



The Deeds Registry in Guyana, its legal and institutional framework with recommendations for promoting transaction efficiency

Steven E. Hendrix and Leon O. Rockcliffe

The paper provides an overview of the Deeds Registry system and its legal framework in Guyana. It also focuses upon the inefficiencies in the processing of land transactions and in the system of record-keeping and availability of relevant land information attributable largely to lack of human and material resources. Proposals are made to remove these constraints, simplify procedures and to strengthen institutional capacity. Published by Elsevier Science Ltd.

Keywords: Deeds Registry; Guyana; transports; land courts; registry modernization; Roman-Dutch law.

Steven E. Hendrix, Attorney at Law, Washington, DC (licensed for Wisconsin, Pennsylvania, the District of Columbia and the Republic of Bolivia).

E-mail: shendrix@usaid.gov.

Leon O. Rockcliffe, (Barrister) Attorney at Law, Georgetown, Guyana (licensed for the Co-operative Republic of Guyana and the United Kingdom).

The Co-operative Republic of Guyana, a former British colony, is located on the northern Caribbean coast of South America. It borders Surinam, Brazil, Venezuela and the Caribbean Sea. In area, Guyana covers about 83000 square miles. The country has a multiracial population of about 750000, of which about 180000 live in Georgetown, the capital city. Guyana is the only English-speaking country on the continent. Culturally and historically, the nation has maintained very close relations with other English-speaking countries in the Caribbean and is a member of the Caribbean Community. Descendants of East Indians compose 51% of the Guyanese population. Afro-Guyanese account for 38%; Chinese, Portuguese, Europeans and indigenous Amerindians make up the remaining 11%.

One of the poorest countries in Latin America, Guyana's economy is largely agriculturally based, with sugar cane and rice being the main crops. In 1990, the per capita income level was US\$360. In that same year, agriculture accounted for about 24% of gross domestic product (GDP) and about 35 to 40% of total employment. The nation's economy is built mainly on agriculture. Main crops produced are rice and sugar cane (Guyana, 1992).

A Dutch colony prior to British rule, the legal framework for land is fundamentally a Dutch-Roman system, with an overlay of British legal concepts, and of course, English language. This has produced a system where land possessed by an individual may be either private (falling under either a transport registry or under the deeds registry system) or public (state—formerly Crown—lands, or government lands). Given the significance of agriculture, land use policy is of primordial importance. However, the informatic infrastructure needed for land use planning and participatory economic growth is simply non-existent.

Beyond simple property records management as a precondition to economic advancement, Guyana has long held poverty elimination and

assistance to the poor as an important policy objective. Today, as records continue to deteriorate, the poor are denied effective and efficient access to one of the most important legal institutions of government, the Deeds Registry. Meanwhile, the social status of the more affluent corresponds with a higher ability to manipulate an inefficient system to their advantage. Lack of transparency in the Registry further facilitates this social class divide.

As economies pass from the industrial age to the information age, information itself is of high importance. It is an economic good; like any other: it requires investment to produce, collect and maintain; it can be produced for profit; and it can be sold at market value. Guyana still has not embraced the new approaches to efficient government management and, consequently, its public institutions are not providing the requisite services to the public in a reasonable time or at an affordable price.

Inefficiencies, and lack of comprehensiveness and transparency in registries and cadastres mean that the poor usually do not have access to what is for them perhaps one of the most important institutions of the justice system. The poor are effectively denied the benefits of citizenship in democratic society. Similarly, they escape responsibility of citizenship, i.e. property taxation. In other words, responsibility of citizenship means payment of taxes.

The Inter-American Development Bank has noted Guyana has roughly 25000 agricultural properties. Owing to bureaucratic procedures and lack of access to land by the rural resource poor, the government has a backlog of requests for land that have not been processed. Clearly, there is sufficient land to meet just about any need. If these individuals are to achieve access to land, corrective measures will be needed. To address these concerns, The Co-operative Republic of Guyana must address registry reform.

Review of the Deeds Registry

The Deeds Registry falls administratively under the Attorney General and Minister of Legal Affairs.* The main functions of the Deeds Registry are as follows.

- (1) The operation of the Roman-Dutch system of land titles, familiarly known as the 'transports' system, including the processing, advertisement and recording of transports, mortgages, leases, encumbrances and all matters affecting title to land.
- (2) The registration and recording of notarial and miscellaneous deeds, e.g. Power of Attorney, Indentures, Deeds Poll, Bills-of-Sale and charges.

The County of Berbice at New Amsterdam has a sub-registry headed by a Chief Registry Officer, which performs all the functions of the Registrar except those relating to companies, business names, trade marks, etc. and trade unions.

With the introduction of the Torrens system of land registration in Guyana in 1960 by the Land Registry Act† the Registrar is also Registrar of Lands and maintains a Land Registry at the Georgetown Office for the counties of Demerara and Essequibo as well as one at New Amsterdam for the county of Berbice. There is no office of the Deeds Registry in the country of Essequibo, the least populated of the three counties. The Deeds Registry at Georgetown is the office of record for transactions for the county of Essequibo.

*Chapter 5:01 of the Laws of Guyana.

†Chapter 5:02 of the Laws of Guyana.

Deeds Registry employees are drawn from the general public service, where the low quality of employee is a direct reflection of the ridiculously low pay level. The staff are predominantly female both in Georgetown and New Amsterdam, clearly attributable to an inability to attract and hold male workers at such low levels of pay.

The total governmental expenditure upon the Deeds Registry, including staff salaries, for both the years 1992 and 1993 did not exceed G\$3.5 million (about US\$28000). The allocation for the year 1994 is just in excess of G\$6 million (about US\$45000). In 1993 the diminished staff processed about 2500 more transactions than the previous year with an increase in revenue of G\$37 million (about US\$290000). Accordingly, proper remuneration, staffing and training are crucial and, having regard to the legal and commercial value of the services rendered and the substantial revenue collected, these elements call for immediate redress.

Documentation at the Deeds Registry and Land Registry

The registers at the Deeds Registry are hand-written and go back to the late 19th century, although some records relating mainly to land ownership are of the late 18th century. Where land titles are concerned, there are two concurrent systems, namely the 'Transports' system (based on Roman-Dutch jurisprudence) and the 34-year-old Torrens land registration system operated by the Registrar of Deeds in the capacity of Registrar of Lands.

Transports

The land registers for transports are maintained in the Conveyancing Department of the Registry. The registers are of a loose-leaf detachable type, manually written, and are the only means by which a direct answer may be obtained as to the ownership of a plot of land. From much handling and non-repair, these important registers are in a continuing state of deterioration. The registers that should give corresponding information regarding mortgages, leases and other encumbrances have been discontinued for the past 12 years and are almost physically inaccessible.

The survey maps supporting transport titles are very poorly stored, and thus are in serious disrepair. The maps generated since 1917 have been recorded in the Lands and Surveys Department. Thus back-up copies or the original are likely to be available there.

Land Registry titles

The register, completely handwritten and also in loose-leaf format, is the owner's title and, apart from ownership, records on the same leaf all mortgages, leases and any other interests or transactions affecting the parcel of land. Documents of completed transactions are normally stored in large envelopes. The registers, most of which have been in use for less than 30 years, are generally in good condition. The survey maps, and copies of the originals on record in the Department of Lands and Surveys, are likewise in reasonably good condition.

Both the Georgetown registry and the sub-registry in New Amsterdam have vaults that, in theory, safeguard documents. In Georgetown, however, documents in the vault are sometimes crumbling owing to humidity and improper maintenance. In New Amsterdam similar conditions exist. Until 1993 the New Amsterdam vault was subject to flooding. With support from the USAID Caribbean Justice Improvement program, this problem, at

least, appears to have been corrected. Still, neither New Amsterdam nor Georgetown offices have any measure of climate control.

The registry system is entirely manual, using no automation, photocopy or micro-photography technology, although non-electric typewriters are used. Thus, no back-up copies of records exist in the event they are lost, damaged or stolen, or in the event of a natural disaster like a fire.

The 'transport' system (Deeds Registry Act (1919) as amended, Chapter 5:01 of the Laws of Guyana)

The land governed by the transport system is mainly a narrow strip of about 2 miles in depth running along the 270 mile Atlantic coastal fringe of Guyana and land of similar depth along the banks of some of the main rivers. Riverrain lands granted by virtue of the (Crown) State Lands Act (the grants of which have since been made absolute) may be transported as freehold land.

From a legal perspective, an owner of transported property owns the land from the center of the earth to the sky above, subject to such rights as overflight or such mineral rights as may have been specifically reserved to the State. The form of transport essentially reflects the fees and duty paid, the name of the proponent (the vendor or person passing title), the name(s) of the person(s) to whom title is passed, a description of the property conveyed and the value or purchase price.

The conveying or transport of property involves publication of the transaction in the Official Gazette on one Saturday with an allowance of 2 weeks for the filing of an opposition by a creditor of the vendor or by someone claiming an interest in the property. The validity of such opposition is settled by an action in the High Court which must be instituted by the opposer.

The transport process should ordinarily be completed in about 6 weeks at most, a period needed mainly on account of the publishing requirement—a characteristic of the applicable Roman-Dutch system—and the necessary file review. However, institutional inefficiencies tend often to double the time. In the normal course, the initial documentation for a transport, mortgage or lease is prepared and filed by an Attorney-at-Law. This is not a legal requirement, as either party may do so, thereby saving some legal fees.

Mortgages of transported property

Mortgage deeds are prepared and submitted by Attorneys-at-Law for the several lending institutions. These would contain the particulars of the parties, loan amount and description of the property in accordance with those published in the Official Gazette.

They are collated by the Collating Clerks and are subjected to all the corresponding stages thereafter, except that they are entered not in the land register, but in a register of encumbrances or Mortgage Register. It should be noted, however, that this last and most important process of entry into a Mortgage Register, although formally required by law, has not been observed for about 10 years.

The process of securing an interest in collateral and, if necessary, taking action upon default, is time consuming, expensive and unreliable. Part of the difficulties are the laws themselves. In many cases, they are obsolete—an awkward combination of Roman-Dutch law and British statutory and common law that has been fabricated over the years. This amalgamation is

difficult to administer and has become an obstacle to economic development. Administrative problems and lack of resources in the Deeds Registry, the government office in which bankable property rights are registered, and in the Land Court, where disputes between private land owners are arbitrated, present additional obstacles.

These problems make the creation, granting and execution of security interests difficult. The amount of credit provided by the financial system reflects this. At the end of December 1994, deposits in private banks totaled US\$292 million, but lending to the private sector was only US\$99 million. A more normal ration is close to one-to-one. It is apparent that if these legal and administrative problems were remedied, the positive effects on lending and on economic growth could be significant.

The 'land registry' Torrens system (Land Registry Act (1959) as amended, Chapter 5:02 of the Laws of Guyana)

The Torrens system was introduced in 1960. In comparison with the transports system with which it is concurrent, land registry transactions are much simpler. There is no requirement of advertisement in the Official Gazette and a transaction of any nature may be completed, with or without the parties being in attendance at the registry, within 1 day.

The land is identified and described as a parcel located in a block situate in a geographical zone with no need for lengthy description or reference to a land surveyor's plan.

Ordinarily, land is brought under this system when it falls within a registration area so designated by Ministerial Order. Awards are made by a Commissioner of Title—judge of the Land Court—to successful applicants for title to land within such an area based on an accurate survey done by a land surveyor statutorily provided by the Commissioner of Lands and Surveys for that purpose.

Registered land is protected by an Assurance Fund to which contribution is made by the parties to each transaction and from which compensation may be paid to someone mistakenly dispossessed of land. Once on the register, land may not be withdrawn from it.

The act provides simple statutory forms for most of the ordinary processes like transfer on sale, mortgage, lease or caveat. Upon payment of the requisite fee, the *ad valorem* duty and contribution to the Assurance Fund, the transaction of sale and transfer or mortgage of land may be entered into the register in 1 or 2 days and a new Certificate of Title issued within 1 week to a new owner. There is no requirement of advertisement and no provision for opposition as under the transports system. Not only is the sale and transfer of property usually completed in 1 or 2 days, but mortgages can also be recorded in a similar period.

Again, unlike the transport system, the Act makes provision for registration of:

- (1) a lien obtained by lodgement of the Owner's Certificate of Title in the hands of the person holding the lien;
- (2) a judgement of the Court or a writ of execution against the owner's property;
- (3) a caveat by some person claiming an interest in the land.

The Land Court—Land Registry Act

The Land Court is presided over by a Commissioner of Title who has the power to determine all matters regarding title to land in a declared regis-

tration area. The Commissioner, upon such declaration, invites all persons having claims on whatever basis, whether by prescription, testate or intestate succession, purchase or actual ownership by a document of title to such land.

A land surveyor provided by the Commissioner of Lands and Surveys prepares a preliminary or sketch plan identifying the several portions claimed and illustrating disputed boundaries.

Following due publication in the Official Gazette and newspaper, the Commissioner of Title adjudicates upon the applications and makes declarations of title (or recordings of a previous title where appropriate) whereupon the surveyor prepares the final plan showing every piece of land as a parcel. After due publication of these declarations the Commissioner of Title transmits orders, under the seal of the Land Court, to the Registrar of Lands upon the basis of which the Registrar opens a land register for the particular area. The land is now 'registered land' for all purposes and all time and may in future be dealt with only under the provisions of the Land Registry Act.

Co-existence of the transports and land registry systems

It may be noted that the Land Registry Act provides for the continued existence of a transport for land situate within a registration area and for the Commissioner of Title merely to record such a title if the holder does not wish to surrender it in favor of a new declaration of title. However, provision is made for such a transport holder to transport the land to himself 'as registered proprietor' and so become subject to the system and its procedures.

Although it was hoped that the land registration system might eventually overtake and replace the transports system, such a process is not likely to take place for many decades. The paucity of Land Courts, essential land surveying staff and Registry officials, as well as the vast area to be addressed, dictate that the two systems will run together for many years to come (see Table 1).

There are no operational problems arising from the co-existence of the two systems, although some inconvenience may be caused by the necessary

Table 1. Comparison of transactions at registries in private lands: recorded at the Deeds Registry.

Office section	Conveyance	Land Registry
Document name	'Transport' or 'Deed'	'Registered Title'
Historic origin	The original Roman/Dutch system operative in Guyana. Based primarily on names of the parties involved in the transaction.	Australian, imported by the British to improve on the Roman/Dutch system. Based on the parcel, rather than buyer or seller.
Property description requirements	Sometimes long, verbal descriptions of land; survey plans often feature.	Reference only to block, zone and parcel number on a survey.
Time requirements for transfer or mortgage	6 to 8 weeks in theory. 3-6 months in practice.	In theory, 1 day. In practice, 2 days to 1 week
Geographical application to date	Entire coast and banks of larger rivers.	Mainly coastal with some riverain areas.
Procedure	Long documentation, publication in the Gazette, period for opposition, execution before the Court.	Presentation at registry. Almost instant registration.
Cost/benefits	Does not often require elaborate survey, but process is time consuming.	Process is cheap and fast, but requires up front investment in surveys by government.
Amount of documentation	Extensive.	Minimal.

suspension of transport transactions in a newly created registration area while a Commissioner of Title adjudicates and makes his awards which may affect land held by transport.

Title through prescription

Documented owners can get title through the Roman concept of prescription. If an occupier has notoriously and openly occupied the land for 12 years or more, the occupier can request a title by virtue of prescription. The application must include an up-to-date survey, a legal petition, notice to all neighbors, notice to the state if the land borders on State Land, and other requirements. An advertisement is placed in a newspaper of general circulation and another notice is published in the Official Gazette. This provides other citizens an opportunity to oppose the titling of the land. If no timely oppositions are made, the order is made by the Court declaring the petitioner to be entitled to have title registered or transport passed in his favor.

The prescriptive process is subject to the law's delays. The costs involved for small holders may exceed the market value of the land.

Lands and Surveys Department (for public lands)

Although not part of the property registry in Guyana, the Lands and Surveys Department is in a position to be a potential key player in any long-term efforts to improve titling and access to land.

State Land can be given out in three forms: a license, a permit or a lease. The lands can also be sold, at which point they lose their character as State Lands. Generally, leased land is found in the 'first depth', that is the land closest to the sea defenses. The 'second depth' lands, those located further inland, are generally given out as 'licenses'. The 'third depth' land, further inland, is given out using a 'permit'. Although these three forms of tenure have historic differences, they are today equivalent. All function as leases. Assuming there are no complications, applications for a lease take about 3 months to process.

The current annual lease fees average less than 5 US¢ per hectare; usually these are not collected, as collection costs outweigh the income.

Clearly the lease payments in no way reflect the actual value of the land leased. In 1990, the total revenue collected nationally from all lease arrangements was about US\$17000 (World Bank, 1992). In 1993, total State Lands collection was G\$9 MM for 1993. Several factors often make leased land value far exceed the official lease value: the land's location, immediate economic productive capacity, value as a source of prestige and, in the absence of the threat of expropriation, a hedge against inflation.

According to one report, the undervaluation of rents brings huge distortions in the price of land and weakens the administration of state-owned lands. This in turn decreases system transparency, promotes market informality and land invasions, and leads to discretionary delivery of public services. That report estimated that the informal market price for land rental is between G\$2000 and G\$4000 per acre per year. USAID estimates rates much higher, perhaps around G\$10000 to G\$14000 for good agricultural land.

Upon initial approval of a lease, if there is no survey of the land, the Commission of Lands will issue a 'temporary' lease. This will, in theory,

allow the applicant additional time to have the survey work done. It is expected that, once the survey is complete, the lease will become a final determination. During the 'temporary' lease period, the applicant can pay the survey costs to the government, or the government can pay for the work immediately. In this case the applicant must repay the government.

In practice, however, many leases remain 'temporary'. The applicants do not have funds to pay for surveys. The government does not have funds either. This causes definite delays in the system. This means that applicants receive property without a physical description of the land. Consequently, the land is non-transferable, non-mortgageable and unable to be subleased.

Perhaps even more grave is the problem of uncertain boundaries. Many disputes arise over time in the settlement of disputes because formal boundaries were never originally established. Conflict resolution consumes a great deal of staff time at the Lands and Surveys Department.

Within 'land development schemes', land is surveyed before issuing leases. Areas of settlement not previously surveyed are those that present problems of boundaries and surveys. These are mainly in river areas. These river areas are very expensive to survey, as they entail expenses for boats, gasoline, engines, etc., and the heavy forest complicates the survey.

The 'land development schemes' are found where the government owns the land by way of a grant or by a 'transport' (purchase). Since the government owns the land, the Commissioner of Lands and Surveys holds the land on behalf of the government: these lands are called 'Government Lands'. All other lands that were formerly called 'Crown Lands' are now called 'State Lands'. This distinguishes 'Government Land' from 'State Land', at least from the legal perspective.

Lease terms are slightly different for 'Government Lands' versus 'State Lands' (see Table 2). Government Lands for agricultural purpose are governed by the Deeds Registry Act. One clause in that act states the Commissioner of Lands can only lease property up to 20 years. But the applicant can always renew the title. 'State Lands' can be rented without this limitation. The current practice is to lease state lands for 25 years.

The legislation authorizes the President to set lease terms and rates according to the executive's discretion. Order No. 60 of 1979 authorized the Minister of Agriculture to approve and fix rent for all state and government land. The term can be 1 year, or up to 20 or 25 years, as the case may be. Since then, rates have remained unchanged. Thus, lease terms depend on the application, what has been requested, what the Commissioner feels is justified, and so on. The present practice is 1 year, 20 years or 25 years. In other words, the lease term is discretionary and elastic, providing for the best term for all parties involved on a case-by-case basis.

Before the 1940s, the government used to issue 'provisional grants' to land. When the land had been possessed and cultivated for 5 years, the government would convert the 'provisional' grant to a definitive 'absolute' freehold grant. Since the land was freehold, if the land was subsequently

Table 2. Public lands: recorded and managed by the Lands and Surveys Department.

Type of land	State (formerly 'Crown').	Government.
Lease period maximum	No maximum lease period. Right to lease renewal.	Maximum lease period of 20 years. No automatic right to renewal of lease.
Alienability	Can be sold by the government.	Cannot be sold by the government.

abandoned, the government did not have access to it. This was a major social concern. In the 1940s, the Government policy was to give out 99 year leases. This length of time was quite close to being the functional equivalent of a freehold title, but represented a slight withdrawal from 'absolute' property rights. However, problems with land abandonment continued and the government came under pressure to readdress the problem. Next, the government began shortening the terms, all the way down to 1 year leases. Now, most leases are back up to 25 years. Anyhow, renewals are nearly automatic if the farmer uses the land productively over time.

More specifically, from a legal perspective, persons with 25 year leases (on State Lands) have a right to renewal, if the farmer has used the land. Those with twenty year leases (on government lands) do not have an automatic right to renewal because of the Deeds Registry Act. In practice, however, these are automatically renewed as well.

Mortgaging of leased property is permitted, contrary to several reports from international consultants. In the issuing of the lease, there is a clause that requires an application to the Commissioner of Lands to mortgage the property. Legislation is also in place to allow the sale of a lease, upon approval by the Ministry. In practice, such applications are summarily approved. Of course the sale of leased property requires a payment of a 2% transfer tax, calculated on the sale price of the land.

Years ago, sales were more closely reviewed. For example, if an applicant received property and sat on it for 5 years, not using it, and then applied for the sale of the property, the file would not be warmly received. The government policy was to discourage non-use of land and receipt of land for speculative purposes. If the person was a genuine farmer, there was less resistance to the farmer transferring his interest in the land.

There are instances in which the government decides to sell government or state lands, rather than lease them. This may be due to the type of land usage envisioned by an applicant for a freehold estate in the land, rather than a leasehold estate. This occurs with permanent structures like a sawmill. When such an application is received, the Commission of Lands writes up a recommendation to the Minister of Agriculture. In principle, the Minister instructs the Commission to proceed with an investigation. The investigation will review the applicant's plans and proposals, what the applicant has done with other lands in the past, and so on. The Commission then gets a financial valuation of the land and prepares a 'cabinet paper', a recommendation the Minister can present to the Cabinet for approval, if the application has merit. If the Cabinet approves the sale of the land the Commissioner can do one of two things. The Commissioner can issue an 'absolute grant' to the applicant (once surveyed). This 'absolute grant' requires the signature of the President of Guyana. These are exceptional cases, and can apply only to 'State Lands'.

Mortgage applications are made to the Commissioner of Lands. The review will make sure that the applicant occupies the land, the rent has been paid, and the title is in force. The applicant must be the same person to whom the Commissioner of Lands gave the land. This application process can be completed in a couple of hours and is handled routinely.

As of 1996, there was a backlog of about 1100 applicants already in the system to be processed. With new applications that have not yet reached Georgetown, there are perhaps 2000 applicants outstanding. Given that there are about 25000 agricultural parcels in the country, outstanding applicants account for an equivalent to about 8% of current farmers. There are an additional 2000 provisional titles which need upgrading to

regular leases via the addition of land surveys to the files. Exact, realistic counts are problematic owing to regionalization of authority. When an application is made at the region, there is currently no report to Georgetown that an application has been made. Only when they enter the system in Georgetown are they included in the count.

The regionalization of the offices of the Department of Lands and Surveys has presented a serious public finance deficiency in the administration of its functions. The national government allocates funds to each region from the general treasury. The region itself then allocates these funds to various uses, such as health, infrastructure, sea defenses, lands and survey, and so on. This allocation is done in agreement with the central government in Georgetown. However, the Commissioner of Lands and Surveys has no authority over how much money is allocated for land and survey activities in any given region. Often, when the resource allocation proves insufficient, the region requests that the Georgetown Lands and Surveys Department helps the region in funding its programs. Unfortunately, the central office has no funds for this purpose. Without control over funding, supervising regional activities is extremely difficult.

The Department of Lands and Surveys is especially interested in raising lease payments to market rates. Unfortunately, it lacks the technical capacity to design a program to figure out rates. The Commissioner would be very interested in technical assistance in this area of market rents. In 1985, the lease rent per acre per year was about US\$0.05. This rate has changed little since. In theory, the government has the legal capacity to revise rental prices once every 5 years, provided it gives a 6 month advance notice. In practice this is not done. Future proposals will need to balance policies to promote agriculture, the ability to pay and the fair market value of the land. Different lease rates might be considered for small farms, medium farms and larger farms. A related issue is that of privatization of public lands at market rates. This too is on the table for discussion.

The Mapping Office of the Department of Lands and Surveys is the mapping agency for the country. Its responsibilities include mapping, geodetic surveying, aerial photography, and cadastral (parcel) mapping. The country has 21 horizontal control stations. Inter-American Geodetic Survey specifications are followed. Maps are tied into the South American grid. GIS and aerial data have been incorporated into sea coast mapping, to an accuracy of 3 m. Maps are not digitized.

The office suffers from a profound lack of qualified personnel. Pay scales are grossly inadequate. Employees gain experience in the office, and then leave to double their salaries with the Mines Commission or the Forestry Commission. From there, they move into private practice, again doubling or tripling their salaries. The Department of Lands and Surveys is simply not competitive enough to keep its best employees.

Where there are provisional leases being surveyed, the boundaries are adjusted to the boundaries in fact being cultivated. For example, if a farmer was allocated 500 yards of frontage (face) but actually occupies 800 yards, the Department of Lands and Surveys may simply make a second grant to the individual for the additional 300 yards, assuming there is no conflict with neighbors.

Many transactions in land—mortgages, subleases, sales—are done on an informal basis. Formal applications for mortgages per week amount to only about two or three per week. Applications for transfer of leases average only three or four per week. Applications for new land are handled at the regional level and, therefore, estimates are not available. There are very few applications for subleasing, as most are handled infor-

mally. Still, only approved subleases are legal. Informal subleases are not lawful.

Because of the great level of informality in subleases, the Department of Lands and Surveys finds itself the arbiter of many agricultural disputes. When a lessee fails to vacate a lot, the lessor often goes to an attorney. But the attorney and court expenses are prohibitive. So the landlord approaches the Commission. Every Monday morning, the Commission has an open window for agricultural problems. On most Mondays there are at least 40 new disputes between landlords and tenants in informal arrangements. The Commissioner estimates that 80% of his staff's time is spent resolving problems between farmers, not preventing problems and carrying out the functions of the office.

In theory, lease titles are kept in two locations: at the regional level and in Georgetown. Cadastral 1:50000 maps also have back-ups. One is available for inspection and another is kept in a vault. Microfilming of documents was considered at one point, but the project was never started.

Management of cadastral projects to date has been disappointing. The cadastral maps produced by the Department of Lands and Surveys are not linked with maps being produced by Mines or Forestry Commissions. The Ministry of Agriculture also had land use surveys done. But even these were not compatible with maps in the Commission of Lands needed for parcels. Perhaps what is most discouraging is the lack of basic maintenance and preservation of existing maps. Some appear to be almost rags rotting on shelves.

Lack of accessible, reliable data in the Department of Lands and Surveys has chilled foreign investment. On a daily basis, the Commissioner receives requests for data from foreign investors. Because the Commissioner cannot supply the data, the impression is that the Commission is blocking investment. Requests for land suitable to plant mangos or peanuts must go unanswered, since the Commissioner has no adequate land capability maps at his immediate disposal. In these circumstances the Lands and Surveys Department cannot do business professionally.

An index is used to record applications received by the office. In this 'application registry', the following information is noted: the applicant's name, location of the plot solicited, the date, a receipt number and the signature of the registry supervisor receiving the application file. A second index is used at the time a lease is issued. Information in this index includes 11 columns of data: file application number; lease number; date of issue; holder's name; number of acres involved; locality of the lease; county; terms of the lease in number of years; expiry date of the lease; annual rental payable; and a listing of actual rental payments.

To locate a property within the system, users of the system must know the lot number, the lease number or must find the property on a map. There is no index by owner, land use, or any other variable.

Policy implications and conclusions

The specific problems of the Conveyance System were recognized even back in the 1950s. To attack this problem, in the early 1960s, the British introduced 'Land Registration' to Guyana, a Torrens-like (title) system based on parcel identification. This conversion occurred not only in Guyana, but in other Caribbean countries. In essence, it is a registry of the land itself. Transactions are much easier. The buyer and seller simply appear at the registry and the transaction takes place. There is no publica-

tion requirement. All that is really needed in terms of legal documentation is the block number, the zone and the parcel number. Consequently, document drafting is less complicated and transactions may be completed all in 1 day, often at less cost than under the transport system.

Until about 10 years ago, the Deeds Registry had a reputation within government and with the Guyana Bar Association as the most efficient, least corrupt office in the country. Until then, it would have been unthinkable for the Registry not to be able to locate a document in its files, although the system was manual. Unfortunately, today the Deeds offices (one in Georgetown and a 'Sub-Registry' in New Amsterdam) are in 'poor condition. Today, fraud and mistakes make the process one that would result in legal uncertainty of ownership.

Virtually nothing has been done to improve the Registry in recent years. On the contrary, it should be noted that, while even in the course of our review and discussing ways to increase public sector salaries at the Deeds Registry, the general governmental salary structure was recently revised generally downward.

The most immediate problem facing the Deeds Registry is the low pay level, resulting in an inability of the Registry to attract and retain competent staff, and an associated low and indifferent quality of performance. There are severe delays in completion of land transactions under the transport system, and the very integrity of titles and records is in question. Documents have been lost or stolen. Fraud and mistakes make the process one that could result in legal uncertainty of ownership. Meanwhile, fee schedules are in some cases outdated and often so low as to be more of a nuisance than a revenue source.

General agreement exists in both the public and private sectors that a major reform of the Guyanese land registry is needed. There is also considerable interest by these groups in improving the land database for several land resource areas. These include data needed for improved land markets, the environment, and land taxation.

Many of these land issues are related, at least as to the data requirements that must be met to develop solutions. Consequently, land records must be made reliable and the recording system must be rationalized and modernized, leading to some sort of integrated land use planning model, perhaps a multi-purpose land information system (MPLIS/GIS) which can serve the needs of a variety of land information users.

To convert from the deeds registry (conveyance/transport) system to the land (title) registry system requires up-front investments in survey. Owing to the high cost of survey, a phased approach was implemented in which the Attorney General would declare a series of 'Land Registration Areas' for conversion. Gradually, over time, the entire country would be converted.

Unfortunately, the surveying has become very problematic, due mainly to budgetary constraints at the Lands and Surveys Department. Consequently, the survey process slowed greatly to the point that no survey work was undertaken in 1993. There has been little money in the system to pay surveyors, and few are willing to work at the rates the government wishes to pay. Neither, in recent years, has the Land Court been given a chance to work. It had no surveyors last year to carry out its work. It does not have adequate staff. In short, conversion from the old conveyance system to the land registry system stalled.

A possible additional constraint on conversion to the new land registry system, beyond the severe budgetary crisis, is the required adjudication procedure. Applications to the Land Court are processed individually,

rather than collectively, resulting in duplication of effort. For example, if a Land Registration Area has 100 parcels, and 99 have no disputes, the entire package is held up until all disputes are resolved. Still, each of the 100 parcels would have to have a separate file and a separate application, with accompanying fees, in order to be processed. This creates potential bottlenecks in the processing of land registration applications and unnecessarily duplicates paperwork.

From the above background, several issues become apparent. First, there must be a mechanism in place to finance the Deeds Registry so that it can operate in a professional manner. It must pay its employees a suitable wage and maintain the office in an appropriate state. It should also finance improvements, where necessary, to bring the office back up to standard. Second, streamlining the process within the Land Court (Commissioner of Title) should be taken under consideration for conversion from the conveyance to the land registry system.

A Records Working Group/Coordinating Committee of inter-ministerial GOG officials should be established with members from the Deeds Registry, Land Court, Supreme Court Registry, Department of Lands and Surveys, Ministry of Legal Affairs, Inland Revenue, Agriculture, Census, National Data Management Center, and other appropriate entities. The commercial banks and the Bar Association should be invited to participate with the working group. This would give some direction and guidance to the Registry, experience sorely lacking at the moment.

As a result of revised institutional financing and potential procedural streamlining, processing time at the Registry should be dramatically reduced. All land registry and all non-property related transactions should be recorded within one business day. Excluding statutory required delays, the registry/administrative processes of unopposed Transport transactions, including leases and mortgages, should be completed within one business day.

In the future, the Guyanese legislative framework for land should be up-dated. Experience and lessons learned in Trinidad and Tobago, and St. Lucia and elsewhere may prove extremely valuable in streamlining the process. For example, in Trinidad and Tobago, land registration was carried out by a number of field teams which included a Registration Officer and a Survey and Recording Officer. In Trinidad, prior to the declaration of a new Registration Section, the government held public meetings to explain the program of registration and informed the public of the procedures that they must follow. Persons wishing to assert their rights to parcels were asked to bring documentation of their rights to the Registration Officer Unit's office, set up to coordinate the local registration activities. All evidence of a claim was presented in that office. The Officer held a hearing if there were any disputes that could not be immediately resolved. Only when the Registration Officer could not resolve the dispute did the Land Tribunal hear the disputes. Once all tasks had been complete in the Registration Section, the index maps and parcel registers were put on public display for 90 days, to give the public the chance to examine the findings and a last chance to petition to the Registration Officer. Claimants are required to do much of the work for themselves.

St. Lucia had a very similar experience. The legal foundation was laid out in three separate laws that were introduced specifically for the purpose of a new land registration effort. They included the Land Adjudication Act, the Land Registration Act, and the Land Surveyors Act. The Land Adjudication Act outlines the process of acquiring title to land under the new system and defines the responsibilities of the adjudication team and

landholders. The Land Surveyors Act described the legal requirements for the spatial definition of land, and the Land Registration Act detailed the elements and working of the new title registry system. St. Lucia utilized the concept of titling 'brigades', to include a demarcation/survey/recording officer, an assistant for demarcation, two survey assistants, a recording assistant, a driver and two or three laborers.

These Trinidad and St. Lucia laws can serve as models for up-dating Guyanese legislation. This will potentially allow for group processing of applications to avoid paperwork, while registering immediately all properties not in dispute. At present, in Guyana, these are processed one by one, in separate Land Court proceedings and actions. The Land Court will currently hold back entire Land Registration Areas until all disputes are settled. Almost all work is done by the Land Court itself, not the community. Legislation could be amended to allow for processing of non-disputed claims in immediate fashion. Other interesting models might be found in Kenya, Belize, the Dominican Republic, and the Cayman Islands, each of which have Torrens-based systems.

In the long term, with increased emphasis on planning, the Deeds Registry will incorporate computerized technologies, to the extent practicable, to provide enhanced customer service. The property-related transactions eventually will probably be linked to an MPLIS network. This may include mortgage transactions. Other registry activities may also be computerized, to the extent practicable. Consideration may be given to the establishment of facilities for access to Registry information/records located in Essequibo county and additionally at Corriverton, Corentyne and Berbice.

Notwithstanding the observations made above, a definitive case cannot now be made against the efficacy of the Land Court. The declaration of a host of registration areas in response to the need for proper title has not been supported by the provision of an adequate corps of Commissioners of Title, land surveyors, Land Court staff and, in general, the funds necessary for such operations. Given those vital resources the system could prove itself, as it did years ago when those resources were made available.

Acknowledgements

The authors wish to thank Leon Stewart (Registrar) and Carolyn Ramroop (Deputy Registrar) of the Deeds Registry, Kumar Datadin (Commissioner) of the Lands and Surveys Department, the Inter-American Development Bank and the Agency for International Development with whom we have worked. The study represents the personal opinion of the authors, based on field work from 1995. Readers should understand that land management is a field of change in Guyana, as elsewhere. For recent changes and developments, local attorneys or surveyors, as appropriate, should be consulted.

References

- Guyana: with improved rice production, *Caribbean Update*, March 1992.
World Bank (1992) *Guyana: Agriculture Sector Review* p.30. World Bank, Washington.

Selected additional reading

- Barnes, G. (1993) The importance of cadastre and land registration systems in the evolution of GIS. University of Florida, Florida (manuscript).
- Benjamin, L. (1993) Tools for poverty management (Guyana). University of Guyana, Georgetown (manuscript from the Bureau of Statistics distributed at the *Colloquium on Poverty in Guyana*, March 18–19, 1993).
- Berry, R. A. and Cline W. (1979) *Agrarian Structure and Productivity in Developing Countries*. The Johns Hopkins Press, Baltimore.
- Canterbury, D. C. (1993) Rural poverty in Guyana. University of Guyana, Georgetown (manuscript distributed at the *Colloquium on Poverty in Guyana*, March 18–19, 1993).
- Chan, P. N. (1993) The social impact amelioration project (SIMAP) (Guyana). University of Guyana, Georgetown (manuscript distributed at the *Colloquium on Poverty in Guyana*, March 18–19, 1993).
- Coopers and Lybrand (1991) *Guyana: A Guide for Businessmen and Investors*. UNDP, Georgetown.
- Smart M. and Henderson T. (FAO) (1991) A draft policy framework for land registration/distribution and agricultural development (Guyana). FAO, Georgetown (manuscript).
- Forte, J. (1993) Amerindians and poverty. University of Guyana, Georgetown (manuscript distributed at the *Colloquium on Poverty in Guyana*, March 18–19, 1993).
- Jameson, K. P. (1977) An annotated bibliography of agricultural development in Guyana. AID, Washington (manuscript).
- Jameson, K. P. (1978) Income and land distribution in Guyana: a summary of existing information. AID, Washington (manuscript).
- Melville, L. (1993) The employed poor (Guyana). University of Guyana, Georgetown (manuscript distributed at the *Colloquium on Poverty in Guyana*, March 18–19, 1993).
- Ministry of Finance (1993) Macro-economic planning and safety nets. University of Guyana, Georgetown (manuscript distributed at the *Colloquium on Poverty in Guyana*, March 18–19, 1993).
- Robert R. Nathan Associates (1974) Guyana's foodcrop systems: an analysis for development planning. AID, Washington (manuscript).
- Rodney, D. H. (1993) Aspects of urban poverty (Guyana). University of Guyana, Georgetown (manuscript distributed at the *Colloquium on Poverty in Guyana*, March 18–19, 1993).
- Stewart, B. (1993) Poverty and youth. University of Guyana, Georgetown (manuscript distributed at the *Colloquium on Poverty in Guyana*, March 18–19, 1993).
- Survey and Evaluation Unit, United States Bureau of the Census (1978) Guyana agricultural assessment: rural farm household survey, period: January 1–December 31, 1978. US Bureau of the Census, Washington (manuscript).
- Van Haeften, R. (1993) A preliminary review of the current food security situation in Guyana: including the dimensions of food availability, utilization and access. AID, Washington (manuscript).
- World Bank (1992) *Guyana: From Economic Recovery to Sustained Growth*. World Bank, Washington.
- World Bank (1991) *World Development Report 1991*. Oxford University Press, New York.
- Constitution of the Co-Operative Republic of Guyana, 1980.

Selected legislation

- Amerindian Act, Ch. 29:01 (Act 22 of 1951, as amended).
- Drainage and Irrigation Act, Ch. 64:03 (Act 25 of 1940, as amended).
- Lands Department Act, Ch. 59:01 (Act 30 of 1903, as amended).

Landlord and Tenant Act, Ch. 61:01 (Act 26 of 1947, as amended).
Land Surveyors Act, Ch. 97:01 (Act 20 of 1891, as amended).
Rice Farmers (Security of Tenure) Act, Ch. 69:02 (Act 31 of 1956, as amended).
Sea Defence Act, Ch. 64:02 (Act 11 of 1933, as amended).
State Lands Act, Ch. 62:01 (Act 32 of 1903, as amended).
State Lands Regulations, Ch. 62:01 (Regulation 24/3/1919, as amended).
Title to Land (Prescription and Limitation) Act, Ch. 60:02 (Act 62 of 1952, as amended).

Land Use Policy

Volume 15 Number 1 January 1998

Special issue: Property and development: building the essential infrastructure

Guest editors: John McLaughlin and John McKenna

Papers	1	Property and development: building the essential infrastructure <i>John McLaughlin and John McKenna</i>
	3	The Thailand land titling project — thirteen years of experience <i>V. Rattanabirabongse, R. A. Eddington, A. F. Burns and K. G. Nettle</i>
	25	The benefits of land registration and titling: economic and social perspectives <i>Gershon Feder and Akihiko Nishio</i>
	45	Implementing real property registration systems in the former Soviet Union <i>Terry MacNeill, Ivan Ford and Gerald McGrath</i>
	55	The role of local land administrators: an African perspective <i>Clarissa Fourie</i>
	67	The Deeds Registry in Guyana, its legal and institutional framework: recommendations for promoting transaction efficiency <i>Steven Hendrix and Leon O. Rockcliffe</i>
	83	Security, risk and registration <i>David Palmer</i>
Conference reports	95	Cross-fertilization of ideas on land tenure and administration <i>Grenville Barnes</i>
Book reviews	97	Urban Land Tenure and Property Rights in Developing Countries: A Review by <i>Geoffrey Payne</i> (A. J. Christopher); Planning in the USA by <i>Barry Cullingworth</i> (Robert C. Einsweiler); Nationality and Planning in Scotland and Wales Edited by <i>Roderick Macdonald and Huw Thomas</i> (John Mccarthy); A Conspiracy of Optimism: Management of the National Forests Since World War Two by <i>Paul W. Hirt</i> (Rebecca Conard); The Environmental Challenge for Central European Economies in Transition Edited by <i>Jurg Klarer and Bedrich Moldan</i> (A. H. Dawson)
Publications	103	

This journal is abstracted/indexed in *Current Contents, Social and Behavioural Sciences, Environmental Periodicals Bibliography, Focus on: Global Change, Geographical Abstracts, Human Geography, International Development Abstracts, PAIS Bulletin, Research Alert, Social Sciences Citation Index, WAERSA*



Pergamon

This journal is now part of the Elsevier Science **ContentsDirect** service. See inside for details.

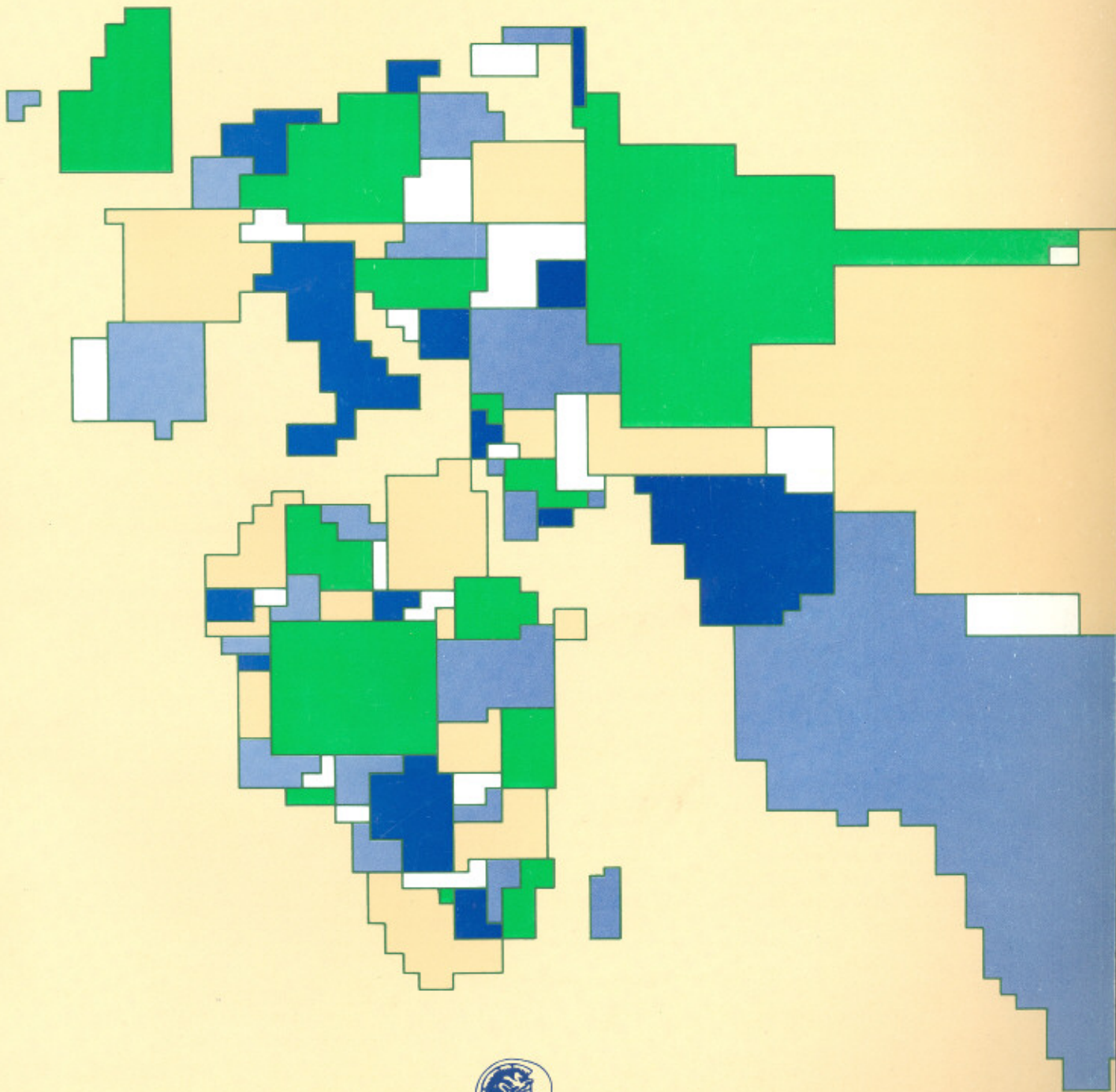


cdhelp@elsevier.co.uk

Volume 15 Number 1 January 1998

ISSN 0264-8377

Land Use Policy



PERGAMON