

A practical guide to preparing,
implementing and ensuring
sustainability of reforms to property
rights registration systems.

Real Estate Registration and Cadastre

Practical Lessons and
Experiences - Chapter 4.
Implementing the Project
odrReforms – the 9 C's.

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Chapter 4 Implementing the Project or Reforms – the 9 C’s

Gavin Adlington

In Chapter 1 of this book the importance of real estate and the need for registration are described. The preparatory work and program leading to starting a project are covered in Chapters 2 and 3. Now we come to the implementation phase. Chapter 5 will focus on the project management and the institutional issues. Just as a reminder, the registration of property rights is a legal matter and the legal considerations and base for doing this work is contained in Chapter 6.

In order to establish the registration and cadastre system, or to improve it, there are various parts of the project that must be in place. I call them the 9 C’s.

The 9 C’s

The 9 C’s are listed below so that it is easier to remember them!

- i **Champion** – the key person who will make the project successful.
- ii **Corruption** – the most common problem to be resolved.
- iii **Customer** – the person who benefits and must be the main focus when establishing new systems.
- iv **Computing** – the technology that will make it all work.
- v **Consultants** – the helpers who will provide advice, support or complete tasks.
- vi **Cadastral Survey** – the method of uniquely identifying and showing the parcels.
- vii **Communications** – the way to let everyone know what is being done and how good it all is.
- viii **Capacity Development** – the need to build institutions and train staff.
- ix **Continual Adaptation** – the need to ensure that it all works and carries on working long after the project is finished.

Champion

Despite all the descriptions in Chapters 2 and 3 about the team leadership, expertise and specialists needed, the Champion who is found *in country* is by far the most important. With the right Champion, the job is already half done. It is rare that the Champion is a senior politician, although this happens occasionally, but the political figures need to be “on board”.

This man has always been a typist

There are differences in nomenclature because in the UK and many Commonwealth countries a ‘minister’ and the ‘prime minister’ are usually also elected members of parliament, whereas in many other countries the ‘minister’ is a civil servant appointed by the elected president or parliament. In this sense they are also political because they generally change whenever the government changes following an election. You also often come across the term ‘secretary’ and ‘undersecretary’. In the USA these are political appointments because they usually change when a president changes, but in the UK and some Commonwealth countries this person is a civil servant who is not supposed to have political affiliations and might be a full-time employee of government. In the UK the head of the ministry is called a Permanent Secretary, and works directly with the responsible cabinet minister (who is a politician). There is the amusing story, shortly after the collapse of the Soviet Union, when a Russian minister was introduced to his counterpart in the UK, who was a Permanent Secretary, and the translator told the Russian minister (in Russian) *this man has always been a typist*.

Translators are very important if you do not know the language. When working in Russian speaking countries I knew enough to know if the word ‘not’ was forgotten in the translation (which of course completely reverses the point being made) and I could tell if the translator said ‘a hundred’ instead of ‘a thousand’, but otherwise you have no way of knowing if the translation is accurate. It is good practice to have bilingual people on your technical team who will spot errors in translation. A good quality translator, knowing the specific technical language of registration and cadastre, is a very skilled person and it is not sufficient to utilise a person who is trying to interpret what you said and meant, because the message will not come across as you intended.

Whatever the person is called internally, the project team will get very little time with a very senior person, maybe ten or fifteen minutes would be typical, but the short session can be very important. It is crucial to think from their perspective:

- The country has an agenda in which land will have some role – make sure that you know the policies, ten-year visions or whatever is published, and gear your commentary to these overarching goals. Land registration itself will be rarely mentioned, and their focus will generally be on foreign investment, development of cities, civil disturbance because of land disputes, etc. It will be important to quickly and clearly refer to how the registration system can contribute to meeting the objectives that are their current concerns;
- The next election is coming in ‘x’ years, so what will be achieved by the time that election occurs? How many certificates of title will be issued (maybe referencing the need to hand out titles in a public event)? How will people understand the benefits in terms of jobs or housing or investment? Give figures where possible that the politician can remember for his/her next media interview. I recall the minister in one country attending about ten minutes of our presentation and then stepping out to the waiting press to announce how he was making sure that new support in every town and district across the country would be established so that the people would benefit from the extra investment that will be possible, including the job opportunities and reducing poverty in these places. He selected that part of the short presentation that suited his political needs;
- Beware the waiting media and be careful what you say! You might think that they are interested in your project, but often they are just wanting a story. In one country we were trying to establish a new registration system but were not ready to include dealing with major squatter camps that had been established following conflicts in another country. We were not working there at all. We did include a section in the project to help develop a policy and procedures for resettlement. The first question that came was innocent, but it was clear that the follow up would be an accusation that the World Bank were going to help make people homeless because we were not including the squatter camps in the program. The responses have to be carefully worded taking into account both the financing partners policies (on resettlement), the government policies and what stage we were actually at, so that it can be reported in a soundbite!
- Be ready for the unexpected. In one central Asian country we had gone through the full project preparation process and finally we had a meeting with the minister of finance. He had read the summary and was going to have to agree to borrowing the money from the World Bank to implement the project. He looked at me and said, ‘I know we need this, but why should I trust you and your team to deliver this?’ You need to be ready, know exactly the biggest challenges, have your answer about where you have successfully met these challenges before, and who on your team is going to make sure that the various high-level risks are going to be dealt with. He was satisfied and the project went ahead.

You have to have the politicians on board, but usually the most effective Champion is the department or agency head within the country. If he or she is devoted and wants to achieve results, then you have the best scenario. There is an unpleasant English idiom that says, ‘there is more than one way to skin a cat’, meaning that you get the same result even when using different approaches. When you have a devoted Champion you just encourage, advise and help to do what is needed his or her way, and this is where the ‘professional’ described in Chapter 2 is so key. Thus, for example, when the agency head in one country decided that he personally was going to visit all 50 districts and persuade the municipal head in each to give him new premises in a convenient place of town, rather than use the existing premises, and that this would be a part of his public awareness campaign, we just encouraged him despite the added cost and the time delays that this would entail. His idea was that this would emphasise a new beginning, a new way of doing things and that the public could have new expectations. Similarly, although it is often not a good idea to place concrete markers at every corner of a property because of the cost and time it takes to place them, the country that I went to advise had been working on a systematic registration process for some years and they were doing this. It would have been better to

start adopting existing corner posts in order to move faster through the process and reduce costs, but they had the beacon placing process running smoothly and did not want to change because they felt that the people expected it. So, we let them carry on.

Unfortunately, there is often no Champion. In addition, there is usually more than one agency involved and it can be difficult to get them to work together as they each have their own priorities, budgets and a ‘silo’ mentality that makes smooth cooperation difficult. It can be a struggle to get an agency to take the right actions when the project is not going well. It happens often. It can be that the politicians want to see change because of the bad reputation of the organisation, but the head of the agency is not so committed. The politician has ordered something to be done, and now has hundreds of other issues to deal with and cannot follow up himself or herself. It may be because the person who was the Champion has left the agency and the replacement is not so committed or that one of the key agencies that needs to be included is not playing its part. In one country that borrowed a large sum from the World Bank for a project to fix their registration and State land management problems, the minister of finance made it very clear to me, when he said ‘We do not need your money, we don’t really trust the agency and we just want to make sure this reform gets done according to good international standards, and that is why we are borrowing this money from you.’ If there is no Champion, more regular visits and the *action list* become very important. See the example in Table 1 below. You visit, review progress with each aspect of the project, and then prepare and agree an *action list* and associated project plan that the agency will need to adhere to. It may be ten action items or 30 items, and it effectively guides the agency (or agencies) by the hand through the reforms needed. In the next visit you check the action list against actual accomplishments and prepare a new action list. If the actions are not concluded, then you go higher up the chain of command until sufficient pressure is applied and the actions get done.

Issue	Agreed Action	Target Date	Responsible
Establishing a single public enterprise for registration	Submit updated implementation schedule and organisational specifics for head office	Dec 31, 2010	Project Implementation Unit (PIU)
Training	Submit 2011 training plan to the World Bank, including training for roll out of project activities	November 30, 2010	Training Working Group (WG)
Cadastral manual	Submit updated version of manual	Jan 31, 2011	Cadastral Survey WG.
Other pending decisions	Submit report on status of government decisions regarding ‘Approval of Clarified Procedures’ including subdivision and consolidation	Dec 31, 2010	PIU
Mass scanning	Submit technical specifications for review	Oct 31, 2010	IT WG
Environmental Management	Ensure that provisions of the Environmental Management Framework are reflected in the terms of reference for the building renovations engineer.	Oct 31, 2010	PIU

Figure 1: Example of Action Plan

Corruption

This is, of course, a very sensitive subject. Standard project documentation often refers to ‘increasing transparency’ and remains silent on this key issue of outright corruption and bribery. If you are working in the land sector, *it is far more likely that there is corruption than not*. Don’t ignore it! Land is the most valuable asset people have and usually of very high value. It is usually managed or registered by a monopoly agency and often by people who are on a fairly low income. When a transaction is occurring, it may involve tens or hundreds of thousands of dollars, so a little bit extra to be paid is not very noticeable. Unfortunately, the ‘little bit extra’ becomes a large amount in many cases. A study by Transparency International and the United Nations Food and Agriculture Organization (FAO) in 2009

concluded that land issues were the third most corrupt service provided by governments worldwide after the police and the judiciary.

Many recent studies show that corruption in the land sector is endemic and should be addressed, often through the use of open data. The reports are commonly looking at acquisition of land (usually State owned or customary land) by people who should not get those rights. (Check out the term 'land grabbing' in google to see these reports.) There is no reason why State, customary or indigenous rights should not be included within a land register or cadastre stating, for example, that the area is under customary tenure in the responsibility of Chief X or Community Y. Unfortunately, customary and indigenous rights are very rarely included in a land register, and often governments themselves do not know what land they own or are responsible for. If customary land and State land were included in the register it would make it necessary for any transaction to a private individual or company to go through the correct channels and documentation to obtain those rights, including the documented approval of the registered Chief or Community. This is not very attractive for those who are benefiting from the current arrangements, so you would likely face arguments that it is not necessary or too cumbersome or costly to do so.

In this paragraph we are going to look more specifically at what can be done to recognise and reduce the levels of corruption in the registration offices. When visiting a registration office and the main stakeholders, you should look for are some indicators that something is wrong:

- If the law or regulations require a lawyer or surveyor to be licensed or qualified (as in most countries) and they produce a document or plan that is only a few pages long, then it should only take a number of minutes to check that all is in order. Because of volumes it may take a couple of days, but there is no reason it should take weeks or months unless the office is grossly inefficient or corrupt. Either way action is needed;
- If there are people milling around the office who do not work for the organisation, or are sitting at a desk with officials on the other side, or behind closed doors, then there is an issue. The most common corruption method is that 'intermediaries' are required to follow up on applications for registration and it is these people who pay the bribes and arrange for transactions to be registered. A queue of people waiting to see the registrar is a bad sign;
- If the office premises appear to be cluttered with files lying around on desks and in piles waiting to be dealt with it is often because they will not be dealt with until a client or intermediary comes to 'facilitate' action;
- If the legal profession or notaries claim that people prefer to go to the office themselves rather than having the lawyer or notary submit the documentation (as in most countries with efficient systems) then it could well be because the lawyer or notary will not pay the necessary bribes or take the necessary time to visit the offices, so it is left to the client; and
- Stakeholders tell you that there is corruption – although it is surprising how often they do not admit it even when it is obvious. This may be because they have been working in the sector and do not want to admit that they have been 'playing ball' too.

And now the actions:

- (a) Keep a clear separation between the officials checking documents and making decisions from anyone in the public. This can involve having closed access doors with coded entrance numbers, video cameras and taking actions when someone is found inside that should not be there. Unfortunately, just having a guard at the door rarely works as the guard can then sometimes augment his or her own income by allowing payments for access.
- (b) The public reception area needs to be large, open and completely separated from the area in which registrars or other officials are making decisions about applications. The counter clerk should be behind a wide open area with wide desk and maybe a glass front so that anyone can see whether money is passed across the counter. The reception clerk should just have a check list of documents and receipts to be presented and then pass the documentation to another

member of staff. Preferably, documents should be distributed randomly to staff for processing, so clients will not know which person to approach. A separate counter is used for payments only, with official receipts given. If a member of the public or a notary needs to meet an official checking the documentation, then a separate office (preferably with glass walls to see through) should be assigned in the public area. Appointments should be made to see the official and records kept.

- (c) One of the reasons that files are ‘waiting’ to be processed is because the examiner needs clarifications or answers to certain questions. It should be a matter of principle that this cannot be held back for more than a day or two, and that any unanswered clarifications or questions that have taken more than a day or two to answer should result in rejection of the application with the reason behind the rejection stated. The applicants can re-apply once they have resolved the problems.
- (d) Public notices giving information about fees, time frames for completing examination of documents and confidential telephone numbers or e-mail addresses for making complaints should be clearly and prominently displayed. The website should also include a possibility for lodging complaints. Remember to ensure that websites or telephones are attended and that complaints and responses are recorded.
- (e) If a major problem is the lack of staff, such that they have trouble coping with demand at some stages in the year, then it is possible to have an official ‘fast track’ process, with additional fees for that service (thus avoiding paying for urgent registrations informally). However, it should be noted that if the registration office is efficient and it only takes a day to register, there is no need for a fast track service.
- (f) A ‘ticket’ system for applicants to ‘take a ticket’ and then wait for their number to be called is useful for busy offices.
- (g) As the office is gradually computerised it should be possible to design the business processes so that it is clear to managers who processes certain documentation. Thus, if some illegal action occurs, the culprit can be found. The system can also track the processes and time frames so that delays are flagged to the manager.
- (h) In most developed countries no member of the public goes to the registration office at all. They probably do not even know where it is. It is the professionals that submit documents either by post, messenger or electronically. I know of at least three sub-Saharan countries where they used to have a process (some thirty years ago) that the legal firm’s messenger brought a batch of documents to be processed and just left them with an office clerk, then walked across the room to collect the processed documents he had left the day before. This no longer works in any of those countries – and the main reason is corruption.
- (i) E-conveyancing, through electronic lodgement of documents, makes corrupt practices more difficult, especially if accompanied by time schedules for processing applications or automation of the examination process. A system for electronic lodgement can be prepared quickly (a few weeks) and need not wait on a major system for registration that may take years to develop.
- (j) Open access to data through searches at minimal cost enables people to check transactions that might have occurred. It should also be possible to object or complain on-line and appeal to the courts if there is no satisfaction following a complaint.
- (k) I came across an interesting case in one Balkan country, where the government had a ‘secret policeman’. This official went to conduct a transaction as if he were just another customer, without telling anyone who he was. He recorded all the actions leading up to the transfer and could report if anything untoward occurred.

Customer

I recall a meeting in an Eastern European country where I once referred to the registration system as providing a service to its customers. There was shock on the other side of the table as the legal expert from the registration office said, ‘Customer? We don’t have customers; we have applicants that come to us because the law says they must.’ The way she said it was almost like she was saying ‘supplicant’ instead of ‘applicant’, as if they were doing people a great favour in considering their applications and

providing answers. A couple of years later, in the same country, a deputy minister referred to the registration system and the need to ensure that they provide a useful and valuable service to the public, because that is what they expect from the people they elect. That country now has a terrific, customer friendly, registration service.

A registration system is only useful if everybody uses it. The objective is for the government to be able to govern and for the public to feel secure in their property rights, all contributing towards the better social and economic fabric of the country. If the public do not use the system or do not trust it then it will fail to fulfil these requirements. In order to ensure the system is acceptable, I use the acronym “SCARF” – it should be:



Simple	to understand and utilise
Cheap	so that it does not deter people from using it
Accessible	so that people are able to easily use the system either through a local office or local conveyancer or notary
Reliable	so that people have complete trust in the system
Fast	so that people have their services provided quickly and efficiently

The staff of the registration office need to be friendly and helpful and give the impression of competence. Just like in any shop or bank, the quality of service encourages people to use it, which in turn does not discourage people from going through an arduous procedure that they would rather avoid. This helps if people want to upscale to get larger housing, thus making more affordable housing available to others, and encourages people to invest, build or further develop because they trust the system. In one Central Asian country where we implemented a project, I had visited the local banks to find out about the amount of money that they lent using property as collateral in the early years of the project. They said, ‘Almost never.’ At the end of the project I went back to the same banks and they now had a mortgage department dealing with customers every day. I asked about their lending portfolio and they said it was largely small loans (but large ones too) for short periods of a couple of years. I asked why their portfolio had grown so much and why they bothered to register small loans like that. Their response was: (a) the person coming for credit has to have a viable business plan, but the title document tells us that the person is local and has roots in the community, which makes them less of a risk; and (b) it is so simple and cheap to register a mortgage that we just do it, because it gives us that extra little bit of security. If people are borrowing in large numbers for business purposes, that gives some indication that the system is helping build the economy and that the customer is satisfied.

As with many other considerations in this book, it is important to put yourself in the shoes of the customer and think what you would need and expect from the government or a service provider. Although governments also have to ensure that they administer and manage land resources well, a good balance between the ‘bottom-up’ and ‘top-down’ approach is needed.

Computing

Many years ago, forward-looking land registries were quick to assimilate a certain amount of computing that involved word processing to create standard documents, databases to keep records and make searches and the technology to compute survey work and create digital records of plans and certificates of title. Even when I was in Malawi in 1991/2 we had a database built on C++ that could be searched and a series of standard documents and reports that could be made. However, the systems that have been built over the last fifteen years or so, tend to be complete, integrated systems that include a process and checks and balances for the whole system, plus linkages with the cadastral survey and linkage with other government bodies, often adhering to government led standards and the Land Administration

Domain Model (ISO 19152 from 2012) or the Social Tenure Domain Model that was more recently produced through the Global Land Tenure Network.

Every project I have been involved in for the last 20 years has included an IT activity and the development of a system. These have varied greatly from PC based local systems in the early years to more centralised and sophisticated ones, but the common trend is that they are always difficult to implement, take far longer than originally envisaged, and are much more complex than anyone thought they would be. The lessons learned in just the IT side are huge and it is so common for a system to fail altogether that it deserves a chapter on its own. Working on the principle that *you can't be an expert in something you have never done*, and that a simple database from over 20 years ago is not enough to claim expertise, I have asked Rumyana Tonchovska to prepare that chapter. See Chapter 8.

Consultants

The first lesson I learned as a consultant was that you have two masters – or two clients. In 1994 I had been recruited by a company working for USAID for some work in Russia. As an expert I quickly worked out from my Russian counterparts their current way of operating and their plans for the future, and I then started working with them to meet their objectives. The work was going well. Some months later we recruited another consultant to help and the first thing she did was document the existing procedures, institutional structures, etc., within Russia. The manager from the USA company (who was not a land specialist) showed it to me and I said, 'Yes – looks right.' Then he asked me why I had not written that up before, and I said, 'What for? The Russians already know their procedures and structures and so do I – we are just working on how to improve things.' It dawned on me later that the person paying my fees also needs to know the situation and problems that need to be solved and that this must be catered for too! The report would have been useless for the Russian counterparts, but helpful for the foreign company manager.

This does bring a dilemma. There are two clients with different needs, but usually only one report being prepared. When reporting I try to keep the main report short (less than 20 pages) and the details in annexes. The country background, situation analysis, government vision and policy, etc. that the client already knows can be in Annex 1. They then know not to bother reading it. The reference to standard information and practice about, for example, the different methodologies for valuation, difference between deeds and title registration, arguments about general boundary positions, or whatever else as background information can also be annexed. I recall one consultant being most upset when I put his whole report in an annex because it was all theory and general information. The main text needs to focus on solutions and be brief enough that the counterpart knows exactly what to do next. If they need the detailed justifications, terms of reference or reasons that things went wrong – find it in the annexes!

Consultants usually need to be professionals (see Chapter 2), unless you are bringing in a technician for a very particular task once the professional has decided what needs to be done. For example, you have decided to use drones for the basic mapping program and need someone with experience in using drones for mapping and surveying purposes. Consultants must be able to analyse the country situation, apply best practice and come up with sometimes innovative solutions given the country context, funding and time frames. There are all types of consultants working in the land sector; some are good, but very many are not particularly useful. Here are some regular pitfalls:

- (a) Long report telling people what they already know. In many cases I have seen reports that are long, starting with a description of the country, demographics, topography and so forth. These are things that both clients already know. Then comes a description of the way things work now, and the problems being encountered. Often this comes directly from the department and specialists within the country. So now we have a report that just outlines everything that the people within the country have told the consultant – which may be useful for the manager of the company that hired the consultant, but is still not much use to the country concerned. The conclusion often is that, 'the government should

followed by the statement about what the government should do. Again, they probably already know that – they want help to actually do it! If the report contains all this, it is probably very long and therefore unlikely to be read. As a person who might have recruited such a consultant, the first thing I usually did was to skim through the document and cross out or tear out all the things we already know, then see what is left. The remnant is the useful bit. Sometimes, there is nothing left and I recall one consultant coming to an Eastern European country and by the time I had finished reading his report, I realised that he had basically expanded and described his terms of reference and outlined all the problems to be solved, which were also in his terms of reference, with the conclusion that the government should take action to resolve these problems. Yet another report to be filed in the round container under my desk!

- (b) The government should It may be obvious from the above that one of my ‘pet hates’ is the statement ‘*the government should*’. Recently I led a team preparing a report to provide guidance for implementing a land policy that had previously been prepared. For each consultant who came to the conclusion that ‘*the government should*’, I required from them the resources they would need to do this including: the department or unit within government and the responsible person who would make sure that the activity happened, the personnel required and their qualifications, equipment or other resources needed, cost estimates and where the money would come from, time frames and the actual terms of reference for doing the task.
- (c) Check the CV. It is far too common that consultants arrive who are either not real professionals (see Chapter 2) or keep referring back to what happens in their own country and trying to replicate that. Consultants are supposed to be offering advice based on a breadth of international experience and having achieved results in the past. When checking the CV, I would advise:
- a. Make sure that the candidate has actually done the work before, i.e. developed a working IT system, completed a mapping program and produced the maps, been licensed to operate as a cadastral surveyor and undertaken surveys, worked in a registration office, implemented a successful training course, etc;
 - b. Make sure that the candidate has worked in several countries and will not just be offering the solutions from his or her own home country;
 - c. Make sure that they have several years’ useful post-graduate experience in land administration or whatever discipline is required;
 - d. Check the countries where he or she has worked and the duration of the support provided. I recall noticing one CV once where the candidate had worked in many countries, but it seemed that they were nearly always one off assignments and he was never invited back. When investigating I found out why no one ever wanted him back, but his CV looked great!
 - e. Ensure the consultant is a good team player and can integrate into a diverse set of team members;
 - f. Check the quality of the consultant’s English writing skills. You do not want to re-write their reports;
 - g. Make sure that they are truly independent and have no conflicts of interest;
 - h. Take up the references. Usually it is just a phone call. You really do need to know if the person is useless; and
 - i. If a person is recommended by someone you can trust, that is always a good sign.
- (d) Terms of Reference. Good consultants in the land sector are very rare. There would be only a very few who you would feel you could invite to a country, expect them to find out what is wrong and come up with a good, innovative way forward, without giving them a very specific terms of reference. In by far the majority of cases, a detailed terms of reference is required with very clear instructions about: what needs to be investigated and where the

investigations must occur; who they should meet; who they will report to; and the deliverables and the time frame for the deliverables. It is also usually advisable to start with an inception report produced after a week or so (dependant on the size of the task) in which the consultant will provide his or her assessment of the situation and the approach for concluding the study or advice that will be given. Both the consultant and the person hiring the consultant should stick firmly to the terms of reference and if anything changes then they should immediately inform the other party and agree the changes. This is a safeguard for both sides. Here are a few examples:

- In a recent tender for a sub-Saharan country, the initial phase required investigations into eight specific issues, and the winning bidder had also said in their tender that they would do certain other tasks as part of that investigation. When the first phase report came out several of the investigations and tasks were not done on the grounds that the consultant thought they were not necessary or helpful, including the one that they had said they would do in their tender. It took months of correspondence back and forth to actually get what was required in the first place. It is important to 'hold their feet to the fire' and to make sure that the delivery is complete and up to standard.
- A few years ago, a consultant hired to gather baseline data and develop an M&E framework in a Balkan country arrived and worked very well with the counterpart. He was doing excellent work and the counterparts liked him. At one stage he wrote asking for an increase in funding because he had used up all the days allocated for the task. My response was to ask what additional tasks to those specified in the terms of reference he would be doing to justify an increase. His reply was that it was not additional work, but that it was much more difficult to gather data than was envisaged and therefore more time was required. Unfortunately for him the contract was based on outputs, not time, and there had been nothing specified in the inception phase that brought up this issue, nor a request to change the terms of reference or outputs or budget. The consultant took this in good faith and completed his task well without the extra funding.
- The person hiring the consultant can also have unrealistic expectations. We used to call this 'asking for a five-legged sheep'. So, a request to analyse a situation and develop a computer system to implement a registration system within two months is just not possible unless a very basic and simple system is expected. As the person writing the terms of reference clearly does not know how complex this can be, they probably would not be satisfied with the result of the task. Asking one person to evaluate the law, registration system, survey methods and explain the economic benefits of establishing a system is fine, if you just want everything very superficially addressed, but without anything useful to follow on with. I generally decline such requests because if the person making the request has no understanding of the subject matter then they will also have no idea if the results are useful.
- Procurement can also be an issue. I was once invited to tender on a very interesting piece of work in Asia, but then the tender stated that the person selected would be based on 'least cost' criteria. Competent professionals are not 'least cost', you get what you pay for and this evaluation criteria would almost guarantee that you got the worst person, so I just declined the invitation. One of the reasons many IT systems fail is because the procurement is often based on accepting the lowest bid. I have often looked at a bid and decided that if the company think they can do this work for the specified sum of money that they tendered, then they have no idea

what they are doing. Trying to persuade procurement personnel that this is the case can be challenging!

- Use a company or individuals? This varies dependant on the task. For most tasks it is the quality and experience of the individuals that is key, but often they work for companies and are only available through that company. Major contracts for large system development or buildings and similar major works require a company, but many consultancies require reports or solutions to specific problems. They are therefore more expensive because the company overhead has to be paid. My advice here is to get the right person – a really good person can do the work in half the time of someone not so good or experienced, and they will get it right first time. If you have to pay extra because they come through a company, then it is usually worth it. If hiring a company that offers certain individuals, then be very wary about the company replacing the individual with someone else. It can be that they never intended to use the experienced person with the good CV – they just used it to get the contract. I once had the experience of being asked by someone from the European Union why I could not do a certain contract. It was a surprise to me, because I had no knowledge that the selected company had used my CV to put me on their tender. It was only by coincidence that I met the contract manager from the awarding institution.
- (e) And finally Beware the consultant who never finishes. I have come across many who will do the required work well, but then find in their conclusions that they must come back to do the next step, which only they can do because they now have the history and in-country knowledge. This can happen time and again, and they get the reputation accordingly. It is better to have a principle that there is no follow on work unless specifically stated in the terms of reference. If I get the situation above, I would normally request the terms of reference for the new activity, put it out to tender and advise the consultant that he or she cannot tender because he or she identified the task and prepared the terms of reference.

Cadastral Survey

Some initial comments about cadastres and boundary surveys are mentioned in Chapter 1, because this is a basic requirement. The location of a property is fundamental to knowing whether all land is covered and to ensuring that the same piece of land is not registered to different people. The arguments then become about the levels of precision with which measurements should be made and the accuracy of the end result. Note that these are different things – you can measure the position of a fence post at the corner of a field precisely to within a few centimetres, but if the fence post is not actually on the boundary or the point from which you are measuring is incorrect then the recorded boundary will be inaccurate. I recall once a surveyor going out to measure a property during a systematic registration exercise and coming back with the plans, reports and all corner point coordinates. The survey had been correctly done, all checks completed and the accuracy requirements for the survey work according to the regulations were all met. But when I looked at the position of the property in relation to the roads and streams, it just did not look right. Why would anyone have a parcel of land that just did not match the road configuration and the footpaths around? I went to the field and checked. Everything was in order – but it still did not look right. Then I noticed the very large survey triangulation pillar that he had used as a basis for all his work and that it was near to a quarry. So, I went to see the quarry manager. He clarified that he knew the pillar was very important, so when they had to excavate near the pillar they moved it for us and placed it in a safer place. They did not realise that they should inform the Survey Department. Thus, the basis for all the measurements and computations was wrong!

Now, going back to accuracy. If the cadastral survey is for tax purposes, then the accuracy of the measurements is not critical. If a piece of land measures 100 metres by 100 metres (10 000 square

metres or one hectare) but the measurements are out by 1 metre, this means that it is 99 metres by 99 metres. So instead of the area being 10,000 square metre it is 9801 square metres. If the land is valued at US\$ 10 square metre, then this makes a difference of US\$ 1990 in value, and if the tax is one per cent then the difference in tax paid annually will be US\$ 19.90 and the owner is paying too much. Of course, his neighbour will then be paying too little and the tax authority will be getting the same amount no matter how accurately the survey was done. It is not worth spending large sums of money to get exact surveys unless the property is in a heavily built up area and values are very much higher – then it is in the interests of owners to make sure that the measurements are correct so that they do not pay too much. However, even there, the buildings on the land represent a much higher percentage of the value of the land than the land itself – figures vary, but a rule of thumb is that 80 per cent of a property value is in the building for high value areas, so the area of the land plot is still not critical.

The accuracy of the measurements for ownership purposes can be more critical. Apart from paying for the land itself, the opportunities for disputes to arise is much higher. This is largely because humans are involved and they tend to argue – especially about whether they think their neighbour is trying to take something that belongs to them. You often get cases that seem unbelievable. One recent case in the UK where a homeowner, who had lost a claim that a neighbour's extension trespassed by a matter of inches on their land, was then presented with a legal bill for the successful party's costs of over £100,000. This resulted in the losing party having to sell their £600,000 home to pay the costs. Although such cases are very rare in comparison with the number of properties that exist, and it ended up like this because of unreasonableness and the parties being unable to discuss rationally or go through mediation, it does explain why there are often arguments that boundaries have to be accurately measured. Whereas the cost and time frame for doing the survey work can be justified in a case by case basis, it is a different situation entirely when a project for systematic registration is taking place and millions of properties need to be identified. For this reason, a separate chapter is devoted to discussing boundaries and boundary measurements and the concept of a fit-for-purpose approach. See chapter 7.

Communications

A registration system is only useful if people actually use it. For this to happen, the **SCARF** principles mentioned under 'Customers' above need to apply, as the system must be free of corruption and sufficiently accessible and usable for people to accept it and utilise it. There are many countries in Africa where the wealthier use systems that have been left behind by the powers that colonised them, but most of the population cannot use the system because of its complexity and costs. If new systems are put in place and a mass program of registering properties is included, then the public needs to be aware and be supportive. Funding for public awareness campaigns and providing local information and support become essential. It is a very important part of the program if it is to be successful, so the communications activities must be budgeted accordingly. It is very common in projects to underfund the publicity work, and then find that people do not hear about the program. Most people are busy in their daily lives and if they are not currently involved in a property transaction, dispute or inheritance, then simple leaflets or flyers will go unnoticed, particularly if some of the audience are illiterate.

As a start it needs to be made clear what is changing and why. It is good to have a brand or seal, and a slogan that can be used. In one country in the Balkans they used 'It's yours. Confirmed!' as they encouraged people to register and use the new system. A full engagement strategy is required to ensure that every stakeholder is identified and communication to them is customised, clear and meaningful. Different parts of the country may have different needs and histories – especially for rural and urban areas or areas with specific ethnic origins, a history of conflict or strong customary authorities. As a first stage the key stakeholders, such as the legal professions, banks and real estate agents, need to be included in seminars or conferences and informed through contributions in their professional magazines, laying out the plans and timetables. Others, such as chambers of commerce, legal aid organisations, women's groups and NGOs that would be interested, should be included. The public interact with these various groups whenever they have land issues, so it is imperative that they know what changes are occurring and why, and what goals and timelines of the project or program are

envisaged. They must be convinced first. The general public may hear about the proposed changes, but it is not useful to start a concerted information campaign for the public until they are about to be affected by it.

Once the program is ready to start, it is necessary to let the general public know. Messages can be displayed on bill boards, the sides of buses and posters in strategic places (like town halls, swimming pools, supermarkets, churches and mosques, or other places the public often go to), but it is also important to communicate via the mass media and through local groups, neighbourhood committees and customary authorities in more rural areas or informal settlements. Sessions with the daily news programs, newspapers, magazines and social media to address the public with clear and simple statements about the 'new' system and the benefits for using it are needed. The best media to use will vary dependant on the country concerned. Paid television advertisements at key times are also useful and in one country I saw that they had hired a well-known comedian to produce a short commercial or 'infomercial'. He was dressed up as a woman and responded to the 'official' telling 'her' about the new system with good graphics in the background showing aeroplanes taking photographs, land parcels, boundary markers and documents that were needed, while she asked questions. The whole thing was hilarious – and I was laughing even though I could not understand the language. It became a famous advertisement in the country. I have also seen commemorative postage stamps produced and a troop of actors going from village to village to explain the changes as part of a play involving relatives who were arguing about their land rights. In one central Asian country the agency director arranged for a huge TV publicity stunt timed just after all the vehicles and equipment arrived that were being funded by the project. He had a senior government official and the heads of every office from around the country attending. Speeches were made about the new system with staff in their nice, new, distinctive uniforms that they all now wore. The office heads were presented with their equipment and the keys to the cars, and they were then shown on TV driving off into the sunset to their offices in different directions. The uniforms were used by all staff countrywide, such that the public immediately recognised them when they arrived in their towns and villages for registration work or when they saw them in the newly refurbished offices.

Apart from the media, a series of explanatory flyers, brochures and posters need to be available showing the key messages, actions to be taken and benefits that will accrue. Direct correspondence through the door, by post and through social media is necessary when the specific location in which the member of the public lives is being targeted for registration work.

Capacity Development

If there are major changes occurring then the staff and any external support required, such as short-term contract employees, will probably need their skill base and overall understanding enhanced. Assuming that the project leading to the new system has been decided, a human resources strategy now needs to be developed. The first step is do the 'situation analysis', to see what currently exists. The number of staff in each department or unit, their functions, qualifications, ages, salary levels or grades, need to be tabulated. The age of staff is primarily important in order to assess how many are likely to just retire rather than undergo all the changes, and the rate at which new people will need to be promoted or recruited needs to be taken into consideration.

The second step is then to assess what staffing requirements will be required for the new or changed organisation. For this, a clear understanding of the proposed technology to be used will be needed as transferring from paper-based or simple computerised systems to a major automated system with fewer offices and e-conveyancing possibilities will entail a lot of changes and new skills. It will also be necessary at this stage to know or agree what level of outsourcing of services might be likely. For example, in two countries in Eastern Europe the decision was made that the agency would no longer undertake cadastral surveys. This would only be done by the private sector in future. Thus, the focus in the training plan for this aspect was to ensure that the private sector received such training as needed and could obtain licences to do cadastral surveys. Also, training was required to ensure that surveyors

currently within the public service could transition to the private sector, with some being retained for quality assurance.

The training methods used will vary according to needs. In one country that had very good capacity, but no experience with a registration system, we set up a model registration office and a number of fictitious transactions and situations for them to process (a 'mock registration office'). Once they knew the cases that were likely to occur and what needed to be done, they could develop their own system to suit their own country's needs. I recall after the first course that we gave, the 'class' answered a set of multiple choice questions and they all did remarkably well – except in one question. The question was: 'A registration system should be (a) simple to understand and to use; (b) complicated and difficult to understand so that the public have to come to you for help; (c) contain as much information as possible.' The answers came in pretty much evenly with a third ticking each of the boxes. I hope that you know the correct answer!

A full training plan will be needed to ensure that staff and any private sector participants understand their roles and the way they need to operate. If it is agreed that some services (such as notaries, valuers or surveyors) require licences to operate, then that must be included in the training. In many projects we included the establishment of a training centre and person responsible for training within the project management unit to make sure that this important subject was given sufficient weight. In other cases, all training was outsourced. In one Eastern European country the government agreed that this would include the equipping and support of nine different universities so that they could provide all the training needs. In another country a unit was established to set up and conduct a very detailed distance learning program and all staff had to go through set courses in order to be allowed to practise in the particular function to which they were assigned.

In Russia, a country with tremendous capacity and capability, we found within our first project that funding to provide training was by far the best outcome of the project. Real estate markets and registration systems that supported the real estate market were new to them in the 1990's. Over 1000 people were involved in international training programs (including site visits to other countries) and 1555 in local training programs. With this new information they worked out what would be applicable to their own country and how best to implement their systems. When actually implementing their training activities they made remarkably good use of distance training using courses, feedback and examination through on-line training.

Capacity development is not just critical at the start of implementation reforms. In some countries there can be wholesale changes when those in power change after general elections. We had experiences in some projects where almost the entire registration and cadastral office staff were replaced following a change in government. This then requires another cycle of capacity development.

Capacity development is fundamental because there is little point in making reforms that cannot be maintained. It is not only for the project activity, but also the institutions or entities directly involved in implementing new systems that must receive training. As laws and practice change, the roles and practice of the professional community, local government and educational institutions might need support. 'Train the trainer' programs may be needed as institutions begin to retrain existing staff and specialists, or university or technical schools change their curricula. The subject matter is covered in great depth in chapter 11 of book reference 7 in Annex 1.¹

Continual Adaptation

Having worked in Africa in the 1980's in property registration and cadastral surveying, I found that there were many good models functioning. Most were relics of what had been established in colonial times and they were still functioning quite well. At this time Kenya was considered a good model

¹ It is available as a pdf at <https://csdila.unimelb.edu.au/publications/books/>

worldwide and regularly had visitors to see their systems – I even took a delegation from Malawi, where I was working in the 1980's, to see the way they operated. It is recognised that these systems were established by colonisers and focused on private property rights along Western European models, which was suitable for the towns and for foreign settlers, but generally did not address the sometimes squalid informal areas in towns, and only rarely tried to include customary land areas. In customary land areas there were attempts to establish registration systems in some countries (like Kenya and Malawi), but in most places the customary systems were considered to be working quite well and should not be touched.

By the early 1990's many of the systems were failing and it is important to understand why this was the case. In some countries that I visited in the 1990's, the well-paid foreigners had left, and I was convinced that the problem was not so much the laws and systems operating, but the civil service as a whole. Salaries were low and many who were intelligent and entrepreneurial had left to join the private sector or work abroad. Those left behind struggled on their salaries and had to look elsewhere for income. I recall one registrar telling me that he arrived at work in the morning, did anything that was critical within the first half hour or hour, and then he left for his private business. He just left his jacket hanging on his chair. He said, 'They pretend to pay, and I pretend to work.' It is not surprising that corruption became more prevalent.

In customary land areas the pressure on land was becoming intense as it was becoming scarcer and, consequently, very valuable. The traditional practice that enabled people to move, reflecting the needs of an ever changing and growing population, and for people returning to their village to be given land, was becoming impossible because of the scarcity. Some of the old systems to manage customary land were beginning to fail and needed to be modified to meet current needs. I recall in one country only two years ago listening to a lawyer complain about the laws in their country that were left behind by the British. I stopped her part way through to ask what changes they had made to laws and practice in the 50+ years of independence and why anyone would think that institutions and practice established by a foreign government to manage a country thousands of miles away for their own benefit could even remotely be considered as suitable for the independent country?

Paradoxically, the ability to ensure continuity requires the ability to change as needed. You will find that most of the higher income countries have continually amended their ways of working. Their laws and their institutional structures will have changed many times in the last 50 years. It is certainly something that each new government considers as they are elected for their four or five year term. In situations that involve a project for changing land administration systems, the government and financing institutions must look to the future and decide whether the current ways of working need amending and what changes may be required for the future. One of the greatest differences between post-colonial independent governments and those governments I came across in Europe and Central Asia was that, although the Europe and Central Asia countries might resent and complain about the socialist systems 'imposed' upon them (and they blamed Russia), they quickly developed policies and new laws that suited their own situation and could be maintained. For example, when the Europe and Central Asia region opened up following the collapse of the socialist systems in that region in the early 1990's, there was tremendous poverty and very little funding to manage the 'new' systems that would allow people to own property and facilitate real estate markets. In many countries the institutions became self-financing from the start, linking with established professions to agree on procedures for registration, cadastral survey and valuation that the private sector would do and then working out how fees for service to register real estate rights could pay salaries and any investments required. They realised that they could not maintain large numbers of staff. Anything the private sector could do should be done by the private sector (such as cadastral surveys, systematic registration programs, legal and notarial services) and the government would only oversee this. They also realised that it was necessary to pay market rates for salaries within government if they wanted to avoid corruption and provide a competent service. Fees were fixed at a level that was comfortable for customers to pay but were sufficient to pay salaries and provide the basic infrastructure for a registration service.

Thus, continuity really means flexibility and agility – the ability to respond to changing situations and to modify the registration system and cadastre to suit the changed circumstances. In this sense,

continuity is different from sustainability, which is more about installing the skills, knowledge and attitudes in the registration and cadastral staff that enables them to be flexible and responsive to change.

The institutional changes and the establishment of self-funding reliable services in real estate registration is addressed in more detail in Chapter 5

Summary

This chapter deals with key issues to be considered when implementing a project. They can easily be remembered as the 9 C's:

1. The Champion within country is by far the most important. If he or she is dedicated and making the changes needed, then the prospects for success are very high. If there is no Champion, it requires much more effort in project management, and it is much more difficult to get the best results.
2. Corruption is by far the biggest problem to solve. It is very likely that there is corruption within the sector, even if it is not admitted or talked about. There are various signals that can identify corrupt practices and some straightforward, practical responses to eliminate or reduce them.
3. The Customer is the most important person. Customers are the prime beneficiary and only if a system is functioning efficiently according to the SCARF principles (see above) will people actually use the system and thus the economic and social benefits accrue to the country.
4. Computing, or rather Information Communications Technology as a whole, is a fundamental requirement in any modern system. The complexity, cost and time to complete systems is nearly always underestimated and failure rates are very high. A separate chapter is dedicated to this very important topic. See Chapter 8.
5. Consultants are utilised in most projects. There are common mistakes made as reports are too long and address problems rather than solutions. It can be difficult for the consultants because they have two masters – one is the company or development agency hiring them and the other is the government counterpart. They have different needs and require different information. This section is quite long and focuses on ensuring that the consultant performs as required and that the right person is hired in the first place.
6. Cadastral survey is required in any project because the boundaries of land parcels (or property units within a land parcel) must be uniquely identified. The question then arises to what level of precision or accuracy? This is a complex matter that is dealt with briefly above, but in more detail in Chapter 7.
7. Communications should be an integral part of any project and be appropriately funded. The use of good advertising, public awareness activities, slogans and distinctive brands and uniforms can all help. If members of the public remain unaware and do not participate in projects or use the system, it will fail.
8. Capacity Development of the stakeholders involved in registration and related fields is necessary to ensure sustainability. Initially the existing institutional and private sector capacity must be examined and a human resources strategy developed for the new institutions. Training needs for the institutions and the private sector are then developed. Academia should be engaged in this process.
9. Continual adaptation is key. A successful project should lead towards the establishment of a sustainable efficient organisation that no longer needs outside support. If the project has achieved its objective and the financing partner, bilateral donor or consultants are no longer being needed then it has been successful. Sustainable institutions that can continue to function into the future are dealt with in more detail in Chapter 5.