

Why not simply record titles in a parallel registry for urban low income areas?

As an alternative approach to titling land to the municipality, some have suggested "parallel registries" as a means to title land individually with lower registration costs and less bureaucracy than the standard registration system. Parallel registries are lists of property recorded outside the normal registry process. They often do not require many of the legal formalities, such as surveying or valuation, which increase the expenses of standard registries. Hence, the strongest argument for a parallel registry is its low cost. Yet these registries, by definition, are a redundancy of effort, since they "parallel" an already existing registry.¹⁸ Furthermore, parallel registries may lack official recognition and may not be of use in gaining access to credit since mortgages must be recorded in the standard registry. In addition, where the parallel registry conflicts with the standard registry, the latter is likely to prevail. Thus, the parallel registry gives a lower level of tenure security than standard registries and often does not provide the basic benefits of registration.¹⁹ The arguments for a parallel registry are often really arguments for reform of the standard registry, and would more appropriately be channeled to that end.

1. Increasing inscriptions.

Simply hiring more employees and supervisors may be the simplest way to get more titles inscribed. Currently the use of employees is grossly inefficient due to the way in which titles are inscribed. Hiring more workers would allow the registry to complete its tasks more

¹⁸ The *Instituto Nacional de Transformación Agraria* in Guatemala maintains a registry parallel to the "Registro General de la Propiedad." Unfortunately, neither registry is now efficient or cost-effective. See Steven E. Hendrix, D. David Moyer & Ronald S. Stochlic, *La Reforma del Registro de la Propiedad en Guatemala: Informe de Situación con Recomendaciones* 22 (1992) (LAC TECH Report, University of Wisconsin Land Tenure Center).

¹⁹ The Institute for Liberty and Democracy has created a parallel registry in Peru. The ILD has titled land only in non-agricultural zones where there are fewer disputes. Yet it is precisely where property is insecure that titles have their greatest impact. Second, the ILD has relied on existing maps and building plans for data without field verification: the ILD inputs this data into its computerized system. Yet the level of confidence in that data is low. Gerhard Larsson, *Land Registration and Cadastral Systems* 105 (1991) argues that conversion of data from older registries can only be accomplished with considerable field work when the bulk of the referred land units have already been defined on maps. Not using field data means that the poor must accept a judicial process that gives them less security and fewer rights than their more affluent neighbors, who can buy into the standard, more exact registry system. A more equitable approach would be to reform the existing registry system to allow all access to the protection of the law on an equitable basis.

quickly, using the same, inefficient manner it always had. In this regard, this proposal is perhaps the most conservative approach.

2. Streamline the *Diario*

There are several ways the *Diario* could be made more compatible with the volume of work coming through the registry. The first and lowest cost option may be simply to hire more clerks. Instead of just one *diario*, there could be several volumes. A single date and time clock could be used to stamp entered documents with exact time down to the second, so that there would be no question over "first in time" with two entries made in different books for the same exact time.

3. Radical Surgery?

It is no coincidence that guarantees of property ownership are usually one of the first provisions in national constitutions. Market economies require property systems to function. The registry is where those markets record transactions in real estate. Consequently, change to that institution should rarely be done. The legal establishment is very resistant to change in property generally. And we might expect it to be more resistant to change in the context of recent changes, as have been witnessed in Nicaragua over the last 15 years.

Further, there is a need to coordinate closely with the World Bank. The urban titling initiative should not undertake anything that will work at cross purposes with the Bank's longer term interests. But now is the moment for bold thinking. Action taken to improve the registry will create synergies and efficiencies that could potentially prepare the registry for even bolder actions in the near future with World Bank funding.

As noted above, the World Bank and INRA appear to be doing some sort of work on diagnostics of the registry. Any work done in this area must include systems analysis, data base management, administration, finance, and legal (both local, national and comparative) perspectives. Without these reports in hand, we believe some diagnostic is needed immediately if the goal of 100,000 urban titles in 18 months is to be embraced as a goal. Such a study will reveal all major bottlenecks and recommend concrete measures to address them. It is hoped the planned studies can meet these needs.

Instead of simply hiring more public employees, a much more appealing solution would be a computer database. The database would provide the narrative template, and would require the clerk only to enter important fields of information, such as owner's name, date, parcel number and buyer's name. Data already captured by INETER or the Fiscal Cadastre would not be duplicated. Instead, a link would be set up on a "read only" basis to obtain these data directly from the proper source, saving immense amounts of time and duplicative effort.

A compromise between the conservative approach (hiring more employees) and the more radical approach (automatization) might be simply scanning in the title rather than writing out summaries. This would capture all data without having to write it all out by hand.

Land Registration Development Phases in the Developing World:

According to Gerhard Larsson, there were four different phases in the development of land registration in non-cadastral countries²⁰:

1. Sporadic and voluntary deed registration. Deeds had a verbal land identification. There were no rules to normalize and formulate land surveying. It was not organized by lot or parcel but by date as in many parts of the United States, when property insurance was added. The insurance companies maintain their own maps and land surveys; Example: Guyana "Transport" system, Bolivia's voluntary deed registry system.²¹
2. Continuation of number 1 above except with a mandatory deed registration. Example: Ecuador.
3. Sporadic, mandatory "title" registration. That is, the land has to be registered with a land survey. From that date on, each new transaction needs to be registered. The registration is guaranteed and insured by the state. During that phase, there are usually two types of legislation. One is applicable to the Deeds Registry system, while the other is applicable to the Title Registry system. (For example Land Registry Act of 1925, in England, and a Land Registry system in Guyana²².)
4. Mandatory and systematic "title" registration. All land within a certain area is identified and registered.

²⁰ Gerhard Larsson, Land Registration and Cadastral Systems (1991) page 23.

²¹ Guyana: Steven E. Hendrix, "Land Tenure in Guyana: A Rapid Appraisal Report with Recommendations on Policy Formulation and Registry Modernization for the A.I.D. P.L. 480 Program" (University of Wisconsin Land Tenure Center, June 1993) page 16.

²² Guyana: Steven E. Hendrix, "Land Tenure in Guyana: A Rapid Appraisal Report with Recommendations on Policy Formulation and Registry Modernization for the A.I.D. P.L. 480 Program" (University of Wisconsin Land Tenure Center, June 1993) page 17.

Yet even more bold, administrative streamlining is needed. In terms of streamlining the titling process at the registry, Nicaragua should examine adoption of declared registration areas. This may be useful to document thousands of small parcels on a swift basis, especially in areas where parcels have traditionally been in the informal sector. It would also reduce paperwork at the registry to a fraction of its current level and make title searches very simple.

What are "declared registration areas"?

Declared registration areas are often used to speed up titling and reduce transaction costs, while providing a high degree of legal certainty to property ownership. Many countries have antiquated registration systems. Conversion to "title systems" is accomplished by declaring a particular, bounded, physical area a "declared registration area." Within this area, titles are brought up to date within the new system. Outside this geographic area, real estate transactions continue as before. Thus, a parcel corresponds to only one registry system, either within the declared area, or outside it. Declared areas have been used in places like Belize, Trinidad, Guyana, Kenya, Cayman Islands, and Albania to allow for massive titling in short order under conventional legal systems.

Title registration is very easy. Reference is made to a parcel map created by the cadastral institute. Documentation simply states that on a certain date a given parcel (represented by a unique parcel identification number) was transferred from seller to buyer. It is that simple. No publication of sale is required, and title searches can be made in minutes. Further, the system gives a high degree of certainty of ownership to a single individual, making title insurance unnecessary.

Since the system is predicated on cadastral maps, the achilles heel of these systems has been the lack of cadastral data. Where such data exists, title registration is a preferred registration system, and declaring registration areas is the proper way to convert from older registry systems to a title system.

Ideally, declared registration areas could be networked with INETER, so that parcel boundaries would be accurately described already, freeing INETER from having to duplicate that effort. Automation could mean processing transactions in hours rather than years.

Automation of the *Registro Social de Inmuebles* in El Salvador

Automation and streamlining of registration is very much welcome--by most users. But there are losers: those that benefit from inefficient, nontransparent systems, including registry employees accepting bribes, title insurance companies earning high commissions, and attorneys paid for lengthy title searches and litigation. These stakeholders have an interest in seeing that automation not come to the jurisdiction. El Salvador took an interesting approach to this issue.

In El Salvador, the country combined automation with the *folio real*, a variation of a title based system. Declared areas initially were only in low income neighborhoods, places where residents currently did not purchase any legal services. The organized bar did not oppose modernization in these areas, as it represented no loss of business. Within modernized declared areas, transactions then proceeded within about 2 hours, while more wealthy neighborhoods had to wait weeks and months for their transactions to emerge from the system. Bankers began to favor the more agile system. Currently, there is a great deal of public pressure to expand the automated system nationwide, to allow the middle class and wealthy to take advantage of the system. The Salvadoran bar association has noted the increase in commercial transactions and has consequently been a strong supporter.

In a similar case in Belize, from the organized bar perspective, law firms are currently carrying a very high level of potential liability for malpractice where engaged in a real estate practice in a jurisdiction with an inefficient registry. Consequently, it is precisely this institution lobbying for automated registration within a title-based system. This approach needs to be communicated to Bars in other countries to solicit support for registry modernization.

Organizational View of the three separate Property Registration Systems Under the <i>Registro de la Propiedad Raíz e Hipotecas</i> (RPRH) in El Salvador	
System	Comment
(1) The <i>folio personal</i>	organizes information based on the owner's name.
(2) the <i>folio real</i>	organizes information based on the property or real estate involved.
(3) the Social Property Registry (<i>Registro Social de Inmuebles</i>).	a computerized subset of the properties within the <i>folio real</i> system. To a certain extent, the social property registry is automated and streamlined for enhanced registration capabilities. Work in this section has been contracted out by the traditional registry to the <i>Instituto Libertad y Progreso</i> (ILP)

Table 3: Organizational Structure of the Registry in El Salvador

Concept of Self-Financing (*autofinancimiento*):

As the registry moves toward modernization, it should look for ways to correct the fiscal deficiency and make itself self-financing. Three concerns are apparent in this effort. First, Nicaragua should charge users fees appropriate to recover the costs associated with registry services. But, charging for use of the system could well become a deterrent to participation in the system. If so, this could lead to a return to informality. In Honduras, a great deal of money was spent by international donors to promote land titling and registry reform. Yet the projects were not sustainable, as participants dropped out and returned to informality, due to transactions costs. Such lack of maintenance makes the original effort futile. These results must be avoided if a registry modernization project is to be seriously contemplated. Currently, at least first time registrations for small urban lots are now proceeding exempt from any registration fee.

Second, allowing registries to retain user fees can create opportunities for corruption. This may be especially problematic during the conversion phase, when money begins to come in, but the process still lacks a high degree of transparency. This is no small concern in a country noted for problems in the area of rule of law and land administration.

Third, perhaps the biggest problem with the self-financing proposal is its view of what the service of the registry is. Emphasis on self-financing has focused on the service of parcel

transaction inscription. But this in only one user of the system. There is a tendency now worldwide to try to capture revenue from all system users. This will include, perhaps, other governmental units and the private sector, all of whom seek geographic information on a regular basis.

**Comparison of Transactions at Registries in
Private Lands: recorded at the Deeds Registry in Guyana**

Office Section:	Conveyance	Land Registry
Document Name:	"Transport" or "Deed"	"Registered Title"
Historic Origin:	The original Roman/Dutch System operative in Guyana. Based primarily on names of the parties involved in the transaction.	Australian, imported by the British to improve on the Roman/Dutch system. Based on the parcel, rather than buyer or seller.
Property Description requirements:	Sometimes Long, verbal descriptions of land; survey plans often feature	Reference only to Block, zone and parcel number on a survey.
Time requirements for transfer or mortgage	6 to 8 weeks in theory. 3-6 months in practice.	In theory, 1 day. In practice, 2 days to 1 week
Geographical application to date:	Entire Coast and banks of larger rivers.	Mainly coastal with some riverain areas.
Procedure:	long documentation, publication in the <u>Gazette</u> , period for opposition, execution before the Court.	Presentation at registry. Almost instant registration.
Cost/benefits:	Does not often require elaborate survey, but process is time consuming.	Process is cheap and fast, but requires up front investment in surveys by Government.
Amount of documentation:	extensive	minimal.

Gender issues:

It may also be necessary to review how titles are granted in the *barrios marginales*, and to make sure that there is participation by female heads of households as parcel boundaries are being determined by the local community representatives. It may also be necessary to bring

in an expert on gender issues to identify the relevant areas where reforms may be necessary to better protect women's rights to and access to land. More generally, as both the urban and rural titling initiatives get underway, care must be taken that women as well as men benefit from greater land tenure security. Broader issues that should be examined are:

- 1) Does the registry allow for land to be co-registered under both the husband and wife's name? In some Latin American countries this is not the case. In those countries when a divorce takes place the woman loses all access to land that was obtained during the marriage.
- 2) Do female heads of households have the same access to land titles as male heads of households? Again, in some Latin American countries this is not the case.
- 3) Do inheritance laws equally allow for the inheritance of land by both the male and female offspring?

C. URBAN TITLING UNIT (OTU)

The Finance Minister already has a solid handle on the OTU. However, some sort of settlement on indemnization of ownership via a block solution for urban smallholders would greatly help. Assistance to INETER will generate more work for OTU in terms of *solvencias*, something OTU is probably already fairly equipped to handle. If additional streamlining were needed, OTU might consider additional staff for the government notary.

D. CROSS-CUTTING ISSUES

Given the many different entities dealing with property (Supreme Court, Department of Construction and Transport, Finance, Department of Justice), some consolidation may be in order. The Vice Minister for Property has suggested that perhaps all should fall under the Finance Ministry. If this is politically difficult to do, all might be located at a single location. This has been done at least partially at the new OTU office.

Titling is typically part of a broader registration reform process,²³ one which requires technical expertise.²⁴ The reform process is indispensable for maintaining a modern

²³ For example, the AID Ecuador project involves broader registration reform issues.

²⁴ For example, the Bar Association and the Property Registrar in Guatemala are consulting with technical experts from Costa Rica in the design of the titling reform project in Guatemala.

cadastral land information system--a database used for property taxation, zoning, and land use purposes. Maintenance of property records and the land information system *over time* is crucial for an active and transparent land market. In addition, land-titling and formalization efforts are useless without subsequent legal enforcement of boundaries.²⁵ In the absence of maintenance and boundary enforcement, the entire registration and formalization process is jeopardized.²⁶

One of the primary goals of property registry reform is to provide a legal framework for economic markets.²⁷ For a legal framework to inspire investor confidence, potential investors must perceive that a solid, high quality institutional basis is in place. This argues for appropriate compensation for land registry employees, as well as other incentives to prevent corruption and encourage professionalism. It also means that all system users should be treated equally and receive equal service. This service should be delivered in a transparent fashion, meaning that the rules are clear and well-publicized, and that documents are open to public inspection. Accuracy standards should never be compromised simply to demonstrate results, as this would undermine confidence in the results generated. As a rule, it is never cheaper than now to make such infrastructural investments in quality. In short, reform projects should "do it right the first time."

The methodology of land formalization should reflect national conditions. In Honduras, for instance, a report showed that much of the property there went unregistered, despite titling efforts.²⁸ This was due to (1) the legal restrictions on titling parcels smaller than five hectares; and (2) lingering suspicions of the government's intentions by the peasantry. Interestingly, data from Honduras also show a continued use of "customary" rather than legal procedures for land transactions even after land had been titled through a titling project.²⁹

²⁵ In Brazil, the World Bank found that subsequent to legal demarcation of the land, violations of the boundaries occurred from a variety of sources, including official acts (revocation of decrees, building of roads through reserves) and incursions into indian lands by poor colonists who themselves lacked alternatives for access to land and resources. See Alaka Wali & Shelton Davis, *Land Regularization in Special Amerindian Components of Bank-Funded Projects in the LAC Region 17* (1991) (World Bank Report available from the World Bank).

²⁶ Gerhard Larsson, *supra* note 31 at 118.

²⁷ See, e.g., J. David Stanfield and Maksi Raço, *Creation of Albanian Land Markets*, 71 *Land Tenure Center Newsletter* 1, 3 (Spring 1994).

²⁸ Stanfield, Nesman, Seligson & Coles, *supra* note 7 at 34.

²⁹ Coles, *supra* note 26 at 32.

The method of titling should also be tailored to fit distinctive regions within a country. For example, urban areas may have a higher property value, and so justify prioritization in titling. In contrast, rural areas may have lower property values. Therefore, as far as immediate economic impact is concerned, it may be logical to prioritize the recording of high value urban properties over less expensive ones. However, equal standards may need to be applied in order not to undercut the institutional credibility of the cadastral system.

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