

Land Registration for Conquering New SDG Frontiers

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Key words: Land registration, first registration

SUMMARY

Land occupants pursue first registration to improve their security of tenure, where they perceive benefits would accrue from this status or, at least, where they perceive that negative impacts of their current status would reduce. States pursue land registration to attain a more comprehensive land administration system which, in turn provides information to support their land management and the pursuit of social, economic and environmental goals for the population as a whole. It is stated that citizens must demand land registration or states should not invest in the process since it is costly and time-consuming. In the absence of a state supported land registration process, indicators must point to a demand that has reached a critical mass for the process to be instituted. The rate of voluntary, sporadic first registration can indicate the level of need for security of tenure as well as the ability of the citizen to fund their desire for security.

To investigate this premise, a case study of the current location and number of applications for voluntary, sporadic, first registration in Trinidad and Tobago is undertaken and this leads to an awareness of the level of need for land registration in specific regions of the country. The data used for this study was taken from databases of applications for occupation surveys at the cadastral mapping agency as the first step in the process of applications for legal consideration and registration at the separated land registry.

It was found that applications for first registration were consistently high in specific areas such as the ward of Tobago pointing to a need in this location for clarification of tenure. This is also an indication that some persons can afford to fund their own first registration while more research is required to determine the number of persons who may wish to be registered but are unable to fund the process.

This analysis is significant as it can spur the state to introduce, redirect, or focus its attention on a land registration programme for specific areas and using specific mechanisms, given current global questions and research regarding land registration and its potential outcomes related to the SDGs. With the deadline for the attainment of the SDGs looming, the state will be required to step in and accelerate the process of registration of the areas most demanding of secure title.

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1. INTRODUCTION

Of late, the focus on land registration, once predominant in land administration theory (Platteau 1996), has shifted to quick recordation of existing tenure rights using fit for purpose and other methods (Zevenbergen et al. 2013; Enemark et al. 2016; Enemark et al. 2021). The more fundamental question is still, however, whether the societal demand for formalization, recordation, or capture of the tenure rights has reached the critical point where the state must respond (Platteau 1996). This paper examines the data required to determine whether the society is demanding a response from the land administration system. Specifically, the demand for first registration in a voluntary, sporadic titling legal regime is investigated.

Pursuing the registration of land can support the achievement of the SDGs as the primary outcome of land registration is improvement of agricultural or other productivity on the way to a reduction of poverty (Abdulai et al 2011). Many of the SDG indicators are also land-based so that an improved land administration can support a land management policy focused on achieving the SDG indicators. Land registration is therefore a prime tool for conquering the SDG frontiers and achieving success.

2. BACKGROUND

It is widely accepted that implementation of a systematic land registration exercise is one mechanism for establishing a foundation for more efficient land administration by authorities. This, in turn, supports economic, social, and environmental development of the territories where such systems are implemented. For persons who do not enjoy formal tenure rights to the lands they occupy, the demarcation and recordation of the duration and nature of their occupation can be significant steps in proving any rights to which they may be entitled. Acceptance of such activities as part of the process of recognition of rights can improve the standard of living and quality of life of occupants. Several researchers have questioned whether the end results occur in every situation without a supporting infrastructure of investment opportunities, vibrant land markets, and peaceful political environments (Barnes and Griffith-Charles 2007, Griffith-Charles 2004). Lengoiboni et al (2021) also point out the importance of an appropriate adjudication process in the legislation and the implementation of the programme as inappropriate legislation unsuitable to the culture and tenure practices in the jurisdiction can reduce tenure security and discourage participation. The outcomes for agricultural productivity have been questioned by Singirankabo and Ertsen (2020) who assert that the land administration system must be comprehensive and sustainable to support secure tenure and continued confidence for farmers. This security leads to the assurance, realisability, and collateralization

effects that result in increases in productivity as first espoused in the Evolutionary Theory of Land Rights (ETLR) (Platteau 1996).

It stands to reason, then, that in efforts to improve the circumstances in which they live, people with informal or unclear titles would undertake to have their rights formally recorded or registered with the authorities of the relevant jurisdictions. Increasing numbers of applications being submitted to authorities for determination of tenure rights is usually an indicator that issues are arising on the ground, such as conflict or contestation over land rights, or activities, such as market activity, speculation, or investment, being undertaken where there is the need for a clear record of the tenure rights of the persons involved. States generally respond to such a situation by initiating a compulsory and systematic registration exercise since individual processes are usually much more costly than collective processes where economies of scale are achieved. There are many countries currently pursuing systematic adjudication and titling with differing levels of success and it is helpful to the states to examine the demand to support or encourage the state moving forward where there is expressed need.

The government of the Republic of Trinidad and Tobago (GORTT) has over the last several years announced and taken certain preparatory steps towards the execution of an island-wide registration exercise (Griffith-Charles 2021). However, this course of action has not been undertaken in response to the observation of an increase in the number of requests for land to be registered for the first time. In fact, the system and legislation for first registration in the Torrens title system has existed since 1889 and yet a low level of parcels have been titled in the system. Indeed if such a push has not taken place what is the reason for such a costly and time-consuming exercise at this time of economic hardship in the country? Additionally, should this exercise not result directly from the desire of informal occupiers, the question arises as to whether the exercise will receive the cooperation of these persons, which is vital to its success.

This paper examines the record of the first registration cadastral survey applications, commonly called ‘To Be Broughts’ in Trinidad and Tobago over the past five years and analyses these applications to determine the presence of any patterns or trends which could lead to conclusions regarding the proposed adjudication and titling exercise.

3. CASE STUDY

3.1 The Deed System

In Trinidad and Tobago, two parallel systems of registration of property rights currently exist. The system of registration of deeds commonly called the Deed System is the typical transaction registration system known internationally that requires the party claiming property rights to show at least twenty years of clear title prior to effecting transactions. The deed system relies on the execution of exhaustive record searches to establish title. The system is very susceptible to instances of fraud and the chain of title may be flawed by valid but unregistered deeds rendering the claim invalid. However, the majority of parcels are registered in the deed system and most transactions are effected within this system. It is therefore rare for a landowner to

wish to voluntarily perform first registration on such a parcel where security of tenure is already being experienced.

3.2 The Torrens Title System

The other system is an old Torrens-based registration of title system in which the claim of any individual, group or company to any parcel of land is captured and evidenced in accordance with the provisions of the Real Property Act. This system meets the four requirements of a Torrens type title registration system where in a single place the history and current record of the title holder is stored and the title is guaranteed by the State. In this system any party wishing to claim title to a parcel of land must register the parcel under the provisions of the Real Property Act Chapter 56:02 (GoTT 2016). This first registration is commonly known in Trinidad and Tobago as, 'Bringing the Lands Under The RPA'. This involves a number of complex survey and legal procedures which respectively create and define the parcel on the ground and give open notice that the claim of occupation and entitlement is being made and can defend against any counter-claims of others. In reality, however, because of the bureaucracy and resource poor land administration institutions, there may be little to separate the cost and time consuming nature of transactions for land held under the deed or title systems. It is typical for persons only with unclear tenure or no documentation at all to reluctantly opt for first registration. New parcels are created by subdivision of existing land under deeds as well as title. This study, however, does not investigate either of these processes for creating new parcels.

3.3 The Proposed Title System

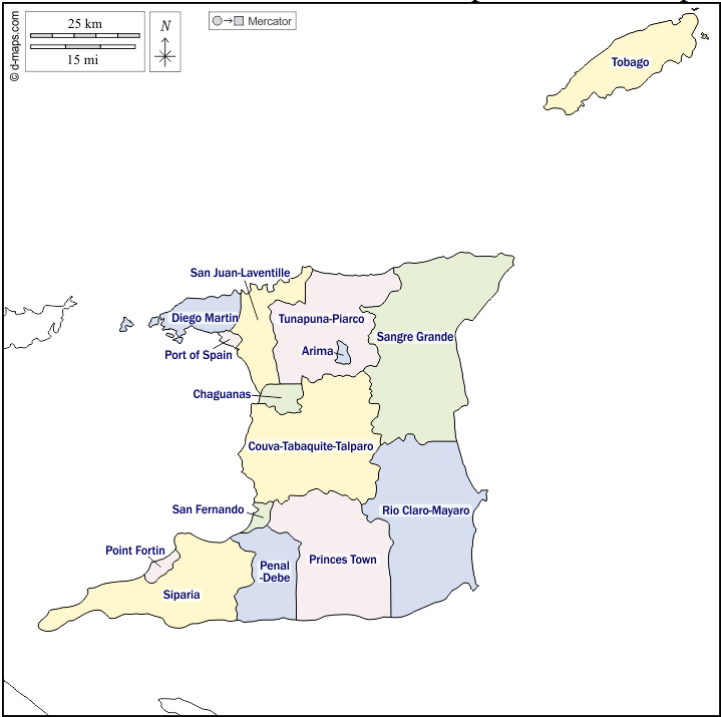
The proposed title system allows for a systematic adjudication of titling through the declaration of adjudication areas and the preparation of a demarcation map with limited amounts of surveying and the mapping of general boundaries to define the parcels. Parcel identifiers will also be introduced (GoTT 2000^a, GoTT 2000^b; GoTT 2000^c ; GoTT 2018). Legislation to support this proposed system: the Land Adjudication Act 2000, the Registration of Title to Land Act 2000, and the Land Tribunal Act 2000, was passed since the year 2000 and amended along the way. However, the process has yet to be implemented. Even after several amendments the adjudication process may not sufficiently recognise legitimate and long standing tenure sufficiently. This study confines itself to the ongoing implementation of the current voluntary, spontaneous, first registration Torrens process.

4. METHOD

For this study, a simple statistical method was used to examine the number of first registrations taking place over five years in the case study area of Trinidad and Tobago. Data lists of the cadastral survey plans submitted to the cadastral agency for approval as part of the process of first registration were enumerated and the location of the parcel noted. This was posited to indicate the magnitude of need as well as the location of most need. Previous examinations were undertaken to project the outcome of a systematic and compulsory adjudication and titling process if it is instituted but this particular method was not used as part of those assessments

(Griffith-Charles and Opadeyi 2009). Instead, in that instance, baseline data was acquired to use in a post facto success indicator assessment when the programme is actually under way, completed or after sufficient time has elapsed for impacts to be experienced.

Trinidad and Tobago was historically divided into counties as shown in Figure 1, and those counties subdivided into wards by legislation. Survey rules required that all cadastral survey plans indicate the location of the parcel by stating the ward within which it fell. Subsequent legislation reconfigured the administrative boundaries into regions but the land survey rules continued to require the old administrative locations be provided on the plans.



Source for map: https://d-maps.com/carte.php?num_car=28051&lang=en
Figure 1. Trinidad and Tobago showing current administrative regions

5. DATA

Figure 2 shows the number of first registrations occurring in each of the wards where first registrations were requested over the period 2018 to 2022. It is notable that in the ward of Tobago there were over 200 first registration processes begun during the period. This demonstrates a need for clarifying of title. Fewer than half of this number occurred in every other ward although more than 50 first registration processes were begun over the same period in each of the wards of Chaguanas, Diego Martin, Naparima, Savana Grande, and Tacarigua. Very few first registration applications took place in the first and second cities of Port of Spain and San Fernando.

Figure 3 indicates that in some instances the number of first registrations requested per year was not consistent over the five years. Covid-19 restrictions may have negatively impacted on the number in some instances.

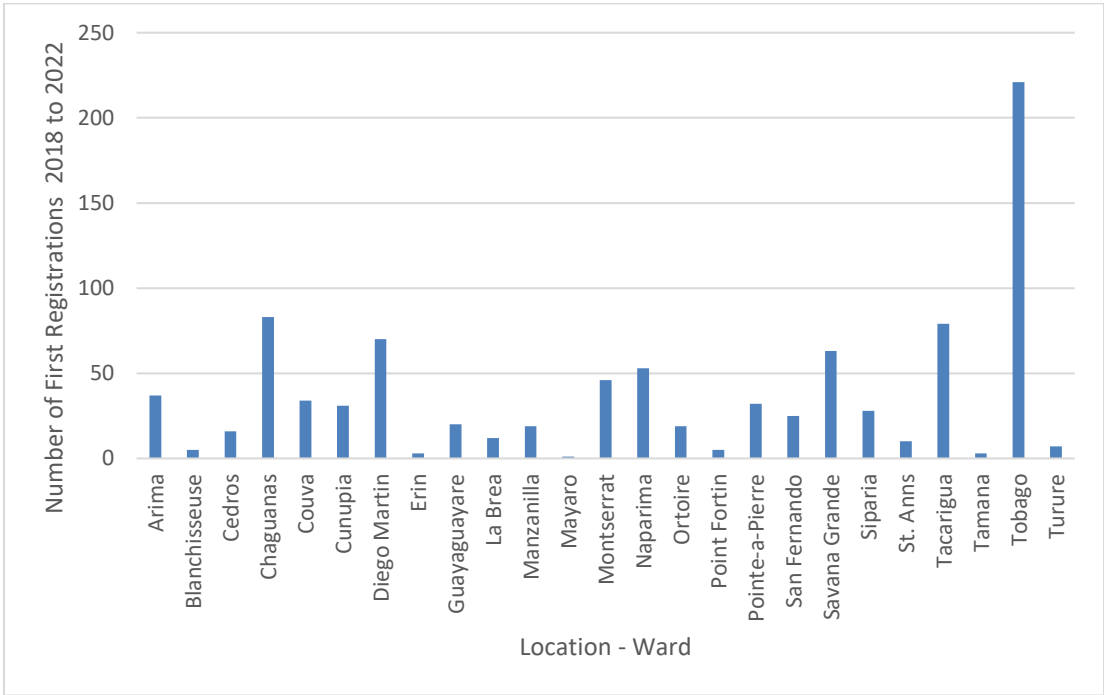


Figure 2. Number of first registrations in all wards from 2018 to 2022

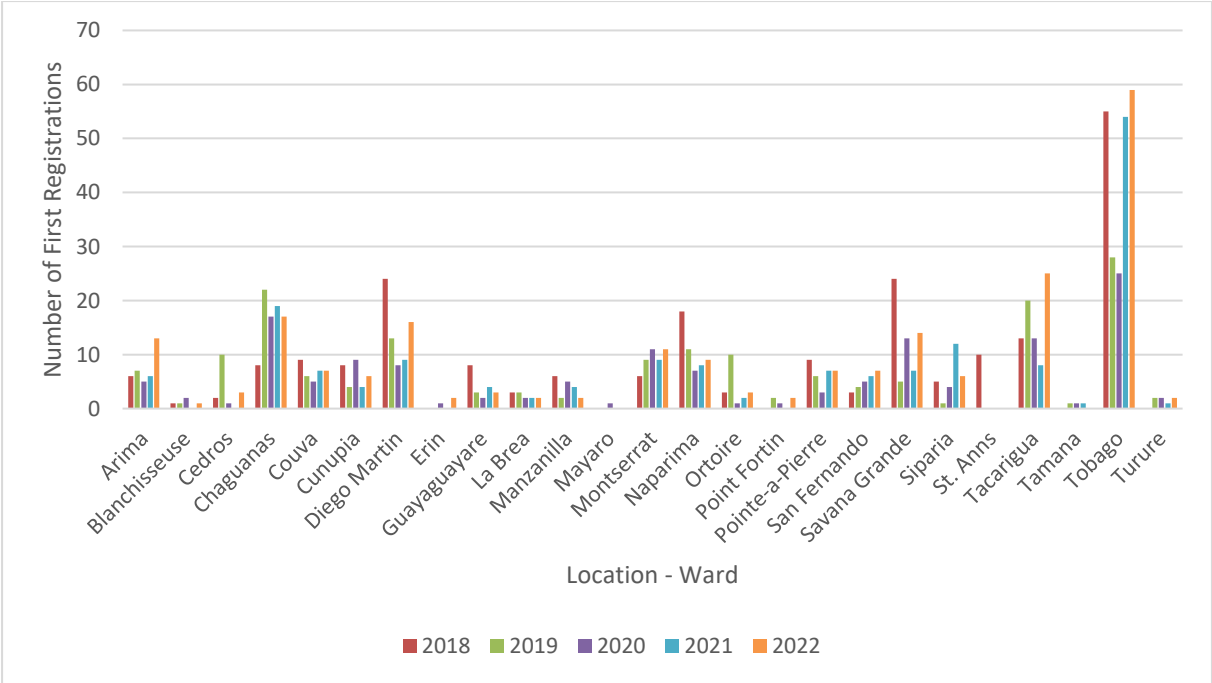


Figure 3. Number of first registrations in each ward in individual years 2018 to 2022

The total number of first registrations over the past five years have been tabulated for each year individually. These figures are shown in Table 1. An examination of these totals indicates the lowest number of submissions in 2020, possible owing to the effect of the restrictions consistent with the Corona Virus epidemic. There appears to have been a swift return to pre-pandemic levels of submission in 2021 and 2022 but the number of approvals has not kept pace with the number of plans received. This represents approximately 61.4% of the plans received as compared with the pre-pandemic level in 2019 of 86.2%. In the five-year period, a total of just over one thousand applications have been received with just over 800 being approved. It is important to note that the approved applications do not necessarily reflect the same submitted applications for that year as it may take several years to complete the approval process.

Table 1: Tabulation of First Registrations Submitted and Approved From 2018 to 2022

Year	Applications Submitted	Applications Approved
2018	233	209
2019	182	157
2020	158	139
2021	191	156
2022	246	151
Total	1017	812

6. ANALYSIS

6.1 Demand by ‘Family Land’ Occupants

An initial look at the results indicate that while there is a demand for corrections to defects in title or formalisation of informal occupation, it varies from year to year as well as from ward to ward. The need is greater in Tobago than in Trinidad where even though the island is much less populous there are almost three times as many applications for first registration than in Trinidad. This may be, in part, because the combination of a lack of formal cadastral land surveys to define parcels owned and the casual treatment of said lands in the devolution of the estate upon the death of the owner, leads to unclear delineation of the lands to be divided as well as lack of formal documentation of the beneficiaries to said lands. Frequently the result is that the lands lie in abeyance undefined with beneficiaries either being unidentifiable, exposed to contestation of their entitlement or unable to take possession with clear title. While such situations also exist in Trinidad, the situation is not as prevalent particularly in urban and peri-urban areas. The figures already articulated in this article reflect this circumstance. For various reasons, including the fact that Tobago was historically isolated from the land administration institutions which were centralised in Trinidad, as well as the cultural attachment to communal ownership, Tobago has always had a larger percentage of ‘family lands’. The origins of the ‘family land’ communal tenure system in Trinidad and Tobago and the rest of the Caribbean is documented elsewhere (Clarke, 1953; Smith, 1956; Besson, 1979; Griffith-Charles, 2006). Family lands occur where lands are inherited over generations by an ever increasing group of

potential heirs without registration of the transfers. Since the legislation does not provide a mechanism for registration of communal tenure to an unspecified group, family land communities are not able to register their holdings. This renders the legislation inappropriate for this societal practice.

6.2 Demand by Spontaneous Informal Occupants

In Trinidad it has been quantified by the Land Settlement Agency (LSA) (Republic of Trinidad and Tobago, 2016) that well over 50,000 families are in informal occupation of State lands as at 2016 with continued growth in this number anticipated. When informal occupants of private lands are taken into consideration, this figure grows to almost 40% of the national population, living in circumstances without title to the lands they occupy. It is reasonable to assume that applications for first registration will emanate from a desire to resolve these less-than-perfect situations. As such the question arises as to why there are not more applications for first registration in Trinidad.

One reason posited is the effect of the State Land (Regularisation of Tenure) Act No. 25 of 1998, administered by the LSA which is a statutory entity created in 1999 for that purpose. The Act, which grants long-term leases to squatters on certain State lands has to date conducted regularization activities on over 30 sites (Republic of Trinidad and Tobago, 2016), introducing infrastructure and executing formal subdivision surveys at little or no cost to the occupiers but at great cost to the state. It is therefore reasonable to assume that occupiers of the approximately 251 estates which fall under the purview of the LSA will wait to be regularised rather than seek first registration independently or that they feel sufficient security of tenure, having been provided with access to all services necessary for living, and having lost the ability to claim adverse possession since they applied for and received Certificates of Comfort under the legislation.

6.3 Complexity of First Registration

While registration of title is frequently seen as the solution to these and other similar title problems, the route to clear title is fraught with obstacles and low on tangible benefits. A look at the process indicates the complexity of the process, the need for the use of legal and survey professionals, the reliance on the pace of work at the various government offices which are part of the process and the timeframes of several of the steps in the process. The requirements for the definition of the parcel in accordance with the dictates of the Land Surveyors Act and the exhaustive nature of the collection (through searches, taking of statements and affidavits) and assembly of the documentation to be submitted in support of any application for first registration demand interventions of both survey and legal professionals respectively. There are significant costs attached to the engagement of these professionals and their attendant staff. The time taken for the collection of statements and affidavits which attest to the nature and duration of occupation where the claimant is in informal occupation of the lands frequently necessitates the use of dedicated professional investigators and in cases of defective title, the associated title searches can be complex and time-consuming, testing the abilities of even seasoned title clerks.

6.4 Timeliness of First Registration

Over and above average processing times, as is frequently the case government offices and agencies suffer from severe shortages of staff particularly at the technical and professional levels. This delays the processes even further as backlogs can add wait times in the order of weeks to months at each office before the application is addressed. In other instances the process itself is lengthy. Periods for the publication of notices can be as long as a year for the applicant and two years for the Registrar General while any caveat lodged must be ventilated and resolved in favour of the applicant prior to successful completion of the application. Evidence of such delays is clear as it is usual to have a time lapse of several years between the submission of a survey plan for approval at the SMD (signaling the start of the application) and the request for the production of the plan on the Certificate of Title by the SMD when the order is issued by the judge (signaling the end of the application).

6.5 Cost of First Registration

The cost of application is also a significant factor. Already explored has been the variety of the professional services which the applicant must engage. Each of these is quite costly. Such expense could factor considerably into the results of the study which showed that the number of applications in rural wards such as La Brea, Guayaguayare, Cedros and Erin in the south and Tureure, Tamana and Blanchisseue in the north was significantly lower than in urban areas such as Savanna Grande in the south and Diego Martin in the north. Where the cost of the process exceeds or is a significant proportion of the market value of the property there is little economic justification for undertaking the process. Factors such as education as to the benefits of registration as well as the ability and willingness to engage the State's mechanisms as they must, would undoubtedly account for the differences in the number of applications in the wards.

When considering whether the State should initiate a compulsory first registration exercise, it cannot rely only on the number of applications for first registration as an indicator of the need for this type of exercise. The low number of requests for first registration in Trinidad can be influenced by a number of factors: the cost, time and complexity of the registration process as well as the necessity to interact with the State's mechanism during the process all impact negatively on the desire of individuals to apply for first registration. This is particularly so in rural areas where individuals may also not be aware of the benefits that would stem from registration.

The work of the Land Settlement Agency on State land significantly impacts on the decision of informal occupants of State land to seek registration, as most feel secure from ejection with only the initial Certificate of Comfort which is issued. It is noteworthy that most do not pursue the lease to which the Certificate entitles them. However, the low number of estates which have been engaged by the LSA is indicative of the time regularisation of this large a number of households will take. A compulsory exercise will assist by mandating these persons to take some of the responsibility for procuring their title, shortening the time taken as more persons

would be involved, coupled with an education exercise on the benefits of registration this should contribute to resulting in swifter completion of the process.

The State must also consider the economic benefits that would accrue from the individuals on registration which would in turn result in overall economic benefits to the government in the form of greater income from property tax (when reinstated) which could then be re-invested in effecting physical improvements in the country. There are numerous opportunities for persons with clear tenure rights many of which can be linked either directly or indirectly to the 17 Sustainable Development Goals (SDGs) identified by the United Nations to be achieved by 2030.

7. CONCLUSION

The data has demonstrated that there is a demand for first registration. It is not known, and it was not the intent of the small study to determine whether the demand is comprehensive throughout each ward, tenure type, and income level. Directly administering questionnaires may not elicit the true picture as it is usually more useful to indirectly determine demand than to ask survey participants about conceptual benefits of first registration. The proposed compulsory systematic adjudication and titling programme will provide a third registration system that employs a quicker and cheaper process for titling and can be made even more efficient and effective with the use of fit-for-purpose characteristics. It will reduce some of the problems of the Torrens system as it will now include a demarcation map where the Torrens title systems do not. It will also employ minimal survey requirements and introduce unique parcel identifiers. However, there are serious concerns about the effectiveness of the legislation since it is proposed to title the greater than 50,000 parcels containing spontaneous occupants on state land in the name of the state. The process will therefore not change the security of tenure of the occupants of state land in any way. There is also no specific provision for titling family land communal parcels in the name of the family group. This may therefore reduce the perceptions of security of tenure of those who feel kinship with their family group without being able to demonstrate clear lineage to the rights to the parcel.

What is known is that there is very little time to meet the SDG deadline of 2030 for moving the security of tenure status forward. A process targeted at the geographical location of most demand may conquer a new frontier in this regard.

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