

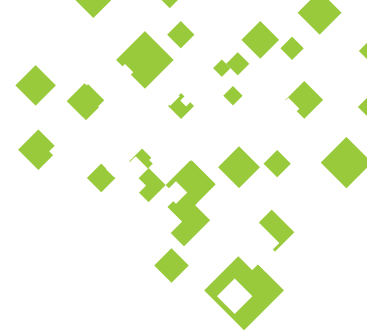


TOWARDS AN INTEGRATED LAND ADMINISTRATION SYSTEM

A PLAAS-PARI-SALGA PROJECT



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A functional land administration system is fundamental to land reform, economic growth and equitable change and pursues widely accepted national land policy goals, plans and strategies. In South Africa, however, these objectives are often discordant or contested.

This framework outlines an initiative of the Institute for Poverty, Land and Agrarian Studies (PLAAS); South African Local Government Association (SALGA) and the Public Affairs Research Institute (PARI) that argues for a greater focus on ‘integrated land administration’ as a means to reconceptualise the institutional domain of land governance and help to overcome the fragmentation that undermines land administration.

There is wide divergence about how to address this – a variance that reflects different interpretations of the problem, the scope of land administration, the priorities and the solutions. This lack of agreement across the board, from policy to implementation, is what this initiative aims to address.

The inception phase of the PLAAS–PARI partnership builds on the recommendations of the High-Level Presidential Advisory Panel on Land Reform and Agriculture and the SALGA study on the Acquisition and Release of Land in Municipalities. It brings together a range of key state and nonstate stakeholders to develop a shared understanding of the issues associated with the reform of land administration, identify and prioritise key areas for innovation and institutional reform.

The first phase provides the foundation for the launch of a broader initiative to be known as the Integrated Land Administration Project (ILAP).



WHAT IS LAND ADMINISTRATION?

Land administration is the operational component of *land governance*, which comprises the relevant land-related institutions, including land policies, laws, strategies, plans and organisational and operational arrangements. The processes, institutions and actions of governing include:

- How goals are set and policies are made
- How actions are designed to implement and realise these goals and policies
- How competing interests are mediated

The term 'land administration', as it is used here, was coined by the United Nations Economic Commission for Europe (UNECE) in 1993, and is defined in the UNECE Land Administration Guidelines as:

*"... the process of determining, recording and disseminating information about ownership, value and use of land and its associated resources. These processes include the determination (sometimes called 'adjudication') of land rights and other attributes, surveying and describing these, their detailed documentation, and the provision of relevant information for supporting land markets."*¹

Land administration includes state and non-state institutions as well as private sector and community organisations, and should be a set of integrated and integrating institutions.

Land administration connects all elements on which land has a bearing including systems of property – acquisition, tenure, inheritance, transmission, expropriation and spatial demarcation – and regulation of land use, valuation, mediation or adjudication of claims or development applications, resolution of conflicts and so forth. These elements are underpinned by a system of information or data processing.

Figure 1 depicts the hierarchy of elements in a land administration system.²

1 United Nations Economic Commission for Europe, *Land Administration Guidelines With Special Reference to Countries in Transition*, United Nations, New York and Geneva, 1996

2 Hull S and Kingwill R. in Hull, Kingwill and Fokane T, 'An Introduction to Land Administration: Notes to accompany the video series produced for LandNNS 2020

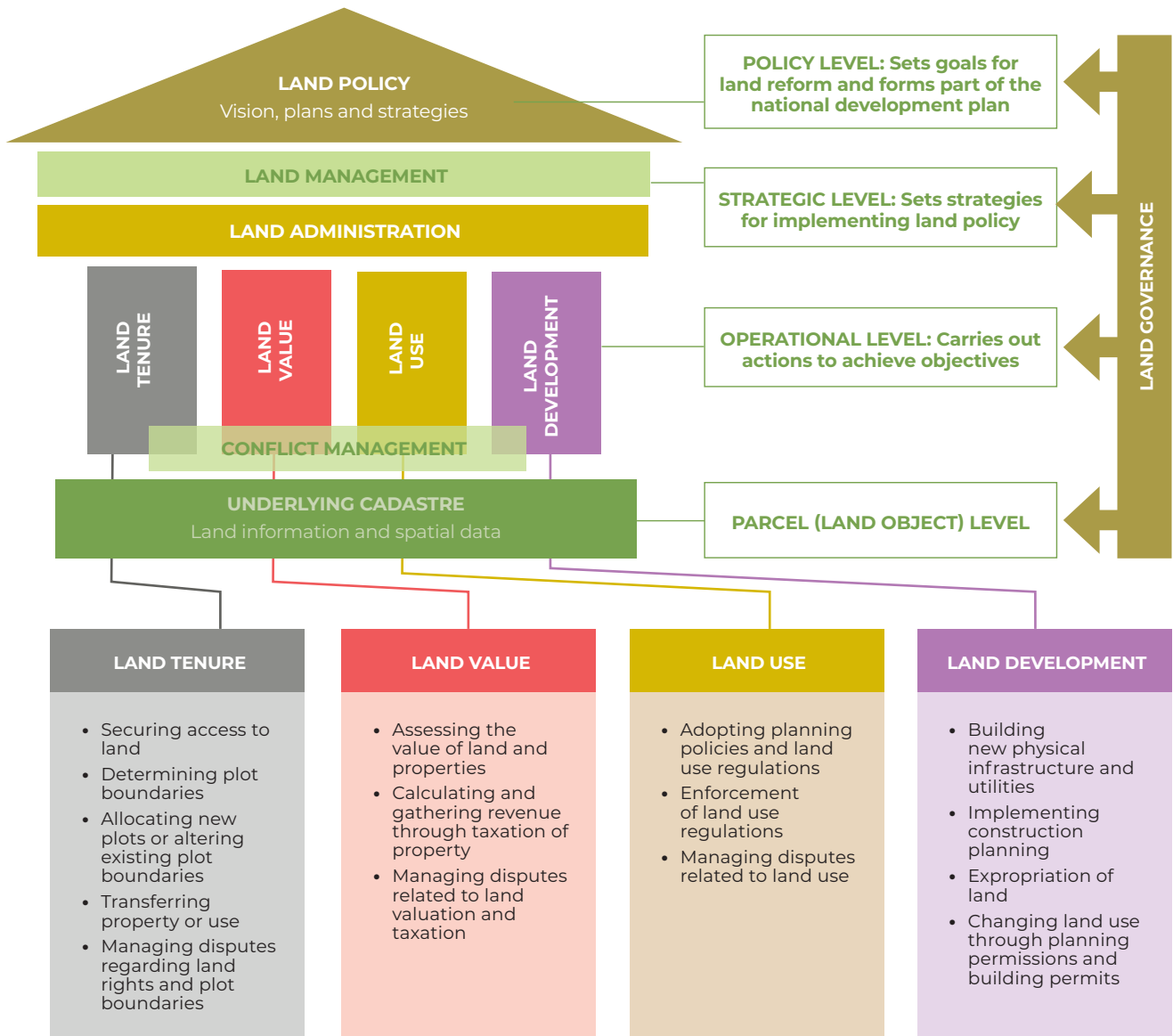


FIGURE 1: The elements of a land administration system

(Source: Hull & Kingwill in Hull, Kingwill & Fokane for LandNNES 2020)

The characteristics of land administration

Land administration is a system

Think of land administration as a car: it consists of many components but only when you put them all together do the parts become a system that can get you from A to B and serve your social and economic needs. The whole is greater than the sum of its parts. Like a vehicle, a land administration system needs reliable infrastructure to operate effectively as well as regular maintenance to stay abreast of technical and social changes.

Land administration is a form of infrastructure

Land administration can also be compared to a road network, with many different roads – national, provincial, highways, municipal roads and dirt roads – all interlinked, and used by every kind of vehicle. Like a road network a land administration system has different land tenure ‘vehicles’ – freehold, collective ownership, leasehold, rental, sectional title, servitudes, occupational rights, etc. *All these ‘vehicles’ need an appropriate level of land administration infrastructure to function properly.*

Land administration integrates and coordinates

Land administration is the central cog that coordinates all land-related sectors for spatial, social and environmental cohesion, and support for land reform. As an integrative system, land administration operationalises land rights and mediates land-related sociospatial issues.

Land administration leverages concrete benefits

A progressive and functioning land administration system activates rights, access and use coordination and can leverage concrete, socially legitimate benefits like tenure, property ownership, economic asset to trade in the economy and enhance social cohesion. It is capable of providing someone with an address so that they can access resources available to consumers and those that cover issues in the realm of public service.

Land administration mediates

A functioning land administration regulates the many public and private interests competing for access to land, with attention to the impact climate change has on the way land is used.

Land administration mediates different land interests, which include surface land use, subterranean resources and marine resources and levels the playing field when competing interests play out in the context of social and spatial inequalities.

Land administration offers redress

South Africa’s legacy of racial segregation has diminished the access and control of land by black people. Land administration offers redress for the discrimination this has engendered, coupled with a vision of spatial integration and social cohesion.

Land administration and social legitimacy

Developmental land administration is not only *defensive*, but also *affirmative*; people will do what works for them and will avoid what does not.

The functions of land administration

Although land administration processes can be categorised in many ways, the easiest way is according to its governance functions, namely, juridical, regulatory, fiscal, information management, conflict resolution and enforcement, as depicted below.

GOVERNANCE FUNCTIONS OF LAND ADMINISTRATION	
 <p>JURIDICAL (LAW-RELATED)/ ADMINISTRATIVE/ TECHNICAL</p>	<ul style="list-style-type: none"> • Allocation of rights to land e.g. sovereign grants, sales, donations, inheritance, prescription, expropriation, reversion, servitudes, leases, mortgages (registered) and off-register allocations by various local or community authorities • Delimitation of the parcel e.g. definition of the parcel, demarcation of boundaries on the ground, delimitation of the parcel on a plan • Adjudication e.g. resolving doubt and dispute regarding rights and boundaries • Registration e.g. official recording of information of rights and parcels • Restitution e.g. restoration of rights and transformational objectives (justice & access) • Resolution e.g. of unauthorised occupation of land
 <p>SPATIAL PLANNING AND LAND-USE MANAGEMENT</p>	<ul style="list-style-type: none"> • Macro planning and micro regulation of land uses e.g. forward settlement planning, zoning and environmental regulations that permit or restrict rights
 <p>FISCAL</p>	<ul style="list-style-type: none"> • Property assessment e.g. valuation of the parcel of land and improvements • Property taxation e.g. computation and collection of taxes • Compensation e.g. when land is expropriated by the state • Trade e.g. as an economic asset to trade and exchange
 <p>INFORMATION MANAGEMENT</p>	<ul style="list-style-type: none"> • Land information systems e.g. collection, storage, retrieval, dissemination and use of land information
 <p>ENFORCEMENT</p>	<ul style="list-style-type: none"> • Enforcement mechanisms e.g. defence of rights, enforcement of land use regulations, enforcement of taxation, etc.

Who performs land administration functions in South Africa?

The drivers of an ideal land administration system are the country's constitution, laws, juristic structures, and land policy goals, plans and strategies.

Although land administration is traditionally the preserve of government, in South Africa it includes state and non-state institutions, traditional authorities and the private sector. In South Africa, however, a lack of consensus about what these are, their discordant nature, and the fact that many are contested, are at the root of the central problem addressed by this review.

In the current reality of weak and fragmented land governance, land administration functions include community-based and nongovernmental organisations and traditional authorities.

Hybrid land administration – when state and civil society organisations undertake land administration jointly (if not necessarily efficiently) in communities with weak state governance – is becoming increasingly common in customary and informal settlements.

Citizens and organisations like schools and religious bodies can also perform land administration functions at a micro-level.

WHAT LIMITS THE EFFECTIVENESS OF LAND ADMINISTRATION IN SOUTH AFRICA?

1. The legacy challenge

South Africa's land administration and land tenure systems are a product of the interaction of peculiar ecological, economic and kinship systems and historical processes of dispossession, and the different ways in which customary law and colonial rule were imposed. The compounded, highly racialised capital-accumulation patterns of differentiation between races and within races were further reinforced by Industrialisation and capitalism.

2. A lack of visibility

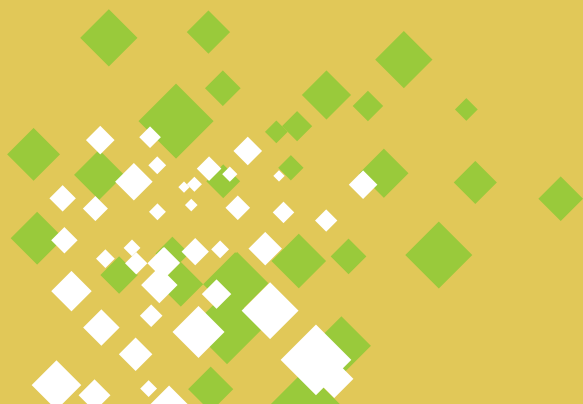
Land administration lacks visibility as a valid domain of land governance in its own right and there has been little political discourse since 1994 about its potential role in post-apartheid land reform, and broader issues of social cohesion and spatial equity.

3. Fragmentation

Land administration is fragmented not only along historical racial discriminatory lines but also in the various authorities including traditional leaders and government departments mandated to function in this domain and in the formal and informal institutions that operate at provincial, district and local level.

4. The binary problem

State institutions treat land administration as a distinction between formal and informal and view them as exclusive and separate domains. In this binary system, formal institutions of ownership



are regarded as the default land administration system.

Official governance structures reflect the dominant norms, which are accordingly translated into the manner in which departmental functions are distributed and organised in government.

Other systems, that include traditional authorities, are regarded as low grade and occupy the lower rungs of the hierarchy; because their logic is not well understood they are not integrated into policies and laws, but rather, represented as add-ons.

5. A lack of resources

Although land is a national function, municipalities and traditional leaders generally bear the brunt of land administration problems, even though they have limited powers and functions in terms of the Constitution to address them. All institutions involved in land administration face severe human, financial and technical resource constraints.

6. Limited scope

The Constitution defines the three post-apartheid spheres of government – local, provincial and national – as ‘distinctive, interdependent and interrelated’. Functions are assigned to each sphere as either exclusive or shared. Although land administration was not listed as a function in any of the spheres, land as a whole was retained in the national sphere.

7. Constrained capacity

South Africa's has vast capacity and expertise in technical systems in government in the Land Administration units in the Department of Agriculture, Land Reform and Rural Development (DALRRD), city management and the professional sector; social support systems via civil society organisations and a long history of immersion on the part of NGOs in land tenure and land rights issues and in academia. Unfortunately, these

are easily dissipated in the paralysing struggles between the state, civil society and various power holders such as traditional leaders.

8. The problem of misinterpretation

We tend to interpret land administration problems purely as problems with tenure, and thus see the solutions in terms of tenure law. This has resulted in a narrow concept of land administration that serves only a small band of tenure rights.

Statutory land acts enacted in terms of the Constitution have played a critical role in protecting rights against dispossession and countering eviction. The relevant tenure laws are: Land Reform (Labour Tenants) Act (LTA) 3 of 1996; Interim Protection of Informal Land Rights Act (IPILRA) 31 of 1996; Extension of Security of Tenure Act (ESTA) 62 of 1997; Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (PIE) 19 of 1998; Transformation of Certain Rural Areas Land Act (TRANCRAA) 94 of 1998.

In practice, however, these acts have helped to defend – but not assert – rights, which means they continue to be violated. The only recourse is the courts. In some cases even the state itself has failed to respect them, particularly if investments are on offer.

One of the reasons many statutory rights have not shifted from defensive to positive is that they are associated with unsurveyed land, which is not recorded on the cadastral system and contributes to its illegibility in terms of formal land administration. Formal survey is obligatory to be registerable (and thus ‘seen’ by the system).

9. Disjointed coordination of functions

While the Constitution and a legislation provide for the recognition of the role of traditional leaders in land administration, the current systems lacks tools to enable smooth coordination and sharing of roles and responsibilities between Traditional Houses and State (mainly represented by municipalities at local level).



Interim Protection of Informal Land Rights

Rights in terms of the Interim Protection of **Informal Land Rights Act (IPILRA)** are particularly vulnerable to misinterpretation. Although these rights apply to urban and rural land that has been beneficially occupied, they are often misinterpreted by the state itself as applicable only to 'communal' or 'titled'.

IPILRA rights are comparable to the concept of 'free, prior and informed consent' (FPIC) without which land rights cannot be tampered with. IPILRA has never been made permanent; nor have official regulations been issued to guide the procedures for recognising IPILRA rights on the ground. It continues to be ignored by the state and investors in many contexts where it is applicable.

HOW DO WE REFORM OUR LAND ADMINISTRATION SYSTEM?

The scope of land administration has to be broadened to address developmental and social inequality. Concrete proposals to develop appropriate systems of land administration that can serve all South Africans are a high priority in land reform policy and practice.

An effective land administration system for South Africa should be guided by Constitutional principles combined with bottom-up development of appropriate measures that address problems on the ground and provide redress to the inequity in administrative justice.

The land administration system should be socially legitimated, guided by constitutional standards of the whole society and be aligned with norms and standards beyond those that are officially sanctioned.

Existing weaknesses need to be identified and addressed. This requires building local institutions, together with reforming and repurposing national institutions to develop land administration services in the most appropriate and accessible way. The roles and powers of municipal governance to provide the scope of local land information and data systems to interlink with national land information systems need to be reexamined.

The process requires development through processes of innovation, experimentation and learning-by-doing to identify appropriate, scalable, effective and affordable institutional forms to plan settlements and record rights. Appropriate local and national land information systems, integrated systems of spatial planning and land use management, taxation, adjudication, and dispute resolution are also required. Local government is critical to this process.

What should the land administration reform process aim to achieve?

The overarching recommendation of the project is a process of land administration reform which will:

- **Integrate South Africa's highly fragmented and dualistic land administration systems** (informal/formal, customary/private, de facto/de jure) which occur in a variety of spatial circumstances: customary, informal, farm, township and suburb.
- **Strengthen state capacity**, including accessible land administration institutions.
- **Adjudicate rights through administrative means** to take the burden off the judiciary in resolving conflicts that emerge because of the weak land administration system.
- **Develop equitable administration of the diverse rights** that exist in South Africa.
- **Restructure South Africa's land information systems to ensure an integrated and interoperable national land information system** with capacity to collect and disseminate a range of data, including various layers of land information and local land information, which is made freely and openly accessible country-wide to all people.
- **Introduce a system for recording rights** that are currently not recorded, surveyed or readily surveyable.

THE PLAAS-PARI-SALGA PARTNERSHIP

The partnership draws from this framework to engage in virtual meetings within three spheres of land administration where momentum already exists for further refinement, development and integration into policy. Through a process of consultative engagements (CEs) with key stakeholders in government, civil society and private sector, the PLAAS-PARI-SALGA initiative aims to start a process of joint problem solving and structural reform in identified arenas of land administration.

INTEGRATED LAND ADMINISTRATION PROJECT (ILAP) CONSULTATIVE ENGAGEMENTS

3 CONSULTATIVE ENGAGEMENTS	DESCRIPTION
CE 1 TITLING DOCUMENTATION	Exploring the findings and insights of the Transaction Support Centre (TRC) in Khayelitsha, a project of 71Point4 and the Centre for Affordable Housing Finance (CAHF) to support titling documentation.
CE 2 OFF-REGISTER LAND RIGHTS	Making off-register rights visible engages around the challenge of bringing off-register land rights on record to promote equitable land administration services to those whose land rights are labelled 'informal.' CE2 explores a proposal by the South African Geomatics Institute (SAGI) to spatially record rights by way of recognition by certificates in the Surveyor General's Office.
CE 3 INFORMAL ECONOMY, LAND-USE PLANNING AND LAND INFORMATION SYSTEMS	Seeking innovation in land-use planning, spatial planning and land information systems in the context of 'informality' as it affects informal work in particular, in partnership with the Sustainable Livelihoods Foundation (SLF).
Consultations initiated with SALGA, presentations to the provincial working groups and a meeting with the DALRRD led to the submission of a report at the national working group in which the proposal for a Municipal Community of Practice on Land Administration (MCOP) was agreed to.	

