



Guyana Property Rights Study

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**Inter-American
Development Bank**

Institutional Capacity
and Finance Sector

DISCUSSION PAPER

No. IDB-DP-141

November 2010

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Inter-American Development Bank

2010

<http://www.iadb.org>

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Executive Summary

As part of an overarching effort to better identify the problems faced today by low-income people and by those with limited access to basic housing, the IDB requested a first-time assessment of the property rights system in Guyana and the way it affects the real estate/property/ land market and the overall security of the wealth base of individuals. The assessment is based on the methodology of **Reality Check Analysis (RCA)**. RCA allows for a breakdown and mapping of the variables that have contributed to the current bottlenecks in Guyana and as well as poverty, malaise, and lack of affordable housing. With RCA it is possible to identify the correct questions that lead to the appropriate answers regarding policy recommendations.

At this stage, RCA was only applied for a first cut assessment. Thus, it was based primarily on desk research and on a brief field mission qualitative survey (data collection). The next step would be to develop a primary quantitative data search, analysis, and full recommendation action plan with strategy and timing. With RCA the following questions arise: What is the underlying legal system that defines the rules and regulations that guide the overall property rights system? Who enforces property rights transactions and who controls the quality of the output? Who are the users? Do the users have a say in the quality control? How robust is the financial market? RCA is able to identify the relationship between a well functioning and secure property rights system with that of a well functioning land and property market (including housing market) of all income sectors. The analysis resulted in identifying the bottlenecks related to the rules applied (laws, regulations, administrative processes, etcetera) and to the organizations in place (agencies, ministries, etcetera).

The Analysis

Guyana has adopted and maintained a dual legal framework, which is a hybrid of two legal traditions: the Civil Code legal tradition transplanted from continental Europe and the Roman Law, and the Common Law tradition introduced by the British. The country also has a dual registry system of property rights with distinct requirements, processes, and enforcement mechanisms. The two types of registry systems are deeds (Deeds Registry) and title (Land Registry) registries that operate in separate jurisdictions, which in theory helps avoid the problem of double entry and dual registration. But overall Guyana's property rights system is overly bureaucratic and complex, with regulations that are overlapping and competing, overloaded, and nontransparent. This affects the proper allocation, enforcement and effectiveness of property rights, as well as, the efficiency of all property-based markets such as housing, land, commercial property and financial markets (especially primary ones such as mortgage markets). What complicates matters even more is that neither of the two registry systems is effective. In Guyana, the property rights system is largely ineffective in all its three aspects: security and effectiveness of emitting the right, organizational management of the rights; and enforcement of the rights.

As a result, individual property rights are insecure, costly, and deemed by many Guyanese owners as unnecessary; thus, a significantly large percentage of owners either do not register their property, or keep their ownership rights updated. For example, problems with subdivisions or mutations of properties among relatives are prominent issues in the city of Victoria. Nonetheless, an untrained eye would not necessarily notice "prima face" the magnitude of the problem. The existence and availability of mortgages (loans with property as a collateral) gives a false indication that formal property rights exist and that they are relatively secure as "mortgages" are issued and private banks dedicate entire departments to this financial product line.

However, a more analytical review using RCA reveals that the financial market is rudimentary regardless of the fact that it may be creative in its operations and products. The banking system is using the typology of "mortgages" for a specific financial instrument. Yet, these "mortgages" are not backed by the real estate asset, as it is typically done in traditional robust capital markets. Instead, the term "mortgage" is another way of calling a specific type of *consumer loan a loan dedicated to the building of a home*. One of the specificities of this type of

consumer loan is that the bank adds in its lists of requirements for loan approval the presentation of a registry certificate for ownership of the asset. The final decision whether to approve the loan is not based on the market value of the asset or the validity of the ownership right, but on the income of the borrower and the income of the guarantors and co-signatories. Often times the loan is preapproved months before the registry's response on the validation of the ownership certificate. To recap:

- (i) A mortgage in Guyana is a consumer loan dedicated to the building of a residential property;
- (ii) The value of the loan is based on the cost of building the project, not on a proper ratio of the specific property in question versus available properties of its kind;
- (iii) Loans given for improvement of commercial properties or for capital expenditures required to finance a business are not considered mortgages but consumer loans or commercial loans; hence, they are handled differently and are not considered in the sum of any banks mortgage portfolio.
- (iv) The information at any of the registries (Deeds or Title) is not reliable; the use of the registration certificate is more of a formality than a valued transaction.

Does Today's System Work?

As a small country of only 772,298 inhabitants (estimated population for 2009)¹ at a relatively early stage of its economic development (based on mineral mining and sugar cane production), Guyana has not successfully addressed the mismatch of its legal frameworks. As more and more Guyanese live abroad and remittances are channeled back to the country, and as the volume of transaction is increasing related to land, real estate, and specifically the housing market, inefficiencies, leakages, and corruption become more pronounced and stifle the financial system and economic growth in general. As a result, savings placed in any type of property and wealth become more illiquid and there are larger disparities between those who have and those who do not have.

¹ [The World Factbook: Guyana](#), CIA. (751,223 inhabitants according to the [Guyana 2002 Census](#), Bureau of Statistics – Guyana). Retrieved 2010-01-19.

Findings of the first round of RCA suggest that the housing market, as well as any property-based market is very weak and this is mainly due to the weak property rights system of the country (i.e., the weak institutions of the country, which trickles down to a very weak organizational structures as well). Despite the challenges, it is possible to address the problem of weak property rights in Guyana and reverse the system with a set of serious and targeted reform resulting in a well-functioning property and housing markets if the following is accomplished:

- Identify the institutional bottlenecks (legal, regulatory, administrative) and organizational overlaps that have arisen over the course of Guyana’s historical development and still have roots today;
- Generate strong political support and local “buy-in” to conduct necessary reforms;
- Develop awareness for the citizens regarding the reforms to be followed;
- Identify the proper timing to intervene;
- Identify an action plan of reform and one or more empowered authorities (and political champions) that will be followed rigorously; and
- Foster and ensure discipline and rigor to implement the reforms and ensure their sustainability and acceptance.

Suggested Reforms in Brief

The situation in Guyana is reversible if the following reforms are implemented:

- (i) Simplify the processes of the land registry and;
- (ii) Simplify the processes of the Deeds Registry, provide open access to low-income individuals and lower information costs, and publicize the fees and time required to complete a transaction of any kind with and at the registry;
- (iii) (i) and (ii) will systematize the absorption process of the two registries;
- (iv) The two registries ought to merge into one registry and the final registry system should look closer to the Title Registry system;
- (v) The registry must be administratively independent;
- (vi) The registry should be autonomous in terms of financing and budget so it is able to self-finance, which allows for the strengthening of the registry;
- (vii) Conflict resolution should be conducted in three stages: (i) mediation in the registry, (ii) arbitration when all other stages do not work and (iii) judicial; and

- (viii) The registry should be able to service citizens and keep track of the title history of the property including the original sale and purchase transactions, new urbanizations for any type of housing created by the state, mining entities, municipalities and the housing ministry, as well as the ministry of economy and finance, banks, and other financial entities that make use of the data.

The suggested reforms need to be coupled with a thorough action plan and a strategy that involves the definition of the appropriate timing to start the reforms, as well as the needed coalitions among government officials and professionals

1 Introduction

Guyana is a newly independent republic, which became independent from the British Empire in 1966. Yet, its history stretches back more than 500 years. The Europeans first discovered Guyana in 1498. It is a small, open economy with relatively low levels and volume of transactions. It suffers from a set of economic challenges, among which are generally low economic well-being, a large income disparity, insecurity of wealth and savings,

and weak property rights. Much of this is a result of the country's rich and turbulent history, which has left an imprint on its institutional evolution (e.g., norms, values, and rules used in a society—agreements among all players in a market).²

Guyana's past is punctuated by a continuous back and forth of applicable rules, laws, and regulations. The legal code and norms in the country carry the influences of the Spanish, French, Dutch, and British, who wrangled for centuries to gain control over this land. In addition, Guyana is comprised of different ethnicities, brought in to help the European settlers in agricultural exploitation. Africans arrived as slaves to work the lands, while Portuguese, Chinese, and Indians arrived as indentured labor; they all had different relationship with land and wealth.

2 Mapping the Problem and Identifying Relevant Institutions and Organizations

It is possible to trace the beginning of Guyana's property rights "system" back to the late 1800s, with its variations depending on the plot sharing along the shore among the Dutch, Portuguese, French, and British. At the time, property and ownership rights were based on the exploitation of land for the purposes of the owner being the "explorer" or "colonizer." In other words there were

Guyana At-a-Glance

GDP: \$1.196 Bn

GDP per capita: \$3,900

Output by Sector:

Agriculture: 37 percent

Industry: 22 percent

Services: 41 percent

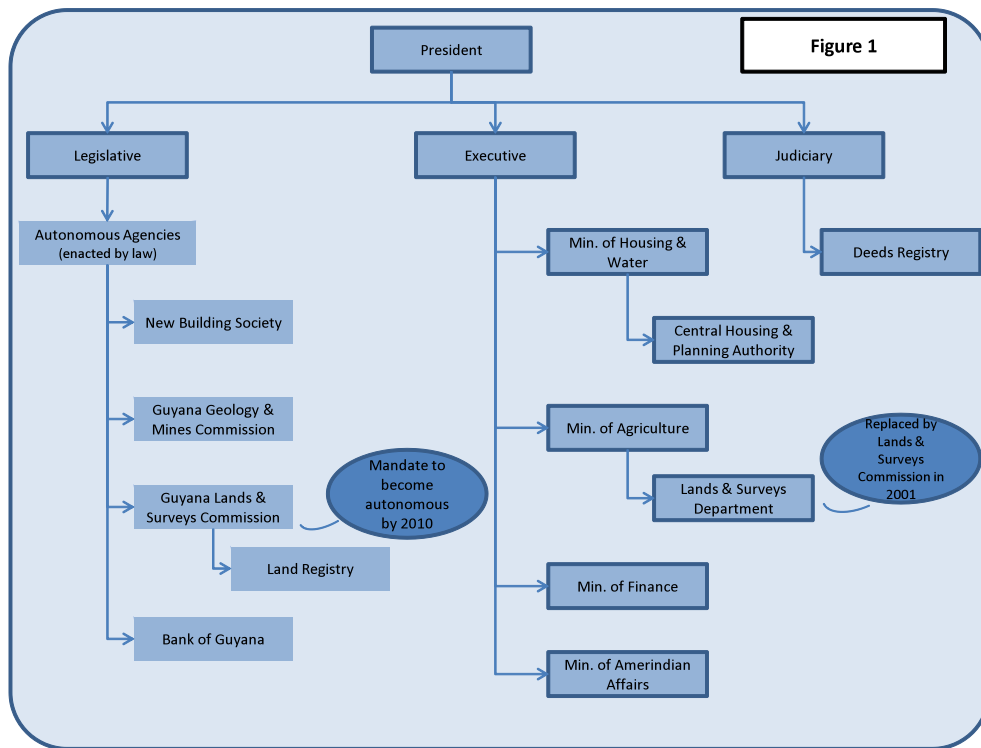
Infant Mortality Rate: 39.11/1000 (69th)

Remittances: \$424MM (2007)

² Chapter 1 of *Prosperity Unbound; Building Property Markets with Trust*, Palgrave 2007.

no “property rights” per se, but “exploring rights.” Following this situation there was the actual colonization of sections of the shore lands by various countries with distinct legal traditions. Some use the basis of the civil code—as applied in the Dutch countries—and some use it as applied in France at the time. When the British Empire took over, it transported all transactional behaviors, rights, and ownership or usage certificates to the common law tradition as applied at the time. As a result, today there is a constellation not only of different legal systems, but also of a divergent understanding of ownership, as well as other rights as they relate to property, land, housing, and mines. It is helpful to the analysis herein to have a general mapping of the Guyana governmental agencies seen from the point of view of property rights (Figure 1).

Figure 1. Organizational Mapping



The property rights system is the core element of governance of a country’s wealth base. Typically it is established by a formal set of rules and norms (institutions) and organizations that (i) emit the right of ownership, sale, inheritance, long term lease, or usage; (ii) manage and control quality and traffic (volume and number of transactions) of such rights; and (iii) enforce the rights.

For a right to be properly emitted, managed, and enforced the following is necessary:

- a. Data from both owners and users that is reliable, frequently updated, easily available, and provided in a voluntary fashion by the owner;
- b. The necessary infrastructure to file and map the information in a standardized and codified manner; and
- c. An incentive scheme for all users to use the system and keep it up-to-date. Such incentive is established if the financial and banking system is robust and able to use these rights as assets, and if the macroeconomic conditions are also robust. Once a right is secure, efficient, and cost effective, the financial markets use it to reduce the cost of lending and to promote further wealth creation and economic growth.

Figure 2. Normative Case

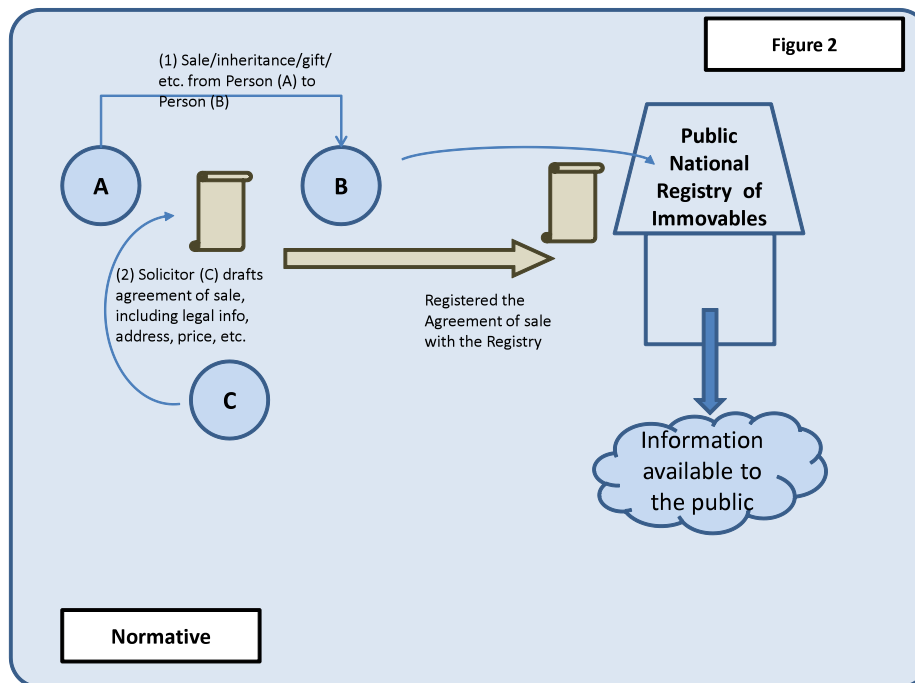


Figure 2 depicts the desired level of transaction and information transparency in a well-functioning property rights system. In this, the *normative case*, an agreement between a seller (A) and a buyer (B) is followed by the drafting of an agreement of sale by a solicitor (C), outlining all details of the transfer. The solicitor registers the agreement of sale with the public registry, which in turn makes the information immediately available to the public.

Today the Guyanese property rights system is broken in more than one of the links suggested above. The section below will outline the reasons why that break has occurred and why it is still broken. The problem is not a relatively benign organizational mismatch, or an organizational procedural matter that could be fixed with a management reform or procedural streamline intervention. Rather, it requires a comprehensive set of reforms aimed at changing perceptions, understanding of the system at large, and attitudes towards property rights and their enforcement.

3 Reasons why the Property Rights System is Ineffective

3.1 *Distinct Legal Systems Lead to Distinct Types of Titles and Registration Certificates*

RCA allows us to peel the historical layers and identify the forces that established new rules and norms of owning and exchanging property in Guyana, as well as the enforcement of such rules. Each layer, in the case of Guyana, brings with it not only a new set of procedures but also literally a new set of written formal legal structures. Distinct formal rules also lead to a series of added, overlapping and conflicting processes because most of these rules are trapped in a past time dynamic and do not keep up or represent the growing new Guyanese society.

Guyana had its natural resources and land originally exploited by the Dutch, who after a series of conflicts with the other European powers (i.e. French, Spanish, Portuguese, and English) formally colonized the country. When the colony was under the Dutch, the property or land ownership, including housing and crops, were originally registered under the guidance of the Civil Code legal tradition in the property registry. This was consistent with the systems applied back in continent. When however, the colony fell from the Dutch to the British Crown the legal system of economic transactions and social conduct was based on the Common Law tradition of the Empire, a distinct legal system from that used by the Dutch or French. To this end all types ownership rights registered or even titles that were drafted under the civil code were ***transferred*** to the common law tradition yet they were registered in the same type of registry system applied by the Dutch called a Deeds registry. The ownership was getting transported from one legal system to the next calling the ownership certificate or deed a ***transport***. A transport is the recognition of the Civil Code system to a Common Law system. As of today the Deeds Registry continues to register transports.

Figure 3. The Story of Public Land in Guyana

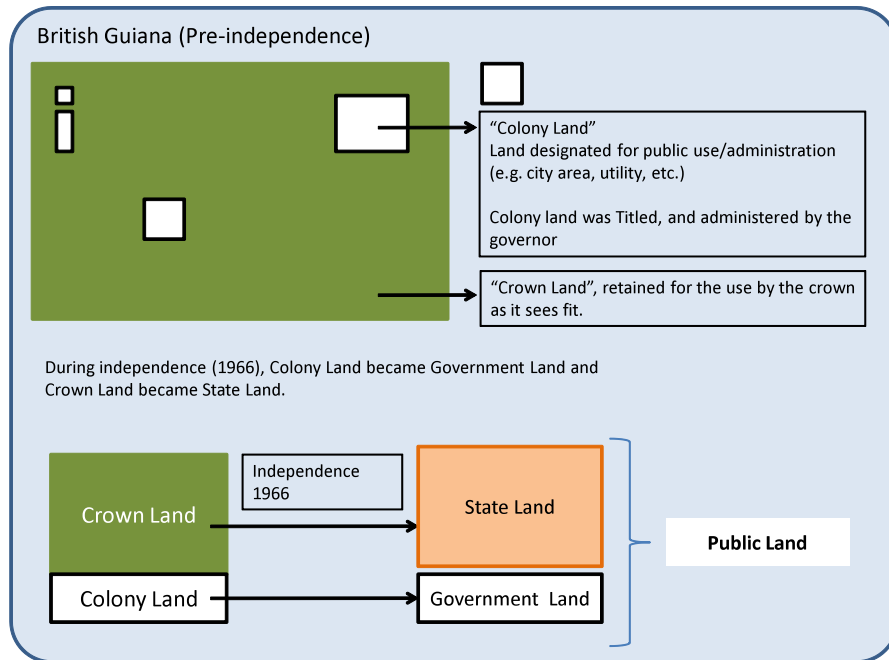


Figure 3 maps out the types of lands in Guyana and the subtypes of public land. Under British Crown the land was subdivided into two types: *crown land* and *adjudicated land* to cities and privates. Crown land could only be “alienated” into *colony land* where a title was issued to the governor. Colony lands were registered in the Deeds Registry. Land that was transferred from the original Dutch ownership was registered as transport ownership in the deed’s registry.

After independence in 1966, Crown Lands became *state lands*. In the meantime those Colony Lands, lands that were nonalienated, nonadjudicated, and had never been given a title of ownership are now referred to as *government lands*. Today the common definition of *public lands* includes all state and government lands.

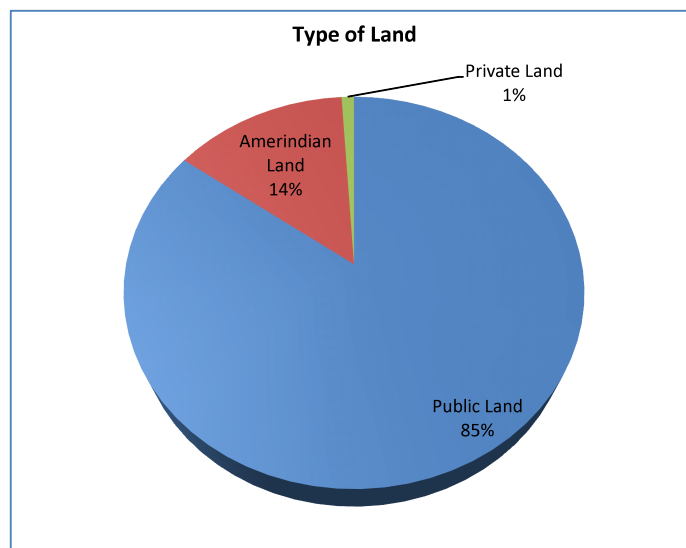
In 1961 the Government of Guyana started implementing a new registration system, similar to the one used in Australia and brought to Guyana by a British surveying engineer who was working in Australia. The system was called *Land Registry* and was followed the Torrens system of registration created and applied with good results in Australia until today. This system was only used to register new adjudications (titles issued by the authorities) created by the British Crown. These types of ownership, created directly by the common law legal tradition, were and are called *Land Titles*.

3.2 Distinct Types of Lands – Organizations Managing Lands and Property Rights

Part of the reason for the convoluted property rights system is the various types of land that exist in Guyana today and distinct ownership. In essence, the ownership type will primarily depend on what type of land is being considered. The following is a breakdown of the three types of land in Guyana today:

- a) **Public land – 85 percent:** made of what used to be known as state and government lands;
- b) **Amerindian land – 14 percent:** lands owned by the Amerindians, which are titled and the alienation was done in the 1970s; and
- c) **Private land – 1–2 percent:** land that can be transferred by either *freehold* or *absolute grant*. A freehold transfer could use either transport system or a land registration system that is based on the Torrens type registry. An absolute grant is issued to properties that come from agricultural lands. The first step of alienation is for the land to become state lands and then granted to a private individual. The grant is issued by the president of the republic. This grant can only be given once on a piece of land and then it can be transferred through either a transport or a title.

Figure 4. Land Distribution



Public land in Guyana today consists of the two following types:

- (i) State lands (70–75 percent)
- (ii) Government lands (25–30 percent)

The Guyana Lands and Surveys Commission, originally established in 1959 (and reestablished under the Lands Registry Act of 1978) is the administrator of all public lands in Guyana, and is responsible for their alienation and final adjudication. Since 1959 a new registry was created to work with the Lands and Surveys Commission, called the **Land Registry**. The Office of the Commissioner is expected to be the overall manager and controller of the lands in Guyana. Together with the Title Registry, this office intended to operate as the perfect system of land and property management—perfect in terms of security of transaction and consolidation of all real property. The Lands and Surveys Commission is responsible for alienating crown lands into state lands and into private lots. These alienations are surveyed (i.e., subdivided into individual lots with a unique identity number), and are in turn registered in the Title Registry of Lands.

3.3 *Parallel Registration System (Deeds and Title Registry—Today a Parallel Registry and Registration System)*

3.3.1 Registration of Property Transfers

At present, land or property in Guyana can be transferred through the following means:

- Government adjudication
- Vesting (Inheritance)
- Adverse possession or prescription
- Sale/purchase or gift

The transfer is agreed between the original owner and the new recipient of the property; the validity of the transfer is legitimized or formalized by its publication at the National Gazette, the official government publication. The registry serves the purpose of making the ownership information and all sort of other rights related to the property (such as financial liens) public to all third parties. Guyana has a rather uncommon situation of having two registries, the Deeds Registry and Land Registry. They operate in separate geographical jurisdictions and use distinct legal frameworks. The **Deeds Registry** exists since the beginning of recording rights of

ownership and was introduced in Guyana by the Dutch based on the Roman/ Civil Code system and tradition. The Deeds Registry records and archives all transactions related to sale, purchase, gift, vesting (inheritance), prescription, mortgage, and mutation (subdivision) of land or a contraction that occur on a transport deed. The transport deed reflects only the ownership of the land, not of the house. The process of registering a transport is longer and more elaborate than that of registering a land title.

This registry effectively catalogues by date key information about a transaction that occurred between the parties. In the case of a land transfer, it includes information about the new owner including the seller, the buyer, detailed information about the land parcel, and details of the financial transaction that took place. There are no mapping coordinates but geographic information is reflected through meets and bounds boundary description and street addresses. The registry is intended to also archive the history of the property. In fact, it only maintains the last transaction and not the full history of the ownership title. However, by a law passed in 1917, a transport is supposed to be indefeasible. Registrations cannot be revoked. If there is an issue of fraud there is no indemnification by the state. It becomes an issue for the courts to sort out.

The **Land Registry** is a different type of registry. As mentioned earlier it started operating in 1961 but it became official by the December 1959 Land Registry Ordinance. One of the key masterminds of this system was Mr. Clark from Australia who was part of the land committee that drafted this new system. Under this system, an area was identified and selected by the minister of justice/attorney general, and declared a “Land Registration Area”. This land registry archives the history of the transactions on the plot, yet every transaction is registered as a new one. The registration is based on identifying information of the owner (legal information) and on the unique location of the parcel defined by a cadastral map (geographical information). This system registers (i) changes in ownership, (ii) financial weights, and (iii) the geographical coordinates of the plot creating a unique plot number. Such a system has the ability to add more information on the right depending on the economic development of the community—that is, it can also register utility lines etcetera. Owners can only register their plot in this registry if the Land and Surveys Department has been given state authorization to declare a large area a Land Registration Area, survey the lands, and adjudicate titles to the owners. Thus this registry is not used unless the state declares the area a Title Area and the Lands and Surveys Department Issues maps and titles of the area.

While registration of property in the Deeds Registry does not provide any indemnification in case of errors or fraud, the same is not true for registering property in the Lands Registry. An *Assurance Fund* of 0.1 percent of the value of the property applies in the title system as a guarantee. This allows for indemnification of any wrongdoing or mistakes the Land Registry may make while registering a property title.

3.3.2 Lands (also called Title) and Deeds Registries in Everyday Use

Based on evidence for this study, on average citizens do not really use the registries that much (the majority of the users are in Georgetown) and the system that is the least known is the Land Registry system. It was originally located in the same place as the Deeds Registry. The original intent was to merge the two systems, as the Deeds Registry is considered to be a more sophisticated, leaner, cost effective, and secure system, but that never happened

The public perceives the deeds registry as a better and more secure system to use. The claim is that while information in both registries can be compromised, the Land Registry is far more susceptible to corruption than the Deeds Registry. The common wisdom, among government officials and solicitor, is that a transport deed is a better and more secure document to have if one decides to use the registry. The transport deed continues to be more widely used and known, although in theory the land title is expected to be THE secure property right.

The Land Registry lacks transparency and accessibility, and suffers from an enormous administrative backlog. These factors combined lead to the perception in the public eye that this registry is untrustworthy and less secure, and thus not the registry of choice. It is important to note, however, that as areas are declared Land Registration Areas under the government's new housing and urbanization programs, and parcels of land are surveyed, they are registered and titled in the Land Registry and provided a title (as opposed to a transport from the Deeds Registry). In contrast, most private transactions are done by transport. It is also noteworthy that during a transfer or sale, the parties do not have a choice as to which to use, as this is determined by the registration history of the parcel or home.

3.3.3 Property Transfer Under the Deeds Registry—the Most Popular Registry—and the Role of the Official Gazette

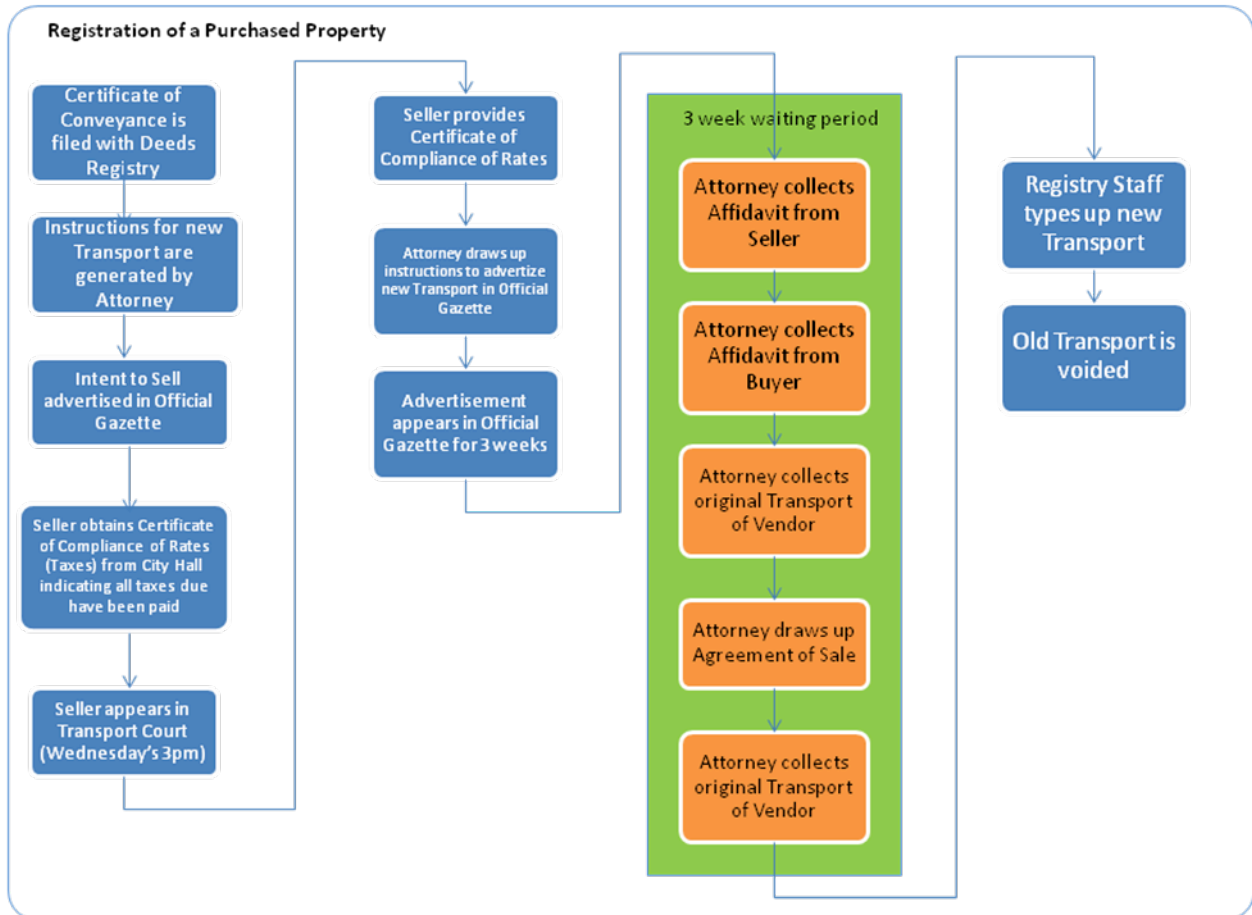
The Official Gazette is the official newspaper of the government where documents of all sorts are posted. The gazette provides an opportunity for the public to become aware of impending transactions and to comment or object to them. Most documents related to transfer of ownership of property held in transport need to be displayed in the Official Gazette for a period of three weeks plus one day. Examples of documents that are advertized include the text of the transport currently in consideration for sale from one party to another or the text regarding a mortgage that a bank is considering to issue to a buyer.

3.3.4 Sale/Purchase of Property Held Under a Transport

The process of selling a property held under a transport is long and inefficient. The steps involved related to the Deeds Registry include the following (see Figure 5 for a schematic description of the steps):

1. The seller takes a copy of his current transport to an attorney, who drafts a sales agreement and the instructions to advertize in the Official Gazette.
2. The buyer provides 10 percent as a down payment to the seller. At this stage, the buyer may require three to four months to raise funding necessary to complete the sale (this process is described in detail below).
3. The bank that will issue the loan to the buyer advertizes the mortgage in the Official Gazette.
4. The bank prepares the details of the mortgage into a mortgage deed and registers it with the Deeds Registry.
5. Seller obtains a Certificate of Tax Compliance from the Guyana Revenue Authority indicating they are current in all taxes owed.
6. If there are no objections raised during the advertising of the mortgage or the transport, and assuming all other requirements for the mortgage are satisfied, the bank will issue the mortgage.

Figure 5. The Process of Registering a Purchase/Sale Held Under a Transport at the Deeds Registry



Number of Steps: 11

Estimated Cost: Total of 3.5 percent of the value (Law of 1930). The valuation is done by both parties, and the seller and buyer must swear that the value is true and real.

Estimated Time: 42 days, assuming the buyer does not require a mortgage from a bank.

3.3.5 Transfer of Property via Inheritance

The process of transferring a property via inheritance is as follows:

1. The executor of the estate (or relatives of the deceased) obtains a death certificate.
2. A list is made of all the deceased assets.
3. The assets, which may include stocks, bonds, shares in businesses, land and homes, and bank accounts, are valued by government valutors

4. A declaration is made to the Commission of Internal Revenue (CIR) and processing fee of 0.5 percent of the value of all assets is paid in order for the CIR to issue a certificate.
5. If there is a will, the executor named in the will applies for a probate (i.e., a power of attorney representing the deceased person). The Supreme Court fees for this process are minimal.
6. If there is no will, the Supreme Court appoints someone to become the *administrator* of the assets. This can be the surviving spouse or children.
7. If the executor is out of the country and cannot apply for probate, he or she leaves someone in charge through a power of attorney and gives a letter of administration.
8. The letter of administration from the chief justice of the Supreme Court is issued.
9. Based on the will, the lawyer drafts the formal documents required for the transport.
10. The transport is advertized in the Official Gazette for a period of three weeks plus one day.
11. The executor pays a fee of 0.5 percent of the value of the properties to the registrar.
12. Executor and beneficiaries sign off on transfer of properties.

3.3.6 The Process of Sale/Purchase with the Title Registry

One of the most challenging elements of the analysis for this paper was to study the Land Registry. Almost no one knew of that registry, originally sharing its location with the Deeds Registry by the high court in the center of Georgetown, but now moved further out and located tangentially to the Lands and Surveys Commission. It was very easy to organize meetings with the registrar general of the Deeds Registry, the registrars, the secretaries, and the legal advisers of the registry. In contrast, it was impossible to meet with anyone from the Land Registry itself. It was possible to meet with the Land Survey Department however, as well as with the original director of the Land and Deeds Registry in 1959, Leon Rockliffe, who served as a director of both registries until the Land Registry moved out of the High Court Building and separated itself to a new location sharing the back office with the mapping department of the land surveying agency.

The process of registering ownership in the Land Registry is as follows:

1. The Supreme Court announces a jurisdiction a Registration Area, meaning that the rights on this area are all registered and managed by the Land Registry. There are areas that have transports and land titles because a Registration Area can be

declared not only state land that was not yet adjudicated, but also areas that has transports registered in the Deeds Registry.

2. The Commission of Land Surveys first surveys the lands and subdivides them into parcels, if parcels do not yet exist.
3. The Commission of Land Surveys creates a unique plot number for each parcel in the cadastre.
4. The land registry registers the parcel's mapping reference (plot number) with the legal information of ownership and any leases that exist.

It was not possible to perform a first-hand analysis of how that registry works. However through a proxy analysis it was determined that although it is intended to follow a more secure system of registration, it appears to be impenetrable and fully capable of avoiding any quality control or inspection. Also, it is not open to the public and its management and faith depends very much on the type of person who runs it. It has a very large backlog of titles waiting to get processed and there seem to be a large propensity of rent seeking. In addition, the Lands and Surveys Commission was stripped of its mandate and funding to continue surveying state lands and more areas that would be eligible for the land registry. The conclusion based on the analysis for this paper is that the system is not at all used to its potential and instead has become a less transparent tool that increases the level of insecurity in the property rights system.

3.4 An Example of Property Rights Inefficiency Outside Real Estate/ Land Mining Rights in Guyana

Although the terms of reference for this paper did not specify to explore the mining sector and how rights and licenses are issued using RCA, it was observed that the overall problem of property rights in Guyana is not only one that touches the immovable properties but also one that touches their important sector of mining.

Mining is a relatively important income generating activity in Guyana. It makes up a large portion of the service sector, and comprises 41 percent of GDP. However, the regulatory system of mining rights, as well as the emitting and enforcement mechanism, is not sufficient or effective. Instead, it is prone to promote informal mining and a serious loss of revenue generation, especially among small and medium scale mining. In larger mining projects, the

enforcement of mining licenses and rights are precarious, weakening the security of these rights. This diminishes the country's ability to negotiate better prices for the extracted ores.

Figure 6 shows the formal outline of the three types of the mining licenses and the process of issuing them. Mining licenses are not efficiently emitted. There are many overlaps and there is a serious inability to enforce them. There also seem to be serious problem to keep up with license requests: there is over 50 percent of backlog of all mining license applications. The processes are long and bureaucratic (see Table 1), and the small and medium mining rights/licenses in particular seem to be mainly informal, as applicants prefer to start mining than wait for years to get their licenses. The rights in the mining market are surface and subsurface. The mining rights are registered in a unit of the *Guyana Geology and Mines Commission (GGMC)*. The process is not at all geared to facilitate the market and allow for monitoring the supply of ores and thus the final value of licenses and any mining rights.

Figure 6. Process of Issuing Mining Licenses and Rights

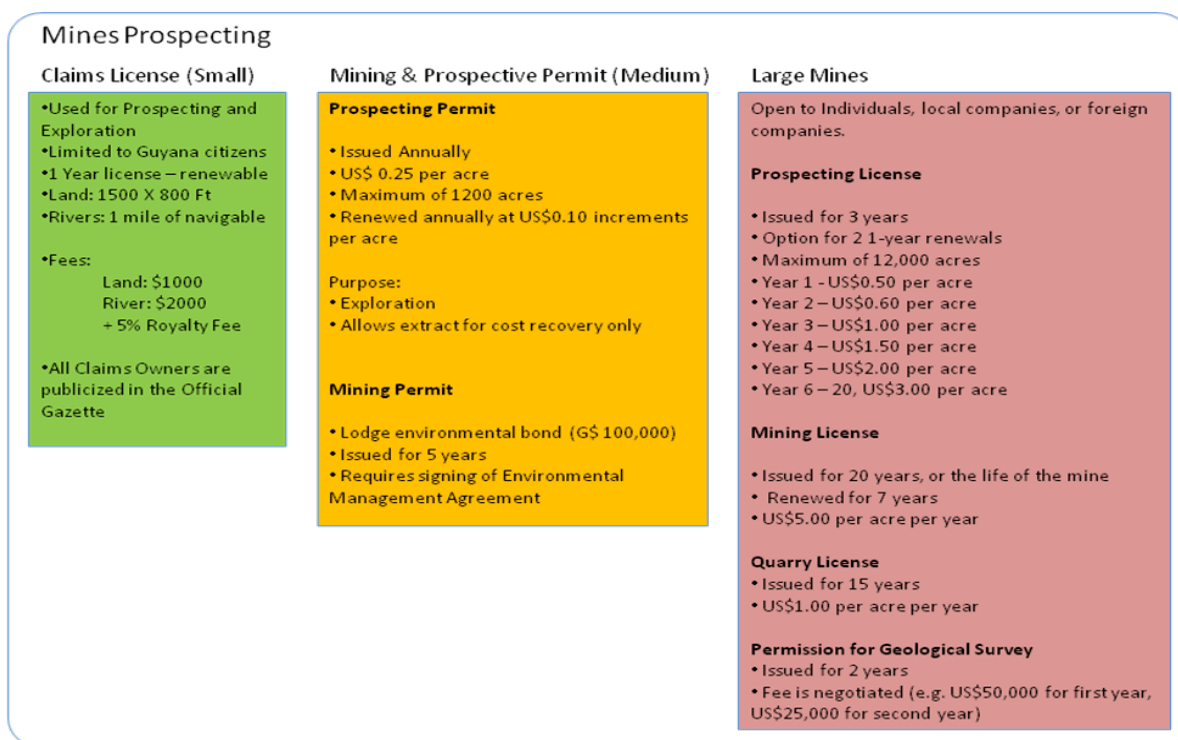


Table 1. Comparatives Regarding Cost and Timing Involved in Enforcing Contracts

Indicator	Guyana	Latin America and the Caribbean	OECD Average	Trinidad-Tobago	Suriname	Haiti	Belize	Costa Rica	Dominican Republic
Time (days)	581	707.0	462.4	1,340	1,715	508	892	852	460
Cost (% of claim)	25.2	31.3	19.2	33.5	37.1	42.6	27.5	24.3	40.9

(Source: *Doing Business, 2009*).

3.4.1 Where the Mining System Breaks Down

A. No Ores Registry

Guyana does not have an ores registry. As such, it does not have knowledge of the total location, type, and value of the minerals and ores that are extracted. Therefore, when an individual or company obtains a mining license and agrees to pay the royalty fee (e.g., 5 percent in the case of a small mine), there is no way to know whether they may have extracted more, given the location in which they were mining. Royalty revenue is based largely on the “honor system.”

B. No Mines Registry

Although the Guyana Geology and Mines Commission registers and tracks the claims and licenses for mining, the mines themselves are not registered. The land itself containing the mines is surveyed and, as permits are issued for extracting, this land becomes part of the registry. However, the individual mines only exist as they are linked to this land. For example, if three individuals decide independently to prospect or mine on three adjacent acres of land, yet they all are extracting from the same ore vein, the registry does not track or register the fact that this is a single mine with three possible extraction points. It treats them as three separate mines.

C. No Mines Exchange or Market

Today the public sector is a passive actor in mining. It mainly administers the mining permits and licenses, collects the fees, and ensures procedures are followed. It does not, however, encourage an open market in mining. As such, there is no formal market where individuals can buy existing mining permits, or sell their own permits. Other than the original transaction to

obtain the permit, there is no secondary exchange. All such transactions are done on a person-to-person basis, without the knowledge that a market may impart, such as comparable valuations.

D. Arbitrary License Fee Valuations

As indicated in Figure 6, the commission determines the license fees to be charged for each type of permit. These fees are not based on a market-based system, an exchange, or on valuation methods of what the mine is capable of producing, or its value and a percentage (full, or subsidized) of that value that each individual or organization is willing to pay, based on a government policy. Rather, the fees are historical and are revisited occasionally by administrators and policymakers. There is no assurance that the fees are not too high or too low.

3.5 Mortgages and Foreclosures

In many aspects the litmus test of a robust property rights system is the users of this system. If the users trust the system, then the system works. The most important users of a system are those who use the rights as collateral for lending. The system is verified by the ability of the asset to be foreclosed and to be valued in the market relatively to other similar assets. This is all behind the issuance and enforcement of a mortgage.

In the case of Guyana, the financial system is rather creative and does not rely on the registry system or property rights system at all for any of their activities. Mortgages are in reality instruments that do not compare with traditional mortgages. In Guyana, a mortgage is essentially a reputational consumer loan. The registry system is not reliable and secure, thus it does not provide the backbone of a serious transparent and robust property rights system to be used by any financial institution as a basis for valuation or asset guarantee. In addition, ownership in general is overregulated with a lot of intervention even in the banking system, which does not allow for the banks to cheaply and effectively use foreclosure. Foreclosure in Guyana is the most cumbersome aspect of a mortgage and thus works as a deterrent for any bank to establish a real mortgage rather than a reputational consumer loan. Foreclosure can take years, as it is court administered and therefore very much dependent on the discretion of the judges. Foreclosures in Guyana are expensive processes to be avoided at all cost. All of the banks engaged in mortgage lending there have expressed frustration with this issue and presented their methods of stringent pre-selection that would render foreclosure unnecessary.

In more detail, a mortgage in Guyana is understood to be a loan from any bank (private or state specialized bank such as the National Building Society) directed for the purchase or construction of a house. It is distinct from the traditional financial instrument of a mortgage applied in the West. In the latter case a mortgage is any loan that is underlined by the value of a real property asset. It can be used for purchase or home improvement, to start a business, or even for consumer/personal purposes. In Guyana a mortgage is strictly understood as a loan directed for the purchase or building of a home. Yet any loan used for home improvement, or for the starting of a business or improvement of a business (with a real property as a guarantee), is considered a commercial loans and is bulked under a different set of loan instruments and ratios in the Bank's overall portfolio.

The mortgage process in Guyana is as follows:

- a. Fully verifying the income capacity of the borrower through a job letter from the employer other bank accounts the applicant may have. If the individual is self-employed, the situation is rather difficult as the individual has to present financial statements of the last two years and convince the department and external legal experts hired by the bank that he is credit worthy.
- b. Verifying the income capacity of the guarantors.
- c. Collecting a certificate from the tax authority that the borrower is current in his or her income tax liabilities.
- d. The bank requires the property ownership information (transport, lease, or title) as a line item in the list of requirements; however the loan can start being emitted in tranches before the verification of the title or the registration of the mortgage in the Deeds or Land Registry. *This is a proof of the fact that the real property is used as a last resort and only as such in the case of a foreclosure.*
- e. The value of the loan is not based on the value of the home. In the case of building a house, it is based on the ability of the borrower to repay. Under this premise, the borrower defines the cost and size of the house that he or she wants to build.

- f. The applicant has to present a certificate from the Neighborhood Democratic Council (NDC) or City Council (CC).³
- g. The applicant has to present the building plan together with building permits and all other approvals (rather cumbersome and many) from the NDC or CC.
- h. The applicant also presents the valuation of the project, which constitutes for the valuation of the contract and the land. The valuation has to be approved by the government valuers, professional engineers, or architects based on the cost of the building, cost of foundation, square footage, and adjacent properties. There are discount rates applied that are up to 50 percent. The key is that this step is what constitutes the value of the mortgage loan.
- i. The bank has to make sure that the applicant is not exceeding monthly expenses over 85 percent of this gross income; otherwise he or she is not eligible.

The regulation on the mortgages is such that banks are to establish mortgage payments on valuation of step (8), and establish monthly payments not higher than the 40 percent of the gross income of the applicant. It is important to note that there is no credit check that occurs for the clients as the process to approve the applicant is considered a credit check.⁴ The enforcement of any property right (real property, mining etc.) is organized by judicial methods. The institutional and organizational structure, as well as the legal framework of the country, does not call for Administrative Dispute Resolution (ADR) or for any other sort of extra-judiciary method. This is indeed a serious impediment to foreclosures and to the usage of a real mortgage as a financial instrument. The registry system is already not conducive to providing security on the loan based on the property. The cumbersome and expensive foreclosure procedure explains why the bankers decide to turn mortgages into pure reputational consumer loans. The fact that the enforcement of a mortgage is so difficult and expensive is an additional negative incentive for the improvement of the security of the property rights, as they do not seem to have a real use in the market.

³ The NDC is the administrative authority of the rural areas. Although it does not really have land, the NDC holds a historic aspect of administration of the public reserves of lands that may exist from housing schemes.

⁴ Apparently, credit checks exist only between banks.

4 Informality as a Result of a Weak Property Rights System

The property market in Guyana is not a robust one. Its distinct puzzle of a series of legal systems, cultures, and people has not jelled in a homogenous property rights system. Instead there is an overburdened process that is not simple or linear and definitely not predictable. It hides a series of unpredictable elements all dependent on the public servants discretion and the directors of each organization. The transaction costs and uncertainty of the final outcomes are large deterrents to even engaging in the transaction to start with. The banking sectors, as well as all other individual users, identify both the Lands Registry and the Deeds Registry as bottlenecks in the process, while the common agreement is that the judiciary—registry and any enforcement mechanism—is weak and not independent. Such a system is vulnerable to corruption not only in terms of rent seeking but also in terms of information compromising.

The situation of outdated information at the registry in terms of ownership rights is a very serious one and can be found among all types of income levels, but most commonly when a plot is subdivided and descendants build additions to the original homes. Moreover, the large numbers of transactions involved in land registration are costly, not necessarily in terms of fees, but more so in terms of uncertainty, unclear processes, and lack of transparency. This discourages middle income and poor individuals who plan to build or buy a property from keeping their ownership records updated. This is a major issue in the case of inheritances and mutations. There are a large number of poor abandoned homes in Georgetown, and many of the housing schemes targeted for the poor tend to house middle class families. This is a major structural problem that can only be resolved if the property rights system is reformed. The case of Victoria is a fascinating case of a village that was started in the late 1800s with a fury to own land and to be able to give it to their heirs, yet today it is a village that has a large level of informality (see Box 1).

Box 1. The Case of Victoria

Emancipation in Guyana came in 1834. Five years later, in November 1939, a group of 83 ex-slaves gathered \$10,000 in savings they had accumulated and purchased Plantation Northbrook from the estate of the recently deceased owner. The approximately 500 acres were divided equally among the 83 signatories of the coop that was established for this purpose. The land was held in freehold title. Northbrook, later renamed Victoria, was the first settlement of its size and type to have a local code of government. Other properties and plantations owned by ex-slaves existed, but they were mostly in bush lands (i.e., away from cleared agricultural land), or were owned by individuals or small groups. Victoria was large enough to require the owners to devise systems of governance and consider needs for commonly used land and even public works projects (e.g., flood prevention) or churches. Victoria succeeded in exporting its produce of coconut and cassava.

Plantation owners did not look upon settlements like Victoria positively, as they saw opportunities for their labor base to defect and competition for their output to grow. Over the course of the next 20 years, attempts were made to thwart their success. These attempts either took the form of new regulations or taxes (e.g., passage of public ordinances prohibiting ownership by more than 20 persons and special levies for public works projects) or subversive actions to burn crop outputs. Yet Victoria and other settlements became symbols of the potential for land ownership among ex-slaves and catalysts for further reforms in Guyana. This is one example of a historic place that, although once managed to celebrate formal property rights, now has a significant number of informal unsecure properties. Victoria has a serious number of inheritances, subdivisions, and mutations whose ownership is not updated in the registry nor formalized in any way.

Informality is demonstrated not only in the lack of a proper registration system and updates on the rights, but also in the way the overall organizational structure to support and use those rights is organized. For example, regulations are overlapping between entities confusing the use of a transport versus a land title, reducing the ability of the financial sector to extend credit in a more secure and efficient way. Inefficiencies are imbedded in the overall property rights equation:

- (i) Emission of the Rights—that is the registry system.
- (ii) Quality control of the agencies that emit the right; both registries complaints get resolved by the intervention of the judiciary.

- (iii) Autonomy of the registries is hindered both administratively and financially; the Deeds Registry is directly dependent on the judiciary while the Land Registry is an independent agency. Quality is undermined and resolutions are difficult.
- (iv) Foreclosure is taken out of the registry and is a fully judicial issue, clogging the courts while the process is not clear and predictable either.

The rules and norms that the property rights are set, monitored, and executed are not at all secure or robust. Although the problem of informality has been so far localized to the country and the domestic market, as Guyana is an open economy a recipient of remittances, returning expats, and a country that has started a very large number of new housing schemes, this problem will soon take explosive dimensions. The organizations (registries, judiciary, etc.) will not be able to manage it, as the number of transactions and players in the market continue to increase. The reform of the property rights system required is imminent and must be done systemically and rigorously.

5 Conclusions and Recommendations

Through RCA it is possible to observe that the property rights system, and as a direct result the property market, is not a robust one. It is based on weak institutions and the end result is insecurity and inefficiency of rules, and a system that is very much prone to corruption. During the analysis for this paper, a few cases of properties being sold without the consent or knowledge of the owner were noted.⁵ This happens often among properties of Guyanese that have expatriated.

The existing system is fractured and does not seem to have an intellectual or political leader. The leader should be able to keep the integrity of the system and also make sure that all sorts of policy or reform decisions do not rapture it but instead mend it further together. Today

⁵ Guyanese who live in the United States found out that their property and homes in Georgetown was sold out and occupied by new “owners.” The new owners registered the transfer to the Deeds Registry and even received a mortgage for home improvement. The transactions were done without the consent or knowledge of the original owners, who later had to go to trial to restore their ownership, which took years.

Guyana's Property rights system is composed of competing and conflicting registries, and a set of rules, procedures, and organizations that are all overlapping, conflicting, unpredictable, and often times unrelated to the actual creation of the final outcome: that of a secure property right.

As of today, property rights are not thought out as such. Instead there is a common understanding that as long as one occupies his or her land or house or has someone occupying it for them, there is a relative security that the property will not be taken away. There is no awareness of the validity and importance of having a well running rights system. There is however the general understanding that a property transaction may require a bureaucratic formality of registering at the registry. The simple fact that people have no awareness of the differences between the two registries, or of the difference between a transport and a title, is telling of the situation.

As with all parts in a thousand pieces, this is because it is not clear to anyone in policymaking that land is both an economic and a social asset. There is no vision and the approach is done from a very segmented manner. It is commonly understood, however, that the rights are not secure as they can be compromised. It appears that the market is operating mainly on the premise of reputation of the owner. Reputation is always a good proxy when formal rights systems are imperfect and when the market is small in terms of number of players and volume of transactions. Reputation, however, falls short and becomes ineffective to manage transactions when the market opens up to the global financial markets and to larger volume of capital (through remittances) and transactions. In this case, regulations prove to be unenforceable. Things seem to work as long as the country is small and unsophisticated. However, once this changes (for example through increase of remittances from abroad, return of emigrants, globalized information flow, and new urbanizations), the system become ineffective and breeds insecurity and corruption.

5.1 Recommended Reforms

Leadership on economic policy ought to recognize the fact that property rights are a function of a system made of parts such as one registry, mapping reference, one set of processes, quality control of the right, and dispute resolution outside the court system. Also the overall cost of the process in terms of time and money should not have a higher value than the value of the actual

property that is getting traded. In the case of Guyana, the main issue with the property rights system is the unpredictability of rules and procedures and the overlapping of regulations, agencies, systems, and organizations, and not as much the fees involved. The outcome is a growing level of informality, as the system does not persuade the users of its benefits.

5.2 Recommended Actions

- (i) Strengthen the Land Registry processes and systematize the merge with the Deeds Registry. This should happen with the collaboration of the Commission for Lands and Surveys, as it should be the entity that provides updates of the boundaries and mapping to the registry. This office should be used as a back office of the registry to provide updated information and also be the data backbone of all transactions.
- (ii) All fees, times, and processes should be systematized so users can predict their cost of following or prerequisite transactions. This will allow for bankers to predict the valuation time as well as of any seller or buyer to predict the finalization of the process. None of this should take more than one working day.
- (iii) The registry should not be seen as a unilateral provider of ownership data to specific owners but as a provider of the public information to users such as banks, insurance entities, utility companies, mining companies, the ministry of economy and finance, yellow pages, among others. The registry should be able to receive a fee for every such data provision.
- (iv) The registry should be administratively and financially autonomous so as to be able to administer with full responsibility the rights. This is important as it gives an important degree of freedom to the registry and raises the seriousness of its operations. Also it reduces the ability of politics to be involved in private rights.
- (v) Conflict resolution should be taken out of the judiciary, especially at the early stages. Given the high level of informality and process ambiguity, much of the conflicts are not real but clarifications of boundaries and mutations as well as updates of the rights to today's heirs or owners. Such situations need to be presented to the registry, rather than the judge, and should be resolved through an administrative resolution or clarification. To this end, there are three stages of conflict resolution: mediation, arbitration, and then judicial. This is a more efficient way to secure rights and reduce costs of conflict, as well

as to reduce the pressure from the court system and let judges concentrate on larger conflicts.

5.3 *Timing and Strategy*

The reforms need to start with strong *political will* that will define the *champion* for the vision for a new property rights system. These two elements will define the implementation strategy of the change. Such reform should always start with ample political time ahead of it, thus it should start a few years before elections or at the beginning of a newly elected administration. This way the reform will can help iron out all procedural inconsistencies and break bad habits and historical patches that remain in the legal operational reality of Guyana.

ANNEXES

Annex 1. Special Policies for Affordable Housing /Low Income Housing

The Government of Guyana has confronted a need to develop and create new urban villages for new families. This has been a policy that the independent Government of Guyana has started since its origination. The village of Victoria is the original urban community for African Americans who were independent citizens of the country (see special annex on the creation of Victoria).

The Government of Guyana through the *Ministry of Housing* and the *National Building Society* is engaged in promoting affordable housing for the low and middle income of Guyana. The National Building Society (NBS) was set up in 1948 by the British to promote housing ownership among lower and middle-income individuals. The NBS today acts like a government-subsidized bank since it is exempt from paying corporate taxes in income earned on loans. As such, it is able to offer lower interest rates to those obtaining loans for lesser amounts. The current rate structure for NBS is:

4.95 percent for loans up to GU\$3 Million

6.95 percent for loans up to GU\$8 Million

9.95 percent for loans up to GU\$12 Million

NBS does not make loans for more than GU\$12 Million, although that is statute driven and the statute may change. About 95 percent of loans made by NBS are in the second rate tier.

To obtain a loan from the NBS, a borrower must:

1. Provide a photograph of the property being purchased.
2. Provide a copy of the transport or title of the property.
3. Describe the land or building, showing dimensions.
4. Provide a copy of the Agreement of Sale (which was drawn up by an attorney and advertized in the Official Gazette).
5. Pay a processing fee.
6. Show evidence of no tax due on water rates and land tax receipts.
7. Provide detailed estimates of any renovation (if purchasing an existing property), or of the construction (if planning to build).

8. Copy of an approved builders plan (approval may take six to eight weeks, and done either by Ministry of Housing if in Georgetown, or City Council or Mayors offices if outside of capital).
9. Letter from the employer stating the borrower's position, years of service, and income.
10. Income tax returns.
11. If self-employed, financial statements of business (P&L, BS, Business Profile, and Business Registration).
12. Banks Statement
13. Passport size photograph
14. ID Card.

Annex 2: List of Individuals Visited Between 11/9/2009–11/14/2009

Ms. Adele Butts
Land Management Officer
Guyana Geology & Mines Commission

Mr. Nizam Mohamed
Assistant Secretary
New Building Society

Hon. Mohamed Ifran Ali
Minister of Housing and Water
Ministry of Housing and Water

Ms. Natascha Hamilton
Senior Account Manager, Commercial Banking Unit
Scotiabank

Sasenarain Jagnanan
Senior Manager - Corporate and Commercial Credit
Republic Bank (Guyana) Limited

Ms. Myrna Pitt
Chief Executive Officer
Central Housing and Planning Authority
Ministry of Housing and Water

Mr. Enrico Monize
Manager for Lands and Administration
Guyana Lands and Surveys Commission

Ms. Fedinand
Deputy Registrar
Deeds Registry

Mr. Leon Rockliffe
Attorney-at-Law

Mr. Mark A. Waldron
Attorney-at-Law