



Land Records Modernisation

Developing Protocols

Policy Brief

LAND RECORDS MODERNISATION: DEVELOPING PROTOCOLS

Main Concerns for Reforming Property Recording Systems

There are three main aspects that require attention in the reforms in the property records, based on the experiences of state-level efforts to modernise land records:

1. **Comprehensiveness of records** to capture on-ground property rights and use arrangements. At least, five basic content areas are important:

- Ownership
- Possession
- Extent
- Classification
- Encumbrances

2. **Record updating** process to create and keep real-time records, which may include:

- **Clearing existing data backlog:** This would involve the updating of existing textual and spatial records, particularly in urban and peri-urban areas, that would include:
 - i. Individual based updating: Encouraging individuals to update transactions in the official records. In India, this may include encouraging individuals to undertake mutation, go for partition of land, etc.
 - ii. Institution based updating: Encouraging institutions to identify and record their land holdings and coordinate with the revenue department when they acquire, transfer, allot, develop land.
 - iii. Survey based updating: New cadastral and non-cadastral surveys in non-surveyed areas and in areas with outdated records
- **Real-time updating:** Updating processes need to capture individual transactions/transfers as well as institutional transfers.

3. **Developing protocols** and dispute resolution procedures to address:

- **Data mismatches while clearing backlog in records:** Procedures and protocols at the state-level to address mismatches that are emerging between legacy records and new records created via surveys, etc., such that the new records are treated as legally relevant by courts at the time of disputes.
- **Clearing dispute backlog:** In India this is a significant challenge, with the Department of Land Resources identifying that more than 24 million property related disputes are currently pending across courts in the country (DoLR, 2011)ⁱ.
- **Addressing future disputes:** The comprehensiveness of property records and the type of rights and arrangements recorded would play an important role in addressing future property disputes. However, the due-diligence undertaken to record property rights and use arrangements would also be important for courts to accept property records as legitimate and legal documents, particularly in a common law country such as India, where courts play a central role in arbitrating disputes based on previous precedents.

Developing Protocols

India presently has a system based on records being presumptive and courts playing a central role in arbitrating property claims. This process is dependent on title searches to establish legal property claims. If new records are to be considered, a link to legacy records has to be created and differences between the records have to be resolved. Otherwise, the new records would increase rather than decrease existing disputes. Also, over time, if courts are satisfied that the protocols and procedures for dispute resolution incorporated into the new recording systems are fair, transparent, replicable (which would link to the concept of precedent in a common law country like India) and sufficiently robust to handle claims and

objections, it may be possible to incrementally draw a ‘curtain’ and move towards clear, presumptive titles and eventually conclusive titles. Some of the key aspects that require protocols are listed below.

Protocols in the Digitisation of Records and Linking to New Geo-Spatial Data:

1. Recording/mapping details about property rights and tenurial arrangements, along with the method (if any) being adopted to ascertain these rights and arrangements.
2. Recording/resolving ownership disputes, as well as issues such as encroachments, possession without ownership, lack of clear titles, etc.
3. Recording/mapping planning violations.
4. Reconciling differences between existing (legacy) property records with new spatial and textual data being gathered as a part of the current modernisation exercise.
5. There is a need to define protocols (at state-level) on how area mismatches between *mussavi*, RoR and satellite imagery should be resolved. This would speed up the overall process, and would also reduce the DC’s discretionary powers.

Procedures and Protocols in the Updating of Records:

1. Data bridge between registration and mutation functions.
2. On-site verification of property and ownership on ground before registration. Going forward, this may mean that registration is not simply acknowledging the transaction, but also acknowledging the legal right of the parties entering into the transaction to undertake the transaction, thus foreshadowing the title transfer associated subsequently with mutation.
3. Provision of record registration information in the land records as a way to capture other forms of transactions that may be occurring on the same parcel of land/property.
4. Data bridge with relevant institutions regarding:
 - Land owned
 - Land allotted/ transferred
 - Land under acquisition (various stages)
 - Land under litigation
 - Land related regulations

Other concerns

1. Addressing the ‘share’ system of ownership. This is a source of ambiguity and potential for disputes as value of land increases and the imperative to build/transact increases.
 - Karnataka has mandated one property-one owner system.
 - In Himachal Pradesh, urban areas require physical partition or NOC from all parties before building permissions.
2. Provision for built-up properties in land records.
3. Provision to assess land classification and changes in land use (Himachal Pradesh’s system of crop and use surveys through the *Khasra Girdawari* may be procedurally relevant for such updating).
4. New land use classifications for the revenue records, which incorporate urban classifications better.
5. Data bridge to capture Change of Land Use (CLUs) and Building Permissions.
6. In case a new property boundary is created via transaction/transfer, thereby mandating immediate physical demarcation on ground with permanent markers and physical possession as a mandatory addition to the mutation process.
7. Recording tenurial arrangements-to record monetisable and legitimate claims on land and property. This may become important if a valuation/compensation framework for land acquisition or land sharing arrangements for large projects becomes more prevalent.

ⁱ DoLR, 2012, Success Stories on National Land Records Modernisation Programme. Accessed at http://dolr.nic.in/dolr/downloads/pdfs/revenue_ministers_document.pdf on 11/04/2014.