Second, the report highlighted the need for enumeration to be a community-driven process with strong involvement from local leadership structures. And third, the report said that to avoid a situation in which residents become impatient and lose trust in the process, “the community should not be given unrealistic time frames for enumeration to be completed. Experience shows that enumeration is a medium-term process.”

Sustaining political support and building high levels of coordination were critical to success. One had to take a very long view to see the benefits of incremental tenure, which by its very nature did not yield the kinds of short-term impacts politicians valued—such as the handover of newly built homes or the immediate installation of physical infrastructure. Noahmaan Hendricks, a civil engineer who served as director of development services and housing in Cape Town’s Human Settlements Department, said, “Because politicians focus on short-term outcomes to retain office, they are not always interested in long-term outcomes that do not occur within their tenure.”

Most arguments against the project centered on the long time it took for an incremental upgrade to turn an informal settlement into a formal suburb and on the difficulties of installing services without relocating residents, but there was an undercurrent of resistance that originated from the project’s close association with Mayor Patricia de Lille’s predecessor. If reformers had been able to emphasize that incremental informal settlement upgrading was more than a mayoral “pet project,” they might have been able to reduce initial resistance by the incoming administration.

For the purposes of coordination, Cape Town’s high-level informal settlements working group, which eventually disbanded, offered a model for breaking through some of the obstacles that regularly arise in the implementation of incremental tenure programs. Had the working group remained longer, it could have eased some of the bottlenecks surrounding the rezoning process and extension of services. “I’d like to emphasize that from my perspective, it was a strategic mistake for the city to close down the informal settlements working group,” said Michael Krause, an urban designer who led the VPUU effort and was director of Sustainable Urban Neighborhood Development, a South African company involved in the field of negotiated development in low-income areas. Krause also said the working group could be a repository for historical memory and a vehicle for the mainstreaming of new programs, like incremental tenure.

A second important lesson from Monwabisi Park was the practice of visible administration. Visible administration has been found to be an important factor in maintaining an organized tenure administration system.48 Whereas Johannesburg subcontracted tasks like community enumeration to external service providers, the VPUU established a dedicated on-site registration
office staffed full-time and located in Monwabisi Park. When combined with a comprehensive social consultation process, this practice meant that residents felt a real sense of ownership over the project. The way that community leaders prevented the attempted 2014 land invasion was evidence of that sense of ownership.

Topography was a third point to consider. Marco Geretto, a senior urban designer in Cape Town’s Spatial Planning and Urban Design Department, pointed out that with regard to the installation of infrastructure, more thought should have gone into selecting the site of the pilot project. “An in situ upgrade would have been easier on a less topographically challenging site because it’s arguably easier to deal with in situ on a slope that is either very steep or very flat. The undulating topography of Monwabisi Park was a problem,” he said.

Decision makers said it was important to sequence steps carefully. Entertaining subdivision at the end instead of the beginning threatened success. “The end product of the informal settlement upgrading project in its entirety is likely to be very different . . . from what was communicated to the community at the beginning of the project in 2009,” Geretto said. If the disagreement between the VPUU and the city’s engineers had come to light at the very beginning of the process, they might have been able to negotiate a balance between the need for reblocking and not relocating residents. Geretto pointed out, “Even though it was a valuable experience, the city and the community are getting frustrated. We may have to go back to the drawing board as far as rezoning goes and reengage with the community . . . We will have to muddle our way through.”

The Monwabisi Park experience also posed an ethical and administrative dilemma that would-be imitators would have to consider. The result of incremental tenure, coupled with in situ upgrading, would not produce the kind of improvements that greenfield development would. It would not by itself produce equality or significant improvement in people’s lives.

For Johan Gerber, who headed the informal settlements division in the city’s housing department and was an advocate of temporary relocation and reblocking, the fact that Monwabisi Park beneficiaries were not provided with fully serviced plots right from the outset meant that “even after 20 years of following the process of incremental upgrading . . . we will still have an informal settlement.” He added, “When we’re done with the project, we want to be proud of it and scratch it off our list of informal settlements, but that’s not the case with Monwabisi Park’s in situ upgrading.
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“Monwabisi Park Land Use Management: Rezoning and Subdivision Application,” Informal Settlement Transformation Program.


Speech by the City’s Executive Mayor, Patricia de Lille, at the Handover of Certificates of Tenure in Monwabisi Park on 20 February 2014.


FROM THE GROUND UP:
DEVELOPING JAMAICA’S NATIONAL LAND AGENCY, 2000–2016

SYNOPSIS
In 2001, registering or transferring land in Jamaica was an uphill battle. Four separate departments handled different aspects of land administration, leading to weak coordination and delay. Even straightforward transactions dragged on for weeks, simply getting information was a struggle, and fraud was commonplace. In April of that year, Jamaica established the National Land Agency, charged with merging the four departments, speeding up services, and improving their quality. As the new agency’s CEO, Elizabeth Stair led a team of managers that had to oversee the consolidation, design systems to prevent fraud, improve performance, and implement new procedures and technologies to increase speed and transparency. During its first decade and a half of operation, the National Land Agency significantly reduced processing times and won acclaim for its customer service and innovative use of technology. Despite these successes, there was still room to improve land tenure security. Stiff documentation requirements, high costs, and limited awareness of the process meant that registration and related services remained out of reach for many Jamaicans.

Maya Gainer drafted this case study based on interviews conducted in Kingston, Jamaica, in June 2016. Case published January 2017.

INTRODUCTION
“It had to change,” National Land Agency CEO Elizabeth Stair said of Jamaica’s land administration system. Before the agency was established in 2001, the four government departments that managed aspects of land administration—the Office of Titles, the Survey Department, the Land Valuation Department, and the Office of Crown Lands—suffered from delays and fraud. Customers could easily access sensitive records, enabling them to forge transactions to take possession of other people’s land. In addition, the system moved at a glacial pace, typically taking weeks to process a simple transfer—and longer for more-complex transactions such as registration or checking a survey plan.

Many of the Caribbean nation’s property owners were unable to access land administration services at all. In 2000, an estimated 55% of the parcels of land on the island were unregistered. The real figures were unknown because people often transferred, divided, or inherited land informally, without written records. The documentation, tax payments, and legal and survey fees necessary to obtain a registered title—the state-guaranteed and definitive form of ownership—presented far too high a bar for many, especially people in rural areas, where nearly half...
of the population lived and where the poverty rate was twice that in cities.1 (See textbox for more information on the title registration, or Torrens, system used in Jamaica.)

In 1996, Jamaica adopted a new National Land Policy to address the sector’s many problems, from unplanned development to inefficient institutions and unsustainable use of resources. The document’s key goals included “affordable and legally secure access to land” and “effective land management and administration institutions.”2 Achieving widespread registration was a key goal of the governing People’s National Party, and the main opposition party agreed on the need to improve access to titling and other land services.

Although the policy called for the creation of a single institution responsible for land management, it provided few details with regard to precisely how that institution would function.

At the time, the Jamaican government was in the midst of a broader transition that became pivotal in determining the land agency’s future. In response to years of high government expenditures and poor service quality in many policy areas, the government and the World Bank initiated a wide-ranging set of reforms called the Public Sector Modernization Project. To improve selected services, the project proposed creating executive agencies based on a model developed in New Zealand and the United Kingdom. The new agencies would be unbound by the usual civil service rules on hiring and firing and would have autonomy over their budgets in exchange for meeting targets set out in the performance contract each chief executive officer signed with a supervising minister. In many cases, the agencies also were allowed to charge for services and generate their own revenues. The reform program planned to create the unified land agency envisioned in the 1996 National Land Policy as one of eight pilot agencies.

“The idea was to give the new agencies more control over their money, their people, and their destiny, but we’d also expect a lot more of them,” said Murray Glow, a Canadian management consultant whose firm won the bid to prepare the initial plans for establishment of the new agency.

Box 1. The Torrens System

Jamaica adopted the Torrens system (named after Sir Robert Torrens, an Australian politician in the mid-19th century) with the passage of the Registration of Titles Act in 1889. In a Torrens, or title registration, system, a certificate of title constitutes a strong, permanent record of property ownership. The person registered on the title has a definitive claim to the property, and the government guarantees the claim and provides the rightful owner with compensation if a title gets issued or transferred in error.

A Torrens system can simplify transactions because the title takes precedence over any other claims, and it guarantees the registered owner has the right to sell the property. In contrast, under a deeds system, transfers have to be thoroughly investigated to verify that the deeds in the registry show an unbroken chain of ownership that ensures that the owner in fact has the right to sell and there are no competing claims to the property. Because the Torrens title certificate serves as a definitive record of ownership, titles generally must be issued carefully to avoid dispossessing someone who has a legitimate claim to the property. Boundaries must be clearly demarcated, and it is important to resolve any disputes or overlapping claims at the time the title is issued.

In Jamaica, as in other Torrens systems, a title has two main parts. The first is a map showing the location of the parcel and its boundaries. The second is text that records details about the owner and the property and any rights or restrictions associated with ownership, such as restrictive covenants or mortgages. When the entire parcel gets transferred, the new owner’s name is simply recorded on the same title. A division of the land or alteration of its boundaries requires amendment to the map and the issuance of new documents or certificates.
In collaboration with the Jamaican public sector reform unit based in the prime minister’s office from 1997 to 2000, Glow’s team developed a plan of operation for the agency, from its relationship to the parent ministry to a planned budget and organizational structure. The team also worked with the reform unit to identify the right leader for the new National Land Agency (NLA).

Stair applied for the job of CEO in mid-2000. At the time, she headed the Land Valuation Department, was serving as acting commissioner of lands, and was a fellow of the Royal Institution of Chartered Surveyors in the United Kingdom, where she had studied. Like many of her staff and colleagues, Stair worried about the new approach, she said, “but it was going to happen, and there was nothing I could do about it.”

As Glow’s consulting team discussed the existing departments’ problems with their leaders and gave examples of countries where executive agencies had worked, Stair saw the new model’s potential. At the end of a grueling application process—consisting of a combination of a written assessment, several presentations, group work with the other applicants, and a formal interview—Stair found herself with six months to get the NLA ready to launch.

THE CHALLENGE

From her first day on the job in September 2000, Stair faced a series of daunting tasks: she had to lead the merger of four separate departments, each with its own culture and procedures. After the merger, the new agency had to control corruption and dramatically improve services—all of it in the face of substantial anxiety and resistance from the civil service staff.

The NLA’s first set of challenges revolved around merging the four core departments—titles, land valuation, surveys and mapping, and estate management (the new name for the Office of Crown Lands, which managed land held by the government)—into a cohesive single agency (Figures 1). “The executive agency acts as an umbrella,” Stair said, by providing a management structure for all four departments.

The departments, renamed divisions, would continue to provide the same services but with closer coordination, a unified operational support system, and overall direction from the CEO.

All four existing departments had their own procedures, however, and they had not formally coordinated in the past. Previously, “we had very informal contact with each other,” Stair said, and getting information or assistance from another department depended on officials’ relationships.

Figure 1. NLA Organizational Structure

Jamaica National Land Agency

- Chief Executive Officer
- Internal Audit & Corporate Planning
- Technology & Business Development
- Corporate Legal Services
- Corporate Services

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Maintaining and formalizing cooperation would be difficult. The department heads had worked together during the planning process, Glow said, “but then the issue became, ‘If we merge you guys, who’s going to be in charge?’” Leaders were reluctant to cede their authority, and initially, “everybody was protecting their turf,” recalled Lori-Ann Thompson, who in 2016 was director of business services at the NLA.

Beyond questions of authority, each department had its own ways of functioning. In every office, “it was a different culture . . . the hardest part was trying to get everyone on the same page,” said Stacey Coore-Leslie, who joined the NLA as operations manager in 2001 and later became director of corporate services. Furthermore, the reorganization meant that some staff moved between departments, and other staff came in from the private sector. For some new hires like Thompson, who started out managing customer service for the titles division, “it was a culture shock when I came here. . . . I really was put in a [role] where nobody wanted you,” she said, and existing employees initially refused to work with her.

The merger also required Stair, her advisers, and the agency’s new management team to finalize the NLA’s organizational structure, staffing plans, and job descriptions. Early on, they decided that those at the four existing departments who wanted to remain in their positions had to apply for jobs at the NLA. That requirement made the consolidation of support functions particularly sensitive. “We put in place a new structure, because of course you had four human resources [units] and four finance [units],” Stair said. The overlap meant that the NLA would have to cut positions, and staff who worked in those areas at the existing departments would face tough competition to remain in their jobs. Technical staff such as land surveyors or lawyers in the core divisions “would not encounter much of a problem, since their skills were specific to that department,” Coore-Leslie said, but in support divisions, “you’re competing with people from other departments with similar skills or tenure.”

Once the merger was complete, the new agency would face a second major challenge: achieving efficient and high-quality service delivery. To live up to the high expectations for the new executive agency, the NLA’s management team had to make sweeping improvements.

Limiting corruption was a top priority. “We knew it [corruption] was huge,” Stair said, particularly in the titles division. Corrupt practices ranged from bribes to speed up processes to the manipulation of documents. Because the Torrens system treated the land titles kept at the office as the definitive records of ownership, stealing or manipulating the documents enabled people to dispossess the rightful owners and fraudulently transfer land. “If they got access to our records, they would basically create their own endorsements—for example, transferring property to themselves,” Senior Deputy Registrar Shalise Porteous said. With few controls on access to records and no means of tracking who had handled them, such practices were almost impossible to trace, Stair said. It was essential that the NLA develop new ways to detect and prevent corruption, especially in the critical area of records security.

In addition, the NLA had a great deal of work to do to meet the standards expected of an executive agency. Before the agency’s establishment, there had been no formal performance management systems at either the institutional or individual level. “Nobody really checked if you did anything . . . and if you don’t check something, then it doesn’t get done,” Stair said. Coore-Leslie recalled that on her initial visits to some offices in 2001, “people were just milling about . . . you would go into a unit and ask for the supervisor and someone would say, ‘Oh, they’re not at work yet.’ Customers would just be sitting, waiting to be served.”

Weak supervision meant that unmotivated staff could get away with poor service and delays, and as a result, even simple transactions often took weeks. A straightforward transfer of ownership took an average of 25 working days, or five weeks. Registering a new title took 70 working days—
more than three months. With a new focus on meeting official targets—for instance, for transaction times and numbers of documents processed—the NLA had to develop ways to track and improve performance at every level.

Information management was one of the crucial areas for improvement because each division had a separate records system and its own way of identifying parcels, said Garfield Knight, who served as the NLA’s director of information technology from 2001 to 2004. As ownership changed and parcels were sold or modified, valuation numbers might differ from survey department plan numbers, for example.

Furthermore, in three of the four divisions, staff members relied on paper records that slowed even basic transactions because of the need to locate and retrieve physical files. In the titles division, Thompson said, “Even to find out where a document was . . . they’d have these big books, and you had to look through the books.” (The exception was the land valuation division, which had a basic electronic database.)

The NLA’s leaders wanted to digitize records and processes to speed up services, improve information sharing, and strengthen security. But such a change would require massive investments in software and infrastructure as well as an agencywide training effort to educate staffers who had never used a computer or knew only basic functions. The dearth of IT skills meant some of the computers the departments had were gathering dust. When Sherlock Glenister, who later became IT director, joined the NLA in 2001, he recalled, “We had maybe 20 computers . . . and I think there were about 50 computers in boxes,” he said.

Staff capacity fell short of needs in other areas as well. Glow’s team of consultants estimated that salaries were 15% to 35% lower than for comparable positions in the private sector, making it difficult for the departments to attract and retain professionals such as lawyers or IT specialists. Although the technical staff typically were experienced in their fields, such as surveying or valuation, clerks had no background in customer service, and managers lacked training in effective staff supervision. Some of the jobs in the new NLA also called for higher qualifications than before, so hiring skilled people and preparing them for their roles were crucial aspects. “There were some people who did not have the qualifications to move forward into certain jobs, and we wanted to move the bar,” Stair said.

Responding to all of those problems and setting up a cohesive, effective agency was difficult enough under the best of circumstances, but Stair and her team faced an additional challenge: widespread staff resistance.

When the concept of a merged agency was introduced several years earlier, employees had voiced concern. “There was some anxiety . . . about the need to reapply for a job in basically the same government service,” said Calvin Thompson, a manager in the survey department both before and after the merger (and not related to Lori-Ann Thompson). Although those who were not rehired would be transferred to other parts of the government or allowed to retire early, “some of them were very resentful, and they felt they were being pushed out of their jobs,” Stair said. And even for those who successfully secured positions at the NLA, the move to an executive agency meant there would be controversial changes in salaries and benefits. The agency could offer salaries that were higher than for comparable positions in a central government department, but it also had more flexibility to hire and fire employees and could offer lower benefits. A particularly unpopular change was the reduction in annual vacation time to 20 days from 35.

Beyond the anxiety created by the transition, the NLA was asking its employees to work harder and deliver better services, which represented a substantial shift in expectations—and for some staff members, an unwelcome one. Those who had been able to slack off or who had benefited from corruption were unlikely to readily accept the new model. As the agency began to make changes, Lori-Ann Thompson said, “There was so much resistance to what we were doing.”
FRAMING A RESPONSE

During the six months between her becoming the NLA’s first staff member and the agency’s official establishment in April 2001, Stair had to set priorities for the agency, hire staff, and lay a foundation for longer-term effectiveness.

The team of consultants and the public sector reform unit had already developed the main building blocks for the NLA: the framework document, which spelled out the agency’s relationship to its parent ministry; the medium-term financial plan, which forecast revenues and expenditures for the first five years; and the modernization plan, which detailed the agency’s functions, staffing, and transition plans.

The minister responsible for land matters—in 2001, the minister of land and environment, although the ministry went through several name changes in subsequent years—would supervise the new agency. The ministry’s Land Policy and Administration Directorate would have the main oversight responsibilities, receiving quarterly performance reports and flagging any serious problems for action by the minister. As the NLA’s CEO, Stair signed a three-year performance contract with the minister, and the targets set out in the agency’s three-year business plan and in the contract set the agency’s agenda. The NLA could award staff raises and bonuses only if it met its targets—a key distinction between executive agencies and central-government departments.

The modernization plan laid out the structure of the new agency, which consisted of the four original departments (renamed divisions) and new divisions for corporate services (human resources, operations, and finance), legal affairs, information technology, and business development. The director of each division reported to the CEO, and each division split its responsibilities into specialized units, each of which had its own manager. In total, Stair, the consultants, and the public sector reform unit had to hire 27 directors and managers, drawing on both the existing departments and the private sector.

“Every single post in the new agency was looked at, and we prepared new job descriptions,” Stair said. Once the responsibilities had been identified, she said, “We had a competitive selection process . . . There was no automatic transfer.” Although the decision to open all the positions to external candidates and require existing staff to reapply risked a major backlash, Stair and the consultants were determined to start afresh. “I was amazed that we saw it through and that it worked,” Glow said. “I thought there was a good chance it was going to blow up in our faces.”

Applicants, whether from inside or outside the existing departments, went through the same rigorous process used to select Stair as the CEO—a combination of written assessments, presentations, observed group work, and traditional interviews. “We were interviewing seven days a week,” Stair said. The process allowed the hiring team to see how people worked together as well as how they handled problems, recalled Jennifer McDonald, the agency’s first director of corporate services and the next person hired after Stair. The idea was to hire key people in the corporate services division first, she said, “because you would need the support staff to then be able to recruit the more [technical] staff.”

With human resources staff assisting Stair, McDonald, and the consultants, the focus turned to selecting the senior management team that would supervise recruitment of technical staff in their divisions. At every level, the hiring process demanded that prospective employees demonstrate their skills and ability to work together rather than simply relying on résumés and interviews. However, “we had to be sensitive to the staff, and we also had to prepare the staff,” McDonald said. Before the transition, the departments offered training to help employees meet the new requirements—for instance, in basic computer skills.

While the hiring process was under way, the new senior management team created an action plan for making the new agency operational. Consultant Gerry Post said: “We wanted to make sure the management team owned the future of the agency . . . We ran through the whole exercise they had done years earlier, and we revisited
“Everything.” It was up to the new managers to review and adjust the existing blueprints and create a business plan for the agency’s first three years in operation, including detailed performance targets and work plans. After agreeing on targets with the Ministry of Land and Environment, Stair said, she and the directors determined how to allocate resources such as IT or training between the divisions in order to meet the goals.

The agency’s leaders decided to focus first on the titles division. “The titles division was important because that’s where the majority of the revenue comes from,” Stair said, and “security was an issue.” Because most clients interacted with the titles division, improving services and procedures there would benefit the majority of clients.

As the plans took shape, the managers studied experiences from around the world. Stair and the directors visited land agencies in the Canadian provinces of Ontario, Nova Scotia, and New Brunswick. Teranet, the company that had developed and administered the electronic registration system used in Ontario, became a model for the NLA’s computerization efforts. Other Commonwealth countries, particularly New Zealand and Australia, also provided ideas both on merging land administration functions and on computerizing registration systems. As the management team learned what global leaders in the sector had done, Stair said, “you saw the opportunities.”

GETTING DOWN TO WORK

On April 1, 2001, the National Land Agency officially started work. By that point, senior management and most of the staff were in place, and the agency had a budget of J$317.7 million (US$6.5 million) for its first year. The new agency had clear goals: reduce turnaround times and improve customer service. But it had a long way to go. Its leaders had to get staff to accept the agency’s new direction, review and reengineer procedures, develop performance management systems, and introduce a range of technologies to ease access to information and speed up services.

Securing staff cooperation

The first mentions of a merger several years earlier had bred unease among the staff of the four land administration departments. Although many preparatory meetings talked about what the transition would mean, “there was a level of distrust between staff and management leading into the process, because the staff felt they were not being given the full picture, that they were not being told the truth,” Calvin Thompson said.

“People believed that management was trying to get rid of staff to bring in outside people or people from the private sector, so they were upset that they had to reapply for jobs that they believed were secure as government employees,” Coore-Leslie added. Consolidating functions enabled the agency to trim the total number of positions to 591 from 633, although vacancies before the NLA’s establishment meant there had been only 458 employees across the four departments. Of those 458, 96 were transferred to other parts of the government and 20 opted to retire. The rest of the existing staff reappplied for jobs at the newly created NLA through a competitive process. Additional employees were recruited externally and hired through the same process.

For those who transitioned from the old departments, some changes sparked resentment—particularly, revisions of their salaries and benefits. The NLA had well-compensated contract positions at the top to attract private-sector professionals, but for most employees, salaries were scheduled to remain the same in the first year and then rise gradually, augmented by performance bonuses; and some benefits were reduced.

Staff concerns “mostly had to do with the loss of leave, the loss of certain benefits you’d get in the civil service like noncontributory pensions,” Calvin Thompson said. “Staff would be saying, ‘I’m losing my leave, so I should be getting more pay,’ and that didn’t always happen.”

The NLA management team used a range of strategies to build support and cohesion.

Agencywide and divisional meetings provided an opportunity for staff members to express their
frustrations and learn about the new expectations, Stair said. To respond to specific concerns about changes in contracts, salaries, and benefits, the human resources unit offered individual counseling sessions—for example, to review pension options.

Each manager had to reassure and engage with team members and be open with them, Coore-Leslie recalled. “The more information people had, the more they started to feel comfortable . . . Whenever there was any amount of disquiet, I would sit down with team members and say, ‘What is the problem? Let’s hear it,’” she said.

Training played an important role in easing employees’ fears and cementing the merger. “The agency had to show there was a commitment to invest in its employees,” consultant Post said. It was important for people to feel ready for the work they were being asked to do, Stair stressed, and training sessions also provided an opportunity for members of different divisions to get to know one another. Team building was critical. “You bring in people from four areas who have never seen each other, and now they have to work with each other,” she said. Participatory training approaches got staff members from different divisions talking, and the agencywide customer service training that took place in the NLA’s first year, covering basics of customer interaction and the agency’s new customer-centric approach, provided common ground.

Social events such as the agency’s sports day were especially important in helping break down barriers between people and work areas, Lori-Ann Thompson said. “People were put on teams, and it wasn’t land valuation versus estate management; you were red house or blue house, and you had to work with somebody in a different division. . . . My customer service staff could now go upstairs to the titles division and say, ‘Hi, how are you doing?’ because we knew each other—I had been on your back in the piggyback race.”

Security and streamlining

The NLA’s establishment—and the new resources and fresh thinking the transition brought in—created an opportunity to make major changes to the ways the four core divisions operated, both to increase security and to reduce turnaround times.

Some of the most urgent changes were geared toward preventing fraud. A critical step involved reducing access to the physical titles, because manipulation of the documents had been common in the past. Records security was doubly important because poorly stored documents were also at risk of deteriorating, Glow said. “There were leaks; it was a firetrap . . . the country’s land titles could go up in smoke,” he said.

The titles division overhauled its storage and access procedures, placing titles in locked, fireproof rooms and setting up security cameras to monitor them. “Things became more sterile,” Senior Deputy Registrar Porteous said. “Whereas before, everyone had access to the records department, now only specific [people] would have access.” To gain entrance to the rooms, the designated staff members had to scan badges, indicating who had been there.

The titles division also introduced a front-office/back-office system to keep clients away from the records and the areas where agents processed transactions. Clients had been able to walk up to almost anyone and make requests, which caused delays and created distractions, and they could even pick up someone else’s property title from an unattended desk. The new customer service desk had twin functions: to help clients get information and answer questions and to keep records in a secure area.

Not surprisingly, the new system upset some of the regular users of the offices, such as the lawyers who handled much of the land trade. “Nobody was accustomed to dealing with a front office,” Lori-Ann Thompson said. Clients eventually got used to the new system, but the transition was difficult, she said. “There was a security guard by the elevator so you couldn’t go upstairs [where transactions were processed], and the security guard had to handle a lot of resistance.”

To improve turnaround times, the NLA’s leaders took a hard look at procedures and found ways to make them more efficient. Stair described
the reviews that directors went through with their staffs: “Yes, you used to do it this way, but why did you do it this way? What if you cut out a step?” The goal of introducing electronic systems lent urgency to the reviews, she added, because “you can’t just computerize a poor manual process.”

Some changes could take place immediately because they required no new technologies. For instance, it was possible to streamline the survey-checking process, which had long caused major bottlenecks. Surveys demarcating the boundaries of a parcel were important parts of applications for titles and for conducting other transactions, and the survey department had to check and approve each one before such transactions could proceed.

Calvin Thompson said the review process sent each survey on a meandering path. The survey went to one office for review and then came back to its starting point. “Then it went to a second location and came back to the starting point, and then to a third, and so on,” he said. “And the time it took for that back-and-forth process could have been eliminated by simply sending it from point one to point two to point three before it comes back to the start.”

Over time, the titles division also developed standardized forms for common transactions. Jamaica’s 1889 title registration law specified the information that had to be submitted, but there had previously been no standard format. As a result, Porteous said, lawyers sometimes added information that was “long and unnecessary and had nothing to do with the transaction,” and staff at the titles division had to pick out the relevant information, which slowed the process. “What we decided to do was to make these user-friendly forms available on our website and make sure the forms captured the basic information as prescribed in our legislation, but in a format in which an ordinary citizen can complete the form and submit it for registration,” she said.

Both staff members and external users had to learn how to use the forms—and some lawyers objected because they believed it would undermine their business—but over time, both groups found that using the forms was easier and decreased the chances that an application would be rejected for having incorrect or incomplete information.

**Supervision and coordination**

Performance management was fundamental to the NLA, both internally and in its relationship with the ministry responsible for land. (In its early years the agency was supervised by the Ministry of Land and Environment, and though the ministry later changed its name, it kept the same oversight function.) The NLA reported directly to the minister, who had formal authority over the agency, but the permanent secretary and the Land Policy and Administration Directorate handled routine monitoring.

A central part of becoming an executive agency, Stair said, “was the focus on performance measurement. . . . [The law requires us] to have a corporate and business plan prepared on a three-year basis, and we are measured against the targets we set in that plan.” Targets for the core divisions typically included the number of transactions processed during each fiscal year and the turnaround time for each type of transaction based on policy goals set by the ministry. For example, in 2002–03, targets for the titles division included issuing 12,000 new certificates of title and reducing the turnaround time for creating a new title with an attached survey plan to 30 days from 50 the previous year.

The ministry’s Land Policy and Administration Directorate monitored the NLA’s performance through quarterly reports. “We review and give feedback,” said Constance Trowers, head of the directorate, and any serious problems were reported to the permanent secretary or the minister. In the case of the NLA, “I haven’t really had that problem,” she said. The agency at times did not meet all the targets, Trowers said, but it usually could provide a reasonable explanation and moved to get back on track. For instance, she said, there might be an unanticipated surge in demand for registration or plan-checking services, but “they know they have to put something in place . . . so they must decide if they are going to do overtime or hire temporary people.”
Unsatisfactory performance could lead to sanctions for the NLA and its personnel. “We have to meet at least 80% of the targets,” Stair said, or “we can’t pay an incentive [bonus] to our staff.” The CEO could be removed if the agency did not perform as expected.

NLA managers broke down the agency’s targets to the individual level. “The targets are set based on the government’s overall policies, and that filters down to the performance targets in the various divisions,” Calvin Thompson said. Within a division, each unit created a work plan based on the division’s targets, he explained, and then employees each had individual targets.

The agency also reported on progress to stakeholders such as lawyers and surveyors, either through an advisory board which operated from 2004 to 2011 or in meetings with professional associations and other groups. These interactions provided an opportunity for the agency to collect feedback and receive guidance based on users’ experiences.

Like other aspects of the transition, formal performance management was new to many of the NLA’s staff, and it took some getting used to. Supervisors had to learn how to set fair and measurable targets and give constructive feedback—a key element of management training both internally and at the government’s Management Institute for National Development.

Financial incentives helped get employees on board with the new system. In the past, employees had received annual raises that “technically should have been performance based but were more or less automatic,” Calvin Thompson said. After the NLA became an executive agency, raises became strictly performance based, he said, but the agency also introduced a separate performance incentive. If the agency had the funds, “at every level there’s a determination as to whether or not the targets were met—first the agency, then the divisions, then the operational units, then the individuals.” If a division or unit did not meet its targets, then even its highest-performing employees were not eligible for incentives.

Because much of each division’s work depended on inputs from the others—whether, for example, technological fixes from the IT division, reviews of plans from the survey division, or property values from land valuation—coordination was essential. After coming under the NLA, “everyone could sit around a table and say what they needed in order to meet a common goal,” said Donovan Hayden, director of estate management. The division directors met at least once a month to ensure each division was receiving the support it needed and to review any performance issues.

The senior management team also selected multidivisional teams for special projects such as developing the agency’s electronic registration system. Although such crosscutting projects required input from multiple divisions for practical reasons, the broad representation also had a strategic purpose, Stair said. “We made sure we had representatives from all the divisions, so that everybody knew, everybody felt involved, everybody had a say in the agency. . . . It’s like a rule: every single division must be represented.”

Easing access to information

Accessing information was a constant source of frustration both inside and outside the NLA. Within the agency, staffers often had to draw on information from other divisions to complete their own work. Lawyers, surveyors, and other professionals had to review records regarding a client’s parcel and parcels around it before submitting a transaction. Prospective buyers had to confirm property ownership. And other parts of the government needed ownership data and parcel boundaries to make policy decisions about land use or other matters. Because most of the existing records were on paper (except in the land valuation division) and often disorganized, the decision to do something about the problem was “a no-brainer,” Hayden said.

Even before the NLA’s establishment in 2001, the departments had started to digitize paper records. Although creating a platform for clients to access records online was not part of the agency’s original plans, the NLA’s management team and the consultants who advised them quickly realized the idea’s potential. McDonald recalled that the
public had high expectations for the new agency, and putting information online was an improvement that could be delivered quickly. “We all recognized that the general overhaul would take a little longer, so there was an effort to have some quick wins . . . and that’s really how eLand [the online platform] was developed,” she said.

For a digital database to work, data was the most important issue to consider. The IT division had to link and cross-reference several separate data sets—its a major challenge, said Knight, the former IT director. The titles, survey, and land valuation divisions used differing numbers to identify the same parcels, and information on boundaries and ownership sometimes conflicted as well. The land valuation division, however, had the most comprehensive set of records, and as result, Knight said, “We decided to use the land valuation database and map as the reference.”

As the IT division scanned the documents, its software pulled identification numbers from each division’s records and linked them by using the valuation number. With each type of record associated with a parcel’s valuation number, a user—whether a client or staff member—who had one piece of information could obtain the rest.

Once the data system was in place, the NLA hired a Canadian firm, Orion Technology, to develop an interface, called eLandJamaica. Launched in January 2003, the platform enabled users to obtain the scanned title images, along with valuation numbers and survey plans, by searching with whichever piece of information they had. The eLand system began as a subscription service used primarily by frequent customers like lawyers and surveyors, and after customers became accustomed to using it, Glenister said, “it was a big hit.” In 2008, the agency updated the platform to allow users to pay for a single document, making the information more widely available.

Computerizing procedures

From the earliest stages, a shift toward computerized transactions—not just digitized versions of manually created records—had become integral to plans for the NLA. Effectively planned and implemented, IT systems could prevent manipulation of documents and reduce processing times, but the NLA’s management team had to design the systems carefully to suit the agency’s needs and pair them with training to ensure staff would use them effectively.

To control fraud and speed up the most frequently used services, the titles division was scheduled for computerization first. The survey division was also part of the initial project because survey plans were integral to many of the titles division’s transactions. The agency aimed to computerize the two remaining divisions over time, but financial considerations delayed that portion of the overhaul.

The IT division began by researching the agency’s options and reviewing the types of software available. “After extensive investigation, we decided it was not practical to develop a proprietary system but instead to customize off-the-shelf software and have vendors integrate the different components,” Knight recalled.

In early 2003, after developing the data model and integration requirements, the NLA selected a consortium of three companies for the project. A Jamaican company, Fujitsu ICL, led the consortium, with the registration component handled by United States–based International Land Systems (ILS), founded by Peter Rabley* and later acquired by Manatron and then Thomson Reuters, and the parcel management component by a Canadian firm, NovaLIS Technologies.

The agency formed a project team and a senior management steering committee with representatives of each division who would work with the vendors to design the registration system. “We wanted people who were very knowledgeable about the processes but also had enough IT background to understand what it could do,” Knight said. The project team worked closely with the vendors, reviewing the steps required to complete each type of transaction and options to both streamline and computerize the process.

* At the time of his interview, Rabley was a partner at the Omidyar Network, which funded this case study, and served as director of investments for Omidyar’s property rights initiative.
“We had our analysts come in and document the work flows first, and they put together a team that engaged with us on the current processes and what they should be,” Rabley said. Based on the procedures the task force and vendors had agreed on, the ILS team customized the company’s existing software to fit Jamaica’s processes. “We weren’t writing customized source code,” which would have been expensive and difficult to maintain, Rabley said. “Instead, we used business rules and logic to configure the existing software, so if it’s document type X, it needs approval by person Y at stage Z.”

The software, called the Land Registration System (LRS), became fully operational in 2004. It created automated work flows for each type of transaction, indicating the information required at each stage and who had to review the document next. The process started at the assessor’s desk, with the application and supporting documents provided by the client. The assessor entered the name, address, and other basic information; selected the type of transaction—registration, transfer, mortgage, etc.; and calculated the fees, which often were based on the overall value of the transaction. The client then paid at a separate cashier’s window, and the documents were sent upstairs to the secure area for processing.

Depending on the type of transaction, agents used system templates to draft language describing the transaction, checked the digital records to make sure there were no restrictions on the owner’s rights that would prevent the transaction, and cued an agency lawyer to review the transaction and attach a digital signature before printing a new or updated record. The system sped up processing by moving the information from one person to the next with just a click, and prompts at each step made it easier for agents who processed transactions to enter the correct information. In addition, each agent had specific editing permissions based on his or her position.

The LRS was critical in “weeding out fraudulent transactions,” Registrar Cheriese Walcott said. “From the minute a transaction is lodged in the office, it gives you a history log of every person who touches that transaction . . . and if there’s an issue, I can pull the history log, which cannot be altered without an IT administrator’s intervening—which would show as well—and it tells me who touched it. So, if there’s any issue, those people can be called upon.”

The system also helped the titles division’s supervisors monitor performance. “You could see how many documents they [agents] were working on in a day, so you could set proper standards,” Lori-Ann Thompson said, by examining the data rather than trying to estimate individuals’ performance and make an educated guess about what was a reasonable workload.

For the survey division, the project created a digital Parcel Data Management System. The aim was to provide a unique spatial identifier for each parcel—distinct from the identifiers used by other divisions in order to prevent duplicate registration of the same land—and to help the survey division digitally create and edit maps and spatial data. Canadian company NovaLIS Technologies developed the system and worked with ILS to build an application that bridged the two programs and enabled them to share information.

The Parcel Data Management System never became as central to operations as the LRS, however. Initially, the agency did not have the money to purchase the specialized geographic information system software that would have been required given the different ways the agency represented parcels, Knight said, because advanced functions and flexibility generally required significant customization.

Fabian Webb, who joined the IT division in 2001 and became director in 2010, added that because the agency did not keep a maintenance agreement with NovaLIS, whenever a new version of the base geographic information system software was adopted, the agency had to carry out the code migration itself rather than having the provider do it. That time-consuming process contributed to the lags in this part of the reform.

Wrestling with new technology

Getting agency employees to use the new software was a major challenge in itself. Porteous recalled that among some staff members in the titles division “there was resistance, saying, ‘No,
we don’t want to use computers; we’re used to doing things manually.”

The NLA conducted training programs at all levels in an effort to get staff on board. “It felt like it was a do-or-die situation,” Lori-Ann Thompson said. “It was not just rolling out the software. They had to know how to use it, [and] they had to buy into it.” The program Mavis Beacon Teaches Typing, which featured a friendly digital instructor and games such as a race wherein the player progressed by typing the correct letters, was a valuable first step, she said, “because everybody thought it was fun, and that was just to introduce them to the computers.”

The new system encountered what the agency called “teething problems” even as staff members grew accustomed to new ways of working. For instance, the NLA initially lacked capacity in its main server, which provided functionality for the system’s programs and connected devices. “We had one of the better servers, which we believed could have handled the pressure, and something in the application kept knocking it out,” Glenister recalled. “So we had to restart the whole application, three or four times a day, and it would take a minimum of 15 minutes to come back up, and that was very uncomfortable for customers.”

Some of the procedural decisions failed to work in practice. At first, the task force wanted to scan every incoming document immediately to forestall any possible manipulation and to enable staff members to re-create the transaction if any supporting documents went missing. However, the idea “failed to give greater efficiency,” Knight said, because scanning the bulky documents caused a bottleneck that slowed processing. In addition, workers in the titles office had difficulty using the scanned images because their monitors did not allow them to view both the property document and the transaction screen at the same time. The practice was quickly discontinued, and as of 2016, paper applications and supporting documents still served as primary references. Agents entered the information into the system early in the process, but the employee working on each step still cross-checked the digital information with what was on the original printed pages.

Staff frustration with the computer problems raised the premium on management perseverance, Walcott said. “Whenever there was a problem with the computers or when the system went down, they would throw their hands up and say, ‘You see why we should go back to manual,’ . . . but we made it very clear [that] going back was not an option.”

Building on technical advances

The eLandJamaica system and the LRS set templates for the NLA’s use of technology both to serve clients and to strengthen the agency’s internal operations. After the two systems were rolled out in 2003 and 2004, the agency built on them to some extent, but the use of technology across the four core divisions remained uneven.

Glenister said that providing land information through an interactive map had been part of the agency’s early plans, but the idea had been shelved because of the cost. However, in 2010, a local insurance company approached the NLA to purchase a data set to develop a map showing which parcels were in areas prone to disasters like floods or landslides. The agency’s managers saw an opportunity. “They wanted to buy the data for risk management . . . and I thought this was exactly what I wanted; it was very similar to our scope of work,” Glenister said. The agency decided to give the necessary data to the company and update it regularly—if the company hosted a publicly available version of the map it was developing.

The resulting product, called iMapJamaica, enabled users to look at satellite imagery and property boundaries and find the physical location of a parcel and its address, valuation number, and size by using any piece of information they had. To get more-detailed information about a parcel, such as a copy of the title, the user had to go to eLand and do a separate search. “We wanted to drive traffic to eLand,” Glenister said, because the pay-for-access system was a major source of the NLA’s revenue.

Also in 2010, the estate management division received funding from a European Union project to begin developing an electronic system similar to the LRS. Working with the same vendor, ILS
(which was acquired by other companies during the process), the division created a system that computerized transactions such as the sale of government land. As the titles division had, the estate management division focused on streamlining processes through the development of the system, although the resulting software, the Estate Management System, was still complex, encompassing 60 different types of transactions. The system launched in 2014, although the digitization of the division’s records was still in progress in 2016.

The land valuation division, which had the most-advanced technology at the time the agency was established, had been leapfrogged by the other divisions and was still using the same system in 2016. Because any changes to the valuation system, which provided the data necessary to levy property taxes, had to be seamlessly integrated with the systems used by the property tax and tax collection entities, “it was decided it would be best to leave it as a legacy system and wait until we were moving toward an [agencywide] solution,” Webb said. “We recognize it would be good to have an agencywide system,” Stair said, but as of 2016 it had not happened because of the high costs.

OVERCOMING OBSTACLES

The NLA’s initiatives improved the system for registering and managing land, but entering that system remained prohibitively challenging and expensive for many of the island’s landholders—particularly the poorest. The registration fees required to apply, as well as stamp duties, transfer taxes, and back property taxes—some of which were outside of the NLA’s purview—were key barriers.† Moreover, many people did not really understand how registration worked or why it was helpful, nor were they willing to pay for lawyers and surveyors to prepare their applications. And they often lacked the basic documents to provide proof of ownership.

Recognizing these barriers, in 2000, before the NLA’s establishment, the government launched an Inter-American Development Bank funded pilot Land Administration and Management Program, or LAMP, to map and register 30,000 parcels in part of a parish (the Jamaican unit of subnational government). The idea was that “LAMP acted as the lawyer,” Trowers said, and prepared applications to register land for landholders in the project area. The applications were then submitted to the titles office at the NLA, which would process them and issue titles as usual.

In its first phase, LAMP also acted as surveyor, hiring a company to systematically map the property boundaries. That function ceased when initial funding ended in 2006, but applicants could still hire private surveyors, some of which partnered with the program to offer lower rates. LAMP also reduced application costs. A 2005 Special Provisions Act, which modified the registration laws in areas where the LAMP operated, allowed the program to waive stamp duties and reduce fees. However, applicants were still required to pay up to seven years of back property taxes upon registration—a significant disincentive to formal titling.

To build public knowledge, LAMP and the NLA organized information sessions and workshops in rural areas around the country and helped landholders start the process on the spot. Lori-Ann Thompson stressed it was important to have a range of government institutions on hand to create a type of one-stop shop. “For example, we invite the administrator general’s department because [if someone inherited land] and there’s no will, you have to deal with the administrator general,” she said. “You may need to prove someone’s death, so we invite the registrar general, who can help with the death certificate. And LAMP comes with us, so they can start the initial process . . . we invite as many entities as we can.”

At first, public uncertainty made generating interest a challenge, LAMP legal officer Nickoy

† The NLA’s registration fees typically totaled approximately 0.5% of the property value. The stamp duty, shared equally by the buyer and seller, was 4% of the value. The seller also had to pay a transfer tax of 5% of the value, but if the land was unregistered at the time of sale and the seller did not pay the tax, the new owner could be required to pay the transfer tax as well before registering. In addition, property taxes on the parcel had to be up to date.
Young said. “Initially, a lot of people were skeptical; they thought it was just a sham,” he said, but gradually, demand picked up—especially as people saw their neighbors receiving titles and as they gained confidence in the system.

Greater interest in registering did not necessarily mean more successful applications, however. Proving root of title—that the applicant had a legal claim to the land, based on either 30 years of continuous and peaceful occupation or an unbroken chain of valid transfers—was next to impossible for many Jamaicans. Especially in rural areas and among members of the same family, land transactions often went undocumented. Formal wills were rare, Young said, and land typically passed from generation to generation “without anything in writing.” Even if a person who inherited land under those circumstances then sold the land with some form of documentation, the purchaser would be unable to prove root of title because the person the purchaser bought it from had had no proof of ownership.

Jamaica’s custom of “family land” further complicated ownership claims. Uncertainties arose in cases involving people who had owned large plots decades earlier and had bequeathed the property in equal shares to their children. As the number of people with claims to the property multiplied during subsequent generations, the family might informally divide up the land. But because the family rarely applied for local government approval to subdivide the property, official title to the land remained in the name of a relative who had held it long before—if it had been registered at all. According to the custom, children who did not live on the land—or even in Jamaica—still had a claim to an equal share of the property, which sometimes led to disputes that could achieve no legal resolution because there were no formal rules or laws governing family land.

With tenure patterns often complex and rarely documented, collecting the documents necessary to support an application for a title was extremely difficult. “The laws that govern land registration do not mirror what is practiced . . . and people are not in a position to comply,” Young said.

Initially, the government had few answers. It was one thing to promote registration and reduce costs, but another to help applicants comply with the complex documentation requirements—and the government was also cautious about relaxing the requirements too much, given the risk of legitimizing false claims.

The 2005 Special Provisions Act included a mechanism to resolve questions of ownership and provide applicants with sufficient evidence for the state to support their applications—even without meeting the standard threshold for proving root of title. The Act authorized the creation of adjudication committees to evaluate claims of ownership, hear evidence, and make decisions, which, if favorable, significantly strengthened landholders’ title claims and made registration easier. The committees relied on evidence from community members with specific knowledge of landownership in the area. They could “speak to what happened—who owned this property—and maybe connect the current person with the previous owners,” Trowers said. “It’s based primarily on how you came to own property, tracing the chain of ownership to see if you have a legal right, you got it in a legal way, and you have all rights to own it.”

Although the NLA’s referees of title, who evaluated applications and decided whether a title could be issued, still had the final say, the committees’ decisions provided a strong piece of evidence. The adjudication committees became operational in 2015, which was 10 years after passage of the law that authorized their creation. Officials at LAMP and the NLA believed the committees held promise, but in 2016 it remained unclear whether the committees would enable unregistered landholders to escape Jamaica’s maze of legal requirements.

ASSESSING RESULTS

After 15 years in operation, the NLA had substantially improved services and set a model for other developing nations—even if there was still room for improvement. However, the NLA was only one part of the land sector, and despite multiagency efforts, barriers to access remained.
The NLA quickly improved performance on its primary metric: transaction times. The agency reported that before its establishment in 2001, it took 70 days to process an application for first registration with a survey plan, 25 days for a change such as a transfer, and 26 weeks to check a survey. By 2006, the agency reported that the processing times had fallen to 30 days, 10 days, and 40 days, respectively. Although the greatest improvements had come in the NLA’s first few years, the agency continued to decrease some of the transaction times during the ensuing decade. In 2016, the average processing time for new registrations remained at 30 days, but transfers took 5 days, and checking of surveys took 35 days.

Both agency staff and clients said preventive measures had made fraud more difficult—although measuring it was extremely challenging. “It has to be really pointed out or we wouldn’t know,” Stair said. “It’s a bit harder for them to do it now, but we still have some allegations of fraud reported to the agency.”

Despite digitization and records security efforts, the system still had vulnerabilities. For example, Walcott said, “the main avenue [for fraud] we haven’t been able to close down completely is identity theft” because the staff at the titles division had no way of knowing whether a person was in fact the landowner, and they had to rely on witnesses and attorneys. Denise Kitson, an attorney who had litigated land disputes and had a conveyancing practice, said that although people who applied to bring unregistered land into the formal system or to replace a lost title certificate were required to advertise the application in the newspaper so that anyone with an objection could come forward, proprietors did not routinely scour the classifieds to check for fraudulent transactions involving their properties.

Several customers applauded changes in the NLA’s services. “They went through a remarkable transformation around 15 years ago, and they’ve continued to perform well since then,” said Natalie Farrell-Ross, an attorney and head of the Jamaican Bar Association’s conveyancing committee. “They put the forms for various land transactions online, they’ve focused on reducing turnaround times, and their operations are now much more customer service oriented than years ago.”

“We are able to get transactions back in a much quicker time,” Kitson said. “In the bad old days, you could safely bet on 30 days for the processing of a simple sale—and sometimes longer.” Surveyors, too, said they received approved plans much more quickly than before the NLA was created, although the process remained comparatively lengthy.

The eLand system also found a receptive audience, although some issues remained. Commissioned land surveyor Glen Watson said eLand “saves me a lot of time” by allowing him to avoid trips to the NLA’s offices. As eLand’s use increased, the revenue it brought in shot up from 2.68 million Jamaican dollars (about US$ 46,200 at the time) in its first year, 2002–03, to J$ 23.6 million (about US$ 201,100, adjusted for inflation) in 2014–15.7

Some users said that linking data across divisions remained a weak point, however. “Sometimes the information doesn’t line up,” Kitson said, and because of those data quality issues, she added, some lawyers were reluctant to rely on eLand. Watson echoed the complaint, saying that sometimes poor scans made the documents he needed illegible, although in those situations, he said, it was easy to get a better copy from an NLA customer service representative. Many members of one key user group—other government institutions—objected to the costs of accessing the agency’s data for national decision making.

The NLA received national and international recognition for its turnaround. The agency won several awards in Jamaica’s Public Sector Customer Service Competition, including the overall competition in 2008–09. The agency hosted delegations from other countries—Azerbaijan, the Cayman Islands, Egypt, Ghana, Grenada, Lesotho, and Tanzania—that were looking for innovative ways to overhaul their land agencies.

The agency was also largely financially self-sufficient. As a type B executive agency, the NLA was required to cover 75% of its operating budget by using its own revenue—for instance, from
processing and registration fees—with the rest contributed by the central government. The proportion of expenditures covered by revenue rose from 51% in the 2001–02 fiscal year to 76% in 2005–06, even as spending rose from J$317.7 million to J$613 million in nominal terms. During the following decade, the agency remained above the required 75% level. In 2014–15, the agency covered 79% of its budget of J$1.4 billion. (Jamaica’s high inflation rate, which averaged about 10% from 2001-15, meant the NLA budget in US dollars rose, from US$6.5 million in 2001–02 to US$11.9 million in 2014–15.)

Standardized metrics of land administration indicated that Jamaica performed well for its income group but was not in the top tier worldwide. The World Bank Group’s Doing Business quality of land administration index, which awards points based on the reliability of institutions and infrastructure, the level of transparency of land information, geographic coverage, and land dispute resolution processes, gave Jamaica a score of 14 out of 30 in 2016—above average for non-OECD countries but still low on an overall basis. The country scored high on reliability and transparency—due largely to the availability of digital information from the NLA—and earned a middling score for land dispute resolution. However, Jamaica received zero points for geographic coverage—the component of the index based on the extent to which parcels were mapped and registered.

In Doing Business reports, Jamaica’s distance to frontier score—the gap between country performance and the best practice in the data set—improved from 42.9 out of 100 in 2005 (the first year data was available) to 53.7 in 2016. Despite the improvements, Jamaica received a relatively low ranking in the 2016 report: 122nd out of 189 countries. However, the Doing Business methodology includes processes outside the land agency, such as the payment of stamp duties, which, in the 2016 report, accounted for a majority of the time and costs associated with registering property in Jamaica.

On the fundamental issue of expanding formal tenure, little had changed. Those who were able to navigate the system—and were motivated to do so—had a better experience, but many parcels in Jamaica remained unregistered. The NLA reported in 2015 that 58% of parcels in the country were registered, but because informal subdivisions likely increased the total number of parcels, the actual proportion could be much lower. The NLA issued more than 139,000 new titles from 2001 to 2016, but since 2004, when the agency began tracking first registration separately, only about 13,500 of those titles were for first registration. The combined cost of stamp duties, transfer taxes, and back property taxes remained a deterrent. Despite efforts to lower the costs of registration through LAMP, which focused primarily on poor, rural landholders, “it’s still hard for a lot of people to afford,” Young acknowledged. Furthermore, documenting ownership was still a critical barrier for many landholders, and although adjudication committees offered a potential solution, as of 2016 they were not yet proven.

REFLECTIONS

The National Land Agency (NLA) took full advantage of the flexibility enjoyed by executive agencies, and its leaders’ focus on sweeping change was critical to the agency’s effectiveness. However, some aspects of the land administration system, such as costs and documentation requirements, continued to hinder formal registration.

Leadership and determination were essential elements of the reform. When new initiatives were unpopular—from requiring staff to reapply for their positions to restricting customers’ access to titles or requiring people to use computers—Chief Executive Officer Elizabeth Stair and her team stayed focused on results and moved forward with their plans despite the skepticism and opposition. “We had to have one another’s backs,” Director of Business Services Lori-Ann Thompson said. “Having that strong support from the CEO was what made a difference.”

“You need a leader who is a visionary—to stick to the task and understand what is required—and I think the NLA has benefited tremendously from that,” said Sherlock Glenister, former information technology director at the agency.
The NLA took on a highly ambitious agenda in its early years. “It was kind of a big bang,” consultant Murray Glow said. The approach meant that managers had to confront many organizational challenges and sources of resistance at once, but it also provided an opportunity to set expectations for far-reaching change and find staff who bought into a radically different culture.

The political environment and the resources available in the NLA’s early years made a big-bang approach possible—but not all of Jamaica’s executive agencies benefited from such favorable circumstances. Jennifer McDonald left the NLA in 2007 to become CEO of the newly established Passport, Immigration, and Citizenship Agency and headed the agency until August 2016. She wanted to implement several strategies she had seen work at the NLA—from required reapplication to agencywide customer service training and sports days—but found that the moves were not always feasible. “Unfortunately we didn’t have the resources at our disposal that NLA had” from the Public Sector Modernization program, she said, putting such large-scale training out of reach. In addition, immigration officers were seen as vital to national security and could not be required to reapply for their positions, which created tensions with staff who were required to do so. However, McDonald said, “having gone through the experience at the NLA prepared me for handling the resistance I would get.”

“The human part of the change—in terms of involving staff at all levels in the education process, in building awareness, and in managing expectations—could have been handled better,” said Calvin Thompson, a manager in the survey division. Lori-Ann Thompson agreed: “Even though we did a lot of communication, I think we could have done more.”

After years of hard work by the NLA, the ministry, and other institutions to improve the quality of land information, questions persisted about how best to share and use it. In 2016, the agency was working to link and improve eLand and iMap “so you can click on a parcel and get any information you want, from sales data to titles data, to land valuation data . . . and not even just with NLA data,” Lori-Ann Thompson said. She and many others involved with land across Jamaica’s government hoped to develop a virtual map with far more information—a one-stop shop for such data as zoning, land use, and population figures. However, it was unclear who would develop—and, more contentiously, pay for—such a map.

Data sharing had proved controversial in the past. In order to meet its revenue obligations, the NLA charged government users for its data, as did the Statistical Institute of Jamaica. Some users, including Donald Moore, senior general manager of government housing agency the National Housing Trust, said charging for the data hindered effective decision making by other government institutions. “To make government more efficient, you have to be able to share data,” Moore said. The NLA had to support itself, he said, “but that ought not to be addressed [by creating] inefficiency, so it becomes a difficult task for me to get information.”

Instead, Moore argued, the central government should appropriate a lump sum for data creation and maintenance, which would enable the NLA to share its data across the government for free. However, in 2016 it was unclear whether the central government would be willing to provide such funding, and for executive agencies in a country with significant budget constraints, relying on an appropriation from the central government instead of from consumers was a risky proposition.

The NLA also aimed to further speed up services at the titles division by building on its technology investments. The LRS had largely computerized the division’s processes, but staff there still depended on paper applications and supporting documents and had to print all transactions on the paper titles—something Walcott hoped to eventually change. An electronic titling system would remove the need to store records and would further reduce opportunities to
manipulate documents, she said. “Electronic is the way of the future . . . but I say it’s controversial because in Jamaica we like paper; we like to hold on to something.” The proposal faced opposition from some key stakeholders, however, and because there were references to physical titles in not only the Registration of Titles Act but also numerous other laws regulating land, inheritance, and borrowing, changing the law would be an especially long and contentious process.

Despite the changes the NLA made to improve land administration services, many Jamaicans still were unable to benefit from them. In 2016, many of the country’s landholders remained outside the formal registration system—which indicated to some that Jamaica’s laws and policies had to begin to give greater emphasis to the issue of access.

Costs were one persistent problem. The registration fee and stamp duty averaged approximately 5% of the value of the property being registered, property tax payments had to be up to date, and legal and survey fees added to the sum. It was unclear what informal landholders would be willing to pay to register, but the existing costs were one deterrent.

In addition, several people said Jamaica should reconsider its focus on extreme precision in certain aspects of land management, saying that the emphasis on fixed boundaries and documentation to determine root of title kept many landholders outside the system. Garfield Knight, former information technology director at the NLA, said the government’s demand applicants for titles go from “zero to the gold standard” under the existing model of registration contributed to high costs, long processing times, and frequent rejections. Constance Trowers, principal director for land policy and administration, said her directorate was working on “making [the law] a bit more culturally relevant.”

Recognizing local practices in buying and selling land, which often occurred without formal documentation even though the landholders had been in possession as owners for years, would make the law “fit for purpose,” she said. In each case, the benefits of broader participation in the land administration system were seen to outweigh the potential costs. However, there were reasons to take a more cautious approach—particularly because of the risk of fraud, which was a persistent problem in Jamaica’s land sector.

In 2016, Jamaica was struggling to find the right balance. LAMP senior legal officer Nickoy Young pointed out the stakes behind efforts to expand access and improve service quality: “Each file is someone’s life.”
When Jamaica established its National Land Agency in 2001, technology was a centerpiece of the agency’s strategy. Creating a digital database of records aimed to ease access to property information, and computerization of procedures would reduce opportunities for corruption and speed up processing.

Capacity—with regard to both equipment and people—was a significant hurdle. The agency lacked the hardware and server capacity required to support sophisticated systems, and few agency staff members had ever used a computer before. Internal resistance emerged as technological changes overturned long-established ways of doing things and raised concerns about job losses. Additional opposition came from those who had exploited the manual system’s vulnerabilities for personal gain.

The planned investment in computer hardware and software, as well as training, carried a high price tag, and the NLA’s leadership team secured funding from the World Bank’s nationwide Public Sector Modernization Project to support the efforts.

As part of the transition from four government departments to a single executive agency, the NLA pushed to hire skilled information-technology staff. But it was difficult to find people locally with experience in specific software the agency required, said Garfield Knight, the agency’s first IT director. Instead, he said, the agency hired general IT professionals and trained them as it introduced new software. “The best way was to have a vendor train them as they implemented a project: not just on the system itself but on broader IT skills as well, using a hands-on approach to facilitate significant knowledge transfer in a short time,” Knight said. Over time, the agency built expertise in its IT division, although retaining top IT specialists was difficult because such skills were in high demand in the private sector.

With technical staff in place, the first stage of the computerization effort involved getting all land records into a digital database to make it easier for NLA staff, lawyers, other professionals, and the general public to get information.

“We recognized that a land management system was essentially a highly specialized document management system with a location component,” Knight said, so organizing the data was paramount. The agency’s IT staff had to link all of the documents that described a given parcel of private land, across the land valuation, land titles, and survey divisions. (The estate management division oversaw government-held land.) Land valuation records were chosen to serve as the backbone of the system because they covered the largest number of parcels and were the most up-to-date, as owners often made sure their property tax bills reflected accurate descriptions of their properties after a subdivision or transfer.

However, the land valuation division’s records sometimes differed from the records in the titles or survey divisions. Some landholders failed to complete the registration process at the titles division after updating the valuation roll. The valuation division’s parcel boundaries were not as accurate as those in the plans submitted to the survey division as part of land transactions, but because many parcels were outside the registration system, not all had been surveyed to that level. “It was the most complete, even if it wasn’t the most precise,” Knight said.

Software called the Document Scanning System, or DSS, created an image of each document and indexed it by using the valuation number. The process enabled anyone who had a survey plan number, or the volume and folio of a title, or a valuation number to locate other documents associated with that parcel.

The process highlighted gaps in the data. Once the documents had been scanned and the data sets linked as closely as possible, “you could see all the
errors,” Knight said. During the scanning process, quality control staff spot-checked to make sure the references were correct, and it was their responsibility to fill gaps by going back to the paper records. “They do miss some things,” conceded Sherlock Glenister, who managed the project and later became IT director. But, he added, clients usually pointed out problems in the system, and the division could go back and re-create the digital records.

Initially, the DSS software enabled clients to search the database by using computer terminals in the NLA’s offices, but the agency’s management team quickly realized there was an opportunity to further ease access. When the scanning project started, internet access was slow and expensive, but as service improved, the NLA seized the opportunity. Inspired by technology used in such countries as Canada and Australia, the agency hired Canadian firm Orion Technology to build an online platform, called eLandJamaica, to search and request documents. The platform enabled users to access the data provided though the DSS terminals from their homes or offices.

Once enough existing records had been digitized to create a core database, the NLA began to shift its attention to developing a system that would process new transactions. As part of a three-company consortium, U.S.-based software company International Land Systems (ILS) won the contract for the new Land Registration System (LRS), which computerized the titles division’s procedures for land transactions such as registrations, transfers, and mortgages.

A crucial first step involved teams from the NLA and ILS working together to review business processes and develop work flows that would make the best use of the new technology. “We spent more time on analyzing the business process, trying to optimize it, than we did on coding the system,” said Peter Rabley, the founder of ILS.‡ Many existing procedures relied on knowledge individual workers had acquired over time, and the agency’s task force and ILS analysts had to document the process and create standard steps.

One key example involved the automation of fee assessments. Under the previous system, some workers could overcharge clients because fee information was not publicly available and calculations often were complex. The LRS increased both security and transparency by automatically calculating fees, transferring data on the amount collected directly to the NLA’s accounting system, and posting online the formulas for evaluating the costs associated with each transaction.

For each type of transaction, the NLA-ILS team conducted similar evaluations of processes, looking for steps that could be eliminated or simplified. With the procedures determined, developing the software became fairly straightforward. ILS customized its existing land registration software to facilitate the revised process—from assessing fees to drafting the transaction information to be printed on the title, to approval by an agency lawyer. The software helped speed up processing by prefilling existing data, and moving a document to the next person required just a click.

Some business process changes remained out of reach, however, such as integrating the NLA’s payment and processing system with that of the stamp office, which collected duties on each transaction. “You still have to go to two separate offices and submit your documents for every transaction, which adds to the processing time,” Knight said, “and that’s of the biggest remaining bottlenecks.”

With the new system’s roll-out, ILS and the IT division had to deal with hardware and resource constraints. “They had to build their own server farm, the network was slow, [they had] outdated switches that couldn’t optimize the traffic—we were gobbling up hard drive space, and there was no scratch space available,” Rabley said.

The hardware challenges forced the NLA and ILS to make changes because staff and customers had to contend not only with new processes but also frequent system outages during the initial stages. One change involved limiting the load on

‡ At the time of his interview, Rabley was a partner at the Omidyar Network, which funded this case study, and served as director of investments for Omidyar’s property rights initiative.
the server by using more of the processing power and storage capacity of the computers attached to it, and moving the data to the server only when the network could handle it. Each iteration of the software took up less space and became more reliable, Glenister said, and the agency upgraded its server capacity.

After its launch in 2004, the LRS went through several rounds of improvements. In addition to the problem of outages, Registrar of Titles Cherise Walcott said, the system initially had trouble processing unusual types of transactions the team had not considered when designing the first version, such as the appointment of a receiver. For each upgrade, Walcott said, “you’d get a cross section of staff from the titles division, the land valuation division, and the survey division to come test the new features. . . . That allowed us to see the bugs ahead of time rather than when you have a customer.”

Stringent testing of newly developed processes took time. As the agency increased the testing time to three weeks from three days and performed increasingly thorough reviews, prioritizing became an important aspect. Over time, the agency became more strategic about the changes it implemented, Glenister said, and sometimes “we’d see when we could wait for the next one.”

More than a decade after launching the LRS, the NLA continued to use the system, and something that had once alarmed employees had become second nature. Technology was a major factor in shrinking turnaround times from before the NLA’s establishment in 2001 to 2016. The time required to register a new title fell to 30 days from 70 days for a new title certificate and to just 5 days from 25 days for a transfer.

“The titles division and the land registration system created a whole new way of doing business,” NLA CEO Elizabeth Stair asserted in 2016. However, technology was just one element of the changes the agency introduced. Effective recruitment and training, performance management, and financial flexibility were essential building blocks that helped the NLA’s ambitious technology initiatives succeed.

References
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BREAKING NEW GROUND: PIONEERING ELECTRONIC LAND REGISTRATION IN ONTARIO, 1987–2010

SYNOPSIS

In 1987, Ontario’s land registration system was overwhelmed. Budget constraints and a surge in property sales were straining the Canadian province’s paper-based operation. After struggling to computerize its land records during the previous seven years, civil servants at the provincial Ministry of Consumer and Commercial Relations led a groundbreaking effort to form a public–private partnership to convert millions of property records—both from paper to digital and in some cases from a deeds system to titles—and create the world’s first electronic land registration system. During the partnership’s first 12 years, beginning in 1991, the provincial government and joint venture company Teranet worked to persuade sometimes skeptical politicians and real estate professionals of the value of their model and laid the groundwork for a lasting relationship even after the government sold its ownership stake in 2003. Despite early financial challenges and a slower-than-expected conversion process, Teranet and the Ontario government pioneered technology that became a model for the world, simplified transactions for the province’s landowners, and built a relationship that continued to offer value for both partners in 2016, 25 years after the partnership began.

Maya Gainer drafted this case study based on interviews conducted in Toronto, Vancouver, and Victoria, Canada, in August and September 2016. Case published January 2017.

INTRODUCTION

“We had to set up tents because we couldn’t fit people in our offices,” recalled Art Daniels, who joined Ontario’s Ministry of Consumer and Commercial Relations in 1987 as the ministry’s land registry offices were struggling to keep up with a surge in property transactions. Lawyers and other users of congested registry offices had to wait outside to register land agreements and had to review records in nearby tents. “The economy was booming, land was selling, and we couldn’t cope with the volumes,” said Daniels, who served as assistant deputy minister.

As housing prices in Ontario—Canada’s most populous province and its political and economic center—shot up and the number of property deals increased, the province’s outdated land registration system staggered.

“There were long lines, and people were not getting registered, so they weren’t getting their keys and they were unable to move on the weekend they had planned,” said Elgin Farewell, a provincial land registrar at the time. “So I think there was alignment within government that something needed to change.”
The provincial government had known for years that modernizing the system would reduce processing times and make records more accessible. Land records were kept on paper in more than 50 registry offices around the province, and people involved in real estate transactions submitted copies of their documents for review and certification by registry officers. In 1980, a team of civil servants had begun developing a digital database to store land records more securely and make data easier to find. However, after seven years of development and piloting, the project, called the Province of Ontario Land Registration Information System, or POLARIS, had digitized only 250,000 of an estimated 4 million records. The time, staff, and funds required to expand the system to cover the entire province were beyond the government’s capacity. “The Treasurer would have thrown me out of his office with a request for additional funding and increased staffing,” Daniels said.

A major hurdle for any proposed solution was that Ontario used both a deeds system and a Torrens title system for land registration. Under the deed model, parties to a property transaction had to review 40 years of records to ensure that the current owner had a valid claim. The title system treated a single record (the title) as definitive, and the provincial government guaranteed the owner’s claim. Converting deeds to titles was a painstaking process that required heavy additional investments of time and money.

Embracing the idea of a major overhaul but lacking the means to implement one, Daniels, Director of Land Registration Ron Logan (who died in 2009), and their colleagues began exploring alternative ways to get the resources required to both digitize the records and bring the entire province under the titles system. Ontario’s premier and other high-level officials had expressed growing interest in public–private partnerships (PPPs) wherein the government and a private company worked together to deliver a service and the company profited from user fees rather than a fixed service contract—a new model in Ontario at the time. The government also wanted to strengthen its ties to Ontario’s service sector, including geospatial services, and a PPP offered the opportunity to do so.

Inspired by projects elsewhere—notably, a hydroelectricity project in Quebec and railroads in both Canada and the United States—the Ministry of Consumer and Commercial Relations considered ways of working with the private sector to digitize and convert Ontario’s land records and use emerging technologies to revamp the land registration system.

THE CHALLENGE

Creating a successful partnership to transform Ontario’s land registration system was a formidable task. Although Ontario had few problems with corruption and informal tenure—factors that can amplify the difficulties of reforming land administration systems—the provincial government and its private counterpart had to navigate a wide variety of other challenges, from setting up the partnership to designing the technology.

Selecting the right private partner was a crucial first step. The provincial government’s ambitious plan meant that it had to find a company or companies that had a wide range of skills and the ability to make a sizable investment. Effective implementation meant that the private partner had to have not only a working knowledge of the real estate industry but also the ability to develop software, convert records, reengineer business processes, and manage government relations. Finding companies with the right set of skills or getting companies to work together presented an immediate challenge.

Furthermore, the relationship between Ontario’s government and its private counterpart had to be structured carefully and precisely so as to deliver on the objectives and be financially viable. “We were not very sophisticated about PPPs at the time,” said Harriet Velazquez, who served as the ministry’s chief information officer and who joined the board of Teranet, the joint venture company formed by the partnership in 1991. Given the lack of experience with PPPs, it was
essential to clearly demarcate the roles of the government and the private partner, to create targets and monitoring systems, and to establish coordination mechanisms. The two prospective partners also had to agree on the main aspects of the business model, such as revenue sharing and ownership of systems and data.

The scale of the project posed a significant challenge. With an area of approximately 900,000 square kilometers, Ontario was Canada’s fourth-largest jurisdiction (including Nunavut and the Northwest Territories). At the time, the government estimated that 4 million properties had to be entered into the system, as well as more than 200 million total paper records. Furthermore, converting properties under the deeds system to the titles system required skilled workers to review the ownership of each property and ensure there were no overlapping claims or other potential disputes.

In addition to the project’s scope, “we were doing a lot of crazy technical stuff,” said Aris Kaplanis, who became the first chief executive officer of Teranet. “Back in 1991, the biggest image-based database we could find was the Pentagon [headquarters of the US Defense Department], with 35 million records, and we had to build something that was six times bigger than the Pentagon had.” Although the province had created a digital database, it had struggled to scale up POLARIS—and the existing software was designed only for managing records and finding information.

Implementing a system that would enable users to submit documents and enable registry officers to review and certify transactions electronically required even greater effort and expense. Although some Canadian jurisdictions had started automating their records, there was no model for completely electronic land transactions. As Ontario went through the process of documenting the methodology for different transaction types, reorganizing work flows, translating them into steps that could be computerized, and writing the code, new situations were bound to arise, and “we would have to make new rules quickly to address them,” said Kate Murray, Ontario’s former director of titles.

Finally, the project had to overcome skepticism from several key groups. Any public–private partnership required sustained political commitment. In the course of a long-term project, governments and high-level civil servants were likely to change and would have to be brought on board. The overhaul risked losing support either because of ideological opposition—for instance, opposition to PPPs—or because a new government opted not to continue following its predecessor’s priorities.

Second, staff in the land registry offices and on the ministry’s POLARIS team had concerns about the new arrangement. It was a new model, Murray said, and especially early on, “it was hard for government staff to hand over a piece of their work—to say, ‘We’ll steer, you row.’” Many feared they would be out of a job as a result of computerization or that they would lose their union rights and benefits if they had to move to a private company. Registry staff also had to adapt to new ways of working, and many had to develop computer skills that their previous jobs did not require.

Third, the outside professionals who handled land transactions had to change their own ways of doing things—a shift that some would likely embrace and others might resist. The main users of the registry offices were real estate lawyers and conveyancers, who performed title searches and prepared and submitted transaction documents, usually on behalf of a lawyer. At the time, many of them “were hand-creating documents, and most of them used typewriters,” said Vicki McArthur, a deputy land registrar who later became director of product development at Teranet. For lawyers, the main issue involved changing their office work flows and methods, but for conveyancers, an online system posed a direct threat to business.

FRAMING A RESPONSE

Daniels, Logan, and a team of civil servants at the Ministry of Consumer and Commercial Relations assembled a working group of assistant
deputy ministers from the ministries involved in land issues—environment, transportation, and finance—to discuss their specific needs in any new land information system. Because the participants each used different types of land information, the meetings were especially helpful in finding common ground on mapping and data, Daniels said, and they took place on weekends to accommodate the participants’ busy schedules.

To attract a reliable private partner and enable the resulting joint venture company (Teranet) to deliver on the project’s wide-ranging objectives, the business model had to offer an attractive return on investment. The ministry’s team envisioned giving the company the right to collect revenue from every land transaction in the province, but the government would still set fees and receive a share of the payments. To strengthen the project’s appeal, the business model included a 10-year exclusive license to use the data, thereby enabling the company to develop new products and services that repackaged land data for uses that went beyond standard transactions.

In collaboration with the Ministry of Industry and Trade, Daniels’s team at the Ministry of Consumer and Commercial Relations developed a request for information to gauge private sector interest in the computerization project and advertised it in business journals and national newspapers. The Ministry of Industry and Trade had been coordinating a related effort to promote relationships between the government and service industries both to improve service delivery and to develop Ontario’s service sector, and members of its staff worked with the Ministry of Consumer and Commercial Relations to design the request for information and promote it to industry groups.

Daniels said the response was encouraging: “I thought, ‘Oh, my God, this is a good idea; so many people are interested in it.’” But even though more than 70 companies expressed interest, none demonstrated the capacity to take on the entire project alone. The two ministries asked them to form consortia that could work together to cover all aspects of the effort. As the companies organized themselves, the civil servants drafted a more detailed request for proposals, and in December 1988, 21 companies were invited to respond. Two consortia, representing most of those companies, bid on the project.

The bids went through several layers of review: by experts in land information systems from New Brunswick and the Maritime provinces; by lawyers, consultants, and audit firms; by deputy ministers from all of the ministries that would be involved in the project; and by staff from Ontario’s Treasury. However, Daniels said, “We realized as we got into the results the two consortia were very similar in a lot of ways.”

Rather than choosing either bid immediately, the ministry negotiated with both groups. “We didn’t want to play one off the other, but to see what’s the best they can do,” said Bonnie Foster, a member of the ministry’s negotiating team who later became a vice president at Teranet. Neither consortium made a satisfactory initial offer, and in early 1990, the government created the Strategic Alliance Liaison Office specifically to handle negotiations for the deal and oversee the resulting partnership. The office stipulated more-specific conditions, including 50/50 ownership, a major financial investment by the private partner, government ownership of the data, and completion of the project in less than 15 years.

One of the two consortia, called Real/Data Ontario, emerged as the province’s choice of a private partner. “After two years, it came down to who really believed in partnership,” Daniels said. Made up of five companies that specialized in areas such as database management and surveying, plus a group of individual investors, Real/Data offered the skills to complete the project and promised to match the government’s financial contribution—a condition the competing consortium did not meet, he said.

For the business model to work, Ontario’s legislature had to amend laws on land administration, a process that took place in parallel with the negotiations. In 1990, parliament approved two crucial pieces of legislation: the Land Registration Reform Act and amendments to the Land Titles Act. The legal changes authorized
and regulated the use of electronic records and assigned the director of titles the authority to convert properties in the deeds system to titles, respectively. The amendments to the Land Titles Act also included a new qualified title, which was designed to make the conversion process easier by reducing the number of records that had to be searched in order to convert property deeds to the title system (see Textbox 1).

The final negotiations were in progress when provincial elections shook up the political scene in September 1990. For the first time, the socialist New Democratic Party (NDP) won a majority in the Legislative Assembly, raising fears that the government would be hostile to the idea of any partnership with the private sector. “We all thought, ‘Well, that’s it. No NDP government is going to approve [involving] a private company in the land registration system,’” Foster recalled.

But the project’s proponents were pleasantly surprised by two aspects of the political turnabout, Daniels said. First, the new minister of Consumer and Commercial Relations turned out to be very receptive to the idea of a PPP. Second, the change in government helped resolve an issue that could have become contentious: what to do with unionized POLARIS staff when the new joint venture company, named Teranet, came into existence. The private consortium had been hesitant about the new company’s taking on staff who remained in the public sector union, but the group dropped its opposition when it became clear

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### Box 1. Land Registration Systems in Ontario

In 1987, Ontario used both a Torrens title system and a deeds, or registry, system to register land. The deeds system had been introduced in the late 1700s, and covered mainly properties in the more densely populated southern part of the province. A century later, in 1885, the province introduced the Torrens system, which became more prevalent farther north. Which system a property was registered under varied by county, which was the level at which land records were managed.

Under a Torrens system (named after Sir Robert Torrens, a mid-nineteenth-century Australian politician), a certificate of title constitutes a strong and permanent record of property ownership. The person registered on the title has a definitive claim to the property, and the government guarantees the claim and provides compensation for the rightful owner if a title gets issued or transferred in error. A Torrens system can simplify transactions because the title takes precedence over any other claims, and it guarantees that the registered owner has the right to sell the property.

In contrast, a deeds system requires the registry office to keep a record of each transaction in the property’s history. Before a sale, a mortgage, or other transaction can take place, the parties must verify that the deeds in the registry show an unbroken chain of ownership in order to ensure that the owner in fact has the right to make the transaction and that there are no competing claims to the property. In Ontario, the law required 40 years of records to verify ownership.

Because the Torrens title certificate serves as a definitive record of ownership, the issuance of titles requires care in order to avoid dispossessing a person who has a legitimate claim to the property. Boundaries must first be described clearly, and any disputes or overlapping claims must be resolved. When Ontario’s government decided to convert all property records in the province to titles, it created a new qualified title to simplify the process. To create a qualified title, those doing the conversion had to search only three arm’s length transactions or 10 years back, whichever was longer. The administrative nature of the conversion process meant qualified titles could not provide exactly the same guarantees, but to ease real estate professionals’ acceptance of the process, the government added some new guarantees beyond those standard in the Torrens system. For instance, property owners or buyers typically had to search adjoining parcels to make sure that there was no history of improper division from neighboring properties. When issuing a qualified title, staff did those searches, and the government guaranteed such problems were not present up to the date of conversion. If errors during the conversion process led to a financial loss for the owner, he or she could go through a hearing process to claim compensation from the title assurance fund.
that the new socialist government would never agree to such an arrangement. “There was no way they’d get the deal” unless the consortium accepted the unionized workers, Daniels said, “so it turned out to be really great.”

After a final round of reviews by the new government, the province and Real/Data signed the partnership agreement in February 1991, and Teranet was formed in May. The 50/50 partnership committed the province and Real/Data to each contribute C$29 million of equity—Real/Data’s in cash and the government’s mainly in the forms of hardware and software that the Ministry of Consumer and Commercial Relations transferred to the venture, which received full ownership of POLARIS for the 10 years of the agreement. The government retained ownership of the data and the original documents, however, and continued to guarantee titles and set the fees for services such as searching and registration.

The agreement made Teranet the exclusive provider of property search and registration services for 10 years and required the company to digitize and convert all of Ontario’s land records by 2002. Each partner appointed four members of Teranet’s board, and they jointly agreed on another five. Because of its 50% stake in the company, the government was entitled to half of any dividends provided for shareholders, and the agreement also granted the government a 25% royalty from registration-related revenue and 5% from nonregistration services.

GETTING DOWN TO WORK

In 1991, the Ministry of Consumer and Commercial Relations and Teranet began working together to transfer staff, digitize and convert records, and develop a pioneering electronic land registration system. As the project progressed, the two partners had to overcome an initial crisis and develop structures for collaboration, eventually culminating in the sale of the government’s ownership stake in 2003.

Building Teranet

Before the newly created company could begin operations, Teranet had to hire staff—in many cases, experienced civil servants—and establish itself as a cohesive institution.

A key component of the partnership agreement was that unionized staff working on POLARIS would receive job offers from Teranet and would still be represented by their public sector union. The Strategic Alliance Liaison Office, which became the focal point for monitoring and coordination with Teranet after the agreement was signed, was responsible for ironing out any wrinkles in the transition.

Sue Corke, a career civil servant who served as the office’s first director, spent months working with the union. Drawing on her experience in mediation, Corke held regular meetings to keep the staff updated on the process. Finally, Corke said, “they were all handed their pink slips, were laid off from the government, and one second later were handed their job offers from Teranet.” For those who did not want to leave the civil service, “we’d match them if we could, but it was never guaranteed,” she said. Of approximately 100 union employees, more than three-quarters moved to Teranet, where they received comparable salaries and relatively few changes in benefits.3

Many of Teranet’s senior managers also came from the civil service. Originally, many senior staff were seconded from the government, Foster said, including herself, but “having two bosses wasn’t going to work. . . . Teranet had to have real employees.” Several months into the partnership, most chose to become full employees at the company. Teranet also hired additional staff, including its first CEO, Kaplanis, from the private sector.

The management team worked hard to smooth the transition, Kaplanis said. The POLARIS staff who transferred to Teranet were “scared to death,” he said, “then you had private sector people going to an environment where they didn’t know what to expect… you had to make
people feel comfortable that they weren’t going into a lion’s den.” To bridge the gap in work styles and expectations between former government employees and those who had spent their entire careers in the private sector, Teranet’s managers strongly emphasized corporate culture. The senior management team tried to keep everyone aware of developments by way of all-staff meetings and to build cohesion through social events and peer-nominated awards.

The partnership was not designed to completely privatize land administration. “The idea of Teranet was to be the enabler of systems” rather than take over the entire land registration process, said Farewell, who joined Teranet in 1997 and became its CEO in 2013. Throughout the process of digitizing the records and designing the electronic registration system, the government continued to own and operate the province’s land registry offices and employ registry staff who ran the front offices and approved transactions.

Finding a new financial partner
In late 1992, not long after Teranet’s creation, the company ran into a financial crisis: The partnership agreement required Real/Data to contribute C$29 million to match the government’s earlier investments in POLARIS. Although the consortium put up an initial C$5 million, it missed the next two installments of C$4 million in October and C$10 million in January 1993, and its members were not in a position to invest any more funds.

Real/Data’s primary financial partners—a small group of venture capitalists—had expected to raise the remaining money on the strength of Teranet’s business model. But two problems caused them to ultimately fail to meet their commitments and lose much of their initial investment.

First, Ontario’s heated economy cooled. The partnership had been negotiated at the height of a real estate bubble in the Toronto area, driven in large part by a healthy job market, migration into the city, and low mortgage rates. When the bubble burst, prices dropped sharply—by 39% for condominiums and 27% for other types of housing—and transactions decreased. Growth also slowed across the rest of Canada. Between the declining real estate market and the sluggish overall economy, few investors were willing to sign on to an ambitious and unproven land project.

Second, the deal had come under intense scrutiny in 1992 after the losing bidder complained that Real/Data had been selected for political reasons and that the government had behaved improperly during the bidding process. As a result, “I don’t think there was a single oversight body that didn’t have a go at us,” Corke said. Daniels, Corke, and other ministry staff had to provide a thorough accounting of the decision-making process to a legislative committee and other oversight agencies. Although none of the inquiries led to charges of wrongdoing, investors were wary of signing on to a project that was under a cloud and facing an array of negative media coverage.

Inexperience with PPPs and problems involving transparency complicated the situation. “I wasn’t helped at all by the former partner, Real/Data,” Daniels said. “They became obsessed with [the] secrecy of their deal. . . . The private sector can have commercial advantage by keeping secrets [information] to itself, but there’s no advantage in government to keeping secrets.” As the press and opposition parties raised questions, Real/Data’s reluctance to disclose information such as its shareholders or the details of the contract compounded the consortium’s financial struggles.

With the Real/Data consortium unable to provide the required capital, the province began looking for a new investor. While in talks with the Royal Bank of Canada, an especially attractive possibility emerged: Miralta Capital, an investment firm that managed several large pension funds. Daniels said the firm appeared to be an ideal partner because of its willingness to make the entire remaining investment up front—bringing the private contribution to the agreed C$29 million—and to wait 10 years to begin earning a profit on the deal. “They very much understood
the idea that this required patient money. . . . They’ll invest in something that has a long-term return,” he said. Teramira Holdings, a new consortium formed by Miralta, included some of the original companies from Real/Data but replaced the investors with Miralta and served as Teranet’s main private investor from 1993 until the company’s initial public offering in 2006.

Converting Ontario’s land records

Real/Data’s default slowed the project, but with Teranet financially secure, the company and the civil servants it worked with could focus on their core task: converting all of the province’s land records to digital format, and those in the deeds system to land titles. Conversion was fundamental, Farewell said. “We wanted to convert and automate the records, we wanted to provide remote access and an electronic marketplace for transacting in land registration, and we wanted to be able to leverage those capabilities and take it to other markets. I still remember that three-bullet slide that said that’s what Teranet does . . . and you didn’t really focus on that last bullet until you’d been successful with the first two.”

The conversion process lasted almost two decades, ending in 2010. However, Teranet and the province sequenced the conversion process to get to critical mass as quickly as possible. Records were stored at the county level, and the company and its government counterparts at the Strategic Alliance Liaison Office focused first on populous counties with more-active real estate markets, mainly in southern Ontario near the United States border. Daniels said condominium property records were the easiest to convert, so the office and Teranet “picked counties where there were lots of condominiums, like Toronto, and then moved on to slower projects—First Nations reserves, crown [government-held] land, and areas with lots of properties with old records or lost records.”

Throughout the process, Teranet’s conversion team followed the same basic procedure: Scan the paper records; enter data from the image into POLARIS; have a staff member certified as a title analyst review it for errors or, if the property was in the deeds system, any problems that would prevent it from being converted to a title; and send the data to Teranet’s mapping group for entry into a spatial database as well. If there was a discrepancy with the record, the problem would be passed up through several layers of authority, from the on-site supervisor to Teranet’s legal department, to the province’s director of titles for a decision. However, the conversion proved more complex and more time-consuming than originally anticipated, and as Teranet gained experience, Farewell and his team refined many of the procedures.

Initially, Teranet’s conversion team rented space next to the land registry office in each county it was working on, took records from the office to its space, scanned the records, and did the conversion on-site. However, as the quality of scanned images improved, the company could process documents—scanned by a small team of Teranet staff—at a central location rather than placing a conversion team, often made up in part of local conveyancers, at every registry office. The creation of a “virtual registry office” meant the same workforce could handle each set of records, which reduced the need to train new staff, Farewell said. Improving technology also enabled Teranet to build an integrated electronic worksheet that prompted users to enter specific data and eased the process of linking the typed information to the scanned image, thereby reducing human errors that were more common when staff relied on spreadsheets.

The records also proved more variable than the provincial government or the company had expected, and the number of records ended up being significantly larger—closer to 5 million than 4 million. The partners worked together to plan how to handle the more complicated properties and increase efficiency.

One crucial change was to plan how to respond to certain problems in advance. Before beginning work in each county, a joint team from Teranet and the ministry visited the local registry office to look at sample records and speak with staff and clients about potential problems related
to the conversion process. Then “we would try to cut those off at the pass and make decisions at a bulk property level,” said Eric Black, who headed Teranet’s legal team responsible for conversion and later became its director of government relations. That way, when title analysts ran into a problem—for instance, unofficial private roads or parcels with water access—they already had guidance on what to do. As Teranet converted new counties, “we created a database that captured those decisions so the staff, the quality assurance folks, [and] the legal folks all had a reference point,” Farewell said. The need to consult government legal experts eased as joint decisions with the province set precedents.

Another improvement was the development of an effective performance management system for title analysts. Measuring performance had proved challenging early in the process because of the wide variability of records. For instance, a new subdivision lot that was already in the title system was much easier to get into the database than an old property in the deeds system. But by the late 1990s, Farewell said, Teranet had developed a system to sort records by their complexity during the initial review, so “it didn’t matter what record you were working on, because we classified all the records and knew the property type.”

By weighting records based on their complexity and factoring that into measurements of individual work quality and productivity, the managers of the conversion process could evaluate staff more fairly and identify training needs.

**Developing electronic systems**

By 1995 almost half of the province’s records had been converted, and the company launched its first digital tool: Teraview, a software package that enabled users to search and view records from their homes and offices.

But remote access was just the first step. While the conversion process was in progress, Teranet and the ministry worked to develop an electronic system that would overhaul the entire process of making land transactions, from documentation to government review, to final record changes.

Designing the Electronic Land Registration System, or ELRS, required close collaboration between Teranet’s product development team, the provincial government—especially the titles division—and real estate attorneys. The lawyers played an especially important role during the planning stage because they were the primary end users of whatever kind of system came about. Teranet, the ministry, the Law Society of Upper Canada, and the Ontario Bar Association formed a joint committee to review land transaction procedures and create guidelines for electronic registration.

After identifying needs and setting broad guidelines for the new ELRS, officials at the ministry and Teranet hatched out every detail in an effort to eliminate inconsistencies and latent problems. “One of the things the system was trying to do was standardize. . . . Each registry office had its own unique way of doing things, so there were a number of us from different registry offices, and as you’re trying to set a rule or say what’s happening, there ended up being some interesting debate about what the real rule was,” said McArthur, Teranet’s director of product development. McArthur worked on the ELRS as one of the province’s representatives before joining the company in 1998.

The design team then had to turn the complex procedures and legal requirements into reasonably straightforward prompts for users. The ELRS relied on lists of legal statements—descriptions of the property owner, the property owner’s rights, and what rights were being transferred. To maintain accuracy, the system included error notifications that alerted users to missing or contradictory statements before they submitted documents. The design team had to come up with a comprehensive list of statements for each transaction type and rules stipulating which combinations of statements were and were not allowable.

Developing and checking the rules was a grueling process, Murray recalled. “We were sitting in boardrooms for days and weeks, talking about extremely detailed design matters like Boolean
logic,” the operating basis for binary computer systems, she said.

To register a transaction through the ELRS, the system retrieved and displayed existing information on the parcel from POLARIS, such as the owner’s name and a property description. Lawyers or conveyancers representing both parties to the transaction entered new material, including transaction type and cost, and selected a series of legal statements that the system cued based on transaction type. Once the documents were completed, both lawyers reviewed and signed them electronically on behalf of their clients and submitted them online to the registry office for review and registration.

Although anyone could use the software, “it was really built with a focus on lawyers,” McArthur said. The interface was organized to resemble the files in a lawyer’s office, and the system could be integrated into desktop programs that lawyers used for managing their files and preparing supporting documents for submission.

**Rolling out digital transactions**

Involving professionals in the design process was an important first step, but once electronic transactions were ready to launch in 1999, Teraview’s proponents had to get its users on board. “The process wasn’t going to work if we didn’t work with and accommodate the users,” Murray said.

Although the transition to electronic registration had little impact on people who were selling their properties or buying someone else’s, the change raised concerns among real estate lawyers and the conveyancers who had to navigate the particulars of each transaction.

Real estate professionals were divided on their feelings about the new system. Many, like lawyer Jerry Udell, were eager for change. “I embraced it—anything to make my life easier,” he said. Still, Udell recalled that some lawyers and clerical staff chafed at having to alter their way of doing things and “didn’t want to deal with computers.”

The law society and the bar association became valuable allies in bringing reluctant lawyers on board. “Some people hated us, and some people said this is the right thing to do,” Farewell recalled—including influential members who advocated for the system with the others. Local chapters organized information sessions so Teranet could explain the system, and early adopters spoke with their colleagues about the advantages of computerization. Teranet also held individual sessions with lawyers, sending a team to visit law offices, help them set up the software, and walk them through how to use it. “Our representative would come sit with you for hours,” Black said—a service that was included with the purchase of the software.

For conveyancers, concerns often ran deeper because the ELRS threatened to reduce their role in the transaction process or cut them out altogether. Conveyancers had functioned as intermediaries between land registry offices and real estate lawyers, combing through thick registry files to perform title searches, preparing lengthy paper transaction documents, and delivering completed applications to registry offices. By eliminating the need to visit registry offices to search records and submit documents, the new system jolted their business model.

“Conveyancers did have concerns, and some resisted,” Murray said. “We did listen to everyone, but our objective was electronic registration for the whole province, for good reasons—you can’t do a transaction that’s half electronic and half on paper.”

The nature of their work made adapting to the digital system challenging for many, and “we had some very heated and difficult meetings,” Foster said. However, she said, some conveyancers “got out in front of it, learned Teraview early on, and continued to make themselves indispensable to the lawyers that way.”

Introducing the system gradually helped ease tensions. Although the 1990 Land Registration Reform Act authorized the minister responsible for land matters to issue regulations making electronic registration mandatory, the province did so slowly, giving lawyers and conveyancers time to adjust. Once a county’s records had been fully or
almost fully converted, the ministry filed a regulation making electronic registration optional. After a transition period, a second regulation was filed making electronic registration mandatory. The transition period for the land registry offices early in the process was approximately a year, McArthur said, but by the time the last county was converted a decade later, the time span was just two months.

**Coordination and oversight**

Throughout the partnership, success hinged on maintaining close communication between the provincial government and Teranet and tracking progress across the entire project.

After the agreement was signed, the Ministry of Consumer and Commercial Relations designated the Strategic Alliance Liaison Office to monitor Teranet’s progress and iron out everyday issues. Corke, the office’s first director, headed a small team that included experts in land titles, POLARIS, and human resources. As the first point of contact for Teranet, the team either resolved disagreements directly or passed them up the chain to higher-level officials.

The office’s staff and their counterparts at Teranet established committees made up of senior managers from the company and the civil service to oversee specific areas of the partnership. Especially important were those that tracked implementation of the conversion, development of the software system, and overall management of the relationship, including dispute resolution.

Initially, the focal point was the joint implementation committee, which supervised the conversion process. In addition to responding to major legal questions, the group set the schedules and determined the order in which counties were automated. The joint systems committee coordinated software development and facilitated meetings between Teranet, the government, and the legal community to design the ELRS. Finally, the joint management committee monitored the progress of both the conversion and system development. “If there were performance issues, you had to report it to that committee, and it would review remedial plans,” Farewell said. The committee was responsible for resolving disagreements, he said. “If one of the subcommittees can’t agree on something, it goes to joint management; if joint management can’t figure it out, it goes to the CEO and deputy; and if they can’t figure it out, it goes to arbitration.”

In addition to helping Teranet and the provincial government quickly identify and resolve their differences, attention to governance structures was a political asset, Corke said. Because of the value and sensitivity of land information, she said, some government officials were concerned about “what was going to happen once the private sector got their hands on our precious data.” Demonstrating that the two partners had regular contacts and clear ways of resolving issues helped “assure people that government was in charge,” Corke said, especially when new—and sometimes skeptical—civil servants took senior positions in the ministry.

“We did more briefing of government people than we did of new board members or staff,” Foster recalled. Because civil servants frequently moved between ministries and departments, there was “constant turnover” of the people Teranet interacted with, she said. As personnel changed, the established governance structures provided an opportunity for the company to “help [them] understand why we were in the room and why we were there to begin with.”

**Selling the government’s stake**

After almost 10 years of working together, Teranet’s contract was nearing its end, and the government, led by the Conservatives since the 1995 elections, began to consider selling its stake in the company so it could raise funds to help cover the province’s budget deficit. In 1998, the government and Teranet began renegotiating, with an emphasis on adjusting timelines and formalizing governance mechanisms before the sale.

The renegotiation covered several major issues, said Velazquez, who left the board in 1999, set up a private mediation practice a year later, and was selected to facilitate the renegotiation in 2002 because of her knowledge of the partnership.
Chief among the renegotiation issues were the timeline and the cost of conversion, user demands for changes to the ELRS, and how to handle value-added products that used the system’s land data, which Teranet was just starting to develop.

Ontario and Teranet agreed to restructure the agreement to extend to 2007 the deadline for converting all of the province’s records, to require the joint committees to meet regularly, and to establish a new privacy committee. Privacy was becoming an increasingly important issue as Teranet designed new products that used the data for purposes other than core land registration functions. The government received a 5% royalty for nonregistration services, with the rest of the revenues going to Teranet. One example was GeoWarehouse, a subscription platform Teranet launched in 2001 to provide sales data, property information, and streetscape imagery for real estate professionals. Purview, launched a year later, provided valuation information for lenders and insurers and enabled them to automatically check for indicators of fraud such as unusual activity or property values inconsistent with a local market. The government and Teranet agreed these were acceptable uses of the data, but they restricted other uses—for instance, by prohibiting bulk sales of information, which would otherwise be valuable to advertisers. “There was tremendous pressure from the private sector, but we just refused,” Kaplanis recalled. “I told them, we’re not a list company; we’re not going to sell you a list of all the 5% mortgages… That’s not what Teranet is.” Eventually, the joint privacy committee established a formal structure for reviewing new products and making sure they complied with government privacy requirements.

With the revised agreement in place, in August 2003 the province sold its shares to Teramira Holdings, the private group of investors who had held the other 50% since 1993. Although Teranet maintained its contractual relationship with the province as a service provider and continued to work closely with the government representatives on the joint committees, the government no longer had either an ownership stake or seats on the board. The sale brought in C$370 million, helping cover the budget deficit that the Conservative government had been concerned about.

As the government exited Teranet, the two partners more than ever had to provide assurances that the arrangement would benefit the province and the public. A critical provision of the sale agreement was that the government would receive half of any additional value generated by any subsequent sale of the company within three years. The government also maintained ownership of the registry offices and the data itself, as had been the case in the original agreement.

OVERCOMING OBSTACLES

Shortly after Ontario sold its shares in Teranet, the province confronted a series of high-profile cases of title theft and mortgage fraud. Although there were only a handful of reported fraud cases out of approximately 2 million transactions per year, the cases undermined public confidence in the system and prompted the provincial government to make changes that would tighten security and prevent fraudulent transactions.

The most prominent of Ontario’s fraud cases involved a 55-year-old widow named Susan Lawrence, who in 2006 received an eviction notice after someone impersonated her and transferred her property to another imposter. The title thief then took out a mortgage on the property and disappeared with the money. Based on a 2005 precedent, Ontario’s appeals court initially ruled that the mortgage company had the right to take the house and that Lawrence had no choice but to claim compensation from the province’s title assurance fund. Several other victims of fraud—mainly older people—faced similar predicaments. The cases highlighted a pitfall of Ontario’s title system: Victims had few options when the registration process failed to prevent fraudulent transactions. What was on the title was legally indefeasible—that is, unalterable—because titles were considered definitive records of property ownership and associated rights. In December 2006, Ontario’s parliament amended the Land Titles Act to invalidate any transaction that took
place after a fraudulent one, and it increased the penalties for fraud. Under the revised law, a mortgage given to a fake owner was no longer valid—even if the bank believed the owner was legitimate when it issued the mortgage. Lawrence appealed the court’s decision, and in February 2007, the Court of Appeal for Ontario reversed its 2005 decision and invalidated the mortgage. However, the legal changes helped only after an act of fraud rather than changing the system to prevent fraud from happening in the first place.

To tighten access to the system and increase the chances of detecting scammers, the titles division and the law society implemented rules to allow only lawyers to submit transfers and to require them to share the risk of any fraudulent transfer. “It made lawyers bear the burden of client identification,” said Jeffrey Lem, a real estate lawyer who became director of titles in 2014. “If someone wants to commit fraud they have to go through a lawyer and convince them.” Although the move sparked objections from conveyancers, “the facts in the Susan Lawrence case created a lot of political will,” Lem said. The new restrictions were finalized in 2008.

After the agreement with the law society, only lawyers in good standing could file transfers in Teraview, although other transactions such as mortgages could still be submitted by banks or conveyancers. Because lawyers served as “gatekeepers” under the new system, Udell said, “it was imperative that we confirm the identities of those we represented.” Udell said he made sure clients had two pieces of identification, and he also had a bar code reader to check that information on the front of clients’ driver’s licenses matched the encrypted information on the back.

Lawyers were required to pay into a fund that served as compensation for people defrauded of their property, but in addition to the financial risk, lawyers could lose their professional licenses if they allowed fraudulent transactions to get through. The law society served as the regulator of the profession and could penalize lawyers who failed to check identities or allowed others to access their Teraview credentials. Because the law society determined who was allowed to practice law, Teranet automatically checked the society’s list of lawyers in good standing every day and blocked anyone whose name did not appear on the list from filing transfers in Teraview.

Despite efforts to improve the security of the registration system, some risks remained. The new restrictions significantly reduced title theft, Lem said, but some fraudulent activity survived and perhaps increased in mortgages, which were not subject to the same lawyer-only controls. A fraudster could still artificially inflate the value of a property, have a conveyancer take out or discharge a mortgage, and disappear—and the title assurance fund was much more difficult for mortgage lenders to access. It was also fairly common for lawyers to allow their clerical staff to use the Teraview account and submit transfers for them, real estate lawyer Alan Silverstein said. The lawyer could still be held responsible if there was a problem, but the practice compromised security.

Although the cases made the public uneasy, “you can’t blame those on the electronic system; I don’t see how you can argue the paper system was more secure,” Murray said. “The issue was due diligence,” she added, which the controls introduced in 2008 helped address.

**ASSESSING RESULTS**

In 2016, almost 30 years after Ontario began exploring the idea of creating a PPP to modernize its land registration processes, its pioneering electronic registration system had become an essential element of the province’s daily workings. Teranet continued to manage land registration services, electronic registration was in widespread use, and the provincial government had reaped financial rewards from the partnership—despite a rocky start.

Converting all of the province’s land records into the titles system and digital format took longer than expected, but the process was finally completed in 2010. At that time, 99.9% of properties had been converted and digitized, with only about 34,000 so-called nonconverts that had
specific problems preventing them from being converted from deeds to titles.

The conversion simplified transactions because lawyers or property owners no longer had to search 40 years of records to establish ownership. Computerizing the records eased access to land information because users could instantly obtain digital copies of titles from anywhere rather than having to visit local registry offices to get paper records. The digital database and its backups also reduced the risk that crucial paper documents could be damaged or stolen.

The conversion process formed the backbone of Ontario’s electronic registration system—among the first in the world. The world’s first electronic land transaction took place in Ontario in 1999, and use of the ELRS took off in subsequent years because the system sped up and simplified real estate transactions. “I shudder to think how we did deals without it,” real estate lawyer Silverstein said. Teranet consistently received high marks for customer satisfaction in surveys conducted by the ministry, averaging around 85%.

However, some lawyers complained about the complexity of the system’s interface and about the need to decipher codes indicating the required legal statements. In 2016, Teranet was preparing to launch an update that would simplify the process and enable online access rather than requiring users to install a desktop program.

Standardized metrics of land administration indicated that Ontario’s performance was strong but not outstanding globally. The World Bank’s Doing Business Quality of Land Administration index, which awards points based on the reliability of institutions and infrastructure, transparency of land information, geographic coverage, and land dispute resolution processes, gave Canada a score of 21.5 out of a possible 30 points in 2016, slightly below the average of 22.7 for high-income countries in the Organisation for Economic Co-operation and Development (OECD).

The Doing Business methodology for evaluating property registration is based on a transaction in a country’s largest business city—in this case, Toronto—making the data applicable specifically to Ontario. Canada’s strongest score was for reliability, and its weakest was for transparency—in part because Teranet and the registry offices did not publicize some of the statistics, such as transaction volumes or timelines.

Canada’s distance to frontier score for property registration in the Doing Business reports (again, based on a transaction in Toronto), which represents the gap between a country’s performance and the best practice in the data set, has consistently been 75 to 79 out of 100 possible points since 2005, the first year data were available. In 2016, Canada received a score of 75.09, slightly below the average of 76.73 for OECD high-income countries, and was ranked 42nd out of 189 countries. However, the Doing Business methodology covers preliminary steps such as receiving an appraisal of a property’s value and obtaining a municipal tax clearance certificate. Those steps increased the time and cost associated with property registration beyond those associated with the online process itself.

The province and Teranet also won several awards for the project—notably, the Commonwealth Association for Public Administration and Management’s International Innovations Awards gold medal in 2002 and Canadian Information Productivity Awards Award of Excellence in 2001. Teranet’s systems served as a model for several other jurisdictions, including Jamaica, Lebanon, and the Czech Republic.

Despite some challenges in adjusting to the new technology, “I don’t think there would be a lawyer in the province today who’d go back to the old way,” Farewell said. A gradual rollout, close collaboration with professional associations, and individual support helped stragglers adopt the system. However, the change hurt business for conveyancers, who made their livings as the experts in interacting with the registry offices and searching paper records.
Box 2. Technology at the Land Title and Survey Authority in British Columbia

In 2002, just over a decade after Ontario’s provincial government signed its partnership agreement with Teranet, the government of British Columbia was facing similar problems. A booming real estate market was overwhelming the province’s registry offices. At the same time, the government was facing a budget crunch and was considering closing registry offices in remote areas to save money, which sparked protests by indigenous First Nations groups, who worried about losing access to their property records.

Inspired by the not-for-profit organization set up to manage Vancouver’s airport, in 2003 the Law Society of British Columbia proposed that the province use a similar model for land registration, which was handled by government ministries. The envisioned nonprofit corporation would focus on providing a single service—rather than being one of a ministry’s numerous responsibilities—and could bring together the titles and survey functions, which at the time were in different ministries. Crucially, a nonprofit corporation would face financial pressures to improve services and create efficiencies because it would be supporting itself by using fee revenue, but it could not put profitability ahead of the best interests of the province.

The government quickly adopted the law society’s plan and assigned Godfrey Archbold, a career civil servant with a background in land administration, to begin setting up the new organization. Called the Land Title and Survey Authority (LTSA), the nonprofit opened its doors in January 2005.

The LTSA faced two major challenges right away: a workforce on the verge of retirement and unacceptably long turnaround times. Although British Columbia had been working on computerizing its land records since the 1980s, in 2004 only 13% of transactions were submitted electronically; and reviewing the documents and processing the transactions took more than a month. Especially given the high volume of transactions in the early 2000s, the LTSA had to either hire more staff—in an environment in which the agency was already having difficulty attracting candidates to replace those about to retire—or make its processes more efficient. And it would have to do so while funding its operations and maintaining the existing system entirely on its own resources.

Technology offered a solution to both problems. By computerizing a large portion of the processes, the authority could quickly reduce turnaround times. And with a sophisticated enough system, the LTSA would be able to replace some of the retiring staff with computers. The older staff would keep the paper-based system running until electronic registration was in place, but to operate the digital system, the authority could hire a smaller and younger workforce that focused on only the complicated transactions.

The first change the authority introduced was the use of smart PDF forms that enabled its system to pull the data that lawyers or notaries submitted and fill in much of the information required to process the transaction. However, the process still required review by an officer of the authority.

The next step was to create a program that could check the data submitted against the legal requirements and either flag issues for an officer to review or certify the transaction automatically. The LTSA brought in a new chief information officer, Al-Karim Kara, to lead the development of the system. Kara coordinated a team of experienced registry officers to document their work flows and develop system rules that his technology team then converted into specifications for the contractor hired to write the code. The authority also consulted users in its development of an interface that was easy to work with and as a way of making sure there would be no surprises about the transition. As in Ontario, electronic registration was rolled out as an option and later became mandatory.

The technological changes—and the business process revisions that took place as part of their development—slashed the LTSA’s turnaround times from 37 days in 2003 to 3 in 2016. By 2016, 95% of transactions were being submitted and processed electronically, and 47% were automatically reviewed.
Financially, the partnership made money for Ontario. The government contributed C$29 million in equity at the beginning of the project, largely in-kind (the value of the work it had already done on POLARIS). Twelve years later, it sold its 50% stake for C$370 million. Assuming the government bore 50% of the C$391 million in implementation costs reported by the provincial auditor for 1991–2002, the government still would have made a profit of more than C$140 million on the sale.14 At the time, some criticized the 2003 valuation for being too low.15 However, the sale agreement was designed to address those concerns: after Teranet’s 2006 initial public offering, the provincial government received C$573 million because of a requirement that it share in the value of future sales.

The two partners formed a lasting relationship despite the structural changes. In 2010, Teranet paid Ontario C$1 billion for a 50-year concession to continue operating the ELRS, and it agreed to make annual royalty payments beginning in 2017. Two years later, Teranet expanded into the neighboring province of Manitoba using a similar model—an up-front payment of C$75 million to operate the land registration system for 30 years plus annual royalties beginning at C$11 million. The agreement with Manitoba went further than the one in Ontario: instead of only providing the software, Teranet also staffed and operated the registry offices and certified titles itself. However, other Canadian provinces digitized their registries independently (see Textbox 2), and by 2016, Teranet had not expanded further. Although several countries looked to Teranet for inspiration, they did not work directly with the company on implementation.

REFLECTIONS

Ontario’s groundbreaking land registration system helped pave the way for widespread adoption of electronic registration technology and highlighted both the advantages and challenges of computerization. Years later, British Columbia’s Land Title and Survey Authority (LTSA) pushed the technology further, adopting automated certification of titles (see Textbox 2). Taken together, Teranet and the LTSA demonstrate the possibilities of innovation in both the institutional design and the technology used to manage land—and the strategies and circumstances that made new approaches possible.

In several ways, Ontario and British Columbia were relatively easy targets for electronic registration. The provinces did not have to contend with several of the challenges common in developing countries that introduced similar reforms—notably, informal tenure systems. Canada had a long tradition of statutory recognition of land rights, LTSA CEO Godfrey Archbold pointed out, and “the technology wouldn’t work as well in a context where land rights aren’t as strongly protected.”

Unlike in countries where land registration had been introduced recently or unevenly, even if records were sometimes flawed or out of date, nearly all private properties in Canada were recorded officially in either a deeds or a titles system. Corruption, often a major challenge in land administration, also was minimal. Although leaders in both provinces had to get staff and users to learn new skills and although there was still some risk of title theft and fraud, Canada offered a relatively straightforward environment for developing and testing new ideas about land administration.

In both provinces, the governments adopted an alternative model of service delivery—working with a private partner in Ontario and establishing a new nonprofit corporation in British Columbia. Both Teranet and the LTSA had to support their operations and finance investments from their own revenues, which helped drive efficiencies and the adoption of new technologies.

The two provinces differed, however, in the type of corporation each created, and that in turn shaped outcomes. Teranet was established as a for-profit company, initially with partial ownership by the provincial government but later with only a contractual relationship as a service provider. The LTSA had never had government ownership and
was legally required to reinvest the money it made into its operations or use it to lower fees.

Because of their different financial structures, the two corporations pursued different improvements beyond their core registration systems. As a for-profit company, Teranet developed value-added services that used the data in new ways. “Teranet followed customers out of the office, and they came up with products for Realtors, mortgage products for banks, risk management products for insurance companies…. We never would have dreamed up any of these ourselves,” said Art Daniels, former assistant deputy minister in Ontario’s Ministry of Consumer and Commercial Relations.

In contrast, British Columbia’s LTSA focused on improvements to its registration system, such as automated examination, and its interface, sometimes investing beyond the point of diminishing returns. “If we have the money, we can argue something is a public good even if there is not a strong financial return,” Archbold said.

The move to a corporate model was made much easier by a favorable real estate market. Both provinces made the shift during a real estate boom, which created the impetus for change because existing systems were unable to manage the demand and helped the new corporation support its investments by generating transaction fees. Without a large and active real estate market, a private-sector-oriented institution would struggle for viability.

The transition was much easier in British Columbia because that province used only the Torrens system, which enabled it to avoid the conversion process that ended up being the most difficult and time-consuming aspect of the partnership in Ontario. Teranet CEO Elgin Farewell advised that in his experience, “legal conversion is pretty complex, so if you’re going to go down that path, be conservative in your estimates.”

In both provinces, the institutional change did not represent a complete break from the government. “It’s a symbiotic relationship,” Archbold said. Close involvement with the ministry responsible for land, whether through joint committees in Ontario or through frequent consultations on legislation in British Columbia, was vital. In both cases, the provincial government was represented on the corporation’s board—in Ontario because of its ownership stake and in British Columbia because a seat was reserved for the province.

Getting a new institution up and running also required its leaders to draw heavily on civil servants’ expertise. Both Teranet and the LTSA brought in senior and line staff managers from the government while recruiting people from the private sector to manage such areas as finance or software development. Employees with strong working knowledge of land administration and relationships with their counterparts in government proved critical in enabling both corporations to deliver. “I believe it’s a great environment for a public-private partnership,” Farewell said. “You really do leverage the expertise of each partner to mutual advantage, and the winner at the end of the day is the end user.”

Other players in the land administration system played equally important roles. People in both Ontario and British Columbia stressed the need for lawyers or other professionals to serve as gatekeepers for the system so as to reduce the risk of fraudulent transactions and provide an accountability mechanism if one got through. Submitting transactions through lawyers or notaries had always been mandatory in British Columbia, while Ontario adopted the requirement only for transfers after encountering problems with fraud in 2008.

“The public has to trust the intermediaries, like the lawyers, the notaries,” LTSA vice president Liza Aboud said. “We’ve seen some places where the public does not trust those groups, and they’re a key part of our system here.” The strategy adopted in Ontario and British Columbia would work only in environments in which lawyers themselves were not involved in corruption, were effectively regulated, and in which the public trusted them to faithfully represent their clients’ interests.
Ontario and British Columbia offered examples and lessons for other jurisdictions, but as others drew on the Canadian experience, Murray said, it was important to recognize that “systems aren’t turnkey.” Close attention to policy goals, the legal framework, and the political environment created a context in which a public-private partnership and innovative technology could succeed. Ontario’s experience provided a valuable model, Murray said, but “you have to customize.”

References
EMBRACING DISRUPTION: TRANSFORMING WESTERN AUSTRALIA’S LAND AGENCY, 2007–2017

SYNOPSIS
In January 2007, Western Australia’s land agency began a top-to-bottom overhaul of its structure, management, and service delivery. A booming property market, fueled by the state’s extractive resources industry, had overwhelmed the public agency’s aging technology, but budget constraints hindered its ability to upgrade the systems. To provide financial flexibility, the state government created a statutory authority called Landgate—a public institution with some private characteristics. Landgate could keep the revenue it generated from regulated services such as property registration and engage in for-profit commercial activities, which provided resources for investment in better services. But making the new model work was not easy. Landgate’s management team had to win the trust of skeptical staff, reduce delay, and contend with a sharp drop in revenues only two years into its existence when the 2008 global financial crisis struck. To surmount the challenges, the agency created an innovation program, explored ways to commercialize its spatial data, restructured to speed up registration and cut costs, and after one failed attempt, developed an automated registration system. By 2017, Landgate had become financially stable, had drastically reduced processing times, and had won acclaim for its innovative products and management practices.

Maya Gainer drafted this case study based on interviews conducted in Perth, Australia, in March 2017. Noel Taylor, at the time CEO of the Cadasta Foundation, assisted in interviews and drafting. Case published May 2017.

INTRODUCTION
In June 2015, Western Australia’s land agency, Landgate, accepted, examined, and registered a typical land transaction in 23 seconds—a process that could have taken up to six weeks a decade earlier. The launch of the agency’s automated registration system represented the culmination of nearly 20 years of efforts to computerize land registration in the state of Western Australia—efforts that had transformed not only the registration process but also the institution responsible for it.

Almost two decades earlier, managers at the state’s land agency, then called the Department of Land Administration (DOLA), recognized that they had to upgrade aging information technology systems—especially those delivering the title register and survey plan system, recalled Bruce Roberts, who joined the agency in 1991 and
became Landgate’s general manager for operations in 2011. DOLA was responsible for collecting and managing land information—from ownership to property values and cadastral maps—for a state that covered nearly a million square miles, or about a third of Australia. Most of the agency’s work, however, was concentrated in the southwestern corner of Western Australia, in and around its capital, Perth, where the vast majority of the state’s population lived and where the state’s thriving mining industry was driving investment in real estate.

The vast amounts of information the department handled and the volume of transactions it conducted using a paper-based register demanded a more efficient system to store, process, and disseminate registry information. A modern, fully computerized title and cadastre system would facilitate faster registration, give easier access to land information, and improve data security. However, getting the funding required to build such a system was not feasible for the department, which had to compete for budget allocations with more-visible services such as public safety, schools, and health care, Roberts said. Furthermore, even if DOLA could get funding to build a new IT system, it would still have to pay for maintenance and upgrades.

The need for major technological changes, coupled with the budget uncertainties, motivated DOLA’s leaders to explore institutional alternatives. “The question for us was how we could set up an entity that was effectively self-funding . . . so we weren’t in a position of continually going back to government with our hand out,” said Grahame Searle, who was the head of DOLA at the time and became Landgate’s first chief executive.

In 2001, Searle and a small policy team at DOLA proposed transforming the department into a government trading enterprise—a for-profit company owned by the government. But others in government were skeptical of that model. “There was huge pushback,” Searle said. Agencies from emergency services to local councils were concerned about price increases for work such as customized maps that DOLA provided below cost. In addition, turning DOLA into a government trading enterprise would entail major changes in public servants’ employment contracts and could lead to management choices that the government was not comfortable with. As a trading enterprise, “We could increase the prices, we could deliver a different service, we could reduce our staff, we could take it offshore . . . [and those things] were not an option with the government of the day,” Roberts said.

Instead, the government and DOLA eventually agreed to create a statutory authority—a hybrid model with both public and private characteristics. The compromise provided the financial flexibility Searle and his team sought, but the government’s greater oversight made the model more palatable to other officials. The state continued to regulate prices for core services such as registration and valuation, and the new authority would still provide discounted services for other government offices—paid for by a state budget allocation. But the new agency could also develop and sell commercial products and services, and it would be responsible for funding its own operations and investments by using fee-based revenue and commercial profits—enabling it to build any new IT systems it could afford.

At the time, Searle said, “we were swimming directly upstream” because the state government was trying to reduce the number of statutory authorities. The policy group put together a convincing business model, however. The key, Roberts said, was demonstrating that a statutory authority would be able to “feed itself”; that is, fee revenues would be sufficient to cover operations and invest in both digital systems and commercial projects. In addition, industry groups, struggling to keep up with a growing property market, supported digitalization, which would help them both complete transactions faster and lower costs.

With the backing of the minister responsible for Lands, the main hurdle lay in convincing
other government agencies. The commitment to keep providing cost recovery services helped, Roberts said, and DOLA’s team explained that “with the ability to improve and modernize our systems, we should be able to deliver that to you better, faster, cheaper.”

After several years of hammering out details and waiting for space on the crowded legislative calendar, Western Australia’s parliament passed the Land Information Authority Act in November 2006. The legislation stipulated the new statutory authority’s responsibilities, financial structure, and relationship to the government. Many of DOLA’s managers would assume similar positions in the new agency, Landgate, when operations began on January 1, 2007.

THE CHALLENGE

Searle, Roberts, and Landgate’s other leaders confronted a range of challenges as they prepared to get the agency up and running. The overarching challenge was to generate enough revenue to update the agency’s aging IT systems while maintaining high-quality services and low fees. The leadership had to maintain financial viability while investing in new technologies but also had to find ways to improve registration services, effectively use the agency’s commercial powers, and persuade staff to buy into the new institutional model.

Success required careful financial management. “We account for our revenues and our costs as if we were a business,” said Mike Bradford, who joined Landgate in 2006 after 22 years in the Australian army and later became CEO. To go beyond covering operating expenses and make major investments, the agency had to earn more than it spent. The divisions that registered transactions, assessed property values, and managed maps and other spatial data all depended on one another’s work but had to coordinate and share information more effectively. Working together more closely would in turn prevent duplication of effort, and enable the agency to consolidate and reduce the costs of support services like human resources and IT support.

The technological upgrades that motivated Landgate’s creation represented a difficult leap forward for the agency. When DOLA first proposed a new model in 2001, Roberts said, the department was in the process of digitizing its paper titles and introducing Smart Register, a system that allowed examiners to review titles digitally instead of on paper and to use their computers to make and print changes to titles. But the examination process still relied on paper inputs and was labor-intensive.

Landgate’s managers envisioned the development of cutting-edge systems that could handle every aspect of land transactions. At the front end, an electronic conveyancing system would enable the new agency to collect digital data from users who submitted transaction information online rather than handing paper forms across a counter. And at the back end, an automated registration system would enable Landgate to review transactions and update the title register—which in Western Australia’s Torrens system served as the definitive record of ownership—without an employee ever looking at the documents. Developing such systems demanded creativity, effective collaboration with software developers, and a careful change-management strategy for staff accustomed to paper transactions. (See textbox 1)

The new authority faced immediate pressure to reduce turnaround times for registration. When Landgate opened its doors in 2007, Roberts said, “Western Australia had the biggest land boom the state had ever seen, and subsequently, we had a huge issue with our business processes.” From 2001 to 2006, housing prices in Western Australia had shot up 118%, and property transaction volumes had increased by 35%.1 With manual processes and limited staff, the registration of even a simple transaction took up to six weeks at the height of the boom, and the agency had a backlog that peaked at 26,000 documents.

The agency’s managers expected that technological improvements would eventually
increase efficiency, but the registration unit had to move faster to improve existing manual processes and speed up services. “We had a huge backlog; we had customer complaints. . . . It was hurting us at both the organizational and stakeholder levels,” Roberts said.

The property boom highlighted an underlying challenge for Landgate. Because the bulk of its revenues came from registration fees, the agency was vulnerable to the property market’s fluctuations. For the statutory authority model to be financially sustainable, Landgate had to be prepared to cope with volatility. Although the immediate priority was to manage the surge in transactions, the agency had to be ready to scale down if the market slowed, which would require flexibility in the workforce and efficiencies in how that workforce delivered services. “We know we have these boom-and-bust cycles,” said Registrar of Titles Jean Villani. “So how in the public sector can we get a workforce we can ramp up and ramp down?”

Landgate also had to diversify its revenue streams both to help cover expenses in case of a downturn and to help finance investments. But finding ways to repackage, market, and sell land data was completely new to the agency. Its managers had to establish a process to generate ideas, assess risks and returns, and decide what to pursue. Furthermore, Landgate’s multiple roles and obligations sometimes complicated the decision making. The agency might pursue a project to make money, to benefit the public, or both; and “it’s often hard to make a judgment around which opportunities we should be pursuing for which purpose and what a project should be measured against to be considered successful,” Bradford said.

All of those changes were likely to face opposition from staff members who were uncomfortable with the new model. Landgate’s commercial functions were very different from the registry’s traditional role, Searle said, so “for me one of the challenges was, how you run two

Box 1. The Torrens System

Western Australia adopted the Torrens system (named after Sir Robert Torrens, an Australian politician in the mid nineteenth century) with the passage of the Transfer of Land Act in 1874. In a Torrens, or title registration, system, a certificate of title constitutes a strong and permanent record of property ownership. The person registered on the title has a definitive claim to the property, and the government guarantees the claim and provides the rightful owner with compensation if a title gets issued or transferred in error.

A Torrens system can simplify transactions because the title takes precedence over any other claims, and it guarantees the registered owner has the right to sell the property. In contrast, under a deeds system, transfers have to be thoroughly investigated to verify that the deeds in the registry show an unbroken chain of ownership that ensures that the owner in fact has the right to sell and there are no competing claims to the property. Because the Torrens title certificate serves as a definitive record of ownership, titles generally must be issued carefully so as to avoid displacing someone who has a legitimate claim to the property. Boundaries must be clearly demarcated, and it is important to resolve any disputes or overlapping claims at the time the title is issued.

In Western Australia, as in other Torrens systems, each title had two main parts: a map showing the location of the parcel and its boundaries and a text record of details about the owner and the property and any rights or restrictions associated with ownership, such as restrictive covenants or mortgages. Transferring a parcel required only the recording of the new owner’s name in the text record. A division of the land or an alteration to its boundaries required an amendment to the map and the issuance of new documents or certificates.
competing cultures within a [single] entity and value both?” In addition, longtime employees of the department had been working in the same ways for years, if not decades. Changing processes and technologies would take time, and to pave the way, the leadership team had to make staff feel “comfortable with and supportive of the change of corporate form,” Bradford said. As the agency evolved, helping staff members adapt would be an ongoing challenge.

FRAMING A RESPONSE

The Land Information Authority Act spelled out Landgate’s powers and obligations. Its central responsibility was to collect, store, and provide access to the state’s land information—key aspects of which were property values, maps, and ownership data but which included everything from fire risk to conservation areas as well. The act stipulated that Landgate had to provide certain services designated by the minister responsible for Lands at cost (in practice, registration, valuation, and some spatial data provision). However, the legislation also required Landgate to generate a “fair commercial return”—a portion of the agency’s profits, agreed upon each year with the minister—for the state government.2 The agency could engage in a wide range of business activities, such as providing consulting services, developing and marketing software or other intellectual property, or forming companies, partnerships, or joint ventures—provided it received approval from the minister and state treasurer for transactions valued at more than 5 million Australian dollars, or about US$3.8 million at the time.3

Such broad authority to engage in business was unusual, but it served an important purpose. Searle said that to avoid a lengthy legislative amendment process, he and his colleagues wanted the legislation to “encompass everything that might happen in the future . . . so we tried quite consciously to keep open as many of the commercial pathways as possible.”

The Land Information Authority Act also set out Landgate’s structure and relationship to the rest of government. A CEO managed Landgate’s operations and reported to a corporate board appointed by the minister responsible for land. “We were very strong about wanting a commercially focused board,” Searle said—as opposed to a representative board made up of stakeholder groups—and board members were typically experienced executives. The CEO and board regularly updated the minister on Landgate’s activities, and the minister approved the agency’s business plans and certain transactions; but in practice, the relationship was relatively hands-off. Officials typically had other priorities, Searle said, and as long as there were no major problems with service delivery, they were happy to let Landgate make its own decisions. “The only time government gets involved is if there’s something broken,” he said. “If it keeps working, who’s going to worry?”

GETTING DOWN TO WORK

Landgate’s leaders had broad aims to upgrade IT systems and profit from the state’s land information, but they had to translate those aims into concrete plans for the agency’s first years. The agency’s first five-year strategic plan set objectives of making land information available online, supporting networked government, becoming financially self-sustaining and profitable for the state, and delivering excellent services to customers and the wider community.4 When Landgate opened its doors in 2007, its leaders knew the steps they had to take, but they did not foresee all of the challenges they would encounter.

Transitioning the team

Once Western Australia’s cabinet approved the creation of a statutory authority, staff at the Department of Land Information (DOLA’s name from 2004 until its new incarnation as Landgate) had to be moved to new employment agreements. Becoming a statutory authority required some changes to employees’ contracts and compensation, and then communications manager Jodi Cant said, “People were
understandably concerned”—especially before they understood the details. Cant managed the communications aspects of the transition and eventually served in several general manager roles and as acting CEO.

Openness and communication were crucial to explain the changes and the reasons for the new model. “I’d talk to each individual work group about what was going on, where we were going,” Searle said. “I did it literally every eight weeks the entire time I was there.” Similarly, as Cant facilitated the transition, she said, “there was a lot of consultation . . . we were very open about what we were doing and why we were doing it.”

The contract changes were relatively minor, and Landgate remained bound by civil service human resources policies. “With a statutory authority, virtually nothing changed in terms of employment arrangements,” Roberts said—a key reason the government chose that model. Landgate’s management team offered to assist people who did not want to join the statutory authority to find new positions elsewhere in government, but Cant recalled that only two people took them up on it. In addition to approximately 850 civil servants who stayed on from the former department, Landgate hired almost 100 new staff—particularly skilled managers and people with private-sector experience—to build the agency’s commercial units.

For the most part, the initial transition went smoothly. “When people left work on Friday, they left the Department of Land Information, and on Monday, they came back to Landgate; we changed everything over the weekend,” Cant recalled. At first, Searle said, “The people in the core businesses [the nonprofit, regulated services] really didn’t have to change at all . . . In terms of their day-to-day work, we tried to keep it as much the same as we could.” Over time, however, the leadership team hoped to develop a very different institutional culture that focused more on innovation and efficiency.

Managers used training in other units’ functions to promote cross-sector collaboration. “There was a lot of work with individuals around the fact that we succeed or fail together, that if one bit of the organization failed, it wouldn’t be the [valuations office] or titles office that would be on the front page; it would be Landgate,” Searle said. However, he added, as they learned to work together and systems improved, the core services became far more efficient.

In addition, some of the agency’s early projects—such as creating a platform for spatial data across government or developing an online store where people could purchase maps or copies of titles—“gave some meaning to the sorts of things this organization would do,” Bradford said.

Frequent communication and consultation remained vital as Landgate went through additional changes. Villani said that when she joined the agency in 2008 as a senior leader in Registration Services, she tried to get employees to voice their own ways of improving processes. “I had workshop after workshop with the team—having fun but getting them to think differently about how we went about our work.”

The culture evolved gradually. Some employees had worked for decades under the previous system and had little interest in drastic changes late in their careers, and others were apprehensive about what the new model might mean for their own jobs. As Landgate placed greater emphasis on technology and on operating like a private business, many workers were uneasy. Villani said the management team persevered. “There’s enormous frustration in the public sector when you’re trying to do something different. . . . With any large-scale change, you always get people who are reluctant, but we were able to get most people on board and making the change,” she said.

**Speeding up registration**

An immediate priority involved finding a way to accelerate processes while the technology to automate functions was in development. The 35% increase in transaction volumes during the previous five years had stressed the budget. In the two years before Landgate’s establishment as a statutory authority, Roberts said, its predecessor

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had spent A$250,000 (about US$187,500 at the time) each year on overtime for registration staff, “and we could not continue to pay overtime to people who were working in a system that wasn’t efficient and effective.”

To help address workforce constraints while maintaining flexibility, the leadership team looked for ways to bring in temporary staff to handle simple functions. The most common transactions—such as transfers, mortgages, and discharges of mortgages—represented most of the registry’s activity, and most of them were straightforward and required relatively little specialized knowledge.

In an effort to establish a workforce that could ramp up or down, Villani experimented with cross-training customer service officers to handle those transactions by using a three-month training program—compared with the nine months required to train a full title examiner (plus two years of working under supervision)—but when transaction volumes started increasing, she was unable to move staff from their regular work to help with examinations. Instead, Landgate used the same program to train external temporary workers, who were carefully screened for the skills and personality traits shared by the agency’s most-productive title examiners.

The group of new contractors, called the Independent Document Processing Unit, or IDPU, proved highly effective. “They punched out the documents. They were producing them at really high quality and very low error rates,” Villani said. Roberts said the management team and existing staff were very skeptical at first and audited every transaction processed, but “that dropped off as we gained confidence in the system—to the point where we had an almost fourfold increase in productivity.” IDPU workers each processed anywhere from 28 documents an hour—such as discharge of mortgages, transfers, and mortgages—up to 40, Roberts said, compared with just 6 to 8 per hour among Landgate’s title examiners.

At the same time, however, productivity fell among the full examiners, to just three or four documents an hour. The examiners, Villani found, were struggling to work faster—and had agreed among themselves to move at a slower pace. “There’s this real reluctance to change, and this fantastic camaraderie,” she said. After reviewing the logs in the Smart Register system, which tracked what each examiner processed and when, Villani saw that her team had been using the simpler transactions being processed by the IDPU to improve their processing numbers. “I thought they were taking the next bundle off the shelf, but what they had been doing was sifting through and pulling out the documents that were simple,” she said. “If they had spent a couple of hours at the shops or doing something else during worktime and didn’t want to put that on their time sheet, they could pull out a whole heap of easy ones” and still meet the day’s targets.

To channel what she called the examiners’ “team spirit” into productivity, Villani decided to reorganize the unit. At the time, examiners were responsible for everything related to the cases they handled, which encompassed answering queries from clients, administrative tasks, and dealing with documents that had been held up due to problems like incomplete information in addition to examining and registering documents. After evaluating skill sets and identifying the most effective examiners, Villani created teams based on each person’s strengths. The people who were best at reviewing and registering documents focused on those tasks, she said, “and all the other tasks that had been distracting were done by people who had strengths in other areas.” Adjusting the division of labor and introducing competition among the teams boosted productivity among the examiners even though the IDPU had taken their easiest work.

Wrestling with technology

In 2008, Landgate began an ambitious—and unsuccessful—overhaul of its IT operations to create an automated registration system to replace its manual examination and registration processes. The project, called iLand, also aimed to develop systems for managing valuation and spatial data
and to integrate all three functions. In addition, the overhaul included preparations for electronic conveyancing and reviews of procedures and legislation.

As Roberts put it, the project “failed spectacularly.” Bradford said, “We started with the right intentions and the wrong approach.”

Increasing cost estimates and delays bedeviled iLand. Part of the problem was the structure of the relationship between the IT contractor and the agency: it was difficult to align the incentives of a service provider being paid for its time and an agency that wanted a system delivered as quickly as possible. Furthermore, the traditional software development process that iLand used resulted in the project’s getting stuck at milestones that proved challenging to reach, rather than moving on and working on a different part of the system.

In addition to using information and communication technology development methods that added time and cost, Bradford said, “we probably didn’t engage the people inside the business effectively.” In Bradford’s view, iLand did not sufficiently involve the registration staff, who had expertise in the subject area and would be the system’s key users. When the technology failed to reflect their needs, they became “disenfranchised,” he said.

Managers added that iLand suffered from a limited vision. The project “was trying to develop a new system that would do what we were doing at that time,” Roberts said, rather than fundamentally reshaping registration processes as part of the business process changes required for electronic conveyancing. Villani added that the focus was misplaced: “We were looking at how we get digital data in,” she said, and paid too little attention to how documents would be processed.

In addition, Roberts said, the project’s management structure was ineffective. The project team “was not prepared to make key decisions and provide viable recommendations for change. . . . They kept feeding the day-to-day decisions that ought to be made in the project up to the senior executive.” The cumbersome decision-making process compounded iLand’s other problems.

When the 2008 financial crisis hit Western Australia and slowed the property market, Landgate’s revenues fell and the agency was unwilling to put more money into iLand without confidence that the project could deliver. After spending A$10.5 million (about US$9 million) with few results, the executive team halted the project in March 2011.

**Fostering innovation**

“The future was so unknown, so uncertain, and we knew we had to be fast and do things differently,” said Bradford. In early 2008, Landgate launched an innovation program to generate ideas on everything from saving money to new products. “The organization always had elements of innovation associated with it,” Bradford said, “but when we got a board, they said this had to be more formal.”

Cant, communications manager at the time, volunteered to develop a program. After struggling to find examples of successful government innovation programs, she decided to design her own based on models used in business. In doing so, she relied on two principles: Everyone had to be able to participate, and everyone had to be allowed to fail.

The first building block of the innovation program was an online forum where any employee could post an idea on how to improve Landgate’s operations or its bottom line. Crucially, Cant said, it was unmoderated—a condition that required a tough debate with the executive team, which wanted managers to approve the ideas before they appeared on the forum.

To encourage participation, Cant persuaded Landgate’s management team to allow employees to use up to 5% of their time on innovation. “When they argued with me on that one, I quoted our IT policy,” she said. “Our IT policy at the time said you could use 5% of your time and IT resources to look after personal business . . . and
you’re not going to give them 5% to innovate?” The executive team agreed.

When ideas appeared on the forum, anyone could comment on them or ask questions. Then a rotating group of volunteers known as the “i-team” reviewed the ideas that had been discussed on the forum, met with the people who had proposed them, and decided which ones to fund. Cant said she insisted on a rotation of Landgate employees through the i-team in order to position “champions” of innovation across the agency.

In addition, the varied backgrounds of i-team members brought different perspectives on the problems the agency faced and how innovation ideas might solve them. The ideas had to generate some form of return on investment, Innovation Manager Rebecca Prior said, but “that could mean revenue, customer satisfaction, brand awareness, or employee engagement . . . or the innovation project might prove or disprove a new process or tool we need to test.”

The program had ample resources: an enthusiastic board approved A$2 million (about US$1.6 million at the time) per year initially. However, after five years, the innovation team recommended that the agency reduce the amount to A$1 million (then US$900,000) because they felt that innovation had become successfully embedded into day-to-day operations. The program focused on amounts below Landgate’s threshold for a full business case, making it easy to get funding of up to A$50,000 (US$40,000). The innovation program supported ideas ranging from an internal wiki to a text message service to notify citizens about wildfires that were common in the state.

The innovation program evolved to meet Landgate’s changing needs. “Initially, when the program was set up, it was mainly to look for other opportunities to earn commercial revenue and find new markets and new products,” Prior said, but once the financial crisis shifted the agency’s priorities from developing new spatial products to increasing efficiency, the program’s focus moved to internal process improvements and employee satisfaction. Several years later, she said, the innovation program changed again, emphasizing business efficiency, continuous improvement, and prototyping. “It’s a great opportunity to test things on a small scale,” such as the agency’s cloud storage system, Prior said.

In 2016, Prior and her team introduced “business challenges,” which asked employees for solutions to specific challenges such as internal communication.

**Commercializing land information**

One of the key factors that motivated the establishment of Landgate’s innovation program was a board-endorsed drive to develop ways to repackage and sell different types of land information. Although some products originated as innovation ideas from Landgate’s employees, the business development unit also had a team of “commercial consultants” who networked with businesses involved in technology, land information, or the property market and who researched global trends to identify new opportunities.

If the business development unit thought an idea had potential, sometimes after initial testing funded by the innovation program, the team had to decide what Landgate should do to turn that idea into a reality. The most straightforward option, designing and developing a new product in-house, was the focus of the agency’s commercial activities from 2008 until about 2011.

One of the most popular products Landgate designed and built was FireWatch, an application that used satellite imagery to map bushfires around Australia. It was a valuable service in the arid and fire-prone country, which experienced approximately 50,000 fires per year. In addition to recent fires, FireWatch mapped lightning strike locations, the greenness of vegetation (representing its propensity to burn), and weather that could influence fires’ paths.

In 2012, Landgate, the University of Western Australia, and the state Department of Fire and Emergency Services released Aurora, which built on FireWatch with predictions and simulations of fires’ behaviors based on different weather conditions.
scenarios, firebreak patterns, and amounts of fuel (mostly dry vegetation) available.\(^6\) Anyone could access a public version of the application, and more-sophisticated users could pay for subscriptions to an advanced version. Landgate also exported the technology—notably, to Indonesia through a project funded by AusAID.

Another example of Landgate’s creative use of its spatial data was Pastures from Space, which used satellite imagery and climate data to track pasture growth rates and the amount and quality of feed available in different sections of farms, helping users optimize grazing rotations, water and fertilizer use, and stocking rates.\(^7\) (See textbox 2)

Landgate eventually shifted away from the development of spatial data products, however, especially after the 2008 financial crisis strained resources. The products were costly to develop in-house and had generated fairly low returns—especially after Google Maps introduced satellite imagery for free, which undercut a key product Landgate had expected to sell.

Instead, the agency began moving toward supporting business ideas developed externally and forming partnerships. But the shift added complexity. For Landgate to create a new company or participate in a joint venture, “we’ve got a lot of hoops to jump through—and rightfully so,” said Peter Markham, general manager of Landgate’s business development unit. If a commercial consultant produced a business plan that looked promising, then the general manager for business development, corporate executive team, CEO, board, minister, and state treasurer all had to sign off on the proposal, Markham said, “so those steps are quite involved—let alone all the work behind the scenes on the legal component, market analysis, and financial analysis.”

Markham said the process played an important role in keeping Landgate’s investments aligned with its strategy and values, even though the time-consuming process could be a challenge when working with private-sector partners; and Landgate had to factor in political and social risks in addition to financial ones. “You’re out looking for commercial opportunities . . . but you’re doing it with a social conscience,” he said.

In addition to the partnerships Landgate established—for instance, a joint venture to create a three-dimensional imagery company called Earthmine Australia—the agency developed ways to support businesses without investing. In April 2016, Landgate launched SPUR, a “location technology hub.” The hub focused on supporting start-ups that used location information in their businesses, although its services were available to others such as researchers and government officials as well. Start-ups could access Landgate’s data more cheaply with a special license, use a coworking space, get technological and data support from Landgate’s staff, participate in networking events, and apply for small grants from the agency.

Companies that used maps or data from Landgate and received grants in SPUR’s first year included Instatruck, an on-demand service for hiring trucks, and Landguide, a website that consolidated and presented information on undeveloped land parcels in new developments to help consumers choose which parcels to buy.

During SPUR’s first year of operation, the hub’s primary focus was on the social benefit of creating new businesses in the state, but, Markham said, “Anytime we’re helping them get going, that’s also an opportunity for us to look at a potential investment.”
**Preventing fraud**

Although Landgate’s managers encountered few instances of fraud, two cases—in 2010 and 2011—made headlines across Western Australia. Scammers in Nigeria had contacted real estate agents purporting to be property owners while the real owners were overseas; they forged signatures on the transfer documents; and they then sold the homes.

“That shook up the industry a bit,” said Villani. And especially with the impending introduction of electronic conveyancing, which made it easy to do business without meeting face-to-face, it was important to ensure that property owners were in fact who they claimed to be.

Landgate decided to introduce mandatory identity checks for lawyers and conveyancers. Doing so proved contentious, however. The key industry representatives—the Law Society and the Institute of Conveyancers—were wary of the potential liability that could come with assuming responsibility for verification of identity. The language of the statement they had to sign created another sticking point: it required that they attest in writing that the person had the authority to transact, which in their view added another layer of complexity.

“Verification of identity by itself isn’t enough,” Villani said. “It’s not just who I am but also whether this is my property and I have the authority to transact, which in their view added another layer of complexity.

“In 2004, the state government allocated A$30 million (about US$22 million at the time) for the development of the Shared Location Information Platform, or SLIP, which would host all of the data in one place; and Landgate completed the platform in 2007. Each agency could upload its own data onto SLIP and use it to access other data without going to the original agency for a copy. In addition to making data sharing quicker and easier, SLIP made sure that agencies used the most-up-to-date versions of one another’s data. The moment one agency updated a data set it had posted to SLIP, all of the other users would receive the new version. In 2008, Landgate opened access to SLIP to the public.

In addition to data sharing, WALIS played a key role in setting policy. The WALIS office coordinated the development of the state’s 2012 Location Information Strategy, which sought to incorporate spatial information into new areas of government decision making. The office also was responsible for administering the state’s open data policy. As of 2017, approximately 3,400 data sets were available through SLIP, most of them free and available publicly.

**Box 2. Coordination of Data Sharing in Western Australia**

In 1981, decades before Landgate’s establishment or the widespread use of digital data, Western Australia established the Western Australia Land Information System, or WALIS, a mechanism whereby government agencies that held different types of spatial information could coordinate their work and share data. At first, “it wasn’t so much a system as a group of public-sector agencies that had land information getting together and recognizing the power of that data—what you could do if you combined the data to enable better decision making within government,” Roberts said. Creating a structure to communicate what information each agency had and its plans helped the government avoid duplication in data collection and enabled agencies to use new sources of information as they designed policies. Landgate’s predecessors had hosted the WALIS office, which served as a secretariat for the group; and Landgate continued to do so after becoming a statutory authority.

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Gary Thomas, who headed the Law Society’s Property Law committee. “There was no argument that you would be negligent if there were indications there was a problem and you ignored them,” he said, but lawyers had not necessarily been obligated to investigate and verify every client’s credentials, and they were concerned about being required to issue written statements in a prescribed form that could be used to sue them if a fraudster managed to get through.

“It was a very painful, extremely frustrating process,” Villani said, but after months of discussions, the Western Australian conveyancers accepted Landgate’s verification-of-identity standard.

Introducing electronic conveyancing
Electronic conveyancing—the digital preparation and signature signing of transaction documents between buyers and sellers and delivery of those documents for registration—was a long-standing goal of registrars in Western Australia and other states and territories. In addition to speeding up the entire process and eliminating the need to exchange paper documents, an online system could limit transactions to authorized users and monitor their activity as a safeguard against fraud. In addition, providing land registries with digital data instead of paper forms would prevent data entry errors and facilitate automated registration.

The state of Victoria had been developing an electronic conveyancing platform, but other Australian states had shown little interest in using the system. “We started talking as a group of registrars, led by the Victorian jurisdiction, around the need for a national e-conveyancing system . . . but we were never able to reach agreement,” Roberts said.

By 2008, it appeared that each state might develop its own approach, but the banks, which were critical stakeholders, objected. Banks regularly submitted mortgage information to the state land agencies, and many operated on a national scale. “[They] said that ‘there’s no way that we are going to participate in this initiative,’ because the expense of having to configure their systems to connect to seven different [e-conveyancing platforms] . . . was not worth doing,” Roberts recalled. The banks wanted a unified approach.

In an attempt to find a solution, the registrars established a national office to promote e-conveyancing and work with interest groups around the country to design a system. The new office quickly encountered similar disputes. “It really got scuttled on myopic issues around the need to change forms and processes and things like that,” Roberts said. And behind those disagreements, “there were state rivalries that just transcended the concept of a reform program.”

The head of the office and the state of New South Wales sought help from a higher authority: the Council of Australian Governments, an intergovernmental body made up of the federal prime minister and the leader of each state or territory’s government. Nationwide digital services already represented a priority at the Council, and in 2008, its members issued an intergovernmental agreement instructing the registrars to work together on a national system for e-conveyancing. At that point, Roberts said, “the registrars didn’t have a choice, and neither did the people above them.”

In 2010, four state governments—including Western Australia—and the country’s four major banks jointly formed a private company, eventually called PEXA, or Property Exchange Australia, to design the e-conveyancing system. Meanwhile, a committee of registrars, initially chaired by Roberts, drafted enabling legislation for the individual states and evaluated business processes to prepare for digital input. The committee also established operating rules and requirements to govern the implementation of e-conveyancing.

In October 2013, the first PEXA transaction took place in New South Wales. Western Australia followed in June 2014 and offered a full range of transactions—mortgages, discharges of mortgage, transfers, caveats, and withdrawals of caveat—a year later. The platform allowed
lawyers or conveyancers to prepare transaction
documents in an electronic workspace, share the
documents with the other party’s representative,
digitally sign the documents, transfer the funds,
and submit the documents to Landgate—all of it
without leaving their offices.

Uptake was slow, however, because e-
conveyancing was a major adjustment for many
lawyers and settlement agents. Katelyn Sinclair, a
member of the Australian Institute of
Conveyancers’ (Western Australia Division)
governing council, cited the need for training as
one significant reason. She said glitches in the
system made learning it especially challenging. In
addition, the industry was working to update
indemnity and cyber insurance as well as standard
contract terms to reflect the requirements of e-
conveyancing, and until those issues were
resolved, some people were reluctant to use the
system.

Facing slow adoption of a technology that the
agency viewed as important and necessary—
especially to generate the digital data required for
automated registration—Villani and some of her
colleagues decided to take steps to make e-
conveyancing mandatory. “E-conveyancing was
going to be the future,” Villani said. “It’s a more
secure and efficient way to transact.” In October
2016, she began collecting stakeholder feedback
on a plan to require all eligible documents to be
submitted electronically.

The move drew criticism from some
conveyancers and lawyers, who said their
industries needed more time to adjust. “We in no
way oppose e-conveyancing, but being forced to
use it as our only system is what we’re not
satisfied with,” Sinclair said. She also raised issues
of potential conflicts of interest based on
Landgate’s investment in PEXA through the
Western Australia state government. Villani said
she had received legal advice that the move was
permissible. She also noted that the requirement
was not to use a single company and that
increasing the use of e-conveyancing could help
promote competition by creating a market large
enough to support another operator.

OVERCOMING OBSTACLES

In late 2008, the global financial system
melted down, and Western Australia’s booming
property market crashed, raising an unanticipated
challenge for Landgate’s managers. Registry
transactions fell to 310,000 in 2008–09 compared
with 362,000 the previous year—a 14% drop—
which resulted in a loss of A$2 million (about
US$1.5 million) for Landgate’s financial year.

But the more serious problem was that
instead of recovering, the market remained in a
protracted slump for the next several years, with a
downturn in Western Australia’s mining industry
compounding the effects of the financial crisis.
By 2011–12, transactions were down by 37%
from the height of the boom, reaching 15-year
lows.

“The global financial crisis was a bit of a
defining moment for the organization,” Bradford
said. The crisis forced Landgate to make difficult
decisions about its structure and investments.

As it became clear that Landgate’s revenue
was unlikely to bounce back quickly, the agency
first raised prices and then cut spending. “We had
to put up the fees, because we had a fixed cost
base and at that stage we were not capable of
absorbing that loss,” Roberts said. The pricing
changes took effect in mid 2010, most
significantly raising the base fee to submit
documents by 23% to A$135 (US$122). The new
structure also adjusted how the fee revenue could
be used. The changes redefined the land
administration system to encompass both
information in the title registry and other
location-based information on factors that might
affect land rights. Although those factors—for
instance, the presence of certain vegetation or
contamination—were not recorded on certificates
of title, they supplied vital supplementary
information, and the agency was therefore
allowed to use registration fees to support
location information functions.

In addition, in March 2011, the agency cut
spending significantly by scrapping the iLand
project. Although raising fees and ending
spending on iLand helped stabilize Landgate’s
balance sheet, the agency had to make sweeping changes to become financially sustainable in the newly challenging environment. In late 2013, the agency launched a program called Transform, which focused on more-effective delivery of services to customers, systems and process reform, and downsizing of the agency’s workforce by nearly a third during the succeeding three years.

Led by members of the executive team who had recently joined Landgate from the private sector, managers looked for operational inefficiencies and ways to consolidate jobs. Their review resulted in new roles for approximately 20% of employees after managers identified the skills and functions they needed from their teams. Landgate had offered voluntary severance before, but this time, the program, although still voluntary, “focused much more on skills and capabilities,” said Alison Hodge, who joined Landgate as general manager for strategy in 2013 and ran the Transform program. “It was really about working in different ways, so people had to choose whether they wanted to be part of that or not.”

Although the effort raised objections from employees, the longevity of the workforce helped. At the time, Hodge said, the average employee had been at Landgate for 17 years, since well before its transition to a statutory authority. As a result, many employees were close to retirement and willing to take the severance payouts that were offered. “The demographics worked for us as an organization,” she said. “There has been some pain, but it’s been a little less painful than it might otherwise have been.”

Those who remained faced more-demanding expectations, and the Transform program involved a more decisive cultural shift than Landgate’s establishment as a statutory authority. Previously, Bradford said, “we kind of had tribes of cultural views inside the organization,” with some taking a traditional view of their roles as civil servants and others focusing on innovation and working as in private business. The initial transition “had been done in a more gentle way,” he said; but with the Transform program, “we were a bit more forthright in our approach—by necessity.”

As part of the Transform program, Landgate’s executive team also decided to try again to automate its registration processes. This time the team took a very different approach. Roberts acknowledged that there was some reluctance to revisit the idea. He and other managers had been burned by iLand, and each felt some responsibility for its failure. “But after that self-examination, the prevailing mood was that we needed a modern, efficient, and effective system,” he said. Landgate’s systems were out-of-date; e-conveyancing required a system that could handle digital input; and after an up-front investment, automation would substantially reduce operating costs.

After struggling to custom-build a system, Landgate’s managers hoped to purchase an off-the-shelf solution. However, Bradford said, there were no purely off-the-shelf options; and the few systems Landgate might be able to customize were not what the agency was looking for. “There was nothing cloud based, nothing delivered as a service, nothing fully automated . . . so we reluctantly decided to build our own system,” he recalled.

After their search revealed that most jurisdictions that used Torrens systems had highly customized, aging IT systems, Landgate’s managers decided that if they wanted to buy a new registration system, other jurisdictions might, too—and Landgate could be the one to sell it to them. “We said, if we’re going to build something, it’s going to meet our needs, but it’s got to be positioned to meet the needs of others,” Bradford said.

The market opportunity helped restructure Landgate’s relationship with its IT provider, the Australian branch of Ajilon, a global IT and staffing service under the umbrella of the Switzerland-based Adecco Group. “To get the right incentive framework, we could be upfront with Ajilon and say, ‘If you build something for us, then you get an in-principle agreement to
participate in the commercialization,”’’ Bradford said. “That creates a strong alignment of interests.” With an eye on potential future business, it was in Ajilon’s own interests to keep costs low and develop a product as quickly as possible.

To avoid iLand’s problems of slow decision making and constant escalation of minutiae to the executive level, Landgate also changed its internal approach to managing the project. The agency established a project team—this time with larger roles for experts from the registration unit—and authorized the team to make and implement day-to-day decisions. When significant questions came up, the project team could get answers from another group that included the project manager, Villani, and Roberts.

Roberts said the new approach worked well. “It didn’t go to endless committee meetings,” he said. “The project governance meant we were making the decisions that were being asked of us, on the fly.”

In addition, instead of focusing on the big milestones and distinct phases used in traditional IT development—points where iLand had gotten stuck—Landgate and Ajilon chose small pieces of the overall goal and made incremental changes, with rapid cycles of testing and adaptation. As a result, Bradford said, “the project was able to focus on the things that would deliver the biggest business benefits first.” He added that quicker and more-visible results increased employees’ willingness to accept the changes and participate in them.

The team also shifted its emphasis based on lessons from iLand’s failure. The first attempt had not done enough to overhaul procedures, so this time, Villani said, “we did the process redesign first and then were looking at building the systems to support it.” In addition, with PEXA in the process of rolling out its e-conveyancing platform, the project team no longer had to dwell on a way to get digital data into the system. Instead, Villani said, “we could shift our focus to the back end and automating what would come in . . . We wanted a hands-free process.”

The project team developed a set of business rules that replaced manual examination for the most common transactions. For instance, in the case of a transfer, the system verified that the seller was in fact the property owner listed on the register, that there were no restrictions on the title that prevented the sale from going through, and that both parties had provided all of the information called for by the laws and regulations governing land sales.

In creating the rules, Landgate had to keep other potential users in mind. The design team had to “make sure we didn’t build into the system things that were peculiar to Western Australia for no good reason . . . and that forced us to question our own business processes,” Bradford said. Landgate’s decision making took into account the shared data standards that states had developed in preparation for e-conveyancing. “[That] gave us some confidence that if we built it following the PEXA data standards, it would be configurable for other jurisdictions,” Bradford said.

Landgate launched its redesigned cloud-based system, called the New Land Registry (NLR), in June 2015, with the full range of transactions rolled out by December. Because most transactions were being submitted on paper at the time, the agency built a simple data-entry portal and hired temporary clerks to input the information as an interim measure until e-conveyancing was in widespread use. Because the NLR’s business rules would reject incomplete applications, counter staff—who continued to receive training in basic examining even after the creation of the Independent Document Processing Unit—checked the documents clients dropped off for acceptability.

Automation further reduced the already falling staff numbers in the registration unit to just 15 people—from 75 in 2008. The staff members who remained handled complex transactions and maintained the agency’s policy and legal knowledge on registration. By 2017, the overall number of staff at Landgate had fallen from more than 950 to about 600.
ASSESSING RESULTS

In the decade following Landgate’s 2007 establishment, an emphasis on learning and adaptation enabled the agency to improve services, generate profits, and receive accolades for innovation—despite a challenging market and some early stumbles.

With the launch of the NLR in 2015, after suffering a major setback with iLand, Landgate had completed the mission that drove its formation: the development of an automated registration system. As proponents had anticipated nearly two decades earlier, automation sped up the registration process, prepared the agency to adjust to boom-and-bust cycles, and saved money. Registration times fell dramatically after the introduction of the digital NLR system: to 1.5 days from 7 to 10 for transactions submitted on paper and to just 23 seconds for transactions lodged electronically. Lower salary costs resulting from automation saved Landgate A$15 million (about US$11.3 million) in the NLR’s first year in use, and the agency anticipated total savings of A$52 million (US$39 million) over five years.

In December 2015, Landgate created a spin-off company called Advara to market the NLR to other jurisdictions, with Ajilon serving as the company’s IT service provider. As of 2017, Landgate owned 78% of Advara, with the remaining 22% owned by Adecco, Ajilon’s parent company; and the company had a five-year, A$140-million (US$105-million) contract to provide IT services for Landgate. In April 2017, Advara was poised to take advantage of its first major commercial opportunity: the privatization of New South Wales’s land registry. Advara advised the winning bidder.

The statutory-authority model proved financially stable and generated revenue for the state government—another of the key goals in Landgate’s initial strategy. Landgate’s profits fluctuated widely depending on transaction volumes, from a low of A$900,000 (about the same in US dollars) in 2011 to a peak of A$40.6 million (about US$37.4 million) in 2014, but except in 2008–09, Landgate was still profitable in every financial year. Each year, the agency and minister responsible for land negotiated a share of those profits to be returned to the state government as a dividend.

Landgate also succeeded in delivering high-quality service for its customers and the broader community. In the agency’s 2015–16 customer satisfaction survey, 80% of respondents rated Landgate’s service as “excellent.” Members of key user groups such as lawyers and conveyancers praised Landgate’s efficiency—although certain moves such as identity checks and mandatory e-conveyancing created some tensions.

Sinclair of the Australian Institute of Conveyancers (Western Australia Division) said, “Because they have elements of private enterprise, they want to make things more efficient; and generally, if it’s going to be more efficient for Landgate, it’s going to translate into being more efficient for us.” However, sometimes the drive for efficiency overrode the “human element,” she added.

Another key customer, the state government, also appeared satisfied with Landgate’s performance. Although several states in Australia raised the prospect of privatizing their land registries, as of early 2017 Western Australia had not made any moves to do so.

Although Landgate was overly optimistic about the revenue that spatial data products could generate, the agency developed award-winning products and facilitated easy access to thousands of data sets. The agency used the spatial information that it and other government agencies held in creative ways, thereby enabling users to monitor everything from bushfires to pasture growth, to flood risk.

FireWatch and Aurora—the agency’s two bushfire-monitoring systems—and Indofire, a version adapted for Indonesia, won many awards, including the Western Australian Information Technology and Telecommunications Alliance awards and the national iAwards. The Shared Location Information Platform received regional recognition, winning the
Spatially Enabling Government award at the Asia Pacific Spatial Innovation Conference in 2008 and the top prize at the 2008 Western Australia Premier’s Awards for Excellence in Public Sector Management, among others.16 Government agencies throughout Australia used Landgate’s innovation program as a model, and in 2016, the Australian Financial Review newspaper named Landgate the 22nd-most-innovative company in Australia.17

“We’re the only agency we’ve seen in the world where spatial and valuation and registry data plus other government data come together in one place as it does here,” Cant said.

REFLECTIONS

From its establishment as a statutory authority in 2007 to 2017, Landgate embraced change and learning, and the agency’s emphasis on adaptation enabled it to weather challenges and build on successes.

Experimentation was a key aspect of Landgate’s culture. It was crucial to make people feel “encouraged and welcomed to push boundaries,” CEO Mike Bradford said, whether through the agency’s official innovation program or in its day-to-day work. The agency encouraged employees to pursue new ideas—and allowed them to devote up to 5% of their workday to innovation. If an approach failed to deliver or had unanticipated, undesired consequences, managers throughout the agency applied the lessons to their next attempt. “We say, if you fail, fail early, and learn from it next time,” said SPUR general manager Peter Markham, “although we can’t just invest in a bunch of failed ventures and go around high-fiving ourselves for learning lessons; we need to ensure we’re making a return for our shareholders: the community of Western Australia.”

The prime example of Landgate’s adaptability was the New Land Registry (NLR) system, which succeeded only after an earlier attempt, iLand, had gone down in flames. After the iLand project’s collapse, the agency overhauled every aspect of its software development process. “I think the failures leading up to [the NLR] are what put us in position to make this one successful,” Registrar of Titles Jean Villani said. “Bringing through those lessons learned is why we’ve been able to achieve it.” With automation, as with other initiatives, the agency’s leadership team—many of whom had been at Landgate since its beginnings but some of whom joined the executive team later on, with fresh perspectives supplemented with private-sector experience—struck a careful balance between remaining steadfast in pursuit of its goals and reevaluating when something was not delivering.

The statutory-authority model adopted in Western Australia had both advantages and drawbacks. Despite operating increasingly like a private company, Landgate still had to adhere to public-sector policies on human resources and financial management—for instance, not investing some of its cash reserves because doing so would add to the state’s already high net debt. The policies were understandable, said General Manager for Strategy Alison Hodge, “but your ability to grow a strong balance sheet and deliver a good financial return to the state is constrained.”

On the other hand, Acting CEO Jodi Cant said, being a statutory authority meant Landgate faced financial pressures for efficiency but could think beyond the bottom line. “Not everything needs to be commercial,” she said, “but we look at everything we do with a commercial lens.”

Despite certain limitations, the broad commercial powers accorded to Landgate in its enabling legislation gave it far more flexibility and space to innovate than a government department had, Bradford said. “I don’t think the people who created the statutory authority ever anticipated exactly what we’re doing, but they knew it could enable something like this,” he said. “We’re lucky that people had the foresight to enable us to act in the way we act.”

Landgate’s statutory-authority model was structurally similar to several other land agencies around the world, such as British Columbia’s Land Titles and Survey Authority. However, its
commercial powers—and how it chose to use them—set Landgate apart. Landgate’s management team placed significant emphasis on profit-making initiatives, whether marketing spatial data products, investing in start-ups, or designing a registration system it could sell to other jurisdictions.

Landgate also offered ideas and technical assistance to developing countries—from Indonesia and Vietnam to Sri Lanka—but its approach was unlikely to work in every setting. Sweeping changes like new institutional structures and IT systems required careful consideration, said General Manager for Operations Bruce Roberts. For instance, he said, he and other consultants had helped the government of Sri Lanka develop a more efficient paper-based registration system instead of computerizing right away—in part because the country’s registry lacked reliable electricity. “It’s about making recommendations that are relevant and timely,” Roberts said, and that meant taking into account countries’ cultures and resources rather than adopting a one-size-fits-all model.

Still, several of the initiatives Landgate put in place could easily be implemented elsewhere, managers said. Although the innovation program’s funding helped, Cant said, “it was never about the money” but, rather, about creating a structure that “gives people the power to make change.” Similarly, the agency’s innovation hub, SPUR, could easily translate to lower-resource settings, Markham said: “A big part of what we do is networking—helping people talk to the right people and cutting red tape. . . . That works everywhere.”

Landgate’s automated processing, customized digital maps, and start-up hub were far cries from the world of paper titles and lines at the counter that several of its team members had started out in—and they represented a proactive response to a changing environment. Especially as electronic conveyancing and talk of privatization emerged on the scene, the executive team recognized change was coming, Roberts said, “and Mike Bradford, our chief executive, identified early on that either we had to do it ourselves or it would be done to us.” As a result, Cant said, “We’ve chosen to disrupt ourselves.”

APPENDIX: RECOGNIZING ABORIGINAL LAND RIGHTS

Australia’s system of property rights was based on the assumption that once the British Crown asserted sovereignty over the country, all land belonged to the government—leading to the dispossession of Aboriginal peoples. A 1992 decision by Australia’s highest court, Mabo v. Queensland, “decided that assumption was false,” said Nicholas Duff, a lawyer who worked for Aboriginal groups claiming Native Title. Mabo held that although there had been a change in sovereignty—a change that some Aboriginal peoples contested—“that doesn’t mean that the traditional Aboriginal owners of the land aren’t still so, unless that land or interests in that land have been granted to other people,” he said. However, after the Mabo decision, how to formally recognize Aboriginal communities’ tenure rights and decide what they meant in practice were open questions.

The Native Title Act 1993 set forth a process for recognizing indigenous peoples’ land rights under the Australian legal system. First, an Aboriginal community that wanted to pursue a claim worked with lawyers and anthropologists from a “representative body”—a federally funded nonprofit that supported Native Title claims for a given area—to determine the boundaries of that community’s traditional lands. The community also had to decide internally who belonged to the group and had rights to the land. Then the representative body’s team filed court documents and worked with the Aboriginal community to collect evidence—from historical documentation to stories and songs—supporting the community’s connection to the land. The claim either went to a civil trial or, more often, got settled out of court.

Once the evidence established that the group was indeed the traditional owner of the land, the next step was to determine the group’s rights
based on how it had used the land in the past. “First is the anthropological and historical evidence, and then we try to translate that and plug it into a Western system of land rights or law,” said Simon Moore, a legal and policy advisor in Western Australia’s Native Title Unit. But state governments and Aboriginal communities might translate the evidence into different rights. Aboriginal groups typically preferred that a Native Title determination recognize broad categories of rights, such as the right to exclusive access or the right to use the land’s resources, whereas state governments sometimes focused on ensuring that the rights in the determination reflected traditional laws and customs for which the applicants had provided evidence.

In addition, “Just because it’s written down in your native title determination doesn’t mean you necessarily get to exercise [those rights],” Duff said. The government still had the power to grant others rights to the land, such as a homeowner or a mining company, and while those rights remained in force, they prevailed over Native Title rights. When rights overlapped, the Aboriginal community was sometimes able to negotiate an arrangement directly with the third party—for instance, with regard to access to the land. In other cases, the government was liable to pay compensation to the community, but generally only in situations when the state would have compensated any other landowner—and going back only to 1975, when a federal law prohibited racial discrimination. In Western Australia, the state and Aboriginal groups had completed 65 Native Title determinations as of April 2017, covering more than 1.2 million square miles.18

References


16 Landgate, “Awards.”


PUTTING RURAL COMMUNITIES ON THE MAP:
LAND REGISTRATION IN MOZAMBIQUE, 2007–2016

Leon Schreiber drafted this case study based on interviews conducted in Maputo and Xai-Xai, Mozambique, in November 2016. The British Academy–Department for International Development Anti-Corruption Evidence (ACE) Program funded the development of this case study. Case published February 2017.

SYNOPSIS

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.
INTRODUCTION

“Whoever takes away land takes everything away: our life, our future and that of our children. Now we won’t have access to our mangoes, bananas, nor grass to cover our houses. Just to walk we need authorization from the company. . . . When our women and children go to collect firewood they are prohibited. In the end is this land not ours?”¹ That complaint, by a member of the Micoco community in Mozambique’s northern Niassa province, appeared in a report on the government’s grant of a property concession to a consortium of local and international investors in 2005.

Under the 2005 deal, the company, known as Chikweti Forests, leased 1,000 hectares for timber production, with the intention of expanding its work area to 140,000 hectares. The government had the authority to complete the transaction because Mozambique had taken ownership of all land after its independence from Portugal in 1975. But the law also required that before the state could grant a land concession to a prospective investor, that investor had to consult with local communities to ascertain whether the land was already in use. Protesting that Chikweti had failed to consult adequately and had planted trees on land used for pasture and crops, community members took matters into their own hands by torching some of the company's saplings.

Such confrontations became more frequent as competition escalated between investors and local communities over access to land in Mozambique. According to one report, from 2004 to 2009, the government granted more than 2.7 million hectares to investors.² The grants covered 7.5% of the country’s total arable land of 36 million hectares.³ The concessions drove members of some communities off their farms, threatening livelihoods. At the time, 70% of the population lived outside urban centers, and small-scale agriculture was the lifeblood of the economy, accounting for 80% of employment and 24% of annual economic output⁴ in a context in which 45% of the population lived on less than $1 per day.⁵

A 1997 law had attempted to deal with the concessions problem by putting in place a system that recognized communities’ rights to use the land they occupied. The law granted a perpetual-use right—known as a direito de uso e aproveitamento da terra (DUAT) (right to use and benefit from land)—to communities that had historically inhabited the land. The same right applied to individual persons who had occupied pieces of land in good faith for at least 10 years.

Simon Norfolk, a British lawyer and land tenure expert who worked in Mozambique, said the 1997 law “effectively legalized all community land at the stroke of a pen.” But problems arose from shortcomings in implementation. For instance, because the law did not explicitly require communities to obtain formal certification from the central government to prove their rights,⁶ many had no official records establishing their boundaries.
At the same time, the 1997 law had created DUATs for commercial investments, which were valid for 50 years if no community indicated a claim to the land and the government approved the transaction.

In the absence of formal documentation of community interests, the process for issuing DUATs often bypassed the people who had the most to lose.

THE CHALLENGE

The 1997 law established a procedure known as delimitation whereby communities could establish their rights to specific areas and gain government certification to protect those rights. But by the mid 2000s, few communities had managed to delimit their lands and formalize their rights. In the absence of pressure from vocal constituents and lacking the financial resources to do the job, political leaders left unregistered communities to fend for themselves.

With the government focused on the income raised by issuing DUATs to commercial investors and companies, community land delimitation was not a similar priority for the government. By 2005, “it was clear what the problem was,” said José Monteiro, a forest ecologist involved in community land rights. “Even though the law says we recognize the customary land rights of communities, those rights are not registered anywhere, and communities have no way to prove that they have them. When you go to the cadastral map, you don’t see those communities.” Mozambique urgently “had to find a way to formalize community land rights in a way that put communities on the map,” Monteiro said.

Economic considerations were significant. The new, private DUAT provision helped make Mozambique an attractive destination for land investment. Mozambique had a low population density of only 28 people per square kilometer compared with 143 in neighboring Malawi, 46 in Tanzania, and 34 in Zimbabwe; and at least on paper, almost 88% of arable land was not in active use. (See textbox 1)

In theory, the DUAT system thus responded to two distinct needs: First, private DUATs aimed to encourage economic development by attracting international investment in agriculture and mining. And second, community DUATs sought to protect local access to traditional lands, the focus of a broad-based social movement that had pushed for preservation of customary rights in 1992, after the end of a protracted civil war. But in practice, the state placed much greater emphasis on the first need than on the second.

The system soon ran into problems. By 2009, close to 50% of land concessions granted to investors under private DUATs either remained unused or were being only partly used. Certain large investors’ failures to make productive use of the land in accordance with the DUAT system
Textbox 1: The DUAT: A Tool to Secure Land-Use Rights

According to the Mozambican constitution, the state was the sole owner of all land in the country. However, after the civil war ended in 1992, the government reviewed land policy as part of an effort to partially liberalize the economy. In 1997, the review resulted in a new land law that established a right to use land, known as the *direito de uso e aproveitamento da terra* (right of use and benefit from land, or DUAT).

The law introduced three categories of DUATs: community, individual, and private. In terms of the land law, all three categories conferred equal rights to land on the rights holder. Local communities that occupied land under customary systems automatically acquired perpetual DUATs under the new law. Individuals who had occupied pieces of land “in good faith” for at least 10 years also automatically acquired DUATs. The third category was for local or foreign companies and individuals who wanted to invest in a particular piece of land. If the potential investor obtained approval from surrounding communities, the state could approve a DUAT for up to 50 years, with the option for one renewal.

Although private DUATs required certificates to prove lease rights, holders of customary-use and good-faith DUATs were not required to formally register their rights or to have any supporting documents. However, they could register their existing DUAT rights by obtaining delimitation certificates to prove the extent of their lands and by formally registering their DUATs in the cadastre.

DUATs obtained under customary-use provisions were transferable and inheritable. Although the land law said, “The land is the property of the state and cannot be sold or otherwise alienated, mortgaged, or encumbered,” infrastructure on the land could be sold, and the DUAT itself—that is, the right to use the land—could be transferred—subject to reapproval by the state.

The transfer of private DUATs involved a cumbersome, bureaucratic process that required several visits to the national deeds registry and the provincial or national cadastre. As a result of such challenging registration requirements, as well as the government’s lack of administrative capacity, many holders of private DUATs transferred their rights without official registration. The practice made it difficult to ascertain the actual ownership status of any given private land-use right.

(which granted a use right) generated widespread suspicion of land grabbing and speculation. In addition, concerns arose that some investors might have obtained concessions by paying kickbacks to government officials. And a drawn-out application process that required many approvals increased the risk of that type of corruption.

Communities paid a steep price when the private DUAT approval process went awry: the law stipulated that communities were entitled to shares of the resource taxes generated by commercial investment, but when investors or officials circumvented the procedures, communities lost out on that potentially valuable source of revenue.

By themselves, most rural communities lacked the knowledge and resources to carry out the process of defining and recording the borders of their land parcels. But even if they wanted to play more proactive roles, neither the government nor nongovernmental organizations (NGOs) had the means to assist. Only one NGO, the Rural Association for Mutual Aid, had previously worked on a pilot boundary delimitation project, and it had so worked in only one province.
Capacity and management problems at the land ministry’s Serviços Provinciais de Geografia e Cadastro (SPGC, or Provincial Geographic and Cadastre Services) posed an additional challenge. The regulations the government had put in place to implement the 1997 land law empowered only the 11 provincial SPGC offices to issue the official certificates and required an official from the department to physically visit each community in order to survey and register that community’s land parcel in the cadastre. But SPGC departments were often understaffed, usually lacked the resources needed to conduct field visits, and typically had poor systems for managing the process. As a result, “it sometimes took the cadastre three months or more to issue a certificate, even though the law says it should be done within two months,” said Xavier Lucas, former head of the SPGC in Nampula province.

Finally, the delimitation process risked triggering conflict between communities. In some instances, separate communities had overlapping but compatible claims to the same piece of land. For example, whereas one community might use an area for grazing cattle, a neighboring community might have concurrent customary rights to collect firewood or water from that area.

Inquiries from prospective investors also caused turmoil, as communities rushed to establish boundaries that included valuable natural resources such as timber or minerals.

FRAMING A RESPONSE

In 2005, a group of international donors offered to help the Mozambican government accelerate efforts to assist rural Mozambicans obtain official evidence of their land rights by launching the iniciativa para Terras Comunitárias (Community Land Initiative, or iTC). The group chose to assist because securing community land rights would have practical economic impact as well as important effects on fairness, inclusion, and conflict reduction. Further, the law establishing the customary DUATs had emerged from an exceptionally inclusive and participatory process that signaled broad public support.11

The initial idea for the program came from Simon Norfolk and Harold Liversage, land administration experts who were consultants in Mozambique. Given the lack of progress by the government, “we thought an independent funding approach would be useful in Mozambique,” Norfolk said. Norfolk and Liversage pitched the idea to a group of donors from the United Kingdom, the Netherlands, Sweden, Ireland, Switzerland, and Denmark; and the group decided to establish a funding consortium led by the UK Department for International Development (DFID). Even though plans called for the iTC to be wholly donor driven at the outset, Célia Jordão, a senior policy officer from the Dutch embassy who was part of the group of donors that launched the iTC program, said, “We wanted to eventually reach
a point where we could set it up as an independent foundation so that local people could eventually take over and be recognized as an organization.”

The iTC program was designed to help rural Mozambicans obtain DUATs under any of the categories created in the 1997 law, but government regulations stipulated two distinct processes for registering the different types of DUATs: delimitation for communities and demarcation for private users. Obtaining a delimitation certificate so a community could register land under customary or good-faith occupation was fairly simple from a bureaucratic point of view because the certificate merely recognized a customary or good-faith land right that already existed. Communities still faced the hard work of agreeing on shared borders and formally mapping them.

In contrast, the authorization of a DUAT for private, commercial uses created a new right that had not existed earlier. Whereas the delimitation process merely registered an existing (customary) right, demarcation created a new (private) use right. And the demarcation process had more-rigorous requirements for surveying land parcels, creating producer associations, conducting community consultations, and erecting markers or fencing around the designated land. However, both received the same level of protection under the law.

The iTC’s first goal was to help communities navigate the process of obtaining a delimitation certificate by providing land survey services and other technical advice. The 1997 law defined a community as a grouping of families and individuals who lived in a circumscribed area and aimed to safeguard their common economic and social interests. João Carrilho, a former deputy agriculture minister, estimated that the average rural community consisted of 400 to 500 families comprising 2,500 to 3,000 individuals. And although that definition left ample room for community self-determination, Carrilho said it also risked making ethnic identity a prime criterion for membership, thereby sharpening senses of difference and “creating indigenous reserves.” However, the risk that delimiting those communities’ lands would inflame ethnic hostilities was somewhat mitigated by the comparatively low levels of ethnic tension in Mozambique, where ethnic categories were neither strongly institutionalized or ingrained and where people from different backgrounds lived together.

In addition, by allowing a community to decide who was or was not a member, the community DUAT process left a lot of power in the hands of traditional leaders and imposed few safeguards for individuals. Individuals could apply for new, private DUAT rights to isolate their parcels from the rest of the community’s land, but doing so was a complex and costly process that also required approval by community leaders.

In addition to facilitating the delimitation process, plans also called for the iTC to assist communities in setting up natural resource committees and open bank accounts. Emidio Oliveira, who worked with the DFID and later...
became iTC executive director, explained that under the country’s forestry law, a delimited community with a representative structure was entitled to a 20% share of the total tax revenue generated by commercial forestry enterprises on its land. The same applied to mining and tourism activities, whereby communities could respectively receive 2.75% and 15% cuts of the total tax revenues generated by those activities.

The program simultaneously tried to recruit local farmers interested in establishing producer associations and applying for private DUAT rights on their lands. For example, maize growers could join together to secure their rights to cultivate a set of parcels within the community lands. The delimitation certificate would formalize the entire community’s right to use the land, and the private DUAT would separate the maize farmers’ land from other community holdings, enabling them to set up a business enterprise.

The iTC planned to invite and fund NGOs to handle communication, education, consultation, and land surveys and other technical tasks. “The iTC was the policy and funding manager, but it wouldn’t execute,” Jordão said. “That was up to the service providers.” The decision to use NGOs as service providers was based largely on donors’ long-term ambition to entrench the practice of delimiting community lands at the local level. “From a sustainability point of view, we wanted to build local capacity,” Jordão added.

Before it could go forward, the donor group had to secure the government’s buy-in and involve it in program design. The consortium invited the national director of land, NGOs, and other donors to serve on an advisory committee whereby “we could explain the objectives, the approach, and the results we planned,” Jordão said. “We looked at areas where government was also concerned [about land] and where there were conflicts or investors coming so that it would be in everybody’s interest to know what communities were there and how big their land was.”

Initially, officials working on land administration worried that defining a community’s borders would close off the community to investment. “Some NGOs had previously given communities bad information,” said Lucas, who had headed the SPGC in Nampula province until 2007. “They told people that no investor was allowed to come into your community; this is your land.” In contrast, iTC’s objective was “to tell the communities that, through delimitation, you can attract people to invest in your community. It’s not to close [communities] off; it’s to manage investments in a way that improves the community,” he said. The directorate allowed the program to move ahead.

The multi-stakeholder advisory body proposed a five-year pilot—subject to review after the second year—in 3 of the country’s 11 provinces: Gaza, Manica, and Cabo Delgado. The provinces included one area from each of Mozambique’s major regions, selected based on the intensity of development and investment pressure on community lands, perceived demand for boundary definitions from affected communities, the presence of NGOs to
implement the program, support from provincial governments, and donor
priorities.16

The new program adopted a decentralized approach to its own planning
and engagement strategies in order to counter the problems that a highly
centralized government had encountered in managing land issues in the past.
Previously, politicians and officials at the national level had imposed
decisions about land allocation on their field offices in the provinces. But it
was really the field offices that had the information and the close contact
with communities to handle land allocation issues effectively. Jordão said the
iTC had set up advisory bodies at the provincial level with the intention to
“go directly to the local level and get the people on board who have to deal
with the problems and the conflicts every day.”

The iTC had no desire to try to resolve existing disputes between
investors and communities. Oliveira said the group “declined requests from
companies to assist them in resolving a dispute or obtaining a DUAT.”
Instead, the intention was for the iTC to be forward-looking and to identify
potential hotspot areas, including areas that were slated for big land
investments. By delimiting the lands of communities in these hotspot areas,
the consortium hoped to reduce the potential for future conflict with
investors.

With both the national and provincial governments on board in mid
2005, the iTC’s next priority was to ensure sound financial management of
the program, which was initially projected to cost $900,000 per year. The
group awarded the joint contract to the Mozambican office of international
auditing firm KPMG as financial manager—alongside the Natural Resources
Institute at the United Kingdom’s University of Greenwich as a technical
partner—to manage the iTC’s operations in the three target provinces.
Together KPMG and the university’s institute had the jobs of reviewing and
approving proposals to map community boundaries, disbursing funding, and
monitoring implementation. KPMG Mozambique and the institute’s team
oversaw overall program management, and the NGO service providers
carried out the day-to-day work at the community level.

GETTING DOWN TO WORK

The program got off to a slow start. Oliveira said the initial plan was for
the iTC to pursue “a demand-driven approach whereby communities that
wanted to have their boundaries defined would approach NGOs, who would
then apply for funding from iTC on their behalf. We believed that demand
would be something natural. By the end of 2007, we realized that we were
too optimistic.”

Julian Quan, principal scientist at the Natural Resources Institute, added
that “it was a little bit of a false start. It became clear that NGO capacity and
community access to information was not sufficiently high to articulate
proposals for iTC support.” Few requests from communities materialized,
and there were concerns that NGOs could run off with the money earmarked for community delimitations. The iTC carried out no delimitations in 2007–08 and only 11 in 2008–09. During the same period, the program assisted 21 producer associations in obtaining DUATs.17

André Calengo, a Mozambican lawyer who coauthored a 2008 program review, said: “The idea that communities would come and demand these services was simply not happening. We said they needed a new approach—one whereby the program would create that demand.”

In response, the iTC hired outreach officers for each provincial office to engage with communities. Calengo stressed the need to focus more on raising awareness about the benefits of delimitation certificates and about the existence of the iTC. “They also needed to create a sense of ownership within the community and prepare a community to interact with private investors once it has the certificate,” Calengo said.

The iTC “needed to change our entire way of working,” Oliveira said. The group responded to communities’ lack of awareness by creating a standardized methodology for the delimitation process, which it called social preparation. The iTC also drew up strict selection criteria for service providers and undertook to strengthen monitoring procedures. Alongside the operational reforms, the iTC and its donor partners focused on (1) implementing a dispute resolution mechanism, (2) issuing DUATs to producer associations, and (3) improving cadastral efficiency.

Engaging communities

The program’s early problems highlighted the importance of working closely with communities throughout the process of mapping their boundaries. “It became not only about delimiting their area but also about making people aware of the value of their space and encouraging them to see the potential of the available natural resources,” Monteiro said. The iTC’s new approach more rigorously applied the process of selecting eligible communities and prioritized areas where the program could map adjacent communities in quick succession, thereby creating economies of scale.

When a provincial iTC office identified an eligible community, it was up to the prospective service providers to engage residents, talk with leaders, and then convene mass meetings. “The first entry point is always the head of the administrative post [Mozambique’s basic form of local government], followed by the traditional leader,” said Bartolomeu Langa of ACOSADE, a rural-development NGO based in Gaza province. If local leaders were receptive, the service provider submitted a concept note to the provincial iTC office, which then decided whether to go ahead with the project.

The next step was to set up a nine-member natural resource committee within the community to oversee the delimitation process, manage the community’s resource taxes, and participate in negotiations with prospective investors. This was a delicate process, as “we have to convince the local chief...
to buy into the idea of creating the committee,” said Mineses Roberto, head of the Rural Association for Mutual Aid, which was a service provider for iTC in Gaza province. “The key was to make him see that the committee would not displace his power but would complement it by giving advice.” With the chief’s buy-in secured, employees of the service provider, who lived in the community during much of the process, facilitated a mass meeting to elect community members to the committee. Roberto emphasized that at least three of the nine committee members “had to be women. That was not negotiable.” Langa added that at least six committee members had to be able to write.

Service providers then provided 10 days of training for committee members. The first five days dealt with various aspects of Mozambique’s land as well as environmental and natural resource laws, and the final five simulated negotiations with prospective investors. “The goal behind the simulations is to look at the interests of different groups, including investors, the traditional leader, and farmers. It’s also a way to help communities understand that they should continually engage with investors and not just chase them away,” Langa said.

To establish the committee as a legal entity empowered to represent the community, Mozambican law required the group to be officially recognized by the local government administrator. Oliveira added that “the committee’s recognition also had to be published in the central government gazette, saying ‘this community exists.’” It was a crucial step. “Commercial banks require the community to be registered in the gazette. If the community is registered, the committee can open a bank account for it,” Oliveira said. With a representative committee and a bank account, the delimited community became eligible to benefit from resource taxes from partnerships with private investors.

The iTC set several tasks for committees. One was to draw up a history of the community. Because millions of Mozambicans became displaced during successive periods of colonialism and civil war, it was important to document the ways community borders had evolved over time. Establishing how boundaries had shifted over time as different people moved into an area also was an important way to foreshadow potential disputes between communities.

In addition to producing a social history, committees mapped the natural resources that existed within the community’s borders, performed a SWOT (strengths, weaknesses, opportunities, and threats) analysis to help frame an economic and social strategy, and conducted an overview of the community’s traditional leadership structure and its geographic, social, and environmental features. The resulting documents were consolidated to form a community agenda.

Although Oliveira conceded that the agenda was “not necessarily very elaborate,” assembling the document was an important exercise for
communities because it encouraged them to assume greater authority over their own futures. The document itself could also be “an important asset for the design of a community enterprise business plan in the future,” Oliveira assess. Many communities had no written record of their history, and the agenda “was a way for them to confront their perception of their own space and history. … It is part of the effort to produce, in a few words, an identity for a community aware of their rights and ready to exert citizenship,” Oliveira said.

Mapping community lands

After the social preparation process created a firm basis for cooperation, the program’s focus shifted to the technical capacity to record in the cadastre the community’s land borders. Because the provincial SPGC cadastral office was the only institution with the legal authority to issue official certificates, SPGC technicians traveled to communities and usually stayed for about a week, Roberto said, adding that service providers were responsible for paying cadastral technicians by using project funds during their time in the field.

João Jacques, head of the cadastral division in Gaza’s provincial SPGC office, said the technical process began with the office’s opening a file with a unique reference number. Technicians held mass meetings that included members of each community, the head of the administrative post, and representatives from neighboring communities. Luis Cossa of NGO ACOSADE said the meeting’s goals were to choose five representatives each from selected and neighboring communities “who know the borders well” and to agree on a suitable date for the group’s inspection of the borders.

On the day of the mapping, the technician traveled around the borders together with the iTC service provider, members of the natural resource committee, and representatives from neighboring communities. In a bid to generate consensus and reduce disputes, Jacques emphasized that “the boundary mapping could be done only when [representatives from] all of the surrounding neighbors were present.”

If participants agreed on the locations of the borders, the technician uploaded the coordinates from a handheld device linked to a global positioning system, or GPS. The community also sketched a map to accompany the coordinates, identifying specific areas used for the purposes of agriculture, livestock, housing, and gathering firewood. The team then displayed public notices throughout the community, indicating it had completed the delimitation application.

In the final step, the provincial cadastral office processed the application and officially registered the community’s borders on the cadastral map. The SPGC office then printed the delimitation certificate, and the community and service provider organized a handover ceremony wherein the certificate was presented to the traditional leader, with copies for the natural resource committee and the iTC. The certificate, signed by the head of the SPGC,
included the name and location of the community, its reference number in the cadastre, the number of hectares it encompassed, and the number of inhabitants it covered.

The issuance of the delimitation certificate and its registration in the SPGC amounted to formal proof that the state had taken notice of a community’s perpetual DUAT right to occupy and use its land. However, the SPGC offices’ limited capacity to process the applications meant that communities often faced long delays, sometimes up to two years, before receiving their certificates to serve as proof of their DUAT.

Oliveira said that formal issuance of the certificate was an important step that signified a community was aware of its rights, had a unique identity, had an elected structure recognized by local authorities, had a bank account, and had a basic land-use plan for negotiations with investors and for consideration with other development plans.

Resolving community disputes

Although the iTC had no interest in trying to resolve existing disputes between investors and communities, the group was keenly aware that defining community boundaries could disrupt relationships. “There are at least three dimensions of conflict,” Oliveira said. “In addition to conflicts with potential investors, there are also internal disputes like community members clashing with each other, as well as border disputes between neighboring communities.”

Roberto said most of the conflicts centered on resource use. In many cases, communities without access to firewood used forest resources located on their neighbors’ lands. “When we come in to do the delimitation, they then try to extend their borders to include the forest,” Roberto said.

The requirement to involve neighboring communities in mapping and delimitation was important, but it was not always enough to defuse such conflicts. If the process ground to a halt because of a border dispute, the iTC drew on the skills of a pool of paralegals who had been trained by the Food and Agriculture Organization of the United Nations (FAO) and Mozambique’s Centro de Formação Jurídica e Judiciária (Centre for Legal and Judicial Training, or CFJJ). Chris Tanner, a longtime FAO technical adviser to the Mozambican government who had helped design and implement the training program, said that around 200 judges and prosecutors had been trained some four years after the 1997 land law had been passed, and in 2006, with support from the Dutch government, the program trained paralegals from NGOs as well as local government officials to work directly with communities.

The need for paralegals quickly grew. The CFJJ-FAO developed a two-week course with a curriculum that focused on using acquired customary rights for development, defending these customary land rights, conflict resolution, facilitating dialogue and negotiation with investors and state
agencies, and gender and women’s rights. Tanner explained that the first week was theoretical and classroom-based, although using up-to-date adult learning techniques and material. Attendees were required to bring case studies of existing conflicts involving land and natural resources, either between communities, or between communities and outside interests. “In the second week, we split them up into groups of five. Accompanied by a trainer, they then went back to the communities to sit down and try to find a solution to real conflicts,” he said.

The program targeted field-workers from NGOs and provincial governments with at least a secondary education or a vocational qualification as well as some experience in working in community development in contexts in which land and resources featured prominently. From 2006 to 2014, the program ran 38 courses and trained 899 paralegals (328 of whom were women) from all regions across the country. By 2014, the iTc was directly employing 456 of those paralegals, including 131 women, who served as conflict mediators when mapping community lands.

Roberto said, “In practice, we first try to have the communities meet each other half way by perhaps fairly dividing something like a forest resource.” But “if we can’t find an acceptable social solution,” Roberto added, “we strictly follow the law, which says that someone has a right to use the land after 10 years of peaceful occupation.” Roberto also said that sometimes paralegals were able to resolve long-standing disputes within communities, citing one example in the Manjacaze district of Gaza province, where “there was a conflict that lasted for over 30 years, but through this iTc project, we actually managed to resolve it.”

Issuing private DUATs to smallholder farmers

In 2009, the Millennium Challenge Corporation (MCC), a US government aid organization, brought new financial resources that enabled the iTc to expand its reach beyond its three original provinces of operation to include Nampula, Niassa, and Zambézia provinces. The program thus covered 6 of Mozambique’s 11 provinces. In addition to expanding the coverage of the program, MCC also further tightened and centralized the iTc system for funding service providers.

The MCC funding also led to a shift in the emphasis of the iTc’s work. Carrilho, a former deputy agriculture minister who coordinated the MCC program’s land tenure component, explained that “although the objectives were the same, MCC was very target driven.” The targets included specific focus on obtaining DUATs for private smallholder farmers. A private DUAT certificate (the same document that international investors obtained) could help a group of farmers within a community benefit from government support programs and gain some security of tenure for a defined number of years, thereby enabling them to plan ahead and not have to worry that others might claim plots they had improved or put under cultivation.
Whereas delimitation certificates recognized the existing DUAT rights of an entire community, private DUAT certificates registered specific land parcels in the name of community producer associations. (The iTC did not assist individuals in obtaining DUATs.)

Binit Varajidas, an iTC development economist, said, “During the initial community meetings, the service providers would consult the community members to see if there are non-formalized associations and people who are interested in forming associations, [and encourage] them to approach [the service provider].” Groups that could potentially become associations included farmers growing the same crops or raising the same kinds of livestock.

In addition to (1) strengthening producers’ bargaining power, (2) improving marketing opportunities, and (3) establishing stronger relationships with buyers, setting up an association was a prerequisite under Mozambican law for obtaining a communal private DUAT. But setting up an association was a complicated and costly process that required approval from the provincial government. The names of the associations also had to be published in the government gazette.

Once associations had been legalized— and while the delimitation process was under way— service providers helped them apply for DUATs. Jacques explained that in contrast to the community delimitation process, “private surveyors had to survey the land for private DUAT purposes. . . . The georeferencing also had to be much more detailed and precise.” Still another difference was that associations applying for DUATs had to physically demarcate their land parcels with concrete markers. And again, in contrast to the community delimitation process, producer associations’ applications for DUATs were subject also to political approval by the provincial governor, because they created new land use rights. “The purpose of the private DUAT is really to take the association’s piece of land out of the community’s land,” Jacques said. And just like outside investors, community producer associations had to obtain permissions from their neighbors, traditional leaders, and the state in order to proceed with the application for a new private DUAT right.

The MCC component’s focus on private DUATs was motivated by the potential economic benefits that the DUATs generated. According to Lucas, associations holding DUATs “were much more likely to benefit when the government or other institutions distributed seeds or implements. It was also a tool to get a loan from commercial banks.” Jacques added that one of the major potential benefits to the government was that the granting of DUATs to producer associations enabled the government to levy taxes on the associations’ business activities.

But Tanner cautioned that those benefits had to be weighed against the way in which “it creates a social differentiation within the community.” Issuing DUATs over specific, valuable resources, to a subsection of the
community—thereby effectively removing this land from the community’s control—“potentially gave a small group preferential access over what might be quite critical resources,” Tanner said, referring both to the livelihoods strategies of other community members, and the commercial potential of those resources for the whole community.

Quan said he felt that “it was good that the MCC imposed discipline requiring action to ensure steady progress against targets on what was previously a flexible and bit of a laissez faire approach that risked not making the most efficient and timely use of available resources.” But he agreed that “you have to be careful in assisting associations to obtain DUATs for commercial production on community land, because they can be linked to local elites whose private interests may conflict with rights and aspirations of other sections of the community and more vulnerable groups.”

In a reflection of the momentum generated by the MCC’s involvement, a June 2014 program evaluation indicated that the annual number of DUATs issued to producer associations increased to 58 by 2012/13 from only two in 2008/2009.21

Improving the cadastre

As the iTC and its service providers gained experience with the process of defining community lands, it became increasingly clear that the lack of capacity in cadastral offices was a key weak link in the process chain. “Everything was done on paper,” Jacques explained. “This meant that files could get lost, and it was difficult to coordinate with [the head office in] Maputo,” Mozambique’s capital city.

Jordão said the problems “led to delays in the issuing of official documents. We sometimes had to wait two years for a DUAT certificate to be processed.” The paper-based format also opened the door to corruption. It was too easy for “officials to register overlapping use rights on the same piece of land,” Jacques said. In early 2000, all of the paper-based records and cadastral maps for Gaza province were also destroyed when floodwaters ripped through the capital city of Xai-Xai.

In reaction to these shortcomings, when the MCC expanded its contribution to the iTC program in 2009, it also launched a separate program to improve the cadastre. The cadastral support program initially focused on creating and piloting a new digital system to process DUAT applications more quickly in 12 local and provincial land conflict hotspots. But the MCC team quickly realized that a new land information management system would only work if it was implemented in SPGC offices across the country. As a result, by 2012, the program aimed to develop a national land information management system while also providing professional development for cadastral officials and upgrading office facilities throughout Mozambique.22

“The decision was to stop using all of this paperwork and to have a digital
system to register land. It’s much more efficient, and it lets you see the full picture,” Jordão said.

It took time to put improvements in place. For example, at the end of 2012, provincial cadastral services were still processing 202 completed applications, and the estimated time to finish that work was two to three years.23

The MCC project hired a Mozambican information technology company, Exi, to build a customized cadastral information system for the country. The result was a data tool based on the Oracle Corp. software platform and known as Sistema de Gestão de Informação sobre Terras (Land Information Management System, or SiGIT). The system was a records database designed to replace the paper-based system for recording land-use rights processed by the SPGC.

Once operational, SiGIT would enable surveyors to upload information from the field using a tablet computer, and the system would automatically back up and consolidate all data on a central server in Maputo. Under the MCC project, which ended in December 2013, the software was installed on the computers of 10 provincial cadastral offices, where network connectivity and technology infrastructure could handle the digital system. The project also aimed to provide technical and legal training for more than 1,500 officials on land tenure regularization, the use of land-surveying equipment, surveying techniques, geographic information system software, and upgraded physical facilities, work spaces, and technology.

But transitioning from the paper-based process to the digital system took time. Following the end of MCC funding in 2013, Dutch and Swedish donors established a new program to facilitate the software rollout and further training for officials. However, progress slowed during a 2014 postelection political restructuring and a political scandal in early 2016 that involved the government’s understatement of the national debt. Many foreign donors suspended their funding to the country in the wake of the crisis. In 2016, “we had to scrap about half of our funding for the project,” Jordão said. “The national land directorate didn’t have the money to hire more staff or pay better salaries. It was suffering.”

The political crisis also meant that the government could no longer afford to pay Exi, the company that designed the SiGIT software. “The maintenance of the program requires a considerable amount of money,” said Lázaro Matlava, the former head of the SPGC in Zambézia and the acting chief of department within the directorate of land in the Ministry of Land, Environment and Rural Development. In addition to the lack of resources and technical capacity in the SPGC, some components of the software were under exclusive license to Exi, which prevented SPGC staff from working on errors themselves. As a result, officials working in cadastral offices continued to use paper and manually transferred data into the digital system.
Despite the challenges, Jacques was upbeat about SiGIT’s potential: “It makes it very difficult to have overlapping claims on the same piece of land. It also saves the details of anyone who makes changes, so you can go back and see who did what. Accountability is really improved by the digital system.” A 2014 evaluation report also concluded that the benefits from MCC’s cadastral support program spilled over into iTc activities, noting that “SPGC [offices] are able to process applications for community certificates and association DUATs more quickly.”

Cossa of NGO ACOSADE cautioned that not all of the problems were technical and financial. “For a long time, the SPGC also insisted on keeping application documents secret after they were submitted to the technician,” he said. “The technician then told us: ‘Your work stops there; now it’s my work.’” The lack of transparency meant that the iTc and its service providers were usually unaware if there were mistakes on the forms.

In mid 2016, the iTc met with top officials from the cadastral service about that issue. Cossa said they undertook to open up the process so that service providers could access the documents during processing. “Previously, all we could do was wait,” he said. “Hopefully, we will now be able to see what the problems are, fix them, and help speed up the process.”

OVERCOMING OBSTACLES

While the iTc team was working to improve the efficiency of the program, the members confronted a political backlash that posed a serious threat to their work. On December 16, 2007, Mozambique’s cabinet, known as the Council of Ministers, passed an amendment to the 1997 land law regulations. The action “effectively aimed to roll back the power given to communities by the law,” land expert Norfolk said. “Through the amendment, the Council of Ministers sought to take control of the delimitation process.”

A dramatic announcement of the amendment, published on the official government Web site, criticized provincial governors for allowing communities to claim large tracts of land. The announcement stated that communities could maintain their rights only if they actively cultivated the areas they controlled.

In a further reflection of the national government’s apparent desire to gain control over community land allocation, provincial land administration officials reported that they were “being asked by the government to identify a new category of land: ‘free land in state possession.’”

The amendment to the regulations further sought to subject the relatively simple process of defining community land borders to the same authorization procedures that applied to the issuance of private DUATs. That is, applications would require political approvals.

Applications for private DUATs of less than 1,000 hectares had to have the signature of a provincial governor. Applications for DUATs of 1,000 to
10,000 hectares required political approval by the minister of land, environment, and rural development. Finally, the Council of Ministers, the country’s highest political decision-making body, had to sign off on private DUAT applications in excess of 10,000 hectares.

In practice, NGOs and communities often sought approval from provincial governors before proceeding with the delimitation process. But the new amendment made obtaining such political approval a legal requirement. Despite civil society organizations’ resistance to the move, the national land directorate distributed a circular at the end of 2007 stipulating that the same approval criteria would now apply to community delimitation applications. The circular also called for communities to submit comprehensive development plans before they could obtain delimitation certificates.

In addition to making the process more cumbersome and more expensive, the change meant that delimitation certificate registration would become legally subject to political approval—“an approach that went against everything the land law stood for,” Norfolk said.

Not everyone interpreted the reasons for the change in the same way. From Norfolk’s perspective, the move was driven by some ministers’ impression that “Mozambique still had millions of hectares of open land that could be allocated to investors. But now they were being confronted by cadastral maps that began to show the extent of community lands. They thought they were losing land and wanted to increase their political control.”

But Carrilho, the former deputy agriculture minister, defended the land directorate’s interpretation. “When the delimitations started happening, some communities got thousands of hectares. This was all wrong, because they arbitrarily decided the size of their communities.” He also criticized the iTC for “targeting different levels of communities because in Mozambique you have three degrees of traditional communities: the leader of the village, the leader of a group of villages, and the paramount chiefs. Depending on where you go, the leader will give you different boundaries. The change . . . was very important because it tried to set limits” on the sizes of community delimitations.

By subjecting the process to political approval and calling for the submission of cumbersome development plans before the government would recognize communities’ already existing land rights, the circular posed an existential threat to the iTC program: that the program was legally required to obtain political approvals for every community that wanted to delimit its boundaries. This step further slowed the process and bred frustration among communities, service providers, and provincial cadastral officials. It also increased opportunities for corruption in the delimitation process by giving political officials the power to approve or deny applications.

In a report, Tanner said the decision additionally reflected political leaders’ “failure to understand how the land law works. . . . [For instance,]
provincial governors do not ‘attribute land rights’; land rights are already acquired by customary occupation, by law. The role of the state and its agents in this context is to reaffirm and administratively give the OK to the processes that gradually prove and spatially define them.”

At the heart of the debate were long-standing arguments about the practical implications of the state’s owning all land. Some powerful politicians reasoned that “the state” was equal to “the government” and that the government consequently had the right to decide about all land allocations. On the other hand, some provincial officials, NGOs, and legal experts argued that “the state” was equal to “all citizens” and that the land law clearly vested the land in the people, with the government’s role limited to regulating the land administration system.

The issue came to a head during a national community land conference in March 2010. In a report on the episode, Norfolk said that prior to the conference, “Activists from a number of NGOs worked with a small group of ‘champions’ within the [national land directorate] to ensure that the issue was central to the agenda” of the conference. During the meeting, lawyers and officials from the national land directorate defended their decision to confirm the amendment. But officials from the provincial offices argued that the circular was inconsistent with the land law.

Backed by the iTC, land rights NGOs, and other civil society organizations, the provincial officials won the argument. In October, the land directorate issued a new national circular that withdrew the requirements for political approval and development plans in the delimitation process. In line with the law, the need for political approval in the case of private DUATs remained. However, the delimitation of community land was “no longer subject to the authorization of the provincial governor (nor the minister or Council of Ministers); they are now merely to be signed off by the relevant [head of the SPGC] as being complete and correctly conducted,” noted Norfolk in the report.

The willingness of provincial officials to push back against the attempt to politically capture the process of mapping community lands to register customary DUAT rights was a decisive factor in the decision to repeal the circular. “Local officials often had a better understanding than did their national counterparts of the challenges facing community land rights,” Norfolk said. But because of Mozambique’s highly centralized state structure, decisions were often imposed on local officials without their participation.

The Council of Ministers’ amendment remained on the books—even though the new circular’s interpretation meant that the provisions for obtaining political approval for delimitation certificates had been withdrawn. But just as with private investors, producer associations that wanted to obtain DUATs still had to obtain political authorization. Carrilho said it was important that the amendment remained in place, “because it at least lets them know you must be a little bit more careful [about the size of registered
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community land. At the meeting in Nampula, it was agreed that the iTC would try to stick to an informal limit of 8,000 hectares... Most people saw the... issue as a debate between centralization and decentralization. But for me it was a debate between populism and effective administration.”

During the nearly three years that the requirement for political approval was in effect, the iTC struggled to meet its targets. But once the circular was withdrawn in 2010, the pace picked up significantly.

ASSESSING RESULTS

From May 2007 to July 2016, the iTC registered and assisted 655 rural communities to obtain delimitation certificates that formalized their DUAT rights. Although that number was only a small fraction of the estimated 10,000 communities in Mozambique, the new registrations represented a nearly fourfold increase over the 171 communities that had acquired formal DUAT rights from 1999 to 2006, according to Lucas, who joined the land consultancy Terra Firma after heading the Nampula SPGC until 2007. The 655 registered communities comprised 1.8 million people, 53% of whom were women—equivalent to about 10% of the total rural population—and covered 6.9 million hectares. By late 2016, the program was active in 9 of Mozambique’s 11 provinces. (Only Inhambane and Maputo were excluded.)

The program also helped 612 rural producer associations obtain DUATs. Together, those associations consisted of 24,000 people (55% women) and 45,000 hectares. In addition, the program set up 763 natural resource committees, whose membership was 45% women. The creation of the committees enabled 101 communities to receive payments from natural resource taxes that they otherwise would have missed out on. One example of the potential impact of the resources came from the Pindanyanga community in Manica province. The community, which held a delimitation certificate for its 31,300 hectares of land, used its 20% share of the forestry tax that a commercial investor had paid to build four new school classrooms and 10 houses for teachers.31

A June 2014 impact assessment found that on average, 104 communities and producer associations obtained DUATs every year as a result of iTC interventions—“a positive result for the iTC in terms of achieving [its] pre-defined targets.”32

The assessment further found that the iTC program had become more and more efficient and cost-effective. By 2012, the share of total funds spent on administrative costs had fallen to about one-third from two-thirds during the early years of the program.

For Jordão, one of the major indicators of the program’s success was the government’s creation of the Terra Segura, or Land Security, program following Mozambique’s 2014 general elections. Although the long-ruling Frente de Libertação de Moçambique (Mozambique Liberation Front, or Frelimo) remained in power, the incoming cabinet demonstrated greater
political support for registering land rights. “Under Terra Segura, the
government has committed itself to issuing 5 million rural DUATs by 2019,”
Jordão said. “But most important, the government also undertook to issue
delimitation certificates to 4,000 communities.”

In light of the previous administration’s ambivalence toward the
registration of community DUAT rights, Jordão said the emphasis on new
delimitations was “a direct result of iTC’s work in putting it on the map.
They could have pursued only individual rights, so this represents a very
important victory for iTC.”

Carrilho agreed: “Everyone now talks about the land law.”

Oliveira also pointed to anecdotal evidence that communities that had
gone through the social preparation process and held delimitation certificates
were in stronger positions to negotiate with potential investors. He pointed
to a case in the Sena community of Sofala province, where an international
investor was searching for a community to work with. “The investor found a
lot of resistance from the first two communities it tried to engage, but it
could easily talk with the third one,” Oliveira said. “It turned out that the
third community was delimited by us and [was] much better prepared.”

The case was an important example of how the iTC’s proactive
approach to delimiting communities could pave the way for amicable and
fruitful negotiations with investors.

Another example came from the Sussudenga district of Manica
province, where the iTC had mapped the boundaries of the local Mpunga
community. The community was subsequently approached by a private
organization, EcoMicaia, to establish an ecotourism lodge on the basis of a
commercial partnership. The community received 60% of the project’s
profits.34

But Oliveira and others acknowledged that the iTC was concerned
about the quality of some of the delimitations. In some cases, surveyors for
the cadastre would use only four GPS coordinates when creating the map of
a community. “This meant that the borders between communities were
simply drawn as a straight line, when in reality they follow rivers or other
natural borders,” Lucas explained. Oliveira explained that the imprecise
representation of community borders resulted in a “different graphic
representation of the community’s perception of their territory, which can
lead to conflicts between neighboring communities, particularly if it affects
the proportion of benefits to be acquired from commercial concessions.”

Further, the impasse over the 2007 amendment and continued official
caution in approving delimitation of large areas may have had unintended
consequences. In a 2013 study, Quan said that the uncertainty, along with
practicality, had a real effect: “Now iTC always seeks to delimit community-
utilized land and resources at suitable practical scales for community or joint-
stakeholder management. These are usually ‘village-level’ delimitations below
10,000 [hectares] in size.”35 But the emphasis on smaller parcels potentially
curtailed community access to common pool resources, such as grazing
lands, that lay beyond their borders.\textsuperscript{36}

Some policy makers also remained skeptical that the 1997 land law and
the programs associated with it were the right approaches to preserving rural
people’s access to land. Carrilho, the former deputy minister of agriculture,
expressed reservations about the long-term social effects of using kinship ties
as a significant factor in setting community borders: “The whole process of
defining communities based on ethnic identity is dangerous because it is
retribalizing Mozambique.”

Norfolk disagreed with that view. “Communities are defining
themselves based on their common interest over local resources,” he said.
“There is no evidence that communities in Mozambique are imposing any
form of ethnic exclusion at all. . . . [Regionally], Mozambicans are at the top
of the tolerance table when it comes to ‘outsiders.’”

Carrilho also voiced concern that the iTC process could empower
traditional leaders at the expense of progress toward democracy. “In urban
areas like Maputo, everyone holds individual titles,” he said. “But in rural
areas, chiefs and customary laws are being empowered because of this
populist and romantic idea of traditional communities. Why should people in
rural areas be treated differently?”

The program— and the law on which it was based— remained an
experiment in pro-poor land administration, and policy makers would have
to remain alert to potential problems.

REFLECTIONS

The iniciativa para Terras Comunitárias (Community Land Initiative, or
iTC) started as an externally driven intervention program. But parallel to its
operations, donors and officials worked to establish the program as a local
organization. They achieved that goal in October 2016, when Mozambique’s
cabinet approved iTC’s application to become a Mozambican foundation.

Emidio Oliveira, who worked with DFID and later became iTC
executive director, reiterated that from the outset “our goal is to become a
fully independent foundation; a Mozambican institution dedicated to
complementing the efforts of the government in the implementation of the
land law to protect community rights over land and other natural resources
from the perspective of economic development.”

Obtaining the government’s approval to set up an independent
foundation was a testament to the iTC’s ability to navigate the complex
politics of land administration in Mozambique. Célia Jordão, a senior policy
officer from the Dutch embassy who worked with iTC since its founding in
2006, stressed, “You need to have an organization that is trusted by
government and all other actors.”

Improving either individual or communal tenure security in rural
Mozambique depended above all on the ability to balance competing political
interests. In the face of previous government inaction and even resistance to land delimitation, the success of the iTC as an externally-funded institution showed that progress was possible when land registration was conducted through an institution that was as politically independent as possible.

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CEMENTING THE RIGHT OF OWNERSHIP: 
LAND REGISTRATION IN KYRGYZSTAN, 1999–2009

Maya Gainer drafted this case study based on interviews conducted in Bishkek and Kant, Kyrgyzstan, during November and December 2016. The British Academy Department for International Development Anti-Corruption Evidence (ACE) Program funded the development of this case study. Case published February 2017.

SYNOPSIS
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, and after Kyrgyzstani independence in 1991, the country began a nationwide program of privatization in a bid to stimulate economic development. The question was how to register and document property rights so that people could transact efficiently in a new land market. To meet the challenge, a new land agency, known as Gosregister, had to hire and train staff in completely new responsibilities, establish performance management and funding structures, improve efficiency by introducing new technologies, and ensure that staff did not engage in corruption. Despite political upheaval—including the overthrow of two governments in the space of five years—Gosregister steadily built its capacity and evolved into an effective land registry. By 2012, the agency had registered 92% of the country’s privately held parcels, and in 2017, the World Bank’s Doing Business rankings recognized its services as among the best in the world.
INTRODUCTION

When the State Agency for Registration of Immovable Property Rights opened its doors in 1999, the new land agency confronted many challenges, not the least of which was how to navigate a sea change in Kyrgyzstan’s economy. “It was our first time dealing with private property,” said Narynbek Isabekov, who joined the agency, known as Gosregister, at its establishment and in 2016 was its director. “We had no equipment, no proper experience,” he said. The mountainous Central Asian country had been part of the Soviet Union until 1991 and was just starting to officially recognize private landownership.

Under Soviet rule, all land had belonged to the state. Individual Kyrgyzstanis might be permitted to use a parcel but not to own or sell it. After independence, Kyrgyzstan embarked on a nationwide privatization and land reform program—a move that distinguished it from most other Central Asian countries, in which the state retained ownership of all land. Although the privatization process involved many institutions and various levels of government, most activity took place locally. Land committees at the rayon (a unit of local government equivalent to a district) and village levels drew up lists of plots and determined who would receive rights to use them. However, because of the decentralized process of assigning rights, implementation varied. Some rayons made decisions about allocation but did not issue official documentation certificates, and others simply failed to implement the process.

The certificates that landholders received represented only a first step toward complete privatization. Although landholders could transfer their rights to others through sale or inheritance, the certificates conferred 49-year exclusive use rights rather than full ownership, because the state was still the sole owner of land, according to the 1993 constitution. (In 1995, a presidential decree extended use rights to 99 years.) In addition, breaking up collective farms was the main focus. There was little effort to formalize property rights in urban areas or in the rural settlements where farmworkers lived.

Privatization was a start, but Kyrgyzstan’s leaders wanted to go further. “We hoped that if we quickly moved to a new system based on a market economy, we could achieve some positive results,” said Tolobek Omuraliev, who became Gosregister’s first director.

The country’s leaders planned to formally recognize rights to land and immovable property and create a transparent central register of ownership and boundary information in the hope it would lead to the establishment of credit markets that used property as collateral and create incentives to develop the land. The work of Peruvian economist Hernando de Soto, who posited that formal recognition of property rights provided a catalyst for economic development, influenced their views.¹
In 1997–98, working with the US Agency for International Development, two rayons had piloted land registration systems by experimenting with procedures and communication strategies that could be applied around the country. Based on that experience, in 1998 Kyrgyzstan amended its constitution to allow private landownership and passed the Law on State Registration of Immovable Property. The law mandated the creation of a single agency charged with registering property rights: the State Agency for Registration of Immovable Property Rights, widely referred to as Gosregister. The registration law also said the government would not officially recognize or protect any ownership right until a valid claim had been registered with the agency.

The 1990s saw dramatic changes in nearly every aspect of Kyrgyzstan’s government and economy, and the new agency had to start almost from scratch. “We had ended all the Soviet rules of socialist property and began to abolish the institutions involved in real estate,” Omuraliev said. Gosregister was responsible for building a new system.

THE CHALLENGE

To lay the foundation for an active real estate market, Gosregister had to recruit skilled staff, establish efficient procedures, and register individual parcels across the country—in an environment in which private landownership was largely an unfamiliar concept.

In a country that had had no private ownership of land for 55 years as a Soviet republic and a history of nomadic herding among ethnic Kyrgyz before that, formalization of individual land rights was an unprecedented step. Gosregister had to introduce the idea of officially recorded land rights and educate landholders about the registration process. Even after the agency developed an effective message, communicating it posed a logistical challenge. The vast majority of Kyrgyzstan’s approximately 5 million citizens lived in rural areas, and with 94% of the country’s area more than 1,000 meters above sea level, some communities were difficult to access.

The transition also would be challenging for government officials, who had to take on new and different roles. Many of Gosregister’s staff had worked in Soviet-era institutions such as the Bureau of Technical Inventory (BTI), which kept records of residential properties, and the State Land Management and Land Resources Agency, whose primary responsibility was land management in rural areas. But despite experience with some aspects of land administration, “we weren’t taught how to register private parcels,” said Nuria Sooronova, who had been with the land management agency before joining Gosregister and later became the head of its cadastre division. Bakytbek Djesupbekov, who in 2016 headed Gosregister’s Geographic Information System center, an internal group of technical experts, recalled that with a staff with no prior experience, one of the biggest challenges lay in
“developing the legal base and procedures—all the steps from application to archiving.”

Gosregister also had to piece together fragmented land data. During privatization, while local officials had the primary responsibility for issuing certificates, the central Ministry of Agriculture had set land reform policy, and its rayon and oblast (province) agrarian reform centers had assisted local governments with land allocation. A separate State Land Management and Land Resources Agency, established in 1996, surveyed and mapped the boundaries of the newly divided parcels. Depending on the region and the land’s use, records might be stored at the BTI, the land management agency, the state architect’s office, the cartographic agency, local government offices, or some combination.

Land records were scattered among various agencies across the country; all of them were on paper; and many lacked maps or other details. At the time of Gosregister’s establishment, “There were simple records in books at the BTI, land management agency, and cartographic agency saying, ‘Mr. X owns apartment Y,’ or ‘Mr. Z owns this land,’” Omuraliev said. Gosregister had to consolidate the existing records and build on them to develop a comprehensive database that would facilitate real estate transactions. In addition, some parcels—especially residential ones—had no records at all. Soviet officials had allocated plots for housing, but “people would lose the papers because it was just a sheet of paper saying someone gets to build on this piece of land,” said Bolot Berikbaev, who coordinated registration work at the rayon level and later managed the national effort.

During the land and agrarian reform process, the government had emphasized reorganizing state and collective farms and paid much less attention to residential areas. “There were no procedures to formalize houses,” and few had documentation, said Myrzabek Shamshiev, head of the registry office in Issyk-Ata rayon outside the capital city of Bishkek. Because the 1998 registration law required that landholders record their claims at Gosregister to obtain government protection of their rights, the new agency had to establish mechanisms that would determine ownership and resolve disputes when documents were not available.

Gosregister also had to contend with limited staff capacity and equipment. In addition to staff members’ inexperience with administering private land, existing institutions did not have enough skilled cartographers and surveyors for a nationwide registration effort, and their equipment was often rudimentary. “We would get bruises on our palms” from the wooden sticks used for measuring boundaries during the land reform process, Isabekov recalled, “and we would use horses to measure the bigger land plots.” Gosregister had to use its existing resources more effectively and train its workers in new responsibilities.

As Gosregister’s managers were developing procedures and registering properties, they had to contend with another common problem: corruption.
Graft had flourished after the fall of the Soviet Union, and the privatization process had made it easy for well-connected people to obtain choice pieces of former collective farms for next to nothing. “After independence, people were given the rights to land shares and plots to build their own houses, but we are not talking only about people who didn’t have their own properties then,” said Jalalbek Baltagulov, director of Kyrgyzstan’s association of municipal governments. There had been a number of violations of the land code and cases of unauthorized construction, he said, “and we should recognize that those violations were committed not just by ordinary people but also by people in charge of the process. Some used their positions to get land plots that were supposed to be for public use and not development. That is our reality.”

Although some damage had already been done, Gosregister had to be careful to avoid creating further opportunities for land grabbing during the registration process. In addition, administrative corruption such as bribery had become widespread. Gosregister had to design procedures and incentives to deter corruption among its staff.

Dealing with all of the challenges required substantial resources, and to register the entire country, the agency had to fund salaries for enough skilled staff, acquire new equipment, and improve record storage facilities. The government had funded Gosregister’s predecessor agencies from the central government budget, but continuing that model was risky. Kyrgyzstan’s coffers were lean: In 1998, gross domestic product per capita was US$345, and government consumption expenditures totaled US$294 million. Development aid poured into Kyrgyzstan during the years after independence and could help Gosregister get started, but those funds were unsustainable. Gosregister had to develop revenue sources and financial structures that could keep the agency running for the long term.

FRAMING A RESPONSE

After parliament passed the registration law in December 1998, Kyrgyzstan’s government had a broad legal mandate to establish the State Agency for Registration of Immovable Property Rights. However, the details of doing so were contentious, especially with regard to the agency’s position in the government. The original proposal during the legislative process had been to place it under the Ministry of Justice; another possibility was to assign responsibility for registration to the State Land Management Agency.

As the debate was going on, the World Bank reached out to Kyrgyzstan’s government to discuss funding a project that would build the capacity of the soon-to-be-created land agency and register properties. Kyrgyzstan’s president at the time, Askar Akayev, assigned Omuraliev, a close adviser who was serving as minister of local government and overseeing local land reform efforts, to negotiate with the World Bank. Omuraliev said that during their discussions, he raised an alternative idea for the agency’s
structure: merging the functions and workforces of the land management agency, the BTI, and the State Cartographic Agency into a single independent institution and having it move quickly to become self-financing.

“We wanted to make Gosregister independent because it dealt with very important issues of property and land, and we didn’t want any state body or local authority to have influence over it,” he said. The new agency could work from the data collected by its predecessors. “Their archives contained very limited information, but it was at least something.”

Although the World Bank initially had favored placing the agency within the Ministry of Justice because it had experience with movable property registration and would ease the process of issuing and adjusting regulations, the land management agency “had the cadastral information and more capacity to deal with rural and agricultural land,” said Asyl Undeland, a World Bank operations officer at the time who participated in the discussions and subsequently worked on the bank’s registration project. But Omuraliev championed the idea of creating an autonomous agency, Undeland recalled, and she and her colleagues saw the value in it. “We agreed that it would be self-financing and autonomous but linked to the land management agency, and that turned out to be a strong factor for success,” she said.

Some other outsiders were skeptical, however. “The argument at the time was that it gave the land registry too much power, and there was a lot of worry about corruption,” said Renee Giovarelli, a United States-based land law expert who helped draft the registration statute. A stand-alone agency might avoid political pressure to allow land grabbing or channel funds to officials, but with little direct oversight, it would have to rely on strong internal controls to prevent corruption.

In early 1999, the president settled the debate with a decree that merged the three institutions and established Gosregister as an autonomous agency. Akayev also appointed Omuraliev as Gosregister’s first director. When the agency began operations later that year, the government was concluding negotiations with the World Bank for the land administration project, and in June 2000, the bank approved US$9.4 million to support the land agency during the next five years. The project focused on two key areas: building Gosregister’s capacity, mainly through training and technical advice, and registering a target of 600,000 properties around the country. Although the World Bank’s land registration experts would oversee the project from Washington, D.C., a local team hired by the bank would lead implementation, working closely with Gosregister’s managers.

The World Bank’s financial support was especially important because Gosregister had to cover its own costs. After a transitional period, government funding for the land agency—whose predecessors had been funded from the central budget—would cease. “There wasn’t much money in the state budget,” Omuraliev said, so the bank’s long-term loan gave the agency time to develop before funding its own operations. Over time, the
hope was that making the agency self-sufficient would force it to either generate its own revenue or attract funds from donors, and the national budget would not have to cover expensive endeavors such as mapping or nationwide registration.

GETTING DOWN TO WORK

During the next decade, Gosregister built itself into a fully functioning land agency. It first recruited and trained staff and developed its registration procedures, setting the stage for nationwide systematic registration. During and after the registration campaign, it made investments in long-term effectiveness, including information technology, performance management, and corruption prevention.

Building the workforce

The staff of the three institutions that made up Gosregister provided a starting point for the new agency’s workforce. Although some employees of the BTI, the land management agency, and the cartographic agency had technical skills such as surveying, they had to apply them in completely new ways. Kyrgyzstan was just starting to introduce transactions like mortgages, for instance, a concept foreign to many workers. In addition, Omuraliev said, many staffers lacked adequate training for their new jobs. But because of high unemployment at the time, laying off existing staff would create its own problems. “I knew if I dismissed all those people, they’d protest,” he said.

Instead, Omuraliev and his senior managers decided to retrain staff members and keep them on provided they could pass an exam—especially because the agency needed employees to handle the planned nationwide registration of property rights. Staff members at the three predecessor institutions took a three-month course focused on the new registration law and the types of transactions and properties they would encounter in their work at Gosregister. Those who failed the exam at the end of the course could take the test once more, but a second poor result disqualified the person for work at the new agency. The agency was in the process of developing more-granular procedures, but the key elements had already been spelled out in the registration law; and as working groups ironed out the remaining details, employees received additional training.

In addition to having to take the course and pass the exam before joining Gosregister, employees of the three combined institutions had the option of going through an additional round of training and exams to apply for positions under the World Bank project. The project competitively hired—mainly from the same pool of people with land administration experience—for its Project Implementation Unit, a team of Kyrgyzstani specialists who had the tasks of overseeing project activities and coordinating between the bank’s technical advisers and Gosregister’s management team. The project also hired staff to coordinate the systematic registration process
at the oblast and rayon levels. A committee of bank staff and senior managers from Gosregister reviewed applications, conducted interviews, and oversaw the training and exams before deciding whom to hire.

Although these people worked closely with Gosregister staff, they were on the World Bank’s payroll and earned substantially higher salaries, so the positions were in high demand. “The World Bank project work started with a big competition . . . and there were about 25 applicants for every position,” recalled Bolot Tashtanov, who obtained one of the positions and later transferred to Gosregister as its lead monitoring and evaluation specialist. Tashtanov acknowledged that the pay differential created some tensions, but he stressed that he and his colleagues worked hard to build relationships with their counterparts at Gosregister, and most joined the agency after the bank’s projects ended.

Gosregister assigned staff members to 49 local registry offices (LROs) around the country. The agency drew largely on the local offices of the former BTI to open branches in each rayon. Even though many areas were likely to have low transaction volumes and it would be difficult for an LRO to sustain itself using registration fees, it was important to have offices “in every rayon and every city,” Djusupbekov said, because it was difficult for poor people to travel to register.

Because Gosregister was in many ways a work in progress during its early years, the agency continued to devote substantial time and resources to staff training. As new procedures emerged and old ones evolved, Omuraliev said, staff “needed to learn them by heart, know how to apply them, and be able to explain to others why they are necessary.” The agency opened two centers— one in the southern city of Osh and one in Kant, a town outside Bishkek— that provided general training on procedures, including annual refresher courses and more specialized ones on skills for key positions.

Staff members who were responsible for approving and recording land transactions had to complete another course and exam to be certified as registrars, with additional courses and certifications required for handling particularly complex transitions. The agency also trained staff members in technical areas such as advanced mapping and IT, especially as it adopted more sophisticated technology.

The Swedish International Development Cooperation Agency partnered with the World Bank to fund training and send mapping and registration experts to advise Gosregister, and several Gosregister managers and selected staff visited Sweden to learn about the Swedish registration system and to take advanced training courses. “We looked a lot at the Swedish experience,” Sooronova said, and used their procedures as a model. In addition, staff who had been trained in Sweden “were given opportunities to introduce things they learned,” she said, thereby enabling the agency to maximize the impact of the limited number of individuals who participated.
Developing procedures

Although the 1998 registration law stipulated the basic requirements for registering property ownership, Gosregister had to develop specific procedures for its staff. Gosregister’s managers assembled working groups to establish standard procedures and regulations ranging from registration forms to mapping standards. The groups consisted mainly of representatives from registry offices around the country, members of Gosregister’s central management team, World Bank project staff, and experienced lawyers from Kyrgyzstan and elsewhere enlisted for the project. The agency had to work with the Ministry of Justice to issue official regulations or revise legislation, Undeland said, but “Gosregister had some flexibility to adjust how the guidelines were implemented, and they could introduce new procedures.”

Based on the 1998 law and examples from around the world—notably Sweden, which served as a model of an advanced system and which had provided technical assistance for land agencies in developing countries since the 1980s, and Lithuania, which demonstrated how a post-Soviet country could make strides in land registration—the working groups drafted a registration manual. “The manual had chapters for different types of property, the types of codes associated with types of property, [and] step-by-step instructions for systematic registration,” Tashanov said, which provided the basis for every aspect of the registry offices’ work.

Over time, the agency adapted some of its procedures based on local registry offices’ experiences. “We’d figure out better or faster ways of doing things,” Berikbaev said. For instance, the team at Berikbaev’s LRO suggested adding a field to the database for the year of a building’s construction, because banks often asked for the information.

Jakshtylyk Toktosunov, who headed an LRO before leading Gosregister’s registration department, said this bottom-up approach was typical. “The head office would suggest certain procedures, and we would test them,” he recalled. Years later, he added, the agency maintained the same flexibility. “LROs still come to us with questions and suggestions if they run into a problem, and we consider it to see if we can amend the procedure,” he said.

Nationwide registration

Because the 1998 law mandated that property rights had to be registered at the land agency before they would be recognized officially, Gosregister launched a nationwide property-registration campaign shortly after its establishment. The effort, paid for by the World Bank and coordinated by its project staff, launched in 2000 and lasted until 2007. Known as systematic registration, this approach was intended to secure and recognize tenure rights for all property owners, lower costs for the agency and allow it to offer free registration by creating economies of scale, and form a basis for an active land market nationwide.
"If we made registration voluntary, it would take decades to finish," Omuraliev said. Especially because people were not yet persuaded of registration's importance and many could not afford it, allowing landholders to register only when they needed to make transactions would likely have resulted in only the most valuable properties being registered, with large amounts of land held informally.

Gosregister's managers knew that registering an entire country's land rights would be a lengthy process. So, in order to quickly create a supply of registered properties needed to enable further real estate transactions and meet the needs of credit markets, they decided to focus initially on densely populated areas, where most transactions took place. The systematic registration process started just outside the major cities so that staff could gain experience. Then the process moved into the major cities of Bishkek and Osh, into large towns that served as district centers, and later, into rural and agricultural areas. "The idea was to give people an opportunity to use property as collateral, and there were more chances to do that in urban areas," Berikbaev said.

To lay the groundwork for systematic registration, Gosregister engaged in nationwide and locally targeted information campaigns to explain how registration worked and why it was beneficial. Although the agency used mass media, the most effective mechanism involved public meetings. "We'd come with people they trust" such as community leaders, Tashtanov said, which helped people accept the process. Few people intuitively understood why registration was important, so giving people the opportunity to ask questions and see local leaders—whether the heads of neighborhood organizations, elected officials, or clan or religious leaders—endorse the process before a registration team came to their village helped smooth the way.

After the information campaign, Gosregister's teams divided the area into small zones and sent teams of legal and mapping specialists house to house to confirm parcel boundaries and ownership. "If they had an ownership certificate, that was sufficient," Toktosunov said, and their information would be sent to the LRO with a recommendation that it be registered.

However, not everyone had such a certificate. Tashtanov recalled that in rural areas, as few as 15% of households had documents demonstrating ownership. In some cases, people had lost their records, and others had never received them. When the residents were unable to provide certificates, Toktosunov said, "we had to dig through the archives to figure out who were the real owners."

Hunting for records on specific properties was challenging. The Gosregister teams first looked to local-government archives, but the information might also be stored in several other places, such as the state architect's office or a notary's office. Sometimes they were able to find
another copy of the ownership certificate; in other cases, Tashtanov said, municipalities had “household books” that listed who lived where and who was responsible for bills like electricity. That evidence, combined with local knowledge, was often enough to confirm ownership of a particular parcel, but if the documentation was spotty, registration teams could recommend the LRO issue a preliminary registration that could be used until the resident provided additional proof of his or her claim.

To safeguard against legitimizing false claims of ownership or against entrenching disputes, once a registration team had compiled a preliminary map and list of owners, the team publicly posted the information for three months so that anyone who objected could dispute the claim at the land commission. LRO staff processed an area’s registrations only after the notification period ended. “There was a strong transparency and awareness component. The community could see the maps of the land, who owns what, and whether they have the right establishing documents,” Undeland said. The process helped expose specific instances of land grabbing because those who had taken properties during privatization could not provide evidence for their claims. As a result, she added, some land got reallocated to community members during registration.

In about a fifth of cases, the registration teams encountered conflicting claims—often due to inheritance disputes—or neighbors who disagreed on a parcel’s boundaries. Those cases went to specially established land commissions, which were typically set up at the rayon level and included Gosregister staff, local government officials, community representatives, and representatives of the state architect’s office. The commission members weighed the evidence for each person’s claim to a certain parcel and made a decision, after which the LRO could register the property.

The commission’s decisions were not final, however. Dissatisfied claimants could appeal to the regular court system. Neither did the commissions resolve every case. Although the systematic registration effort covered 2.5 million properties by the time it ended in 2007, approximately 200,000 other parcels remained unregistered because of conflicting information about ownership rights that required additional time to resolve. In addition, pockets of informal settlement, called novostroiki, emerged as Kyrgyzstanis migrated to urban areas, creating more complications for the registration process (Textbox 1).

Preventing corruption

As in many countries, land administration in Kyrgyzstan was seen as a fertile area for malfeasance in the forms of both petty administrative corruption such as bribery for faster services and larger-scale wrongdoing such as land grabbing. During its first few years of operation, Gosregister adopted several key measures to stop staff from engaging in bribery or fraud.
One problem came to light during systematic registration. Groups of scammers impersonating government employees sometimes stole people’s ownership certificates, likely with the intention of taking the land for themselves. “That information spread, and it made people nervous,” Omuraliev said. Some villages even chased away the agency’s teams because of concerns they were impostors. To solve the problem, the agency introduced distinctive uniforms for its registration teams and worked harder to publicize the date and time that legitimate Gosregister staff would be visiting the area.

As clients started visiting LROs to register transactions, the risk grew that bribes might be solicited or offered for faster service. To reduce opportunities for corruption, Gosregister separated front-office functions from back-office functions, so that agents who processed transactions would never interact directly with clients. Managers assigned the case files to registrars randomly—later aided by the agency’s registration software—so that clients would not know who was processing their transactions and registrars would have difficulty soliciting bribes from clients.

Textbox 1. Kyrgyzstan’s ‘New Settlements’

Although Kyrgyzstan managed to formalize most citizens’ property rights during the systematic registration campaign, urbanization created a new set of challenges—and some pockets of informality.

Seeking economic opportunities unavailable in rural areas, thousands of Kyrgyzstanis migrated to cities, especially the capital, Bishkek, during the 1990s and early 2000s. With limited housing available, migrants settled in the outskirts of the city, either occupying vacant land or buying cheap plots. Most of these novostroiki, or new settlements, received official recognition from municipal governments, and residents could apply for land titles by using the same process as residents of any other area. Of 53 novostroiki in Bishkek, 48 had received government recognition as of 2012, although in 8 of those cases, the previous owners of the land were contesting the transfer to settlers. 1 Some novostroiki remained unrecognized. 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. For people in informal novostroiki, tenure security was a problem, but the lack of an official residence in the city also limited access to schools and utilities, which residents often saw as more-pressing issues. 2

“Receiving a residence permit is very difficult, and many people who have moved from the village to the city are suffering,” said Mamatkul Aydaraliev, director of Ayrsh, a nongovernmental organization that worked in novostroiki and on migration issues. The need for an official residence to receive certain services, a holdover from the Soviet system, made the issue of informality especially pressing. The problem was largely in the hands of municipal governments, which decided whether to recognize the settlements, but for some Kyrgyzstanis, it did act as a barrier to securing tenure. Disputes over zoning and formalization of the novostroiki remained contentious in 2017.

The agency also attempted to enlist the public in corruption prevention by providing copious information regarding the registration process. LROs publicly posted fees and timelines for each service, Sooronova said, “so [clients] know what to expect.” Offices also posted lists of phone numbers so citizens could report corruption, and they maintained separate complaint boxes.

In addition, Gosregister adopted an official fee for expedited processing—a move that aimed not only to head off bribery but also to boost revenues. For some time, the change worked, preventing payments for faster service from being diverted to officers’ pockets. However, that tactic eventually lost its effectiveness, said Sualir Himamov, head of Gosregister’s financial and economic department. Clients would bargain with the officers who received their documents to mark them for expedited service in exchange for a bribe amount that was lower than the official fee. In November 2016, the agency dropped the expedited-service fee and resumed charging a single fee—but it also tightened procedures and monitoring to offer a shorter timeline for each type of service.

“Delays create opportunities for corruption,” Shamshiev said. Officers had to work within the law, he stressed—but the shorter timelines meant customers had no reason to look for workarounds.

_Building and monitoring performance_

Gosregister relied heavily on financial incentives to spur staff performance, and as a result, LRO managers had to closely track both quality and quantity metrics. “People need to be motivated. . . so we introduced performance-based salaries,” Himamov said. “Salaries depend on the income a person brings to the agency,” which for registrars was a percentage of each transaction they processed. The percentage varied based on the type of transaction—more-complex ones provided a greater percentage to compensate for the longer time required—and each registrar had monthly targets for the number and types of transactions they were expected to process.

Support staff had fixed salaries but received bonuses based on overall revenues. Staff members hoping to boost their salaries could not cut corners on quality, however: each error resulted in an automatic deduction from the employee’s paycheck. Disciplinary infractions, such as lateness, also resulted in financial penalties.

Gosregister made performance monitoring a central part of its operations and culture. The central office tracked the number of transactions at each LRO, as well as revenues, through quarterly reports, and randomly inspected the offices to evaluate service quality. Monitors also used office visits to check for cleanliness and orderliness, make sure that the required service standards and anticorruption information were posted, observe processing to see whether all procedures were being followed, and randomly
check records for errors. “We’d also do opinion research and interview people about what they needed and how they felt about the procedures,” Djusupbekov said, and the agency would try to simplify the steps or reduce processing times accordingly. Much of the monitoring was carried out by specialists paid by the World Bank at the regional level, and after projects ended, monitoring responsibilities shifted to the central office.

With fewer staff members dedicated to monitoring, the number of such visits to LROs fell significantly. Individual performance management, however, remained consistent even after the World Bank projects ended.

Managing self-financing

Financial self-sufficiency had been Gosregister’s goal since its establishment, but the agency had time to make the transition. In addition to donor funding, the agency received several years of central government allocations. Systematic registration, a network of LROs, skilled staff, and information campaigns that educated citizens about property markets were all prerequisites for a market that was sufficiently active to generate fees covering Gosregister’s operating costs. But by 2005, the pieces were largely in place, and each LRO was expected to cover its own operating expenses.

The system had several key advantages over reliance on a budget set by the government. Because LROs were allowed to keep their revenues and distribute them in the form of salaries or bonuses, staff had strong incentives to work hard and run the LROs efficiently. Earning its own funds also gave Gosregister the flexibility to offer substantially higher salaries than the regular civil service did, which helped attract high-quality staff and reduce turnover.

However, “we knew self-funding would have its challenges,” Omuraliev said. In places like Bishkek, where the real estate market was active, LROs usually made more than enough to cover operating expenses and could offer bonuses or invest the funds in new equipment and other improvements. For LROs in other places, especially those in remote rural areas, transaction volumes were much lower, and some had difficulty covering their costs. Those LROs kept costs low by keeping less space and fewer staff, but even so, Himamov said, 9 of the 49 offices were unable to make ends meet. Ten others were able to cover their costs but had very little left over to invest in improvements.

Because each LRO was a separate legal entity, Gosregister had no formal mechanism to compel high-income LROs to subsidize their weaker counterparts. The agency could do nothing more than ask offices with surplus funds to help others out of “solidarity,” Himamov said. “So far, we’ve been able to convince them, because they don’t want any tension,” he said in 2016, adding that Gosregister was exploring changes to its legal structure to enable the pooling of certain funds that could be distributed by the central office.
In addition to their uneven distribution around the country, revenues could be uneven over time. For instance, the real estate market slowed as a result of international sanctions placed on Russia in 2014, which reduced remittances from Kyrgyzstanis working in Russia—often a key source of real estate investment—and direct investment from Russians. However, Himamov said, “the Kyrgyzstani market isn’t that integrated globally, so there’s not much immediate effect.” LROs—especially those in the key investment areas of Bishkek and Osh and in the resort town of Issyk-Kul—had time to evaluate global trends and adjust their staffing and operational plans accordingly.

In rural areas, the market was typically less active and could be predicted to some extent based on more-limited factors such as ministries’ plans for construction and activity during the same season during the previous several years. However, LROs had to be ready to adjust. In areas like Issyk-Ata, Shamshiev said, it was difficult to anticipate the number of transactions, and therefore the salaries of the LRO’s workers. However, he added, staff became accustomed to the fluctuations and learned how to plan for variations in their pay.

**Introducing technology**

Gosregister adopted a strategy of gradual computerization, prioritizing the registration of all of the country’s parcels on paper with simple mapping techniques and developing effective manual procedures before attempting to digitize. “We took a simple, step-by-step approach to IT,” Djusupbekov said.

In 2002, while systematic registration was in progress, a small IT team under the World Bank’s implementation unit began designing software called the Automated Registration System, or ARS. During systematic registration, the LROs entered basic data on Microsoft Excel spreadsheets, which formed the basis for the records in the ARS.

“As soon as you had data from a district, you’d put it in Excel and Access,” a Microsoft database management program, “and then we had to link the databases,” IT manager Jipar Davletova said. Davletova’s department created an overall structure for the existing data and then worked on developing software to enable LRO staff to enter information directly into the database.

Developing the ARS required staff from both the IT team and the LROs to conduct a thorough review of Gosregister’s business processes. “We would track a file from beginning to end,” Davletova said, and through that process, “we were able to get rid of certain duplicated functions and add others to optimize specialists’ work.” The reviews resulted in several procedural changes, such as enabling front-office clerks to input information directly into the system as they spoke with clients rather than having the registrars rely on application forms. People often needed assistance in filling out the forms, which led to long wait times, Berikbaev recalled. “Now they
don’t have to fill out anything manually; they get a printout and sign it,” he said.

The software also enabled managers to track information more accurately, such as the time it took to process a transaction or the number of transactions an individual had completed. Managers could also identify problems. “The ARS is a good tool for measuring performance. It tracks errors, omissions, and delays, and each case is linked to the person who handled it,” Shamshiev said.

Corruption prevention shaped several aspects of the design of the ARS. The system tracked the names of all of those who made changes to a record, and it created automatic backups of each title. The software also included different access and editing permissions depending on each person’s role, and it barred users from making changes without supporting documentation. In the ARS, “a person has to submit an application and attach documents supporting the changes, and modifications are not allowed without them,” Shamshiev said.

The implementation unit coordinated the ARS’s gradual rollout to the LROs, starting with pilots in the cities of Bishkek and Osh and the Issyk-Ata rayon in 2004. IT capacity at the rayon level was a challenge, Djusupbekov said, and it took time to introduce the system because of the need to train LRO staff. Gosregister also had to purchase computers and servers for the LROs before staff could begin using the system. But by 2007, the system was in use across the country.

With completion of the ARS, which was solely for internal use, the IT team moved to make land information more accessible to the public. The agency piloted the Kyrgyz Land Information System in 2008 and launched it officially in 2011. The system integrated ownership data with digital maps, letting a user select a property on the map and get its registration details and vice versa. Information about the property, such as its size, was publicly available, but to get ownership details, a user had to pay for a subscription. As of 2016, most of the subscribers were banks, real estate agents, notaries, and government agencies.

OVERCOMING OBSTACLES

Gosregister’s managers were keenly interested in preserving the agency’s independence. The agency’s position in relation to other parts of the government had been the subject of heated debate in the lead-up to the agency’s creation in 1998–99, and it remained contentious in the following years.

“The whole history of Gosregister is the history of small conflicts or big ones with other agencies,” Isabekov said. Other institutions—such as the Ministry of Agriculture, which had led agrarian reform, and the Ministry of Justice, which oversaw the notaries who had previously administered
property registration—occasionally attempted to take control of the agency or some of its functions, he recalled.

Gosregister’s proponents cited the agreement with the World Bank as the main reason for continuing the agency’s autonomous status. The agreement referred specifically to Gosregister as the project’s implementing agency. Maintaining Gosregister’s independence was essential to the bank-funded project, they argued. “We would refer to that agreement every time there were attempts to control us,” Isabekov said. For the bank, Undeland said, the primary issue was ensuring that Gosregister performed well, avoided corruption, and moved toward sustainability. The agency’s placement was secondary, she said, but the team was wary of moves that might transfer its revenues or add new functions.

In 2009, however, the agency’s decade of autonomous operations ended. President Kurmanbek Bakiyev—an opposition leader who replaced Akayev as president after April 2005’s “Tulip Revolution” and quickly came under fire for being even more corrupt and autocratic—decided to create an umbrella agency to oversee all types of registration, encompassing the passport agency, civil registry, vehicle registry, business registry, and state archives in addition to Gosregister. In October, Gosregister—renamed the Department of Cadastre and Registration, or DCR—became a part of the new State Registration Service (SRS).

Gosregister’s leaders stayed on during the transition, but they feared the move would hinder the agency’s authority to make independent operational decisions or would cause its budget to be reallocated to other parts of the SRS. However, circumstances meant those concerns turned out to be largely unfounded.

In April 2010, just a few months after establishing the SRS, Bakiyev was overthrown in another revolution. Unlike in 2005, when Bakiyev quickly consolidated power, Kyrgyzstan’s politics remained in flux for some time. The country was focusing on drafting a new constitution, holding elections, and responding to political and ethnic violence in the southern city of Osh. The structure of the government’s registration services was a low priority, and the DCR’s work continued much as it had during its years as Gosregister.

Whereas the DCR’s operations remained intact, top-level leadership of the new SRS proved highly unstable. “They weren’t around long enough to figure out how profitable the DCR could be,” Isabekov said. Changes in government and corruption scandals saw the SRS have seven directors in the space of six years. From the point of view of DCR staff, the turnovers were positive developments because they prevented the SRS from meddling with the DCR’s way of doing things.

The DCR’s financial independence also helped insulate it from the upheavals. “Gosregister was able to maintain semi-independence within the SRS because self-financing and autonomous status gives lots of flexibility,” Undeland said. By 2014, the agency had generated enough revenue to finance
not only the LROs but also its central office and a new Geographic
Information Systems Center, created to retain members of the World Bank’s
implementation unit after the bank’s projects ended in 2013. (Many World
Bank project staff were hired for managerial positions at LROs or the central
office, and the new center created positions for specialists in technical areas
such as IT or monitoring and evaluation.)

After several years of management turmoil, the SRS stabilized. The
umbrella agency organized units that served as liaisons between overall
management and the leaders of each department and began work on projects
to reconcile the differing data each department held. For instance, because
street names often changed—especially in the aftermath of Kyrgyzstan’s two
revolutions—the land registry, the civil registry, and other arms of the service
sometimes used different names to refer to the same places. In 2014, the SRS
created a cross-departmental team to build a unified address database and
map.

Although integration with the SRS was less problematic than expected,
the transition was not always seamless. Occasional tensions arose about
whether the SRS could use some funds from the DCR’s budget to support its
other subagencies, and the SRS sometimes asked the DCR to participate in
projects that were outside its central mandate—for instance, Isabekov said,
helping with the collection of biometric voter registration data when the
government introduced a new identification system for the 2015 elections.
“We now have to do some SRS work in addition to our own,” Isabekov said,
but he added that the tasks were manageable.

ASSESSING RESULTS

Despite a challenging environment, Kyrgyzstan created an effective and
innovative land agency that served as a model for others in the region.

As of 2017, a country that had no formal property registration until
1999, had a per-capita gross domestic product of US$1,100, and had
experienced two revolutions in the space of five years had the eighth-best
property registry in the world, according to the World Bank’s Doing Business
rankings. For each of the previous seven years, Kyrgyzstan had been in the
top tier of countries worldwide, and in 2017, its distance-to-frontier score,
which represented how close the country’s performance was to the best
performance in the data set, was 90.6 out of 100. Kyrgyzstan scored 24.5 out
of 30 on the Quality of Land Administration index—above the average of
22.7 for member nations of the Organization for Economic Co-operation
and Development—and received perfect scores for reliability of
infrastructure and geographic coverage.

The scope of registration in Kyrgyzstan was particularly impressive.
During the 2000–2007 systematic registration campaign, Gosregister
registered 2.5 million properties—more than four times the original target of
600,000. In the same period, approximately 1 million property owners
registered transactions by coming to an LRO—mainly for sales, leases, or mortgages that took place after systematic registration had been completed in the area. The radical change in the country’s property rights regime created an opportunity for Kyrgyzstan to largely avoid the informal tenure challenges that developing countries often encounter, and the systematic registration process reached most of the country’s households. By 2012, the agency had registered 92% of the country’s private parcels.

The DCR, which many still called Gosregister after the renaming in 2009, helped lay the foundation for an increasingly active real estate market. The agency reported that sales more than doubled to 67,609 in 2012 from 25,901 in 2002. Mortgage transactions during the same period nearly tripled to 66,612 from 22,387. Although the gains also reflected broader economic performance, the numbers demonstrated that Gosregister had developed the capacity to handle an increasing number of transactions and that the agency’s procedures had facilitated, rather than hindered, the growth of registered real estate transactions.

After several years, the agency was able to generate its own resources, with all of its LROs’ operating expenses covered by fee revenue—albeit with some revenue sharing to address the disparities in transaction volumes. In 2014, the agency established a self-sufficient central office as well. However, many of its investments depended on external funding—primarily by the World Bank. Technology was one area in which such investments paid off. By 2007, all LROs were using the Automated Registration System to record transactions and back up records, and in 2011, the agency launched an online platform for obtaining land information.

Gosregister’s achievements attracted much international attention. The agency served as an example for several developing countries—especially former Soviet republics. Most notably, Gosregister staff served as technical advisers for land registries in Kazakhstan and Tajikistan.

The agency’s record was not perfect, however. Corruption was an ongoing challenge, and the data were mixed. A 2007 survey of Gosregister clients conducted by World Bank consultants found that about 17% of respondents had experienced corruption at an LRO, although the rate had declined to 4% by 2012. The most common form of reported corruption involved bribery for faster service rather than the manipulation of records. However, Transparency International’s 2013 Global Corruption Barometer found that 34% of respondents said they had paid bribes to land services within the previous year. Despite the agency’s carefully designed procedures and incentives, Isabekov acknowledged, “we haven’t been able to completely eliminate corruption.”

**REFLECTIONS**

By the end of its first decade in operation, Gosregister had successfully introduced property registration in a country that had minimal experience
with private land rights. It was a challenging task, but starting from scratch created opportunities to design institutions carefully.

Although the agency’s structure initially caused some concerns about insufficient accountability, Gosregister’s staff and partners maintained that its establishment as an autonomous, self-funding agency contributed to its effectiveness and sustainability. The New Public Management-style approach gave Gosregister the flexibility to maintain a strong workforce and created financial pressures for efficiency. “When you have to earn your own money, you have to be smart,” said Director Narynbek Isabekov. Exempt from civil service human resources policies, the agency could offer attractive salaries that helped reduce staff turnover and preserve institutional memory. Above-average pay coupled with tight monitoring also helped deter corruption because employees were unwilling to risk their jobs for onetime bribes.

Gosregister also served as an example of effective cooperation with donors on institution building. “Donor assistance was key—especially for the equipment and training—but it’s important to provide for targeted use of the donor funds,” said Nuria Sooronova, head of the cadastre division. Sooronova stressed that capacity building enabled the World Bank’s land registration projects to have a lasting impact.

In addition, “The projects were very integrated with the head office,” Isabekov said. During the two bank-funded projects, which ran from 2000 to 2013, the Project Implementation Unit and the agency’s head office developed a close working relationship. When the projects ended, the agency was at risk of losing staff in such areas as monitoring and IT, where the implementation unit had taken the lead; but the agency was able offer the World Bank implementation team competitive salaries to stay on.

Gosregister’s experience offered lessons for other countries in the careful introduction of technology. The agency’s systematic registration effort demonstrated the benefit of using simple, low-cost survey methods to secure tenure rights on a large scale. “Initially, our aims were just to provide registration services and get the data, so that’s why we used simple survey procedures,” said Bakyrbek Djusupbekov, director of the agency’s Geographic Information System Center. “If we went for more detail, it would take a lot of time and resources.”

Technology did eventually increase records security and tighten controls on access, but the agency focused on developing efficient manual processes first and avoided the pitfall of spending heavily for IT systems that would have required staff capacity it lacked at the time.

Although systematic registration enabled Gosregister to formalize rights to millions of properties in a short time, certain tenure shortcomings lingered. Politicians and other influential people had been able to obtain land improperly during privatization, and the registration process did not investigate those issues. In some cases, public scrutiny of land allocation
during systematic registration forced land grabbers to back off their claims, but in other cases, registration legitimized earlier land grabs.

Gosregister also faced an ongoing challenge in dealing with pockets of informal settlement, called *novostroiki*. If municipal governments did not recognize the informal settlements, the agency could not register residents’ property rights. Disputes over the status of several such settlements continued in 2017. Gosregister also was responsible only for privately held land. The government often did a poor job of managing state-owned land, and leases were vulnerable to corruption.  

It was important for Gosregister and other Kyrgyzstani institutions to broaden their perspectives on land issues, said World Bank consultant Asyl Undeland, who on worked the bank’s land registration project as an operations officer. “Gosregister is doing a great job, but it’s become very focused on providing a technical service. . . . There’s a lot that needs to be done with getting banks to accept property as collateral, property valuation, taxes, zoning, and so on; and in a context like Kyrgyzstan’s, you have to have a holistic approach.”

Although challenges remained in 2017, Kyrgyzstan had made great strides since 1999. Former Gosregister Director Tolebek Omuraliev said it took hard work to introduce an efficient and comprehensive property registration system in a country that had prohibited private landownership for decades. But also important, he said, were changes in knowledge and mind-set: “At the time, all of us were former Soviet citizens, and we had no idea about private property registration. Now the Kyrgyzstani people can understand and defend their property rights.”
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