

Sean Parramore, PhD Candidate
Queen Mary University of London, School of Politics and International Relations
sparramore09 [at] johnshopkins.it

Overcoming obstacles to land registration reform in Bosnia-Herzegovina through problem-driven iterative adaptation

The paper traces why and how land registration reform in postwar Bosnia-Herzegovina happened. It seeks to explain a twenty-year transformation from a dysfunctional land registration system—a legacy of war and socialism—to one where Bosnia-Herzegovina climbed to 97th on the ease of registering property ranking in 2016. The paper uses two competing theories of institutional reform to find out which best explains this phenomenon: one where preconceived solutions are championed by reform leaders, the other where recognized problems drive coalitions to find locally appropriate solutions through trial and error—i.e. problem-driven iterative adaptation (PDIA). It argues this was a PDIA case. The reform began once donors recognized the politically and economically destabilizing effects of land record opacity, and in 2002 legally imposed a new land registry law. There was not one leader or a preconceived implementation plan. Instead, iteratively and incrementally coalitions of domestic actors and donors adapted. Initially intransigent governing elites now supported the reform and its implementation, noting the potential economic benefits of systematic clarification of land records. In return, donors accepted a non-comprehensive, piecemeal approach by phasing modernization, leaving in place significant opacity in land ownership and taxation. This case thus demonstrates the possibilities and limits of PDIA-driven land registration reform.

Introduction

In 1995, Bosnia-Herzegovina's land registration system was in disorder. The recent conflict¹ had distorted such documentation recording the rights and physical boundaries associated with specific real estate.² Moreover, land records proving private ownership were often in a poor administrative state due to decades of neglect under a socialist regime. Without clarity on formal land-based property rights market exchange of land would be extremely difficult. The opacity in land registration also warped incentives for the “affected population”³: e.g. it enabled some power holders on a quest to socially engineer postwar ethnic voting blocs to reallocate vacant or abandoned land to those displaced by conflict through informal or extralegal means.⁴ Given such political interests, not to mention the fragmented decision-making structures established by the Dayton Peace Agreement it seemed unlikely that land registration reform was forthcoming and that the opacity and dysfunction of land registration systems could be satisfactorily dealt with.

Nevertheless, by 2015 the World Bank's Doing Business Index indicated that the ease of registering property had vastly improved between 2004 and 2015:⁵ in 2016, the Bank ranked Bosnia-Herzegovina 97th (out of 189 countries) – one spot below Malta,

¹ M. Garlick, 'Protection for Property Rights: A partial solution?' *Refugee Survey Quarterly* (2000) UNHCR, p.66-7

² According to Horisberger, World War II affected 20 percent of the mapping surveys held in the municipalities, which were not replaced after the war. J. Horisberger, 'Land Administration in Bosnia and Herzegovina after the war', *Symposium on Land Administration in Post Conflict Areas*, Geneva (2004), p.4. In 2003 it was estimated that over a quarter had been destroyed in World War II and the 1992-95 wars. CRPC (Commission on Real Property Claims) (2004) *End of Mandate Report (1996-2003)*, Sarajevo CRPC, Annex B, p.1.

³ "Affected population refers to people who are seeking access to land at a given time; it includes refugees and internally displaced persons attempting to return to their lands of origin, displaced who cannot or do not wish to return to their areas of origin, and those who were displaced well before a conflict and who view the post-conflict period as an opportunity to regain long-lost lands. In addition to affected populations, other actors—including ex-combatants, opportunists, state actors, and individuals or entities with claims dating back to previous regimes—may also be pursuing access to new lands." J. Unruh, R. Williams (2013). *Land: A foundation for Peace. Land and Post-Conflict Peacebuilding.*, p.3

⁴ G. Tuathail, C. Dahlman, 'The West Bank of the Drina': Land Allocation and Ethnic Engineering in Republika Srpska. *Transactions, Institute of British Geographers* (2006); A. Buyse, 'Post-Conflict Housing Restitution: The European Human Rights Perspective with a Case Study on Bosnia and Herzegovina', PhD Leiden University (2008)

⁵ In 2004, an average applicant interested in property registration needed seven procedures taking 331 days, and needed to pay 6.1 percent of the property's value. By 2015, he or she still needed to pass seven procedures, but now spent just 24 days at a cost of 5.2 percent of a property's value. Obradovic, Z. et al, 'Towards sustainable land administration with improved customer service delivery', *World Bank Conference On Land and Poverty* (2016).

and just twelve below France.⁶ Bribery in the recording of real estate exchange was reportedly virtually non-existent, and satisfaction of land registration services was rising among public users.⁷ By and large, outside evaluations showed that changes to rightful ownership were recorded systemically, expediently and accurately across the spectrum of the land registration system: on maps, local and central land ownership records. For those living in major cities in Bosnia-Herzegovina, records on land rights were now accessible in a largely unified, digitized and increasingly harmonized system. Moreover, this system was now compatible across the Bosnian entities and with several of the EU's spatial data standards, even if this was not (yet) a formal accession requirement.⁸ Land ownership was increasingly clear and formal real estate market activity was modestly increasing⁹, suggesting unrecorded land transfer was in decline.

This paper analyses the process that led to this twenty year-long transformation of Bosnia-Herzegovina's land registration system. It uses mostly qualitative data to test two competing theories of institutional reform and explain how and why land registration reform in Bosnia-Herzegovina came about in the postwar period. It argues that the theory of problem-driven iterative adaptation (PDIA) best explains land registration reform in Bosnia-Herzegovina. It also posits that the importance of PDIA in this case illustrates both the possibilities and limits of economic reform in Bosnia-Herzegovina. This has implications for other reforms that are trying to open up and depoliticize control over the Bosnian economy.

The importance of researching the process of land registration reform

Land registration is an activity directly related to cadastral mapping. It has become widely considered a bare necessity and cornerstone of any country formally committed to formal land markets.¹⁰ There are many theoretical benefits of land registration reform:¹¹ land registration may provide clarity and authority on the

⁶ The Doing Business report of 2016 ranked Bosnia-Herzegovina 97th out of 189 economies in overall quality of property registration - <http://www.doingbusiness.org/data/exploreeconomics/bosnia-and-herzegovina/> (last checked 10/31/2016).

⁷ Three out of 143 surveyed users of land registry offices in the Federation noted "they had to make some informal payments", while in the municipal cadastral departments this was five out of 151. The Federation of Bosnia And Herzegovina Federal Administration For Geodetic And Real Property Affairs, 'The Eighth Quarterly Project Implementation Report For the period 01 July 2015 - 30 September 2015' (2015), p.38, 53.

⁸ Of all Western Balkans states, so far only Croatia was required to transpose the INSPIRE Directive pre-accession and to implement an INSPIRE roadmap post-accession. V. Cetl et. al. 'Report on the status of INSPIRE in the Balkan countries, JRC Technical Reports, European Commission (2013), p.8

⁹ World Bank, Land Registration Project Final Report (2012), p.34, 38-40.

¹⁰ The "Cadastré" is "a parcel-based land information system that includes a geometric description of land parcels, usually represented on a cadastral map. In some jurisdictions this is considered separate from, but linked to, the register of land rights and holders of those rights (land register), while in other jurisdictions the cadastre and land register are fully integrated." I.e. Modern cadastres simply inform users of the physical extent of a property (the number, location and shape of each parcel and the 'improvements' (like buildings, roads etc.) on it); as well information regarding ownership (consisting of 1) a names register listing who holds what rights to these property units, and 2) legal archives -detailing the property unit's location, origins and the interests behind it). It may also include the preceding history of transfer of a given parcel, including inheritance, decisions of verification and other changes of ownership. In a property rights regime that allows for market exchange, the textual part also covers taxable value besides ownership. J. Dorsey et. al., 'An Assessment of Property Rights in Kosovo Final Report', USAID, (2004), p.7. The ability of land surveyors (using orthography, aerial photogrammetry or satellite imaging) and land register clerks (using (computerised) land registration systems) to record, maintain and update information about the physical dimensions and rights on land - as well as their ability to work together to make data uniform - is now considered crucial for any modern land registration system. See M. Higgins, 'Positioning infrastructure and its relevance for sustainable land governance'. International Federation of surveyors (FIG) found in K. Deiniger et. al. 'Innovations in land rights recognition, administration and governance' (2010), p.73.

¹¹ The case for land registration reform in developing and post-socialist countries was made most famously made in Hernando De Soto's *Mystery of Capital* (2000). He argued enabling land registration is a self-evident win-win for public and private actors: by giving the poor rights to the land they used, and by recording these rights in an a standardized, accessible and authoritative system private and public sector actors would reap all sorts of benefits: Squatters no longer have to worry their land will be expropriated and may acquire ownership titles. Traders can make more informed choices about selling or buying land and property: they can create and enforce contracts as the state stands for the validity and legality of the cadastre's information. Mortgaging, which requires clear and enforceable titles to land, becomes possible. Meanwhile the state can use the information on land to tax real estate that is

question ‘who owns what’¹². Studies show¹³ that if land owners feel protected against arbitrary expropriation; they may be incentivized to use land records to formally exchange their land (mortgaging, inheritance, etc.). Land registration may thus undermine informal exchange: ‘corruption’; land patronage; and a host of rent-seeking activities.¹⁴ Voluntary, but relatively specific, standards have been developed by international organizations to set-up a land market-enabling registration system. A prominent example is the Doing Business Index, which indicates a country’s progress towards a measurable market-friendly order.¹⁵

Despite this seemingly crucial role in 2015 an estimated three in four people globally did not have access to formal land registration systems.¹⁶ A cursory look at e.g. the Doing Business Index suggests that obstacles to establishing market-enabling land registration systems exist across the developed and developing world, including in post-socialist countries. Some of these problems are technical: an appropriate legal framework may not yet be in place, nor may common registration standards and procedures. In post-socialist countries some laws may need to be removed, like legal bans or restrictions on private exchanges of land. Other technical problems may be that real estate records were not updated for a long time; or they may be incomplete. Clerks and surveyors may be poorly trained and prepared to use modern recording software and surveying technology.¹⁷ However, the core contributions to the literature on land governance suggested that it would be a mistake to perceive dysfunctional land registration as a purely technical or capability problem.¹⁸ Laws can be rewritten; donors can provide funds to build capacity. The key seems to be to win over local governing elites to adopt and enable land registration reform¹⁹.

Engendering political acceptance to reform land registration for the sake of opening markets seems to be a particular challenge in post-socialist and post-conflict countries. In post-socialist Central Eastern Europe “land [...] markets have evolved where governments have allowed them” noted the economist Anders Aslund, and where they did, they emerged over a long period of time.²⁰ Country studies confirmed this notion.²¹ In post-conflict countries, the resistance to market-enabling land registration reform may be even more formidable compared to post-socialist countries. Rival groups during or after conflict may have engaged in the destruction or distortion of

graphically depicted in the cadastre and recorded in immovable property registers. It can make more informed decisions on where to build public infrastructure or to expand its land information systems. As new growth opportunities emerge, the state collects more tax revenue, including on property, from citizens and business. Because the state and market benefit a virtuous circle emerges. For some critiques and shortcomings of this theory, see E. Fernandes, ‘The Influence of de Soto’s *The Mystery of Capital*’, Lincoln Land Policy Institute (2002) and A. Gilbert, ‘On the mystery of capital and the myths of Hernando de Soto: What difference does legal title make?’, *International Development Planning Review*, Volume 24, Issue 1.

¹² L. Bakker ‘Who Owns the Land? Looking for Law and Power in Reformasi East Kalimantan’. PhD Thesis, University of Nijmegen. (2009)

¹³ See the previous two footnotes..

¹⁴ L. Wren-Lewis ‘Corruption in Land Administration: Roles for Donors to Minimise the Problem’, U4 Anti-Corruption Resource Centre (2013), p.1-4.

¹⁵ In addition, most developing countries’ overall progress is now explicitly measured in the World Bank’s Doing Business Index and implicitly in the Sustainable Development Goals. See footnote 5; <https://sustainabledevelopment.un.org/sdg15> and <https://sustainabledevelopment.un.org/sdg11> (last checked 31/10/2016).

¹⁶ <http://blog.chemonics.com/know-your-sdgs-land-matters-for-sustainable-development> (last checked 01/03/2017).

¹⁷ K. Deiniger et. al. ‘Innovations in land rights recognition, administration and governance’ (2010)

¹⁸ Hernando De Soto, ‘Mystery of Capital: why capitalism triumphs and fails everywhere else’ (2000).

¹⁹ De Soto, (2000).

²⁰ A. Aslund, ‘How Capitalism Was Built: The Transformation of Central and Eastern Europe, Russia, the Caucasus, and Central Asia’ (2012), p.186-7

²¹ E.g. see F. Harvey, ‘Elasticity Between the Cadastre and Land Tenure: Balancing Civil and Political Society Interests in Poland’ (2006)

proof of rights on real estate and set themselves up for informal positions of power. Once in such a position, they might be tempted to delay processes to return the pre-war distribution of these rights.”²² Worse yet, donors may be too concerned with maintaining political stability to insist on market-enabling, ownership clarifying land registration reform.²³

Many have noted how the incomplete transitions from conflict and Yugoslav socialism left enduring institutional problems and vested interests in keeping many parts of the economy unreformed. This incentivized “state capture” by a few politically networked businesses and political individuals who ensure state institutions benefit no one but insiders.²⁴ As these networks appeared wedded to the political, economic and institutional status-quo Bosnia-Herzegovina and seemed to resemble a “limited access order”: i.e. a context where control over the economy has been depoliticized and governments allow for free competition and investment.²⁵ In such a context it seemed reasonable to expect little space for reforms, including in land registration, to push the country towards a more “open access order.”²⁶ Since 2006, domestic and external decision-makers have made attempts at institutional reforms pertinent to European integration and other (economic) reform agendas. The tendency of these attempts to fail led many observers to take a bleak view about the possibilities of institutional reform in Bosnia-Herzegovina.²⁷

Theories of institutional reform

How then to explain the transformation of land registration system in Bosnia-Herzegovina? If the general assessment is that Bosnia-Herzegovina is a limited access order, why and how would general obstacles to institutional reform be overcome?

Matt Andrews and a team of researchers at the Harvard Kennedy School of Governance suggest two competing theories of institutional reform that help explain the chapter's questions of why and how institutional reform may happen in post-conflict countries. Especially given that in post-conflict countries such reforms seem unlikely to be adopted, and let alone be implemented.²⁸ Both theories expect the reform method to break an entrenched status quo – or “capability trap”²⁹ – in which governing elites are unable or unwilling to break out of a vicious circle of “corruption” and state dysfunction (like the limited access order mentioned above).

²² S. Leckie and C. Huggins, ‘Conflict and Housing, Land and Property Rights: A Handbook on Issues, Frameworks and Solutions’ (2011), Cambridge University Press, p.185-6. For example, in Kosovo most land records and maps were taken to Serbia after the conflict. Similar destruction or removal happened in the wake of conflicts in Timor Leste and Cambodia. D. Todorovski et al., ‘Post-conflict land administration; a facilitator of the post-conflict state building the case of Timor-Leste’, FIG conference paper (2015)

²³ D. Zaum and C. Cheng, ‘Corruption and post-conflict peacebuilding: Selling the peace?’ Routledge (2011), p.14-15; R. Biddulph, ‘Cambodia's Land Management and Administration Project’ (2014)

²⁴ S. Blagovcanin and B. Divjak 2015, How Bosnia's Political Economy Holds It Back And What to Do About It, Johns Hopkins University SAIS Centre for Transatlantic Relations, p.14.

²⁵ A post-conflict limited access orders is a society where governing elites deliberately keep access to basic public services to the economy limited to a select group of political insiders. D. North, ‘A conceptual framework for interpreting recorded human history’, No. w12795). National Bureau of Economic Research (2006).

²⁶ D. North et. al., Limited Access Orders: Rethinking the Problems of Development and Violence (2011).

²⁷ S. Toperich and M. Kamenica, ‘Challenges of Democracy in Bosnia and Herzegovina’ in A. Noi and S. Toperich, ‘Challenges of Democracy in the European Union and its Neighbors’, Center for Transatlantic Relations Johns Hopkins University SAIS (2016); F. Bieber, ‘Building Impossible States? State-Building Strategies and EU Membership in the Western Balkans’, Europe-Asia Studies (2011); G. Noutcheva, ‘Fake, partial and imposed compliance: the limits of the EU's normative power in the Western Balkans’, Journal of European Public Policy (2009).

²⁸ M. Andrews, ‘Explaining Positive Deviance in Public Sector Reforms in Development’, World Development, Vol. 74 (2015); M. Andrews et al. ‘Development as Leadership-led Change’, Kennedy School of Government Harvard University (2010);

²⁹ M. Andrews et. al., ‘Escaping Capability Traps through Problem-Driven Iterative Adaptation’ Harvard Kennedy School Faculty Research Working Paper Series (2012)

The first theory and reform method is the solution-based and leader-driven change (SLDC) theory. Here one expects institutional reform to achieve the intended results because:

“solutions are fully identified up-front and are the focus of change; the reform is fully planned out at the start and implemented as planned; a champion drives the process; and a pure-form best practice solution is produced.”³⁰

The second theory of institutional reform is called problem-driven iterative adaptation (PDIA). It:

“proposes that successful change is usually motivated by a problem, not a solution; the reform content emerges through a process of experimentation and trial and error; with multiple agents playing different leadership roles [within a reform coalition]; producing a mixed-form hybrid that is fitted to the peculiar context.”³¹

Thus in the case of SLDC the drivers of such a change are preconceived regardless of the context: this can be a technological standard or best practice imported from outside (like the World Bank’s Doing Business Index on property registration or perhaps supported by a concessional loan or other forms of donor support). Or, there may be external incentives to change, such as (new) EU accession requirements.³² The PDIA reform emerges from problems – a disruption – like an economic crisis. In this situation a solution is not predetermined but emerges through (domestic and external) actors cooperating in order to adapt the institutional context incrementally.³³

The two theories have competing hypotheses to the questions of why and how institutional reform may happen. Below the questions and hypotheses of research are diagrammatically depicted and adapted to the case at hand.

Table 1. Hypotheses of SLDC and PDIA (H1-8) – adapted from Andrews (2015)

Key question	Solution and leader-driven change (SLDC)	Problem-driven iterative adaptation (PDIA)
1. What drives post-war land registration reform?	H1. Land registration reform is driven by a solution. Data shows the solution is identified and derived from a known (external) technical standard, best practice and/or a legal standard.	H5. Land registration reform is driven by an identified problem. Data shows disruptions like an economic or political crisis to kick-start a search for possible solutions.

³⁰ Andrews (2015), p.199

³¹ Ibidem, p.200

³² F. Schimmelfennig, and U. Sedelmeier, ‘Governance by Conditionality: EU Rule Transfer to the Candidate Countries of Central and Eastern Europe’. *Journal of European Public Policy*, Vol. 11, Issue 4 (2004).

³³ Andrews (2015), p.204; Andrews et. al. (2010), p.9.

<p>2a. Who leads the post-war land registration reform process?</p>	<p>H2. Land registration reform “is led by a high-level individual or institution with authority”. One expects data to underline the central and indispensable importance this leader throughout the reform process.</p>	<p>H6. Land registration reform is led by a group of actors who play different “functional roles” in the reform process. One expects data to recognize playing these roles in the adoption and/or implementation process.</p>
<p>2b. How do post-war land registration reforms get implemented?</p>	<p>H3. Land registration reform is implemented according to a plan of action specified in advance. Data shows implementation occurs in accordance with this plan.</p>	<p>H7. Land registration reform is implemented through trial and error. Data suggest local actors finding suitable reform content and adapt it to the local reality.</p>
<p>3. What do post-war land registration governance outcomes resemble?</p>	<p>H4. The outcome of land registration reform resembles the preconceived solutions. Performance indicators like the Doing Business Index suggest implemented solutions meet standards. The case suggests an open access order (OAO) can be approximated regardless of local political preferences.</p>	<p>H8. Land registration reforms resemble products of adaptation. Data reveals implemented solutions as blends of local and external ideas. The case suggests incremental advance towards best practice or even an OAO is politically acceptable if domestic ideas and political interests are accounted for.</p>

Methodology

To test these theories, the chapter relies on data acquired between October and December 2015, through semi-structured interviews and primary sources. The data is organized and analyzed using the process tracing method.³⁴

³⁴ Process tracing allows one to observe a particular case’s historical context and to identify steps that led to a certain outcome – here principally the improvement of DBI scores). A. George, & A. Bennett, ‘Process-tracing and historical explanation’, *Case studies and theory development in the social sciences* (2005). The method allows for finding out original historical causes and processes that drove unlikely outcomes, and description of how intervening variables interacted and in what sequence they had impact P. Vennesson, ‘Process Tracing and Historical Inquiry: Policy-Making Sequences and ‘Possibilism’ European University Institute (2010). Quantitative data suggesting correlation can be used alongside qualitative data to interpret how and why the outcome

Origins of the problem of unclear land records

The postwar problem of unclear land records in Bosnia-Herzegovina arguably starts in the Austro-Hungarian period. When the Austro-Hungarians came to govern Bosnia-Herzegovina in the late 19th century, they did not expropriate or redistribute land; instead they decided to record ownership of existing rights on land more efficiently, systematically and accountably than the Ottomans had. The system for doing so became commonly known as the “Grunt”. It consisted of two separate books: one book recording the rights on property within a numbered parcel – also called the land book or land registry. This book was kept in courts. The other book was the land survey, showing the same parcel graphically depicting its shape, size and structures kept by cadastral officials. This system survived the 20th century’s political transformations up to and beyond the post-1995 era. Marshal Tito, Yugoslavia’s long-time head of state, had not abolished the Grunt nor had he completely outlawed private land ownership (see below). In principal, the Grunt therefore remained the central authority on questions about ‘who owns what’. In practice, the Grunt was unable to keep track of changes of the reality of land ownership. One of the chief causes was redistributive justice and land re-allocation: under the Yugoslav Kingdom, land was redistributed from large to small landholders; whereas under the early Socialist Federal Republic of Bosnia and Herzegovina from private owners to nationalized socially-owned enterprises. In addition, at the end of the Yugoslav period there were partial privatizations of socially owned real estate (e.g. military apartments). These re-allocations had not been systematically recorded in the Grunt’s land books.³⁵

Besides, the political transitions and land redistributions increasing legal fragmentation made the reality of land ownership different from the official records. One reason for this fragmentation was that Tito introduced limited private land ownership to a maximum of ten hectares or less. Credit restrictions and associated tax obligations gave private land owners little economic incentive to register their ownership.³⁶ Legal fragmentation was made worse as Tito also introduced a separate system, known as the “Katastar”. This was in order to register possession and user rights on socialized land, buildings and apartments. The Katastar’s records were linked to aerial surveys which tended to be graphically more accurate compared to the old surveys of the Grunt. Thus an effort was made to harmonize the Grunt survey and records with the Katastar’s surveys and records. This was made to bring Bosnia-Herzegovina’s land registration systems within a single centralised system, the Real Estate Cadastre (REC). However, when just ten percent of the municipalities had completed the process of creating the REC³⁷, the war that started in 1992 halted any further progress.

The war worsened the already inaccurate land registration systems. “[C]ontrol of territory was a major [...] rationale for which the war was fought”³⁸; and belligerents

manifests itself. Finally, this method has been considered appropriate in countries like Bosnia-Herzegovina where outside actors are structurally positioned to influence domestic actors, reform processes and institutional outcomes

³⁵ CRPC (2004).

³⁶ Smallholder farming became so common that it was the only sector which was predominantly privately owned. By 1983, eighty-three percent of agricultural land in the SFRY was owned by approximately two-and-a-half million individual farmers. World Bank, ‘Staff Appraisal Report Kosovo Regional Development Project’ (1983), p.1-2. World Bank Land Registration Project Appraisal (2006), p.1-2.

³⁷ CRPC, Annex D (2004), p.1. Horisberger (2004), estimates around 10 per cent (p.7).

³⁸ Garlick (2000), p.66-7

took advantage of controlling records on pre-war distribution of ownership and possession rights. Many of the Grunt's land books were destroyed – others were “altered” or spirited away across entity or international boundaries. Just one-third of ownership records held in courts were still “intact” at the war's end. The Katastar's possession lists were also manipulated: “With a gun in one's face” many possessors were forced to legally transfer their property. As roughly one in four Bosnians were displaced, many found shelter in abandoned homes, and “[m]any property transfers made during and immediately after the war were disputed.”³⁹ At the same time, land and housing became more scarce.⁴⁰

Restitution and the postwar path towards recognition

The signatories of the November 1995 Dayton Peace Agreement – which included the two warring entities – Republika Srpska (RS) and the Federation of Bosnia-Herzegovina (FBiH) – were faced with many problems of political prioritization. Re-launching the attempt at an REC or finding an alternative way to create a systematic recording of land records was not among their priorities.⁴¹ However, real estate did enter the Dayton accord in some way, as the signatories committed to clarify the rights associated with the problem of displacement. A special independent⁴² body, the Commission for Real Property Claims of Displaced Persons (CRPC), was mandated to “receive and decide any claims for real property [...] not voluntarily [...] transferred since April 1, 1992.”⁴³ The entities were required to cooperate and give the CRPC access to land records; to make any legal adjustments and provide financial, technical and human resource support to enable the CRPC's work.⁴⁴

However, soon after the first CRPC members settled in Sarajevo in March 1996, they learned about the technical and political difficulties they would face. Their primary working material – the information contained in the three different land registration systems – was at odds with the reality of ownership on the ground. They learned this was the result of the waves of redistributive justice, destruction, and neglect, that had caused havoc for the land records: it was not uncommon that the last registered “current” owner of a plot of land was an Austro-Hungarian citizen. They also learned about the discordant land registration systems themselves: one for ownership rights – the Grunt imported from Vienna – another, the Katastar for possession rights – a legacy from Socialist Yugoslavia – and the REC. Finding evidence to decide a restitution case in this institutional landscape would prove difficult enough. Yet even if the CRPC staff knew where to secure pre-war data on possession of property, they ultimately depended on political cooperation and approval of individual municipalities to disclose this data. This cooperation functioned in some municipalities,⁴⁵ yet in others, like Banja Luka, “a pattern of obstruction” was discernable.⁴⁶ Political obstruction also existed at the legislative level. Despite their

³⁹ CRPC (2004), Annex B and D.

⁴⁰ Garlick (2000), p.66-7

⁴¹ There is no known evidence that a plan existed to clarify and formally divide the responsibilities for gathering land records, verifying it and making it accessible in each entity.

⁴² The CRPC had a 9 member decision-making body. Two members were appointed by RS, 4 by the Federation and 3 by the President of the European Court of Human Rights and designated one as Chairman. Dayton Peace Agreement, Annex 7, Article IX (1995).

⁴³ Dayton added that “where the claimant does not now enjoy possession of that property [...] for return [...] or for just compensation.” Dayton Peace Agreement, Annex 7, Article XI (1995).

⁴⁴ C. Rabenhorst, ‘The Real Estate Market in Bosnia-Herzegovina. Current status and recommendations for reform’, the Urban Institute (2000).

⁴⁵ CRPC (2004), Annex D, p.5-6.

⁴⁶ Especially when it came to data that could enable repossession of socially-owned apartments, the capital of RS shared very little useable evidence with the CRPC. Its municipal “representatives” simply stated that “relevant documentation” was destroyed. The

Dayton-imposed obligation to cooperate, lawmakers in both entities had enacted and sought to uphold legislation that essentially prevented refugee returns and perpetuated political control over abandoned real estate.⁴⁷ Even where the CRPC managed to reach a decision on restituting property, it was obstructed from implementing it.⁴⁸

The Peace Implementation Council (PIC) (the body representing the G7, the EU Presidency, Russia and Turkey, which through a Steering Board appointed a High Representative) realized the lack of restitution was stranding hundreds of thousands of displaced in third countries.⁴⁹ After four years of ensuring the implementation of the Dayton Agreement, the PIC realized this key Dayton priority was not met. In May 2000, the PIC openly recognized that commonplace domestic political obstruction of enabling restitution was reflective of a larger problem: the unwillingness of domestic politicians to relinquish control over unclaimed or unrecorded yet valuable economic resources, notably scarce housing and land. The lack of clarity on ownership rights was also being recognized as economically unsustainable: the prospect of Bosnia-Herzegovina remaining a “donor dependent economy” loomed in anticipation of donors’ impending decampment and withdrawal of donors funds on which postwar economy recovery had significantly depended.⁵⁰ Now that the failure to enable returns and restitution was becoming evident, the economic problem of opacity around land ownership rights was linked to the paltry levels of foreign direct investment. With land records still in a state of disrepair and confusion, foreign investors who could not be sure the real estate on which they wished to invest was legally secure. The PIC thus demanded Bosnia-Herzegovina’s governing elites to enact a land registration reform to deal with this problem.⁵¹

The effort to encourage domestic lawmakers to start this reform lasted two years – up to 2002. A bevy of donors, principally GIZ – the German Development Agency – helped fund the search for a solution, and together with lawyers and geodetic experts they met in stakeholder consultation meetings. Yet after two years they still could not agree over whether land registration powers should be separated (i.e. with land registries and survey separated as under the Grunt) or centralized under one institution (as under the REC). Separation would ensure more accountability; while centralization more administrative efficiency. Lawyers tended to favor the separated system. Conversely, cadastral experts tended to favor the administrative efficiency and expediency of having “an integrated solution under the roof of the geodetic administrations.” GIZ was involved in these deliberations on drafting a new law, yet it did impose any particular draft or standard.⁵² No other donors had a standard or best

CRPC confided retroactively that the Geodetic Authority of the RS (the institution that oversees and verifies all cadastral data collection within RS-borders (also based in Banja Luka) had resisted “from the beginning of the CRPC’s work.” *Idem*.

⁴⁷ From the moment it started in March 1996 work the CRPC was understaffed (10 officials) and in search of alternative funding from donors. Until the end of its mandate in 2003, the CRPC was dependent on donor funding, and hard-pressed to secure it. The entities provided no financial support. CRPC (2004).

⁴⁸ A report delivered to the OHR by USAID-paid consultants in January 2000 noted: “CRPC decisions [...] do not necessarily result in eviction of unlawful occupants, in updating the land register or in enabling the decision holder to sell or otherwise dispose of the property. Often they are frustrated by local judges, politicians or other officials whose co-operation is needed ... [this] is exacerbated by lack of alternative accommodations for evictees as well as by political considerations. Rabenhorst (2000), p. 5.

⁴⁹ A CRPC report noted that “[f]our years after the GFAP [Dayton] was signed, it is estimated that up to 830,800 people (487,300 in the FBiH and 343,500 in Republika Srpska) remain displaced within Bosnia and Herzegovina 324,100 refugees remain in host countries without durable solutions. Many, if not most, wish to return to the property that they occupied prior to the war (CRPC 1999, p.1).

⁵⁰ A “self-sustainable market-orientated economy cannot be built in an environment where the principles of economic logic are overruled by the objectives of maintaining political control.”

<http://ec.europa.eu/enlargement/archives/seerecon/calendar/2000/events/c20000523.htm> (last checked 31/10/2016).

⁵¹ <http://ec.europa.eu/enlargement/archives/seerecon/calendar/2000/events/c20000523.htm> (last checked 31/10/2016).

⁵² GIZ, Land Management and Land Administration Projects in Southeastern Europe Good practices and lessons learned from two decades of GIZ Engagement (2015), p.23.

practice to hold up to the lawmakers (the World Bank had yet to establish its Doing Business Index and the EU lacked an *acquis* in this area.)⁵³

Without an agreement on a new land registry law in either entity, a new High Representative, Paddy Ashdown, soon after assuming office in May 2002, urged action “to remove barriers to business [...] by restoring confidence in ownership and investment.”⁵⁴ The PIC steering board now made it “legally binding” for “future governments” of RS and the FBiH⁵⁵ to “enact harmonized land registry laws” and to subsequently “secure technical assistance in training and staffing land registry offices.”⁵⁶ Still, the call for land registration reform was ignored: it was an election year. After the general elections in October, Ashdown saw no sign the reforms would soon be adopted by the domestic legislatures of the RS and FBiH entities. In a letter dated Friday October 18th 2002, addressed to the UN Secretary General, Ashdown speculated that the government formation process would be “perhaps lengthy” and expressed alarm at the economic cost of slow reform:

“Donor contributions are falling, foreign and domestic debt is increasing, and there is little or no foreign investment to fill the gap. By next Spring, BiH could be in the grip of a severe domestic debt crisis. The country is racing against time, and *there is no choice* but to increase the pace of economic reform. [...] BiH still needs [...] a Law on Land Registry Books.”[emphasis added]⁵⁷

The next Monday, Ashdown wrote to the members of the RS and FBiH parliaments: He reminded them that the PIC had required twice in the past two years to pass this law. He explained, a final time, that it was “a necessary precondition [...] for economic development and investment.” Moreover, “any further delay” in adopting the law would “threaten [...] natural persons” property rights. After the entity lawmakers failed to react, Ashdown used his PIC-granted powers to singlehandedly impose the Law On Land Registry in both entities.⁵⁸ The laws were subsequently confirmed by the respective entity legislatures.

Towards implementation

Ashdown’s imposition of the land registry law was game-changing for three reasons.

⁵³ Since its inception, the EU principle has been that “[t]he Treaties shall in no way prejudice the rules in Member States governing the system of property ownership”. <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61998CC0367>. As long as Member States do not discriminate, they are entitled to design their own systems of how land is owned, used and acquired.

European Court of Justice Case 182/83, *Robert Fearon and Company Ltd v. The Irish Land Commission*, judgment of 6 November 1984, (1984). Found in A. Mungiu-Pippidi and L. Stefan, *Perpetual Transitions Contentious Property and Europeanization in South-Eastern Europe East European Politics and Societies Volume 26* (2012), p.356. From 2007, the INSPIRE directive set some guidelines for spatial data infrastructure, but for Bosnia-Herzegovina these were optional. Cetl (2013).

⁵⁴ Ashdown set out to form a “Justice and Jobs” agenda the month he arrived. It consisted of 10 pledges and 67 commitments one of which aimed “to remove barriers to business [...] by restoring confidence in ownership and investment.” The document read that it had been prepared together with the Council of Ministers (A body of state-level ministers’ whose prime minister is nominated by the elected three-headed Presidency of Bosnia-Herzegovina) Office of the High Representative (OHR), ‘Jobs and Justice: Our Agenda’ (2002), p.2. Elsewhere it is argued that the OHR wrote the programme unilaterally – see e.g. G. Knaus and F. Martin, ‘Travails of the European Raj’ (2003).

⁵⁵ Bosnia: Report by the High Representative for the Implementation of the Peace Agreement to the Secretary-General (S/2002/1176)

⁵⁶ OHR, (2002), p.7, 12.

⁵⁷ Bosnia: Report by the High Representative for the Implementation of the Peace Agreement to the Secretary-General (S/2002/1176), p.7, 11.

⁵⁸ In the decision Ashdown cited the entities requirement to adopt the law as stated in the PIC’s May 2000 conclusions and the Steering Board’s July 2002 decision. OHR, ‘Decision Enacting The Law On Land Registry Federation Of Bosnia And Herzegovina’, Number 58/02 (2002) http://www.fbihvlada.gov.ba/bosanski/zakoni/2002/odluke%20VP/56_bos.htm (last checked 31/10/2016). The same law - The Law on Land Registry of the Republika Srpska- was imposed in the RS, no. 67/03. Gotovusa et. al, ‘Zakoni o katastru Republike Srpske: političko poigravanje pravom na imovinu’ (2012)

Firstly, the law separated responsibilities for handling survey and land record data. The law clarified the institutional framework of land registration by essentially reinstating the Grunt's dual land registration system, rather than a centralized land registration system (which the REC reform had sought to achieve). The land (registry) books would solely be the responsibility of land registry offices in forty-eight first instance courts across Bosnia-Herzegovina, each overseen by a court president⁵⁹ and not be reintegrated into the geodetic administration.

This, on the other hand, complicated the task of clarifying the land records by updating and harmonizing the data and the different systems that existed across the country. The cadastral (or geodetic) administrations that would oversee the land surveys and spatial information were headed by a director, and supervised and funded by the ministry of justice of each entity. The land registry offices were in a different hierarchy.⁶⁰ Court presidents at the land registry offices⁶¹ and a state-level body oversaw their work.⁶² The laws on land registry thus ensured that the task of devising plans for implementation depended on several parallel hierarchies.⁶³ In each entity, it required willingness among geodetic administrations and land registry offices to cooperate and to prioritize the search for solutions to clarify land records – e.g. to make legal and graphical information storage technology compatible across jurisdictions.⁶⁴ This willingness existed and the subsequent horizontal cooperation was strong. Court presidents and geodetic administrations invested in building and maintaining positive working relationships, and incrementally worked towards fully updated and integrated systems.⁶⁵ Certain court presidents turned out to be particularly strong allies for this effort.⁶⁶ Similarly, the entity ministers were politically committed to work towards a fully updated and unified system. Their “leadership,” “oversight” and “engagement” were seen to have a strong “motivational effect” to

⁵⁹ The laws on land registry were the foundation for kick starting the land registries reform process. Other relevant laws are the law on cadastre and the law on real rights. See S. Leskovic et al. ‘Registering Property – Experience from Bosnia and Herzegovina’; <http://www.klix.ba/vijesti/bih/registracija-zemljista-u-fbih-za-uredjenje-imovinskopravnih-odnosa/100916077> (last checked 31.10.2016). Apart from the various iterations of the law(s) on land registry Ashdown “imposed” 11 other economic reforms (Bideleux & Jeffries, 2007, p. 396).

⁶⁰ At the top of the hierarchies were the geodetic authorities of each entity, headed by a director who was appointed by, and received funds from, the entity's minister of justice.

⁶¹ N.B. Clerks and judges have distinct responsibilities vis-a-vis entries in land books and work independently. FBiH Law on Land Registration (2002), article 14.4

⁶² The court presidents in turn were appointed by the High Judicial and Prosecutorial Council (HJPC) – a state-level institution – which carried out this work. The HJPC was also legislatively imposed by Ashdown's predecessor, High Representative Petritsch shortly before the former's arrival. Ashdown letter to UNSG (2002), p.6. The HJPC law entered into force June 2004. <http://pravosudje.ba/vstv/faces/vijesti.jsp?id=51991> (last checked 10/31/2016).

⁶³ Again, laws on land registration were adopted and implemented in RS, FBiH and Brcko District of BiH strictly separated competencies and jurisdiction. These were strictly defined. There were no parallel hierarchies within nor across entities as such. In RS and Brcko, the cadastral administration was more centralized by virtue of those regions' political structure. In RS, the Ministry of Justice supervised and funded the entities' Geodetic Administration, which in turn did the same for the different cadastral municipalities (each cadastral municipality covering a number of political municipalities). In Brcko the head of the department of public register partly fulfilled this function. Interview, Belmir Agic, formerly in charge of Public Register dpt. on behalf of the Brcko government, Sarajevo, 10/19/2015. In the FBiH, the cantonal ministries of justice and geodetic administrations were funded by the canton. Thus while RS and Brcko could work hierarchically, the Federation Geodetic Administration (FGU) had to coordinate horizontally, i.e. network to enforce compliance with the quality standards. Interview, Tomislav Tomic, Expert Advisor for Cadastral Affairs, Federal Administration for Geodetic and Real Property Affairs, FGU Sarajevo, 10/13/2015.

⁶⁴ Interview, Sarajevo 10/14/2015; 11/30/2015.

⁶⁵ Interview, Sarajevo 10/14/2015; 11/30/2015.

⁶⁶ Such as the court president of Sarajevo Court, Goran Salihović, President of the Municipal Court in Sarajevo (September 1, 2005 - 2013). He secured resources from the Federal ministry of justice through Land Administration Project (IDA) to pay for his court's land registry office refurbishment. He also made a lighter version of land registry (LARIS) (i.e. not all data but all LR data that was in digital form) version freely accessible to the public. Interview 11/30/2015. He (later) also advised on the Federation BiH Ministry of Justice on the implementation of donor-funded projects (See below). <http://www.tuzilastvobih.gov.ba/?id=66&jezik=e&kat=15&opcija=sadrzaj>.

realize the project goals on lower administrative levels. Cooperation between the entity ministers was considered strong.⁶⁷

The second game-changing effect of Ashdown's law was that it attracted a stream of international donor support for the process of clarifying land records. Shortly after the law was adopted, the so-called Land Administration Project (LAP) was created with financing from Germany (GIZ), Sweden (SIDA), and Austria for the ministries of justice and geodetic administrations of FBiH and RS. LAP began to re-educate land registry and cadastral officials "with the aim of improving efficiency and quality of the provision of services to users."⁶⁸ In 2006, the entities agreed to a 15 million USD concessional loan from the World Bank Land Registration Project (LRP) to improve technical infrastructure for the registration and clarification of land records in cooperation with the LAP.⁶⁹ Both projects avoided imposing severely restrictive measures. Instead they took a "pragmatic, incremental, approach applied to software development and [...] use[d] [...] small contracts to deliver specific outputs" – i.e. new monitoring and evaluation systems, new land recording and geospatial information systems were not installed all at once.⁷⁰ Transaction costs began to fall as the number of pending requests dropped and incentives to informally expedite the registration process (bribery) were further reduced through digitization⁷¹ (see graph 1 below). This reduction meant that citizens, banks and notaries could spend less time and money to acquire excerpts related to specific property – e.g. for a mortgage.⁷² The LRP and LAP support for instrumentalism was key to this gradual improvement according to both the RS and Federation authorities.⁷³

⁶⁷ The Ministries of Justice of the Federation, Feliks Vidovic from 2007 and 2011 was heavily engaged in attaining progress in the LRP. <http://imovinapoliticara.cin.ba/biography.php?id=92>. Interview, Sarajevo 10/14/2015; 11/30/2015. His counterpart Džerard Selman (SDS) said cooperation was strong in 2009: "This program is proof that the entity ministries of justice on the basis of goodwill and professional cooperation can work on a single project that marks out the future of ... joint implementation of projects benefitting all citizens of Bosnia and Herzegovina." Selman was minister from September 2006 to January 2011.

<http://www.ustavnisud.org/Sudija.aspx?sudija=13&cat=11&subcat=42&id=37&lang=bos>

⁶⁸ GIZ was not coincidentally the primary donor of implementation as it built on the experience of its capacity building pilot projects in 1999 to 2001, and its involvement in the two stakeholder consultations of the new land registry draft law. Now with more resources available it could field a much larger, multidisciplinary team of legal, cadastral, IT and PR experts. Sida co-financed since 2003; ADA since 2004. World Bank, Appraisal Document LRP (2006), p.19 The total amount funded by LAP was 8.8 for the Federation and 6.2 for RS. The entities themselves provided 1,225 and ,9 million USD respectively. Additional donors paid 5,4 million euros 2010 (2010 Bosnia And Herzegovina Federation Of Bosnia And Herzegovina Federal Ministry Of Justice Of Sarajevo, Project Implementation Unit of the World Bank for Land Registry Administration in the Federal Ministry of Justice; GIZ (2015), p.25-26

⁶⁹ World bank (2012)

⁷⁰ The World Bank claimed these successes could be explained in part by "good court presidents, managers and staff" responding "positively" to the revolution in their workplace ("renovations, new equipment, improved software, temporary additional staff and training" provided by the LRP and LAP). World Bank LRP final report (2012), p.6.

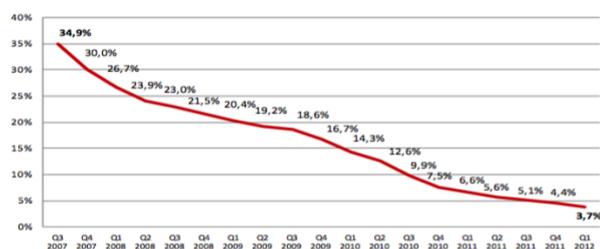
⁷¹ A new digital archive system for land registry – LARIS software – ensured that cases were processed in accordance with the law i.e. chronologically, which according to GIZ and the FGU added "more transparency to the process". Moreover, "[t]he development and nationwide implementation of new software for the land registry "LARIS" essentially improved the land registry data management and data exchanges with other institutions (like banks and notaries): "the accompanying increase in transparency was an important step against corruption." GIZ (2015). p.23.

⁷² GIZ (2010); Interview, Sarajevo 10/14/2015; 11/30/2015.

⁷³ Idem.

Graph 2: Pending requests at land registration offices drop from 2007

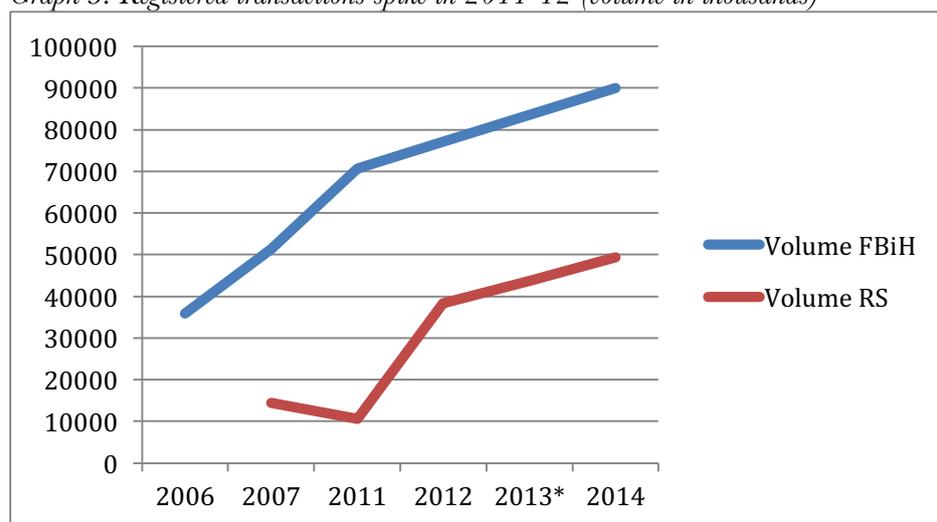
Percentage share of cumulative number of pending requests in cumulative number of total registration requests received in the FBiH:



Source: The World Bank (2012).⁷⁴

GIZ invested in encouraging citizens to use land registration services,⁷⁵ and as backlogs continued to drop satisfaction rose among primary users of land registration services (banks, notaries) and the number of formal real estate transactions began to increase.⁷⁶ As backlogs dropped and property registration time fell to twenty-five days, registered transactions spiked in 2011-12⁷⁷ (see graph 2).⁷⁸

Graph 3: Registered transactions spike in 2011-12 (volume in thousands)



Source: The World Bank (2012, 2016); RS Geodetic authority (2015); author's calculations for year 2013.

Thirdly, Ashdown's law was game-changing because governing elites no longer resisted the process of clarifying land records – in fact they supported it. The legislative intransigence that had characterized the period before Ashdown's

⁷⁴ World Bank (2012) LRP final report, p.27.

⁷⁵ It began to focus on public outreach to encourage use of the reformed registries to overcome predominant views that its services were expensive and time-consuming, while encouraging citizens to use the LARIS system (it was found that particularly made good use of it and merged with cadastral project). G. Schindler, 'Project experiences with land management in countries in transition', (2006), 12-13; GIZ (2015).

⁷⁶ Customer satisfaction surveys showed appreciation of improvements to cadastral and land registry services among private users, banks and notaries. It also showed that more people started seeing the value of clarifying or registering their ownership title. State data. LRP (2012).

⁷⁷ World Bank (2012), LRP final report, p.28.

⁷⁸ "By the end of March 2012, a total of 60,349 mortgages were registered in the Electronically Maintained Land Registry. 45.3 percent of these were transferred from the old books, while 46.4 percent were newly submitted and registered requests for registration of mortgages. The remaining 8.3 percent were the mortgages taken over from the Real Estate Cadastre." World Bank (2012), LRP final report, p.36.

imposition – like the earlier resistance to restitution – had been broken.⁷⁹ This might seem paradoxical, as the law might endanger their strong political influence on land exchanges: the new system would gradually permit indiscriminate public access to formal land exchange services. This meant registering real estate had become a more impersonal and less informal process.⁸⁰ But it did not mean that real estate investment was now devoid of politics or market distortions: obtaining other regulatory permissions (urban planning, construction permissions, procurement contracts etc.) was a slow process⁸¹ that typically required political facilitation.⁸² Yet what the process of clarifying land records did do was create a basis for formal real estate investment. After all, banks and foreign investors expected to see a proof of ownership from the land registries. The process thus enabled lucrative land improvements and other turnkey projects that were very difficult, if not impossible to attract before Ashdown's law. Not coincidentally, the real estate 'boom' that started in Sarajevo took off after 2002, after the adoption of Ashdown's law.⁸³ The first multi-billion euro opportunity to present itself was already 2003 (soon after Ashdown's law was adopted): the European Commission announced its South-East European transportation artery would run north from the Croatian coast past Sarajevo into RS to the Croatian hinterland.⁸⁴ A precondition to make this great font of investments (notably construction, material and transportation contracts) happen and to find willing investors⁸⁵ was to clarify ownership about the land along the highway route.⁸⁶

Challenging and adapting 'Ashdown's Law'

Tensions about the implementation Ashdown's land registration law resurfaced. This was in spite of the fact that the heavily decentralized system for recording and updating land titles was clearly becoming more functional thanks to horizontal coordination and cooperation between the courts and geodetic authorities. At first glance this appeared mainly a result of "friction between the entity governments and GIZ": The World Bank did directly disburse credit to the geodetic authorities, whereas GIZ did not. As GIZ was unwilling to change its disbursement policies, GIZ decided to end its 9-year old project in 2011⁸⁷ (even as a new five-year World Bank loan worth 34 million USD for a Real Estate Registration Project (RERP) was in the making (it was approved in May 2012)⁸⁸). However, a more problematic, underlying

⁷⁹ The CRPC closed in 2003, its mission considered largely complete. CRPC (2004). A host of new, but harmonized bylaws and amendments were adopted by both entities following the imposition of Ashdown's law; including amendments to the Law on Land Registry Books, the Law on Court Fees, the Law on Notaries, the Law on Survey and Real Property Cadastre, as well as a law on Law on Real Property Rights (2008). Nikola Panic, Head of the Department of Land Registry Administration, Ministry of Justice of Republika Srpska, Results of Land Administration Project. GIZ, Media Sarajevo (2011)

⁸⁰ From 2003 to 2006, LAP prioritized re-training land clerks. The rebalancing of responsibilities, as well as "decades without a single seminar" meant that too few clerks were trained, tested and licensed to deal with real estate disputes. The LAP thus invested in "on the job training" of 150 existing clerks and 250 new lawyers. GIZ (2015), p.2-3.

⁸¹ The World Bank noted in 2012 "The entities need to work to reduce market distortions, encourage greater investment and growth by improving the quality of the data held in the registers, harmonize the entries and address the problems of illegal construction and idle land. Illegal properties are still not selling as they cannot be easily registered in the land book due to missing construction permit." World Bank Real Estate Registration Project Appraisal (2012), p.36.

⁸² E.g. see Z. Moses, 'Neo-Liberalism, the Islamic Revival, and Urban Development in Post-War, Post-Socialist Sarajevo', M.A. thesis, University of Toronto (2012).

⁸³ M. Fischer, Peacebuilding and Civil Society in Bosnia-Herzegovina: Ten Years After Dayton (2004), p.95.

⁸⁴ A feasibility study estimated the highway to be around 1.5 billion Euro. EC, REBIS STUDY (2004).

⁸⁵ E. Jansson, (2004), PM turns on the pressure in big drive for new motorway, Financial Times.

⁸⁶ Z. Bačić and V. Poslončec-Petrić, Regional study on cadastre and spatial data infrastructure (2012), p.105.

⁸⁷ According to GIZ this made the donor recipients feel "capable of implementing activities without the technical assistance of LAP [GIZ]" and subsequently, "[t]he LAP was increasingly perceived as a project with the objective of supporting the WB [World Bank] project, which meant that it should only fund the necessary human resources to strengthen their own teams and provide additional financial resources to supplement the WB loan. This approach was not acceptable to the LAP donors, [...] [and] an exit strategy was jointly agreed." GIZ (2015), p.23.

⁸⁸ That project, again with Federation and RS ministries of justice as beneficiaries would seek to sustain and enhance progress

issue, was a “frozen conflict” between lawyers and geodetic experts over the separation of powers in land registration. This evidently had existed since Ashdown imposed the Law on Land Registry. ‘Ashdown’s Law’ evidently never achieved full acceptance, especially among officials in the geodetic administrations.⁸⁹ Meanwhile, GIZ’s support for building country-wide legislative coordination had self-admittedly not succeeded as “the political economy in BiH” began to “to emphasize more the Entity level authority.”⁹⁰ Entities were looking to centralize powers over land registration under the geodetic authorities and away from the more independent court presidents. The old debate over centralization or separation left donors who (had) invested in land registration reform looking for a common response.⁹¹ While GIZ claimed neutrality, it evidently thought some of the donors it worked with were biased towards centralization.⁹²

In February 2011, soon after GIZ left (and the era of Ashdown and OHR interventionism long over), the RS parliamentary assembly adopted a new Law on Cadastre. This law was similar to Ashdown’s law in that it re-unified the previously separated cadastre and land registry under RS’ geodetic authority (RSGA). The RSGA argued centralization would expedite harmonization of the cadastral and land record data.⁹³ Yet for GIZ, the RS law “could be considered a major setback for the efforts undertaken by the LAP” as GIZ held that

“Choosing between a “dual” or “single” administrative solution for managing the land registry and cadaster is not important, a clear separation and the strong coordination of legal and geodetic functions is in any case “a must”⁹⁴

I.e. it was feared that the registration of property rights – real estate – the land registry should have remained administratively separated to ensure the registration of land records at the RS’ geodetic administration would not come under direct political influence.

This fear was shared by Bakir Izetbegovic, the Bosniac President, who suspected the centralized system could be abused to enable unlawful land reallocations of real estate abandoned by refugees or left vacant during the war: without the appropriate checks and balances, outdated land records could be altered without proper due process: e.g. by changing land ownership titles without consultation of absentee owners who might someday return to formally clarify their ownership rights and/or return to their property. The Bosniac President thus challenged the law in the constitutional court,

with more infrastructural and policy development and seek to harmonise land registries and cadastral records in urban areas. World Bank Real Estate Registration Project Appraisal (2012), p.36 “

⁸⁹ GIZ (2015) p.23.

⁹⁰ A designated state-level coordination body (the Land Administration Coordination and Advisory Board (LACAB) had failed to live up to its task of proposing “appropriate” measures to improve the land registration system: slow government formation at the Federation and State level impeded formulation of nation-wide strategic guidelines. GIZ (2015) p.25-6.

⁹¹ According to the leader of the Bosniac caucus in the RS Assembly, Mujo Hadziomerovic “The Council of Ministers of BiH, and part of the international community hesitate(d) and said – reach agreement among yourselves” – suggesting that this created a window of opportunity for this reform. Bosnia Daily, Bosniaks Veto Republika.

Srpska’s Law on Cadastre (2011).

⁹² After GIZ’s departure a report looking back at the GIZ land registration reform projects suggested the “frozen conflict” between lawyers and cadastral officials had endured and was in fact “aggravated by the advent of donors who promoted the unification of the cadastre and land registry under one authority.” GIZ (2015) p.23.

⁹³ Interview, Tamara Travar, Deputy Project Coordinator, Real Estate Registration Project, Republic Authority for geodetic and property affairs of the Republic of Srpska, Banja Luka, 4.11.2015.

⁹⁴ GIZ (2015) p.23.

and this eventually brought RS to amend the law.⁹⁵

Since then, the World Bank worked with FGU and RSGA to avoid abuse of the harmonization of land records, e.g. to take advantage of unclaimed (absentee) land for political and/or private ends.⁹⁶ Meanwhile, the idea of centralizing land registration power persevered: At a World Bank conference in 2016, the Directors of both entities' Geodetic Authorities jointly stated that

“the transition of the dual registration system into a single, unified one is internationally recognized as a best practice.”⁹⁷

Analysis of the Bosnian land registration reform

How do these findings answer the research questions? What hypotheses can be confirmed?

Some evidence presented above gives reason to argue that land registration reform was driven by Ashdown's move to impose a preconceived solution (reinstating the two-book system). His leadership was arguably “indispensable” in changing the rules of the game. His aim was to create an institutional framework and to clarify responsibilities (between entity geodetic authorities and the court's land registry offices). This framework was the basis for implementation and donor support. Further, it quashed domestic legislative intransigence and disagreements. Finally, the improvements in the Doing Business Index and specific project performance indicators suggests the reform approximated “international standards” – even increasing real estate market activity – and conceivably advanced the country towards an open access order. In short, key evidence can be used to confirm part of the hypotheses of the solution and leadership-driven change (SLDC)-theory of reform (H1-4 – see table 1).

However – a deeper reading of the presented evidence suggests this case typifies problem-driven iterative adaptation (PDIA). Firstly, Ashdown's law was not a comprehensive or permanent solution: it was the starting point for the search for one, and marked the acceptance of a deep-rooted and evolving problem: the legacies of socialism and war had made land records extremely unreliable. Only four years after Dayton, when the failure to implement restitution was connected to failure to attract foreign investment, did land registration reform become a priority for the international community, i.e. the PIC. The PIC recognized unclear land records as both an obstacle for restitution and the country's ability to attract investment. It subsequently expected domestic legislators to concoct a reform that would allow for a systematic process of clarifying un-harmonized land records (and land registration

⁹⁵ Constitutional Court BiH, Decision on Termination of Proceedings regarding review of the constitutionality of the Law on Cadastre of the Republika Srpska (Official Gazette of the Republika Srpska no. 60/11 (2012)

⁹⁶ The reader is reminded that the legal framework across the entities is distinct. In so far as the FBiH law on land registry was concerned no significant changes in this law were made, apart from the introduction of bylaws. No interest nor reason existed to challenge, discuss or test the procedures for data harmonization that existed under that law. Moreover, Land registry and cadastral offices at the municipal level carry out the harmonization of data in accordance with their own laws and bylaws. Each one of these parties carry out harmonization independently, without any formal interference from the Federation Geodetic Administration or Ministry of Justice. Interview, Sarajevo 10/14/2015; 11/30/2015.

⁹⁷ Like RS, the FBiH said that the unification of the cadastre and land registries would make it “easier” harmonise and to collect real estate data. Moreover a survey submitted to The World Bank indicated that notaries and surveyors were complaining about the efficiency Federation's property registration system. At a World Bank land governance conference in 2016, the director of the Federation geodetic authority, Mr. Obradovic maintained that a unified land information system was international “best practice” and a goal. See Obradovic et. al. (2016)

procedures). Yet domestic lawmakers remained in disagreement over this reform. After two years of fruitless attempts to pass a law, High Representative Ashdown's fear of an imminent economic crisis led to the imposition of the Law On Land Registry. This law clarified the legal framework and institutional responsibilities yet lacked a plan. Thus H5 (not H1) can be confirmed (see table 1). As for who drove implementation: there was not one actor leading implementation: rather a coalition of domestic actors and donors began finding and fitting solutions iteratively, incrementally and adaptively. Each actor played a different role, which changed over time. This is well illustrated in the case study. Domestic elites adapted by ending their erstwhile political intransigence upon realizing their political and economic interests were served by seeing this reform implemented (namely because ownership clarification opened opportunities for attracting investment and large-scale real estate projects. The World Bank adapted by de-facto accepting the revisions of Ashdown's law and recentralizing land registration powers in the RS. By contrast, GIZ had difficulty adapting, and eventually left. As the entities and the World Bank continued to agree that the main aim was to make land registration more functional: centralized authority in exchange for ever increasing harmonization of land records and registration systems in Bosnia-Herzegovina was acceptable to all key stakeholders involved..

In short, the continued search for context-appropriate solutions and institutional adaptation is what made possible the land registry law and continued political, financial and technical support to enhance land registration functionality in Bosnia-Herzegovina. Domestic acceptance of the need for retraining, modernization and standardization of local land registration capacities was as important as the World Bank's acceptance of the local desire to recentralize separation of land registration powers. Evidently, the World Bank wagered that centralization would not undermine their project performance indicators.

Facilitating access to land registration services and clear records appears to be an advance toward an open access order – just as the improved Doing Business Score for the ease of the registering property suggested. Yet this was a result of an approach that did not involve straightjacketing according to predefined standards, and left room for external and internal ideas to adapt the reform after it was adopted and being implemented.

Conclusions

Three conclusions can be drawn from this analysis. Firstly, the unbroken political support for land registration reform since 2002 suggests the surprising possibilities of problem-driven iterative adaptation (PDIA). The reform made Bosnia-Herzegovina more akin to an open access order. This analysis shows powerful actors, like the High Representative, playing a surprisingly modest role in enabling this outcome – i.e. while he was an important champion of the reform, his influence was not indispensable or throughout the reform process, which is perhaps not expected when considering this case at first glance. Rather, the case study finds that the reform moved ahead more because involved actors continuously adapted to new roles and situations to drive change toward a more functional land registration system, primarily so to enhance the country's ability to attract greater investment. This finding seems remarkable in a country where political compromise over comparable liberalizing economic reform often has been considered problematic, if not impossible.

Secondly, the analysis shows the limits of PDIA. Governing elites did not block the process of enabling greater transparency about who owns what land by clarifying land records, yet they did move to remove the courts' role as an immediate check and balances to prevent potential abuse of the power to regulate land records. Meanwhile political elites successfully undermined institutional capacity that would clarify their own real estate records, and thus kept hidden potential conflicts of interests.⁹⁸ Moreover, attempts to link land registration with property taxation systems were only beginning at the time of writing this paper.⁹⁹ It is unclear if further attempts in enhancing the functionality of land registration will remain contingent on backtracking or lack of change in areas directly related to land registration.

Finally, the possibilities and limits of PDIA suggested in Bosnia-Herzegovina raises further questions. PDIA in this case shows external donors and domestic actors finding compromise after confrontation, but political acceptance by the governing elites appears to be a pre-requisite for change. Is this really the case? If donors lack clear or complete standards on checks and balances in land registration¹⁰⁰; is that helpful to advance liberalizing institutional reforms, or is it a shortcoming that elevates the abuse of institutional power for narrow political and economic ends? Secondly, if only a narrow elite is able to take advantage of the new economic opportunities a reform (here land registration reform) creates (as research on land registration reform in Cambodia suggests) does this not affect the legitimacy of donors supporting land registration reform?¹⁰¹ Thus while this chapter may provide insights why and how PDIA may drive and overcome obstacles to reforms that governing elites and donors promise will open up the economy to competition and investment – it does not verify if this promise is actually fully delivered. Hopefully this galvanizes researchers & policy-makers to think about & critically evaluate the adoption and implementation of comparable reforms in Bosnia-Herzegovina and other post-conflict countries.

⁹⁸ Group of States Against Corruption, Second Evaluation Round Report, Compliance Report on Bosnia and Herzegovina, Council of Europe (2008); European Commission, 'Progress report Bosnia and Herzegovina' (2010), p. 15. Interview, Leila Bicakcic, Director of the Centre for Investigative Reporting (CIN), Centre for Investigative Reporting (CIN), 11/12/2015.

⁹⁹ Z. Obradović et al. 'Building Capacity and Communication for Land Administration in BiH, Annual World Bank Conference on Land and Poverty, Washington DC (2014).

¹⁰⁰ The donors who continued to monitor progress on land registration reform, namely the World Bank (and also the EU) remain watchful on improvements of the DBI score, yet indifferent to particular aspects. A clear illustration is their position on centralization of land registration powers. From what can be told from the EU 'progress reports' the EU remained indifferent whether centralization heightened the risk of abuse of land registration powers (as mentioned, it lacks a clear *acquis* on the point). The World Bank appears to simply recognize that for a long-running land registration project creating a uniform, integrated land registration system is becoming a norm globally (thus contrary to entities' claims, the World Bank nor any other donor has an explicit standard for whether land registration powers should be centralized or separated): "The World Bank, too, has exhibited [...] the assumption that one uniform set of land laws based on a Western model would facilitate foreign investment in land" However, he noted that "There is a growing recognition that rather than attempting to impose a uniform national land law in such countries, an approach that recognizes the strengths and benefits of diversity is more likely to encourage social stability and economic development" Deiniger et al. (2010), p.155-6.

¹⁰¹ Biddulph (2014).