This paper is essentially an abbreviated version of the author's Ph.D. thesis of the same title.

April 1972 R.P. No. 45

THE LEGAL INSECURITY OF RURAL PROPERTY IN COLOMBIA:

A CASE STUDY OF THE NOTARIAL AND REGISTRY SYSTEMS

by

Luis Arevalo-Salazar*

*The author is presently Legal Adviser of the National Cadastral Survey at the Geographical Institute "Agustin Codazzi".

ACKNOWLEDGEMENTS

The thesis upon which this study is based was directed by the Land Tenure Center of the University of Wisconsin and by the Law School of the same university. Among those who provided invaluable aid are Professors Peter Dorner, Herman Felstehausen, Joseph Thome, and Raymond Penn. Sincere thanks are due to all of them. I am particularly grateful to the late Professor Jacob Beuscher of the Law School of the University of Wisconsin, who first introduced me to "law in action" empirical research.

TABLE OF CONTENTS

I. TITLE PROBLEMS

INTRODUCTION

The need for procedures to title and transfer land arises from the potential and actual conflicts which occur as land claimants struggle to gain, enlarge, or maintain control over land resources. In Colombia, the problem is complicated by historic, legal and administrative factors, all exacerbated by the high incidence of minifundia in the land tenure system. There are 1.2 million land parcels[1] spread over a country about the size of France, Spain, and Portugal combined; 65 percent of them are less than 5 hectares in size.[2]

In order for property holders to protect their claims to land, legal and administrative mechanisms used to perform registration and transfer functions must be relatively efficient, complete, and accessible to all property claimants. An administrative process requires at a minimum:

1) a reasonably efficient and accurate method of locating and identifying any one of the land parcels in the national territory (i.e., mapping)

2) a reasonably efficient and accurate method of identifying any one of the land claimants in the national territory; and

3) a reasonably efficient and rapid method of transferring a land claim from one party to another.[3]

---

[1] Comite Interamericano de Desarrollo Agricola (CIDA), Tenencia de la Tierra y Desarrollo Socio-Economico del Sector Agricola: Colombia (Washington, D.C.: Union Panamericana, 1966), p. 68.

[2] Ibid., P. 5, p. 73.

[3] Joseph Thome, "Title Problems in Rural Areas of Colombia: a Colonization Example", Inter-American Economic Affairs, Vol. 19, No. 3 (Winter 1965), pp. 82-83. Also published as Land Tenure Center Reprint No. 12 (Madison: University of Wisconsin).

In Colombia these objectives are not being met. Procedures are inefficient, unscientific, and poorly administered. In part this is a result of historical factors. Colombia's land policies are a carryover from earlier periods when land claimants were fewer and when technology for verifying and documenting claims was less advanced and less subject to empirical tests. The early customs of writing elaborate land titles, describing properties by general natural features, and filing documents by chronological order are no longer adequate or feasible.

The national legal tradition itself exhibits various and contradictory philosophical foundations for property law. While both the intrinsic legality of a deed and usufruct rights are recognized as bases for land possession, emphases are often placed on theoretical principles and legal formality with little concern for administrative procedure and technical problems. The property title with all of its legal formalities is only proof of a transaction; it does not guarantee ownership. The title can be invalidated through various legal procedures established by law. Even titles granted by the Colombian Agrarian Reform Institute (INCORA) may be subject to attack from third party claimants with usufruct rights, from nullity demands initiated by agrarian district attorneys or other persons, administrative actions by public institutions, and from governmental reinstatement procedures.

The archaic organization of the administrative process creates additional problems. Land measurement and identification is centralized

and, with the exception of one department, is administered from Bogotá. Notary and registration services are privately operated on a fee basis, but with extensive government regulation. There is no coordination between title transfer process and the (approximately) three other administrative steps required to complete the procedure. Often delays result from inefficiencies in the offices which must supply supporting documents. Administrative inefficiencies in turn stimulate corrupt and extra-legal procedures. Clients and attorneys often make incentive payments, perform favors, and use personal influence. These informal and customary procedures are a result of widespread deficiencies in the formal system, but they nevertheless frequently accentuate conflicts.

The rural land owner in Colombia is concerned that the legal system be sufficiently responsive and functional to protect his claim in case of challenge, make property transfer possible without undue cost and delay, publicly identify the location and existence of properties so that a land market can function; and provide a trusted document that will serve as a negotiable instrument in borrowing money, paying taxes, and demanding public services. Under the present legal and administrative system, none of these needs is met.

This study will describe and analyze legal and administrative systems used in Colombia to title, transfer, and register agricultural land. The analysis of the general system will be coupled with an examination of a number of title registration and transfer cases in order to

document the functions of the system as well as to search for ways to improve and modernize land titling operations. Evaluation of current procedures and recommended changes will consider that the rural property titling, transfer and registry system must:

1) Minimize the number of land title conflicts caused by lack of documentation or boundary identification;

2) perform administrative operations in a reasonably short time;

3) provide property owners with reliable and accessible property documents for use in negotiations for credit and farm services, in paying taxes, and in resolving conflicts; and

4) create adequate capacity and reliability in land record offices to accommodate all of the country's owners and properties.

METHODOLOGY

The case study method was used in this research. Cases were deliberately chosen to show the variety and complexity of factors related to the acquisition and transfer of land titles. The cases include administrative and judicial procedures in order to illustrate the role of public agencies in creating or legalizing property documents. Attention was given to such factors as the number of steps required to complete a given procedure, time and cost of procedures, the importance of personal influence, the rigidity or flexibility of the system in adapting to new conditions and problems, the accuracy and reliability of public documents, and class of clientele most likely to be served by the present system.

The cases for study were chosen from areas in the Department of Cundinamarca, including Bogotá and its neighboring towns, and the Department of Boyaca, including Tunja, Villa de Leiva and other neighboring towns. In order to acquire and study appropriate descriptive materials, numerous personal interviews and direct observations were made in field offices. Judges, mayors, notaries, registrars, lawyers, INCORA officials, local and regional cadastral agents, and the National Superintendent of Notaries and Registries were consulted or interviewed. Other sources of information included personal interviews and conversations with farmers and property owners in both areas mentioned.

Lands titled by the Colombian Agrarian Reform Institute, INCORA, were deliberately excluded because they are often handled under separate regulations. Also, the number of properties titled by INCORA is still relatively small in relation to the national total. INCORA's procedures, however, are referred to when they suggest shortcuts or guidelines to greater technical and administrative efficiency and reliability.

The case method was chosen for two reasons: first, to obtain an accurate description of the actual procedures applied in property titling and transfer in Colombia; and second, to determine whether equal cases are treated equally under the law or whether, as is hypothesized, extra-legal criteria are also applied so that considerable and unpredictable variation in treatment of clientele occurs. The cases were deliberately selected to reflect those titling problems most frequently reported by property owners to the legal profession. To assure study of non-administrative problems as well, three cases of land sales and three of inheritance were also chosen.

II. THE NOTARIAL SYSTEM

In the Colombian system the legal instruments for real estate transactions are drafted in notarial offices. This section examines the functions of the notaries and the legal steps to assure property rights.

GOALS AND ORGANIZATION OF THE NOTARIAL SYSTEM

The notarial system is created by civil law, regulated through the administrative branch of the government, and staffed by agents officially nominated. Its service, however, dating back to the year 1852, is essentially private.[4] The acts and contracts witnessed and granted by the notary are recognized by law as legitimate, truthful, absolute, and credible instruments establishing public faith in contracts between specific persons.

Notarial offices do not operate out of government buildings. Rather notaries rent space at their own expense or simply work out of their own homes. Some notary offices supply the customer with official papers and the official seals which the legal document requires. In the majority of cases, however, the individual must purchase the stamps from other offices. Few notary offices have an organized internal work system which regulates the employees and verifies their work.

---

[4] Pablo Garzón Muñoz and José E. Morato, Notariado y Registro, Legislación y Doctrina (Bogotá: Editorial Temis, 1960), pp. 2, 79-80.

The National Superintendence of Notary and Registry (hereafter Superintendence) has exercised control and supervision over the notary system since 1959. Several laws and decrees govern the functioning and financing of the Superientendence.[5] This national office is directed by the Superintendent, an official appointed by the President of the Republic for a period of five years. Major administrative decisions are reviewed by a four-member council of delegates appointed by the Ministry of Justice, the Notaries Association, the Registrars Association, and the Institute "Agustin Codazzi" (National Surveying Office).

Colombia has 515 notarial offices. Control and supervision of these offices is carried out by 18 inspectors employed by the Superintendence. In 1966 these inspectors made a total of 645 inspections according to the report of the Superintendence.[6] In the areas of this study, 88 inspections were made of the 50 notarial offices in the State of Boyaca and 55 of the 39 notarial offices in the State of Cundinamarca.

The Superintendence is financed in part through monthly notary payments of 10 pesos for each public deed granted (US $1 = Col. $16.25 for the year 1966). In 1966, the notaries' support was $3,800,000 pesos.

---

[5]Decree 3394/54, arts. 2 and 12 in Supplement Civil Code (ed. 1962), p. 1446; Law 19/58; Decree 3346/59, art. 21 in Superintendency of Notaries and Registries, Instrucciones para los notarios (Circulares), No. 4 (Bogotá: 1963), p. 4, Notes about the organization of the Superintendency exist in Law 1/62, Decree 1298/62, and Decree 1366/62.

[6]Superintendency, Informe de Labores en 1966 (Bogotá: 1967).

The notary's jurisdiction is called the notarial circuit. Several municipalities are grouped in each circuit. The 39 notarial circuits of Cundinamarca serve 114 municipalities and the 50 circuits of Boyacá serve 131 municipalities.[7] The notarial work in the large circuits is performed by clerks and the employees of the notary, but in small towns the notary himself frequently performs all the work related to his office. The functions of the notary may be classed in several categories, which are described below.

1) Promoting connections with commercial real estate brokers is an important and competitive undertaking among the notaries in large cities.[8] The large agencies dealing with real estate transactions on a commission basis are often grouped in associations called "lonjas". The lonjas' objectives, among others, consist of providing market information on real estate and collaborating with public agencies. One of these lonjas had real estate transactions totaling 108 million pesos in 1967,[9] and, consequently, extensive dealings with notary offices.

Some banks are also of interest to the notaries, not only because of their lending in the real estate market, but also because they provide the notarial offices with covers for the deeds issued. These covers carry an advertisement of the sponsoring agency.[10]

---

[7] Ibid.

[8] Personal interview with an employee of the 6th Notary Office of Bogotá, November 14, 1967; personal interview with a contact man who obtains complementary documents for clients transferring properties, Bogotá, November 27, 1967; personal interview with employees of the Notary Office of Zipaquirá, November 16, 1967.

[9] "Lonja de Propiedad Raiz", Supplement to El Tiempo, March 14, 1968, p. 4.

[10] Interview with Colombian Insurance Company (Compania Colombiana de Seguros, COLSEGUROS) Advertising Department, Bogotá, December 2, 1967.

2) Recording of real estate acts and contracts, as well as other documents which are presented voluntarily by individuals, insures the physical security and custody of the deeds, which then serve as acceptable legal evidence in any further litigation. The notary is required by law to issue and authorize with his signature all acts and contracts concerning real estate transactions--the exchange or the alienation of real estate and the establishment of encumbrances or restrictions on property rights. Also, a cancellation of contracts previsouly notarized and a new document called "cancellation of public deed" can be obtained at any notarial office.

3) Authentication of signatures in private documents can be performed only by a judge or by a notary, though people often resort to non-authorized agencies, such as the local police inspector or mayor. Individuals must appear personally at the notarial office in order to obtain the notary's recognition of their signatures.

4) Issuing copies of public documents of acts and contracts is another function of the notary. If the original public document does not mention the number of copies to be issued, the notary presents the interested party with a single copy. A judicial writ is required for obtaining additional copies.

5) The notary's personal knowledge of the contracting parties is a requisite established by law. When the notary does not know the grantors, legislation authorizes special witnesses who must testify that they know the grantors. The special witnesses have to be known to the notary.

6) Prevention of the existence of unlawful clauses in the preparation of a document is legally required to avoid possible future annulment. However, the notary, after warning the parties of such irregularities, is bound to issue the document if there is insistence on the part of the contractors. If such warnings are not recorded in the original document, the notary himself becomes legally responsible.

7) The responsibility for the correct form of the documents authorized by notaries is very detailed, although many minor and inconsequential formalities have been abandoned in practice.[11] By law, legal instruments prepared by notarial offices must contain the: (1) public document number, (2) place and date of issuance, (3) legal identification of the notary, (4) names, sex, neighborhood, and age of contractors, (5) nature of the act or contract, (6) legal origin of the title of the transferor (a public document, judicial decision, administrative adjudication, or evidence that he is the first possessor or that he bought the possession from another), (7) clear specification of the property and area (the precise boundaries and area taken from the original document and sometimes told orally by the transferor, particularly when they are not clear in the legal document, which is the base of the right of property), (8) location and cadastral identification of real estate, and (9) full signature of grantors, special witnesses, attesting witnesses, and public notary.

8) Fiscal control exercised by the notary consists of requiring the appropriate tax or other fiscal certificates from the contractors before the notary can issue the document.

---

[11] Interview with a notary of Tunja December 15, 1967; interviews with employees of the 6th Notary Office of Bogotá and the Notary Office of Zipaquirá; interview with a contact man who obtains documents for his clients.

Each notary office keeps a variety of record books. Two of the books ordered by law are of special interest for the present study--The draft book, regulated by the Civil Code and composed of successive additions of contract drafts, and the protocol book, composed of successive additions to the original deeds which change, limit, or encumber real estate property rights.

Notaries are appointed by state governors, for terms of five years. Any Colombian citizen of "public honesty", as specified in the Civil Code, may occupy the notarial position. Since 1948, notary candidates have had to have a degree in law to be eligible for notary positions in state capitals, at judicial district headquarters, and in cities with a population greater than 50,000. But, according to the same law, a law degree is not necessary for those who have already occupied the notarial position for at least a five-year term. Notarial officials are frequently selected on a political basis.[12] Other qualifications, if considered, are not given much weight. Officials learn their work on the job.

The income scale of notaries ranges from 2,000 pesos per month in small circuits up to 30,000 pesos per month in large circuits.

Remuneration of the notaries depends in large part upon the notarial tariff, a fee based on the value of a real estate transaction. Additional fees are charged for extra copies and for contracts exceeding a given number of pages.

---

[12]Interview with a Registrar of Boyacá, January, 1968.

PREPARATION OF TITLE DEEDS

Preparation of deeds for rural property is a mechanical process identical in all notarial offices. However, deed issuance depends upon the presentation of other documents, increasing the time and cost of the service. The following procedure is representative of the system.

FIRST: Personal appearance of the contractors. The first contact is made directly with the notary in small circuits or with an employee or special clerk in large cities. Customers are informed of the cost of the notarial work and of the need for complementary documents. Once the notary's fees have been covered and all complementary certificates are at hand, preparation of the title deed involves only a few minutes' work.

The following complementary documents are required:

1) A draft of the proposed contract of sale.
2) Evidence of title of seller.
3) Income tax certificates.
4) Property tax certificate.
5) Municipal tax certificate.
6) Registry and annotation tax certificate.
7) Citizenship papers.
8) Certificate of military service for males over 18.
9) Inheritance tax certificate if the transaction involves an inheritance.

As an illustration of the potential difficulties in acquiring these additional documents, consider that the certificate of no pending income taxes is issued by the local Income Tax Collection Office (or by the Mayor in towns where there is no tax office), that the certificate of no pending property taxes is issued by the local cadastral agency (or, in its absence, by the local treasurer with jurisdiction over the real estate), that the certificate of no local taxes is issued by the local treasurer, that the certificate of no pending registry or annotation taxes is issued by the state treasurer (if the state has not transferred this tax to the cities or agencies of public assistance, in which case those agencies determine both collection and certification), and that certificate of no pending inheritance taxes is issued by the local Income Tax Collector's office.

SECOND: Assessment and payment of notarial fees.

THIRD: Fiscal information to the state treasurer. This information includes the name of the contracting parties, the location of the rural property, and the value of the transaction. In cases of inheritance, the entire accumulated file is sent to the collector's office.

FOURTH: Issuance of the document.

FIFTH: Reading of the document. If corrections are needed, they are made immediately, after which the document is read again.

SIXTH: Signature of the document.

SEVENTH: Agreement on time to receive the copy. The issuance of copies generally takes eight to fifteen days, but they can usually be obtained sooner, at least in large circuits, by paying the copy clerk some fifteen to thirty pesos.

EIGHTH: Obtaining a copy of the document. Once the client receives the copy of the deed, he can initiate the registering process at the appropriate Registry Office.

NINTH: Protocolizing the document. The original deed and the complementary certificates are passed to the chief of protocol in large circuits, or to the place assigned in small circuits, (usually a shelf or the floor), in order to be bound once a sufficient volume is accumulated.

ANALYSIS OF THE NOTARY SYSTEM

Notarial authenticity seems to serve as proof only if the notarial act and contract is not challenged. In 1964, 939 cases of falsity in documents were initiated in the country. Of these, 38 were in Boyacá and 53 in Cundinamarca (excluding Bogotá, where there were 202 lawsuits).[13] These data give an idea of the number of serious defects which can be found within the public documents.

The basic problems in the system lie in the means which are used to achieve the notarial goals. The internal organization of the notary offices suffers from lack of uniformity in work methods. While some notaries do make efforts to overcome deficiencies of the system in which they operate, most do not. In part, such problems are associated with the qualifications and selection criteria of the notary and his clerks. Political influence is of great importance,[14] and social

---

[13] National Administrative Department of Statistics, (DANE), Anuario General de Estadistica, 1964, Tomo III, Justicia (Bogotá: 1967), Table 189.

[14] Interviews with Dr. A.M.B., Bogotá, October 5, 1967; with Dr. B.G., Tunja, December 1967; and with the agricultural producer J.B., Villa de Leiva, January 18, 1967.

relations of the candidate are also important avenues to contact with the appointing governor or with judges. Since there are no required minimal technical qualifications for being a notary, political and social influences predominate. Moreover, the notary and his employees learn their work on the job, without training or special courses in law schools, and without promotion or stimulus for professional improvement. This system favors a mechanical exercise of notarial functions.

Another weak point is in the record and bookkeeping system. Some are kept regularly while others are abandoned or kept irregularly. Certain books are even assigned to the notary's office which do not strictly pertain to its functions, such as the civil registry book.

When preparing title deeds, obtaining all the required fiscal certificates consumes much time, effort and money. These certificates do offer the state an opportunity to collect taxes from delinquent taxpayers, but they also delay the consummation of real estate transactions. To try to speed the process of getting the various certificates, individuals often pay middlemen or expediters, sometimes the very men working within the offices that issue the various certificates. This exposes the system to various corruptive practices. Unless this entire process can be streamlined and better coordinated, individuals will often continue to pay extra-legal charges of various sorts or have their notarization long delayed. Thus, it would seem that the legal security which the citizen seeks is not necessarily fulfilled by the various agencies he must use.

There has been some demand in Colombia for a reorganization of the notarial system. However, all attempts to reorganize seem to be based on theoretical considerations rather than empirical research of the current situation.

III. THE REGISTRY SYSTEM

GOALS AND STRUCTURE

The real estate registry is an institution in which legal documents relating to property are recorded by inscribing a notarial act or contract in the pertinent books. All acts relating to a change or a limit in the rights of ownership are subject to registry. The Civil Code stipulates the following goals of the registry inscription:

1) to transfer property rights or to grant property possession;
2) to publicize acts and contracts which change or limit rural property rights;
3) to ensure the authenticity of title deeds;
4) to record the title deed.[15]

The real estate registry service is organized by circuits. Of the 174 circuits in the country, 16 are in the State of Boyacá and 14 in the State of Cundinamarca.[16]

---

[15]Arturo Valencia Zea, Derecho Civil, Tomo II, Derechos Reales (Bogotá: Editorial Temis, 1958), pp. 228, 233, 235, 508.

[16]Informe de Labores . . ., op. cit.

The registry office is any place owned or rented by the registrar, and the rent payment is covered entirely by him. No office operates in state buildings because the registrar, although officially nominated, provides private services.

Registry offices are usually open from 8 a.m. to noon and from 2 p.m. until 6 p.m. Several employees may remain working after closing in large circuits like Bogotá, where more than 90,000 inscriptions and more than 20,000 certifications are carried out annually.[17]

The work method and office organization vary among the registry offices. Each registrar performs the job in his own way and style, with few meeting the precise legal requirements in matters such as dispatching cases according to the sequence in which they are received, extra-legal remunerations, terms of delivering the service, bookkeeping or inscribing the document properly.[18]

The National Superintendence of Notary and Registry exercises control and supervision of the registry circuits through 18 visitors or inspectors headquartered in Bogotá. The inspectors visit the registry office about twice a year. During 1966 they made 248 visits, 30 of them in Boyacá and 32 in Cundinamarca.[19] The same inspectors also control the notary's office.

---

[17]Memorandum from the Head of Certifiers, Registry Office of Bogotá, November 28, 1967; interview with Registry Officials of Zipaquirá, November 16, 1967.

[18]Interview with a registrar in Boyacá, January 17, 1968.

[19]Informe de Labores . . ., op. cit.

FUNCTIONS

The several functions of the registry office include:

1) Checking that the title deed is legally valid. Any encumbrances or limitations on the original document must be correctly inscribed. If the deed shows any irregularity, either the registrar is notified and the document is returned to the client to take back to the notary's office for correction, or the inscription is performed with irregularities remaining.[20]

Before recording the deed, the registrar should: a) avoid inscription on determined property in cases of transfer of rights and shares of inheritance (registered in the Second Book because the transfer is not specific as to boundaries or to object of transfer); b) inquire into the books about possible encumbrances or limitations in the land transferred; c) determine that the 90 day period (from the notorial granting date) stipulated for registration of mortgage contracts has not elapsed; d) inquire as to the existence of inscriptions of transfer and encumbrances if the property is in another registry circuit.

The following items must be present on the deed: (1) citizenship and military identification of the contractors; (2) stipulation of the contract price; (3) indication of references of the property right acquisition on the part of the grantor; (4) transcript of fiscal certificates; (5) granting date of the document; (6) appropriate signatures.[21]

---

[20]Interview with a registrar in Boyacá, January 17, 1968.

[21]Ibid.

2) Inscribing the property title in the appropriate books to verify the legal formalities. Contracts of sale with mortgage are inscribed in Book Number One, in the Mortgage Book and in the Matriculation Book. If the document constitutes a family patrimony, the inscription is also entered in the corresponding book. If the legal instrument deals with the transfer of rights and shares of inheritance, the inscription is made in Books One and Two.

3) Indexing the public document. At most registry offices, indexing is performed whenever there are enough public documents to make a volume, commonly at the end of the year. The final pages of the volume are then dedicated to an index of the volume's contents.[22]

4) Certifying the liberty and ownership of a particular registered property; i.e., an assertion that the rural property owned by the present holder is free of encumbrances and limitations for a period of time longer than 20 years. The certification should contain the juridical history of the real estate, logically ordered during a period of at least 20 years, as the Civil Code requires. This certificate reproduces land boundaries, notarial and registry references of the public document of immediate acquisition, transfer prices, area of the property, written evidence of registry fees receipts, turn number, and certification number. It also contains conclusive attestation that the land is free from encumbrances and limitations and that the present holder is the legitimate owner.

---

[22]Interview with registry officials of Zipaquirá.

5) Certifying the extension or complementation of liberty and ownership of the real estate, issued when the former certificate does not include the present holder. The assertion of ownership and liberty of the land runs from the date the last certificate was issued until the present date of issuance. The contents of this certificate are the same as the one above.[23]

6) Certifying the sufficiency of the property title, establishing that the present holder's inscription has not been cancelled and is still in force and in his favor. This certificate is supplementary proof of ownership in cases where a judicial authority has so ordered because the notarial "protocol book", or the copy of the grantee has been lost.

7) Cancelling the registry inscription of property titles or encumbrances. This is performed after the applicant presents either the public instrument of cancellation issued by a notary's office or an official letter from a judge at whose court a lawsuit took place that could have affected the ownership. The registry office keeps the document of cancellation and writes CANCELLED in the margin of the original inscription. Some registrars add the references of the document of cancellation.

---

[23]Personal observations at the Registry Office of Bogotá.

Several registration books are kept by law, and others are voluntarily kept by the registrar. Briefly, Registration Book Number One is used for public documents which transfer, modify, encumber, or limit real estate ownership. Registration Book Number Two is used for public documents not included in the former book, such as wills, inheritance cases, cancellation documents, and constitution and cancellation of corporations. The Mortgage Annotation Book registers public documents on mortgages; some offices also use this book to register title deeds on inheritance rights and shares, judicial decrees of inheritance possession, and sentences on inheritance division and distribution. Index Books A and B of the Books Numbers One and Two list surnames in alphabetical order, one of them (A) for the grantors and the other (B) for the grantees. There is only one Index Book for mortgages; in some offices this book is carried in alphabetical order, in others in chronological order. The Book for Writs of Attachment carries entries of judicial embargos (attachments) on real estate property. The Book for Civil Claims is used for inscription of civil claims initiated in the courts. The Book for Private Documents attaches the private documents to a memorandum the registrar prepares on the incorporation of each document. The Special Book for Pledges is divided into two sections on public documents and on private documents. This book does not exist in many registry offices because there are not enough contracts of this kind. The Book of Turns records the order in which petitions are received for registration of public instruments. The purpose of this record is to avoid influences based on friendship or extra-legal payments for the regular execution of the service. A Matriculation Book is kept for

each municipality forming a part of a registry circuit. The matriculation book should have two complementary index books, one for rural properties ordered by the farm's name, and the other for urban properties ordered by street address. Many registry offices do not carry these books. The Book for Agrarian and Industrial Pledges registers pledge contracts in favor of the Agrarian and Industrial Bank (Caja Agraria). A complementary index for this book is alphabetically ordered by debtors' last names. The Certified Copies Book is composed of the copies of certificates of any kind dispatched by the registry office. An Appendix to the Mortgage Book compiles private documents in favor of the Institute for Territorial Credit (INSCREDIAL), the Caja Agraria, and sometimes the Popular Bank. The Book for Family Patrimony registers public documents in which family patrimony is established. The Special Book for the Mobilization of Real Estate Property contains the same written evidence described for the mortgage annotation book.[24] The Book of General Powers of Attorney is authorized for the registry offices in the capital cities of states, but other registry offices have had to begin this book because of interest in it. The Book of Property Value Increment, though legally required, was not found at any of the registry offices visited; in fact, the interviewed registrars had not even heard of it.

---

[24] "Mobilizing" rural property is to change it into a movable value expressed in the form of bills of currency or in form of mortgage bonds at a value of 50% of the real estate commercial price. The mobilized real estate is out of business for later mortgages and judicial attachment. However, it could be subject to judicial public auction.

All the above seventeen books are supposed to be kept by law. In addition, the following books are sometimes kept on the initiative of the registrars.[25] A Cancellations Book compiles judges' official letters or annulled public instruments returned by interested people. It is kept without any order or method. An Index Book for judicial attachments or liens (embargos) is kept alphabetically by defendants' surnames. An Auxiliary Book for encumbrances on property notes the name of the attached owner, the type of lien, and the date of entry. A Book for Control of the internal process of the service points out the date the application was received, the initial of the employee in charge, and the date of issuance.

OFFICIALS

Any citizen is eligible for the job of registrar. The person should be a lawyer in those registry circuits with headquarters in the judicial circuit site, but this requirement can be waived if the candidate has served at least one period as registrar. The registrar and his substitute or alternate are appointed by the Governor of the State for a period of five years from a list of three names sent by the Supreme Court of the Judicial District. At present, there are six judicial districts in each of the two states of Cundinamarca and Boyacá. The number of registry clerks and other employees depends on the office's volume of business and on the will of the registrar, and varies from none up to seventy-six in the Bogotá circuit. No special qualifications are required. Some have acquired a certain level of skill through experience on the job. Turnover is very high, however as it is considered a transitional job.

---

[25]Interview with registry officials of Zipaquirá; interview with registry certifiers of Bogotá; interview with a registrar in Boyacá.

The selection of registrar candidates depends mainly on political support.[26] Sometimes friendship with one or more superior justices is enough to insure placement on the list of three candidates prepared by the Supreme Court.[27] The three candidates for each registry office then try to influence the Governor, who must choose just one principal and substitute for each registry office. Again, political influence is usually determinative. The selection of clerks and taskworkers depends on the will of the registrar. Of course, vested interests may always play a part since observations thus far indicate that nothing moves in the public and private bureaucracies without some kind of influence. Compensation of the registrars is determined by the registry tariffs set by law for inscriptions and cancellations. However, individual registrars frequently excced their legal rates. Rates are fixed on either the cadastral valuation or the transfer price, whichever is higher. Rates also vary for other services rendered. Small registry circuits assert that their colleagues in large cities receive a monthly income of 70,000 pesos. The registrars of large circuits declare that they receive only 25,000 pesos each month, from which 40 percent is deducted for income tax, reducing their salary to the level of a senator or representative.[28] About 125 registrars of the country received subsidies from the Superintendence in 1966 in the amount of 300 pesos each month.[29] Of these, 12 were in Boyacá and 8 in Cundinamarca. This

---

[26]Interview iwth a registrar in Boyacá; interviews with Dr. B.G., Tunja, Dec. 1967, and with Dr. A.M.B., Bogotá, Dec. 5, 1967.

[27]Interview with Dr. A.J.A., Tunja, January, 1968.

[28]Interview with registry certifiers of Bogotá.

[29]Informe de Labores . . ., op. cit.

subsidy goes to registrars in places where the real estate traffic was not sufficient to achieve self-support of the offices.[30] Though it is argued that this support eliminates the need for outside jobs for registrars, some registrars nevertheless hold other occupations.

THE REGISTRY PROCESS

The law states definite time limits for the delivery of registry inscriptions and certifications. Furthermore, it fixes sanctions for nonfulfillment of the service within the time limit. But practice and legal requisite can be quite different, as shown below:

For Inscriptions	Legal Term	Time Required in Practice
Up to 5 pages	6 days	8 to 15 days
More than 5, less than 50	10 days	12 to 30 days
More than 50	15 days	17 to 45 days
For Certifications		
20 years or more	8 days	9 to 45 days
From 5 to 20 years	4 days	8 to 40 days
Less than 5 years	2 days	8 to 15 days

The registrars claim that they cannot hire more employees because the registry fees are too low, and that labor legislation restricts their action in releasing low qualified personnel and thereby impedes their efforts to improve the quality of their personnel and the quality and timeliness of the registry services.[31]

---

[30] Letter from the Registrar of Tunja, op. cit.

[31] Interview with a registrar in Boyacá; interview with registrar of Bogotá, November 30, 1967.

The registry process in large circuits is often completely different from the one used in small circuits, but the elements seem common in the procedure.

1) Presentation of the title deed. The client should carry with him an authentic copy of the legal instrument. In some offices he should add a special application form. The receiving official writes down the turn number and the date of reception.

2) Liquidation of the Registry Fees. The liquidator records the cost of the service and passes it on to the cashier.

3) Payment of the Fees. After paying the fee, supposedly in cash, the customer receives a ticket on which is registered the turn number, the amount paid, and the reception date. He is then told to return after a certain period of time, usually stipulated by law.

4) The Internal Process.

a. An employee compiles a list of the day's applicants which becomes the turn book.

b. The registry inscription of the legal instrument is typed into the appropriate book, and an inscription seal is affixed to the legal instrument. When the service consists of issuing a certificate, the employee bases his work on the information given on the title deed, which also must be presented. He goes on to verify whether the registry inscription coincides with the references in the title deed, and then checks the historical record in the books to verify that the property is indeed in the name of the grantor. He then looks for any possible entries on the Indexes for encumbrances and limitations.

c. Once the title deed is recorded, it is entered in the Matriculation Book. If the rural property does not have a former matriculation, one is opened. If the particular property right is only a part of a more extensive rural property, it must be annotated on the matriculation of the real estate of which it is a part, and a new matriculation should be opened as well for the segregated lot. On the matriculation of the segregated part, the corresponding references to the property from which it issued should be annotated, as well as its own references. A matriculation seal is affixed to the title deed.

d. The registry office seal is attached to the legal instrument. After a number of these sealed legal instruments accumulate, they are submitted to the registrar for his signature.

e. Signed documents are placed on a sectioned shelf by initial of the last name of the applicant.

5) Delivery of the Documents. The customer appears on the day he has been instructed and presents his ticket. If the document is not ready, as is usual, an employee directs the client to someone who informs him of the document's status.

ANALYSIS OF THE REGISTRY SYSTEM

The Colombian citizen wants a property right secure against an extraneous claim via a completely clear and valid title deed. Registry inscription of real estate transfer does legally transfer property, but does not fully guarantee the legal security of the new deed. If the deed,

for any number of reasons, can be shown to be false or null in its origin, then the corporeal and legal transfer of the property can be invalidated. The process of registry only documents that a particular title deed was recorded at a specific date.

The complex mechanism by which authenticity of the title of record is warranted is not sufficient. The large number of public offices involved in the transfer of title deeds tend to function in mechanical fashion, so that title deeds are almost always registered even though legal formalities and substantive requirements may not have been observed. The state thus warrants the evidence of the title or record, but not the title itself. Establishment of registry offices themselves may depend as much upon political interests as on actual needs. Accordingly, some registry offices are very close to each other and process little real estate traffic, while other areas have no office though the service is needed.

Allowing the registrar to organize the internal work of the office as he pleases does not contribute to the unity of the system. For instance, no registry office provides any sort of statistics. The little numerical data obtainable come from the Superintendence, but they are insufficient and are generally ignored by registrars and notaries. The only real concern of the Superintendent's inspectors is the financial status of the registry offices visited. It is important for inspectors to establish these figures as they share in the 10 percent of monthly net profits paid by the registrars to the Superintendence.

The registrar's functions are accomplished in a mechanical and formal way, characterized by submissive devotion to the processes thoroughly established by law and tradition. Unfortunately, because of oversights or lack of legal knowledge on the part of the registrars, these same processes furnish no positive guarantee of the legal security of rural property.[32]

One mistake in registry was personally observed. Property rights which should have been recorded in a different registry circuit, because of the location of the property, were inscribed at an improper office. The customer claimed restitution of fees already paid for the inscription of the land transfer, which had no legal worth whatsoever because the property belonged to a different registry circuit. It is not known if the customer got his money back, but he was advised to consult an attorney in order to avoid similar mistakes in the future. However, the mistake was actually committed by the registry officials and also by the notary, since both could have advised him not to register the title deed and informed him in which registry circuit he should have made the inscription.

A proper index is an important means of locating any legal instrument. However, under present indexing an official must know the year of the contract, the grantor's name, and the registry number in order to locate any legal document.

---

[32] C.C. arts. 2628, 2653, 2657, 2659, 2669; Law 40/32, arts. 15 to 18 and 23, 27 in Supplement C. C. (ed. 1961), p. 1289; Law 56/04, art. 10 in the same Supplement, p. 1241; Valencia, op. cit., pp. 501 to 503; Legislación Notarial. . ., op. cit., p. 85.

Certificates on ownership of a particular property are not done in the way the law requires, but simply state that the present holder is the owner on record from a certain year until the present, and that some encumbrances or limitations are either expressed or not, according to a number of books and indexes. Certification has become such a rush job that the juridical history of the property has been eliminated, and many legal advisers who study land titles disdain the registry certification because of the absence of supporting documents. The twenty years or more of chain of title testified by the registrar is just secondary evidence, because the registry system does not offer the juridical history of the real estate.

The registry inscription for present land transfers automatically cancels the ownership inscription of the present transferor. In other words, the property rights held by the seller disappear in order to legitimize the rights of the taker. But such automatic legal cancellation without any annotation could result in unscrupulous actions from the former owner. Some registrars order annotation, but the majority of registrars do not. On the other hand, the registrar is not authorized to cancel registry inscriptions or titles himself. He can issue certifications of such cancellations, even though he cannot and does not actually cancel anything.

Twenty-four authorized books are supposed to be maintained at registry offices, and additional ones are kept on the initiative of some registrars. Most of the books are not kept in some offices because of the absolute absence of the acts and contracts for which they are designed. Some other books, although kept, are handled without care

and system, because registrars consider that they are redundant.[33] Such is the case with the Matriculation Book's indexes, ordered to list real estate by the name of the property. Registrars say that indexing properties by name is confusing and makes identification impossible because many farms have similar names, even within the same local section or village. There are books which do not accomplish the proper aims because many registrars do not even follow the legally prescribed formal procedures, as we have seen above.[34]

In addition, the registry institution has a wide mix of functions--not only for real estate but for other matters as well. Powers of attorney, abstract property rights, private documents, and so on are recorded without considering the specialized nature of these functions. The system of books becomes even more complicated given the privileged agencies for which special books must be opened--The Agrarian Fund, the Popular Bank, the Institute for Territorial Credit, and others.

As with the notary system, lack of technical qualifications occurs, among other reasons, because of the political system of selection, the lack of special training courses at any level of the educational system, and the absence of a registry career. Though law requires that in some places the registrar must be a lawyer, this is not a warranty of efficiency, notwithstanding the presumption in his favor, because "nobody knows what the registry institution is; it is not taught at the law chools, and lawyers have no idea of the registry before they get into the job."[35]

---

[33] Interview with a registrar in Boyacá.
[34] Ibid.
[35] Interview with the Registrar of Bogotá.

Under normal circumstances, any inscription or certification takes 15 to 45 days unless the process is stimulated by money or friendship. This discrepancy with the time limits established by law is the result of many factors. Among these are the many books to be handled; the concentration of work in just one registry office, particularly in large cities; the mixing of functions of the registry office; and the qualifications of the personnel.

The cost of registry inscription and certification is generally around 45 pesos, sometimes above the legal rates. There are also extra-legal payments, usually to the registrar's employees by clients hoping to get faster service; these are in part the consequence of low salaries.

The most outstanding problems of the registry system could be summarized as follows: (1) a surplus of inefficient and useless books; (2) a lack of technical qualifications for most registry officials; (3) the anarchical organization of registry offices; (4) the time and money lost in the process of registration; (5) the mechanical and formalist role of the registrar.

IV. RURAL PROPERTY TRANSFER PROCEDURES

This chapter examines the three principal methods used to transfer real estate: by sale, by private document, and by inheritance. The administrative process of land adjudication used by the Colombian Institute of Agrarian Reform (INCORA) has been deliberately excluded. INCORA procedures constitute an important and complex subject requiring separate study; however, they do use the same notary and registry procedures already described.

TRANSFER SALE

The system of land sale in Colombia is unnecessarily formal and complex, and many farmers fail to complete the formalities required to legalize their land tenure status. Many conduct real estate transfers without bothering with notary and registry procedures, thus creating a perpetual situation of title insecurity. Available statistics indicate that during the 1963-67 five-year period, out of a total of 201,284 real estate transactions only 59.1 percent were registered contracts.[36]

Concepts in Legislation

In Colombia, land sales are regulated by civil law which describes a sale as "a contract in which one party is under obligation to give an object to another party..."[37] The object is any physical body susceptible to appropriation.[38] Service contracts are distinct and are regulated by the labor code. A real estate sale is a consensual act in which the rights of property and possession are transferred and formalized by means of a public document. The public document recording the sale is issued by a notary and must be registered in the registry circuit where the property is located. Practical problems often arise because of a long time lag between notarization and registration, or because of failure to register, which leaves the purchaser without legal rights to possession.

Content of a Sale Contract

Sale contracts are made up of essential and complementary clauses which must follow legal requirements and formalities. Essential clauses are listed below.

---

[36]Departamento Administrativo Nacional de Estadistica (DANE), Boletín Mensual de Estadística (Bogotá: April, 1968), p. 166.

[37]C.C. arts. 1849, 1857.

[38]Arturo Valencia Zea, Derecho Civil. Derechos Reales, Vol. II (Bogotá: Editorial Temis, 1958), p. 10

1) Legal identification of the notary and of the persons participating in the act.
2) Nature of the contract.
3) Identification of the property.
4) Notary and registry references applying to the seller indicating how he acquired the land.
5) Sale price.
6) Title warranty and the right of possession.

The document begins with legal identification of the notary followed by indication of the place and date of issuance of the deed. The contracting parties must have citizenship and military identification numbers which are transcribed (women are of course exempt from military certification). In some sale documents the age of the contractors--males over 50 years of age or under 21, appears as a substitute for military number. The addresses of the contractors are included. If the contractors are relatives, this information is registered to allow for fiscal levy on presumption of gift and to preclude illegal contracts between non-divorced spouses or between father and a minor child.

After the initial paragraph comes a brief description of the nature of the contract, stating under what means the land is being transferred (e.g., sale, gift, or unsufruct), who is the transferor and what is being transferred, and the boundaries of the land. The land boundaries and measurements are not in a special clause.

For almost two centuries the same expressions have been repeated invariably. The clause is constructed of redundant terminology, as if

the omission of one word would cast doubts on agreement. Unfortunately, notaries and lawyers must follow the ritual because in the formal juridical world, defective use of punctuation or terminology gives rise to lawsuits.[39]

A clause about "references by which the present seller" acquired the land must indicate previous notarial and registry references of the previous title in order to determine within the contract of sale the immediate antecedent of the property title. Nevertheless, the Supreme Court has admitted that the omission of the way by which a vendor obtained land does not take away his character as owner in the case where he has possession. At the same time, the statement of ownership does not, per se, give him ownership status.[40] Thus the references mentioned here are not absolutely essential to the contract. Nevertheless, they are important in establishing the successive chain of title of the property at the registry offices. This clause is supposed to allow the registrar to link the chain of transferences by searching his records, but in practice, this procedure fails for lack of an organized referencing and filing system. The clause in the contract is a poor substitute for a real estate registry, which should by itself provide the juridical history.

There are cases in which the vendor does not have a legally acquired right. In these circumstances, he sells his right of possession, and the notary attaches a statement that the vendor "does not have a registered

---

[39]Interview with J.B., farmer of Villa de Leiva, January 18, 1968.

[40]Colombian Supreme Court, Cassation May 27/20, XXVIII, p. 69, quoted in C.C. (ed. 1961) to art. 2594.

title, but has possessed the land for so many years." The statutes allow that it is legal to sell property under one's possession, even without title, as long as a minimum period (usually 10 years) of possession can be established.

The clause of price in the sale is a sine qua non of the contract. The price is, furthermore, the basis for determining the amount of property tax owed to the county as well as the notary and registry fees to be paid. Fees are determined by the higher of two values; sale value or appraised value. Any amount or date or number must be written out; it may or may not be expressed a second time in figures.

Since cadastral values are usually out of date and land prices are rising, sale values almost always exceed appraised values. This difference affects the income of municipal governments since they assess land taxes on the basis of cadastral values rather than commercial values. Cadastral valuations in some regions of the country have not been revised in five years or more. Some land has never been entered into cadastral records. Persistent inflation has widened the gap between commercial and cadastral values. The difference in values also stimulates under-the-table dealings between buyers and sellers in order to show a lower price than actually paid and so to reduce both taxes and official fees.

The title warranty and right of possession clause obliges the seller to protect the purchaser in obtaining peaceful possession of the land, as well as to indemnify him if this promise is not fulfilled. The seller has responsibility for hidden defects in the land being sold and for

truthful representation of the facts of the sale. Since the laws thus indicate the rights which rest with buyer and seller, it should be unnecessary to record the full and complete legal language in each title. Yet notaries and lawyers feel they must include every expression in every title in order to avoid any further doubt or suit based on language. In any case, the clause ends with "and all conditions anticipated by the law," which is adequate to indicate the rights and responsibilities of buyer and seller without detailed language.

Complementary clauses in sale documents provide explanations or qualifying conditions to the essential clauses. They are many and varied, and direct observation found the following: mortgage clause, easement clause, note on form and place of payment, provisions for temporary usufruct.

The practice of establishing a mortgage in the same deed saves time and additional expenses. During the five years (1963-1967), mortgage securities appeared on 29.4% of all real estate transactions, represented 22% of the value of all real estate operations.[41]

Easements that favor or burden the land generally include right-of-way, water rights, water installations, and improvements.

The reservation of usufruct rights by the vendor is usual in sales by parents to children during the possessor's lifetime.[42] The heirs generally agree to this system because it avoids later inheritance proceedings.

---

[41]DANE, op. cit., p. 166.

[42]Public Document No. 496 of April, 1967, examined at 2nd Notary Office of Tunja.

Some public documents specify that attesting witnesses are adults, residents in the notary circuit, and in good standing. Others simply state that the attesting witnesses fulfill the requirements of art. 2586 of the Civil Code. This last practice obviously abbreviates the deed. Most deeds contain the final warning that "the contracting parties are advised of the formal requirements of the registry". All the original public documents contain the expression, "the tax receipts are attached to the deed." In the issued copies of sale documents, receipts are totally transcribed.

Time and Cost of Sale Procedures

A registry and annotation tax is charged by the departmental (state) government on the value of all contracts. In some departments, state charity organizations collect the tax. The tax is charged at the rate of 1 percent of the value of the sale, plus a 10 percent surtax earmarked for the National Treasury.

The Tunja office in the Department of Boyaca issued 343 tax tickets in November of 1967 for the amount of 62,000 pesos.[43] The surtax, then, was more than 6,000 pesos. These figures provide some idea of the cost of the document tax throughout the country, in more than 50 collecting offices.

The following case presents an example of the nature and amount of costs which a purchaser of farm property might encounter in trying to complete all of the documentation work for a legal title to his

---

[43]Interview with collector of states' taxes of Tunja, December 22, 1967.

new farm. When a peasant farmer confronts these costs without ready cash, he is often tempted to proceed by informal means, or, as is often the case, he terminates the registration action short of completion.

The following example is a 20 hectare farm located in the Municipio of Villa de Leiva, Boyacá and valued at 6,000 pesos per hectare, an average amount for this region. The farm lies near a main road, about one hour by bus from the village of Villa de Leiva. There is a notary in Villa de Leiva but the registry office is in the departmental capital of Tunja, about 40 kilometers away.

The costs (see Table 1) allow nothing for working time lost. Considering that a peasant farmer earns an average of only 15 pesos per day, the total costs outlined in Table 1 would constitute 213 days of work, a prohibitive amount for becoming a small property owner.

It is interesting to point out that the National Government had to issue regulations with respect to the continued and successive writing of the deed; some notaries used to write the minimum of words per page in large letters in order to increase their fees.[44]

The preparation of the public document for sale could take but a matter of hours if all complementary certificates were ready, but they seldom, if ever, are. Also, the notary "works for his own economic self-interest."[45]

---

[44] Interview with notary official of Tunja, December 15, 1967.

[45] Ibid.

Table 1. Example of the Nature and Amount of Expenses Incurred by a Land Buyer in Transferring and Registering Title.

Item	Cost in Pesos
1. Bus fare round trip, farm-Leiva-farm	6.00
2. Fees to a lawyer, legal practitioner or notary clerk to prepare a draft of a new title	625.00
3. Notary fees:	
a) Notary fee on title documents	45.00
b) Additional notary fee for each 100,000 pesos of value excluding the first 20,000 pesos and charged at the rate of one percent	120.00
c) Notary tax fee to Superintendency of Notaries and Registries	10.00
d) Fees for two witnesses	24.00
e) Legal paper and stamps	18.00
4. Registration tax and cost of certificate (11 pesos per 1000 pesos of property value)	1,320.00
a) Surtax on the registration tax (10%)	132.00
5. Stamp to obtain income tax certificate	1.00
6. Cost and stamps to obtain a land tax certificate (4 percent of property value)	480.00
7. Clerical typing fee in the notary office and incentive pesos to keep the work moving	60.00
8. Meals, coffee breaks and drinks for self, notary and lawyer during time in Leiva	100.00
9. Bus fare, round trip, farm-Tunja-farm to register the new title at the departmental office	16.00
10. Registry fees for the document in Tunja	45.00
11. Incentive payments to registry clerks to get the work done on the same day.	75.00
12. Meals, coffee breaks and drinks for self and probably friends or officials in Tunja	50.00
13. Bus fare for a second trip to Tunja, round trip, in order to receive a copy of new land title after it has been recorded.	16.00
14. Meals and personal costs on the second trip to Tunja	50.00
TOTAL COST TO BUYER	$3,193.00

The principal reasons for inefficiency, as outlined earlier, are untrained personnel, lack of technical procedures in handling documents, difficulties in locating file materials, lack of division of work in public offices, absence of responsible officials during office hours, excessive amounts of work given the personnel, and level of technology used.

Official agencies involved with the process of title transfer complain about the congestion of work, particularly in large cities. The congestion is a real product of diverse factors. Work pressure and frequent breakdowns in the system result in excessive buck-passing. In many public agencies no one can solve a problem by himself: all employees depend on one another, and all offices depend on other offices. There is a lack of confidence in lower level employees who, in turn, leave everything to be resolved by the head man. But the head man is often not around; he is in a meeting or having a conference with another head man. A typical remark by a public official is "come back in a week," "maybe tomorrow," or "your certificate is almost ready." This circular game is repeated endlessly. Sometimes the unfortunate citizen never gets to see the head man, while lower level personnel claim they cannot act alone. There is a growing corps of professional middlemen and expediters growing up in the large cities to help with public documents. These middlemen may charge a fee such as 100 pesos for three or four signatures in the administrative process. They are known to the offices which they frequent and may enter behind the counter or into private rooms to complete transactions ahead of more patient persons in the line.

Statistical information on real estate traffic in Bogotá shows a total of 52,561 public documents registered in 1966.[46] Each one of the ten notary offices in Bogotá thus issued an average of 5,256 real estate documents that year in addition to contracts and other legal work. Estimating 250 days of work, this total amounts to 21 real estate documents a day for each notary office. This presupposes the following additional complementary certificates necessary to issue the real estate documents:

1) 105,122 income tax certificates (to both seller and buyer) issued by only one local Income Tax Collecting Office. The rate of service would be 420 certificates per day (50 per hour) which is a high rate for an office requiring a record search for each customer without mechanical methods. Many times the tax office does not even try to search the records. If the customer brings a copy of his last income tax return or receipt, the office will stamp it and the process is complete. If one does not bring a receipt or tax document, he cannot be helped.

2) 52,561 cadastral certificates (to the seller) issued by the national cadastral agency. Daily production would be 210 certificates for two cadastral offices in Bogotá.

3) 52,561 registration tax certificates (to the seller) issued by the Departmental Welfare Agency. Daily production would be 210 certificates.

4) 52,561 certificates (to the seller) showing that municipal taxes have been paid, issued by the municipal treasury. Daily production would be 210 certificates among several municipalities.

The problems related to administrative capacity and efficienty can be resolved in two ways. One would be to eliminate the production

[46] DANE, Anuario Estadistico de Bogotá (Bogotá: 1966), p. 155.

of meaningless certificates, the other to install mechanical and electronic equipment to automate the work.

Two cases illustrate the time required to obtain and register a final land title. In one land sale the preparation of documents took four months due to delays in obtaining complementary certificates; the sale document was finally issued without a registry tax certificate, which the notary office did not receive until three months later. This practice is not in keeping with legal requirements. Another land sale document was issued 26 days after application. Again, the notary authorized the sale document without the registration tax certificate and without the cadastral certificate. Both, however, had to be presented later in order for the buyer to get a copy of his land title. The custom of authorizing sale documents without complementary certificates seems generalized. The National Superintendent of Notaries and Registries has verified that this practice occurs.[47]

TRANSFER BY PRIVATE DOCUMENTS

A private document, a written agreement by two or more parties to establish some commitment or obligation, does not enter any official registry or receive any official endorsement. Under the law, private documents carry the power of sworn testimony if they are recorded in a registry office or if they have been recognized by the claimant in a civil court or notary.

---

[47] Superintendency of Notaries and Registries Circular Number 8 (November 5, 1962).

If a private document is neither recorded nor recognized, the Supreme Court considers it a document without value, "easily subject to alterations,. . . without authenticity of its origin,. . . and without merit as evidence on its own."

In real estate transactions private documents have no validity at all and cannot be recognized. Transferring property by private means leaves the receiver without property rights. All acts through private documents in regard to rural property transfers only provide evidence of intention which itself must be established in the courts.

Private real estate transactions executed outside of the notary and registry systems are nevertheless very common and several kinds of cases involving private documents were studied.

1. Letter of sale

A letter of sale is a written note from the seller to the buyer by which a piece of land is sold and physical possession of the land is taken at the same time by the buyer. Usually, two witnesses give evidence of the transfer by their signatures.

In one case studied the content of the letter of sale was similar to that of a public document, using the same clauses and almost the same legal terminology. The buyer had uninterrupted possession for ten years without any legal claims from any other party, giving her a strong principal of evidence in case of future dispute. However, even if no one with better property rights argues the ownership, she will continue to be a mere holder with a precarious title. Her successors will cultivate the land in the same conditions

as the present holder, perpetuating the defective title. This landholder did not use the existing system to legalize her property rights due to the complications of time and cost implicit in the system.[48]

2. Promise of sale

A promise of sale document does have legal standing and uses the same content as a deed of sale. The contracting parties expressly state that they are entering into a promise to sell and purchase.

An important part of the document is a clause on "penalties," or in other cases an "obligation fund". In the case examined here, the grantors of the promise of sale did not differentiate between penalty and obligation. The penalty clause was written as follows:

> "...if the promising buyer does not pay the price on the date set, he will lose the obligation fund he has given, and if the promising seller does not fulfill his part he will pay an amount double of the obligation fund to the promising buyer...."[49]

Essentially, a formal promise of sale completes legal transfer requirements up to the registration stage. However, it still produces a precarious title because it guarantees nothing more than physical possession. That is to say, it provides the exercise or property rights, not as an owner, but in place of and in the name of another.

---

[48]Interview with Mrs. M.A., Villa de Leiva, December, 1967.

[49]Promise of Sale subscribed in Santa Sofia on August 15, 1954.

Few farmers legally formalize through registration the promise of sale contract and many of them consider it a legal transfer of land rights. Given the complexity and high cost of transferring land, many look only for an official-looking document which in some manner certifies the right to use the property. Legal transfer procedures are not always within farmers' physical reach, and are costly and lengthy. In practice, many farmers experience no difference in property security between the legal system and the informal one. Yet this customary practice based on good faith only perpetuates complex and insecure land titles.

3. Sale of possession rights

This form of sale is common in Colombia because of extensive public lands. Sale of possession rights occurs by one who has lived on a parcel of either public or private land without challenge for (usually) five years or more. At that time the land occupant can sell his use rights. He may make a formal legal sale or he may sell by letter or other informal method. One example of a formal sale of possession, equivalent to a quit-claim deed, had the same wording as a real estate sale. This transfer required official paper, stamps, complementary certificates, notary and registry fees, and other details followed in a normal sale.

National legislation defines possession of land as use for a productive purpose. In principle, precedent gives preference to use possession of land over a simple registration of deed. Other interpretations illustrate the legality of transferring land rights based on possession of the land after a minimum period of time. However,

"the simple recorded possession is not legally sufficient to acquire domain or ownership", and, in addition, "there does not exist in Colombian legislation recorded possession...since the registry inscription of the deed is concerned with ownership."[50]

The Supreme Court has ruled that possession is a "secondary right" for the assumed owner of land and a "provisional right" for one who is not yet an owner but is on the way to becoming one. In the first case, the owner has to exercise positive actions which are economically valuable in order to obtain absolute ownership. In the second case, the non-interrupted cultivation of the land for the required time aids the presumption of ownership.

A presumption of ownership declared by judicial decision, once registered, merits a title. This judicial decision is obtained in municipal Civil Court through legal proceedings called "property action." This action must be initiated by the possessor interested in taking advantage of his noninterrupted possession or by a person interested in buying possession rights. Until there is a "property action," any transfer of possession awaits the establishment of better rights; ownership may remain precarious if possession was supported only by private documents.

The agrarian reform laws define procedures whereby a frontier settler on public land can become a private property owner. These procedures include the free titling of public lands by INCORA, but

---

[50]Colombian Supreme Court, Cassation May 10/39, XLVIII, p. 17, quoted in C.C. to art. 762; and also Cassation April 27/55, LXXX, p. 97, quoted in C.C. to art. 785.

only in amounts up to 50 hectares. Private parties may title up to 2,000 hectares at their own expense using the INCORA Procedure. INCORA has titled more than 50,000 parcels in this way since 1961 when it was founded.[51]

However, since the sale of possession rights also creates a full legal title to property, many farmers and ranchers have also become owners without submitting to the limitations of INCORA. They buy possession rights privately, and evade the agrarian reform law's limits on size. New ranch properties in the Eastern Plains, for example, reach 5,000 hectares or more in size through simultaneous purchase of the possessions of several settlers. Even in the densely settled mountain areas, new land titles are being created constantly as land possessors sell off rights to lands their families may have held for many decades.

No records show how many new property titles are created annually through the purchase of possession rights of settlers on public lands, illustrating a further breakdown in the title system. One objective of land recording is to give the State a record of the lands transferred to private ownership. If the transfer takes place through INCORA, it is recorded and counted. If it takes place privately the State is likely to remain ignorant of the transaction. For this reason, the State itself is in no position to assure the new owner that his land has not already been granted to someone else.

---

[51] Instituto Colombiano de Reforma Agrarian (INCORA), Annual Report (Bogotá: 1967).

TRANSFER BY INHERITANCE PROCEEDINGS

Colombian inheritance procedures are so complicated and costly that no one wants to undertake them unless the property to be received has considerable value. The civil judges responsible for inheritance proceedings cannot intervene in initiating action; the initiative must come from interested parties.

Legal procedures for inheritance are further hampered by the need to pay extra-legal "expenses" to judicial officials in order to facilitate action.[52] Such practices have "reached the extreme of creating a hierarchy of privileges and preferences...in the civil processes according to the stipend charged or the overpayment made... by the parties to a suit or their attorneys.... Some lawyers are actual accomplices in maintaining such customs."[53] Money is also needed for lawyers, depositaries, appraisers, land surveyors, other officials and occasional heirs.

The time spent in inheritance proceedings varies from three months to 15 years. Lawsuits are short when there is unity in the claims, but the right of exception of the parties to a suit is unlimited, prolonging the time of potential solution. The passive function of the

---

[52]Interviews with many lawyers; among them, D.F., M.C., and C.R., Bogotá, April, 1968.

[53]Alfredo Araujo Grau (Ministry of Justice), Circular a los Jueces Civiles del Circuito y Municipales (no date), examined at local court of Villa de Leiva, March, 1968.

civil judge impedes the elimination of stubborn and unnecessary claims as well as exceptions presented by the parties. If the parties to a suit do not ask frequently at the court about the course of an action, it will not get attention.

Accordingly, many persons abandon cases due to hopelessness or lack of money, leaving the actions in suspension. In 1964, more than half the 3600 inheritance cases in the courts were inactive or suspended.[54] The summary below of inheritance procedure, based on case observation, will demonstrate why extra-judicial transfers of inherited property are common.

The same type of initial petition by an attorney representing the parties in the suit is common in all inheritance proceedings. These requests are usually accepted by the judge in a judicial decree. The writ repeats the requests in the form of a court order. The first petition is always accompanied by a series of probatory documents: (1) death certificate of the deceased person issued by a notary; (2) marriage certificate of the deceased, if he was married, issued by the notary who registered it, or a marriage certificate from the Catholic Church plus a certificate from the notary stating that a license does not exist; (3) birth certificate from the notary office, or Church certificate plus the statement of

[54] DANE, Anuario General de Estadistica 1964, Vol. III, Justicia (Bogotá: 1967).

the notary of nonexistence of official registration; (4) power of attorney previously presented at the court by the constituent.

The interested person must obtain these certificates at his own expense. Often legal and extra-legal fees are also charged.

Notice of writs is given to the parties of the suit and to the official inheritance trustee. Proper record is put in the brief. When there is no notice of the writ, the judicial decision is posted on a special bulletin board or on the wall of the judicial secretary's office. This form of notice reports the type of suit, names of the defendant and the plaintiff, date of the decision, type of writ, suit book, pages, and observations. It follows regulations established in the Code of Civil Procedure.

Notification to the official of the National Internal Revenue Agency responsible for settling inheritance taxes is always made personally. After this, documents are carried to his office as often as necessary. Of all the notices to the tax trustee, only one is really useful, the notice of unpaid taxes which must be paid before the case can be continued.

The summons edict gives notice to all persons having an interest in the suit. It is ordered by the first writ of the civil judge. The edict remains posted in the secretary's office for one month and is also published in local newspapers. The edict is prepared on official paper and has notifications of posting date and removal with the corresponding dates and the signature of the secretary of the court.

The edict on official paper, the newspaper, and three or four bulletin board notices are added to the lawsuit file. Sometimes so many copies are attached to the file that its volume increases fantastically; the inheritance file of one case weighed more than 24 pounds.

Cases encountered show the participation of guardians or trustees for minors in the inheritance proceeding. The guardians may participate by virtue of three judicial measures: appointment, authorization to act, and possession. Upon fulfillment of these rituals, the guardian presents his initial petition. He requests exactly what was requested by the attorney who opened the suit. Likewise, he presents his claim and the probatory documents already mentioned. It is logical to demonstrate the legal interest of the parties who claim some right in the estate, but it is unnecessary and costly to duplicate the probatory documents already admitted by the judge.

An appraiser designated by the Internal Revenue Agency intervenes in the name of the national treasury. Generally, the heirs agree on this person in order to avoid more expense, although they can appoint their own appraiser. There is an internal proceeding to select the appraiser by the fiscal agency. All of these facts are recorded and added to the file.

The appraiser or appraisers play an important role in ascertaining all the rights and property of the decedent, in inventoring the estate, and setting valuation. Fees for them are set by the judge and prompt payment is a requisite for approving inventory and evaluation and continuing the proceeding. Attorneys and guardians collaborate in the assertion of the rights and property of the estate as do the judge and clerk.

It is usual among attorneys, upon presenting their initial petition, to make the statement that their represented clients accept the inheritance with "benefit of inventory". The statement allows the attorney to limit the responsibility of the heirs up to the value of their part in the estate. The attorney of the case must report in his initial petition the rights and property of the estate, showing its location and the proper means of identification. If there is a will, it must be added, or the person who has custody of it must be identified.

Inheritance taxes are paid at the Internal Revenue Agency. These taxes are calculated on the total net assets of the estate and are detailed in this way: total inheritance value, assignees, overcharges, payments made, and fines, if any. The resolution on tax matters is communicated to the attorneys by placing a notice in a visible place. Three days after the resolution, the same office declares it executed. The resolution is added to the lawsuit file.

Payment of the inheritance taxes is in practice a precondition to approval of inventory and valuation. The revenue agency issues a release, upon request in writing by the attorney, who must submit evidence of payment.

The process continues by requesting the estate division and the nomination of the partitioner. The judge approves the partitioner and orders that he be given legal possession of the job. If the partitioner is not named by agreement of the heirs, the judge has the power to appoint him. It is common practice to name as a partitioner a lawyer friend of the attorney directing the case. The partitioner receives

advice from engineers, land surveyors, public accountants, and others as the case may be, which obviously increases the cost and reduces the value of the estate. The partitioner is not legally responsible for his work. He may assign parts of the real estate he is dividing in a way not compatible with the original document, due to influence from interested parties. No one is responsible.[55] Making someone responsible would imply a new and a different lawsuit, sometimes as costly and time-consuming as the inheritance proceeding.

The estate division is written on five, ten or more sheets of official paper. It begins with a short history of the antecedents of the case. The length of the history depends upon the eloquence of the partitioner. Next follows the active and passive balance of the estate, which is usually the same description made on the inventory and valuation act. This is followed by the adjudication of the rights and property of the estate to each heir, separating portions for expenses, debts, etc. If a portion contains real estate, the land boundaries, location of it, extension, and the notary and registry references of the title of the deceased person are transcribed in the document. The act ends up with a summary of values by portion, in accordance with the active and passive balance of the estate.

---

[55] Interview with J.B., farmer of Villa de Leiva, January 18, 1968.

In many cases the estate divisions in an inheritance proceeding are agreed upon outside the court by amicable division among heirs in order to save time and money. The amicable division must then be authorized and approved by the judge of the case.

In many inheritance cases, unlicensed practitioners, supported by lawyers, control the inheritance process and manage the administration of justice.[56] Most of these practitioners are familiar with the legal mechanism of the process and are favored by the friendship and advice of many judicial clerks. Their knowledge of law has been acquired working as a clerk in courts or in a mayor's office, or from a few years of study in law schools. They are able to write petitions which are then signed by their protecting lawyers; these lawyers do no more about the case.

The final stage of the inheritance proceeding is the obtaining of property title of the new inheritance adjudication at the registry and notary offices.

Amicable estate divisions, mentioned above, are frequent within legal proceedings but do not require judicial proceedings. Unfortunately no statistical information pinpoints the frequency of amicable estate divisions within or outside the court. Many of the informal arrangements do not pass through registry or notarial offices. The name of the deceased continues to appear on the cadastral lists and cadastral taxes are paid in his name. Sometimes

---

[56] Ibid.

portions of the estate amicably divided are individualized in the cadastral lists under the name of the heir because he was found in possession at the time of cadastral inspection. He pays cadastral taxes in his name, and such receipts are accumulated as a proof of land possession in case of later legal dispute.

The extrajudicial division of an estate or any other common property is made by the heirs themselves or by a police commissioner or mayor. Whatever is done on the site is usually processed through a notarial office, and evidently some registrars made the corresponding registry inscription.

The Supreme Court has ruled on these cases: "The registry inscription of a deed containing extrajudicial estate division...does not substitute for the inscription of the right of actual possession of the estate, because...it does not cancel the registry inscription under the name of the original owner, nor by virtue of such inscription is the inheritance transfer made and registered...."[57]

In view of such a decision, the extrajudicial amicable estate division has no legal value, and the possessors of the inherited property lack secure titles. The only value attributed to the amicable estate division out of court derives from the good faith of the heirs, but their children may dispute the agreement at any time, causing those holders difficult situations.

---

[57]Colombian Supreme Court, Cassation April 21/54, LXXVII, p. 387, quoted in C.C. to art. 1382.

Private and amicable solutions to property rights perpetuate the common situation of lack of secure property title among landholders. The situation is even worse when common property of less than the minimum area established by agrarian law is inherited by more than one heir. Agrarian law has established two measures for such cases: one gives the right to any heir to buy part or parts of the estate, if its division would reduce the size of the parcels to less than three hectares; the other allows request for judicial decision to continue the common property if the family derives its daily living from it.

Such solutions, however, cannot be feasible for these small farmers unless judicial and titling processes become accessible, less costly, and quicker. There are also cultural and social norms under which farmers are anxious to continue on the land of their ancestors. It is, consequently, not easy for farmers to accept either of the legal solutions.

V. BOUNDARY IDENTIFICATION AND LAND MEASUREMENT

Since boundary descriptions form part of the contents of land titles, the system of boundary identification and land measurement constitutes a major part of the legal study of land titles. However, appropriate legal procedures and technologies, which allow the farmer to define and clarify the size of the farm he is using, are often lacking.

Marking of boundaries in Colombia is carried out under the system of metes and bounds, as in colonial times. This traditional practice is so informally applied that boundaries are almost never exact and are usually defined by verbal descriptions, not precise measures. No maps, measures, or artificial markers are required. However, what is recorded in words must someday also be recorded on maps, since there is no way to aggregate written documents to determine what land is titled or owned.

Here again, the State cannot fulfill its stated objective of knowing what is public domain and which lands have been granted to private users. As could be expected, the State many times has given overlapping parcels of land to different citizens at different points in time.

According to the Supreme Court, land measurement is not necessary for a valid real estate transfer.[58] However, the Court itself,

---

[58]Colombian Supreme Court, Cassation, April 1/25, XXXI, quoted in Ortega, op. cit., p. 183.

following the Civil Code which requires determination of the land by size or boundary identification in order to transfer a "real thing", has decided on other occasions that there is no individualized property, nor property to transfer, if it is not measured.[59] In spite of this ruling, two other decisions of the Court, twenty-eight years apart (1925 and 1953), still leave unsettled the legal requirements for measuring properties.

Confusion in the law results in confusion in practice. Farmers usually do not measure their land, nor do they transfer it by measurement. Any measurements which are taken are made in general ways using a variety of units and expressions peculiar to each region and to each century. Common units appearing in titles are the fanegada (1.6 acres), vara (2.8 feet), cuadra (6,400 square meters), plaza (same as cuadra), Pucha (amount of land that can be seeded with about 800 grams of corn), and Cigarro (distance walked while smoking one cigar). Many agricultural producers do not know the area of their farms, and the phrase "more or less" is frequent in public land documents. The only accurate and technical measurements and markings of boundaries are found on urban lots, rural lands titled by INCORA, a few farms privately measured, and lands measured as a part of a colonization or regional development project.

---

[59] Ibid., Sentence of May 20/53, LXXV, p. 99, quoted in C.C. to art. 1887.

The various cases examined regarding land boundary description and measurement in rural Colombia fall into three general categories, traditional, semitraditional, and modern, all of which coexist at present.

1. Traditional Description

The traditional description of property lines is characterized by incomplete details, utilization of surface phenomena, orientation by sides, and use of adjoining owners' names. Such descriptions, based on verbal terms rather than maps, do not offer a clear location of the land, either in space or in time. They usually are long and confusing. Landmarks are inexact particularly when they are as general as in the studied cases, which used terms such as mountain ridges, steep hills, rivers, streams, ditches, fords, plains, swamps, bays, banks, slopes, springs, etc. The orientation of the land, using sides, head, and base, is not precise if these base lines cannot be reproduced. Such cardinal points also depend upon the position taken on the site. The use of adjoining owners' names as general references does not help to identify a rural property over time.

Besides surface phenomena, markers such as stones, fences, trees and roads may be used. In cases examined, the most common trees noted are those corresponding to each thermic level. Among them are the cucharo, huche, dinde, and guayacan, each of which has hundreds of species, their names changing by region or even within the same region.

Cases illustrating the failings of traditional description methods range from a royal adjudication of 1636 to a notarized document of 1967.

2. Semitraditional Description

Semitraditional boundary descriptions have the following characteristics: orientation by the sun's position, use of decimal or other length units, use of artificial borders like wire and stone fences, and use of marked stone piles. They tend to be brief.

These methods are steps toward technical demarcation of properties, especially if the decimal system, now required by law decree No. 767 of 1964, can be firmly established in practice.

Semitraditional description may suffer from the impermanence of artificial markers. Also, descriptions of mixed utility occur; for instance, suitable landmarks may be specified without lengths being noted.

3. Modern Description

Modern land description methods have been recently introduced in Colombia, principally through the INCORA agency and private engineers. The system is clear. It requires the participation of skilled people and gives the owner exact knowledge of the piece of land he possesses. This new system provides juridical individualization of property, and any controversies on boundaries can be easily settled.

The direction of each segment of a property line, the length, and the angle of turn with adjoining link segments, are indicated. If one can find point one, or any of the subsequent points, the whole geographic shape can be reproduced. Almost all land parcels in Colombia are irregular in shape.

If this work of INCORA were done by cadastral agencies, enough rural properties might be completely identified in order to make up local charts. Unfortunately, the cadastral agencies continue identifying rural properties by means of maps according to descriptions offered by the landowners. Such descriptions use the narrative method imposed by tradition.

The INCORA methods, in summary, exhibit several features which should become minimal standards for all land measurement and description:

1) mapping by local units,
2) using standard units of measurement,
3) at least one permanent point delimited in each plot,
4) orientation by cardinal points and establishment of benchmarks,
5) parcel numbers,
6) official records and map surveys to property holders.

BOUNDARY DISPUTES

A precise land description method would be invaluable in resolving boundary disputes over rural land in Colombia, which are now settled in one of three ways: (1) private procedures, (2) police action, and (3) judicial precedures.

Private procedures are carried out independently of official participation. Neighbors of adjoining properties simply get together on the site, sometimes accompanied by other persons who act as amicable advisers. They try to identify possible landmarks or surface phenomena which they can remember, or which appear in documents they may possess. Landmarks are then set if they do not exist, or renewed if possible, and distances are paced off or otherwise estimated. A change in neighboring landowners generally causes new conflicts since the original determination of property lines was based upon the good faith of the original parties. New disputes are settled by negotiations, using any one of the three procedures.

When boundary disputes arise, many peasants take their complaints to the municipal mayor, who is also the chief police commander in small towns. In a police action, both parties appear before the mayor and present their claims orally or in writing. The mayor is obligated to listen to their complaints, as well as to the testimony of witnesses. Upon termination of the hearing, the mayor issues a decision, which is actually a recommendation that need not be followed. If the decision is not accepted, the parties have two alternatives: to request in writing that the mayor's hearing continue with a visual inspection of the site, or to initiate judicial litigation in the Civil Court.

If the dispute is settled on the site, an act is prepared reporting the visual inspection, and all the details of the proceedings, such as time of initiation and termination, participants, testimonies received, documents submitted and reviewed, claims presented, and the solution of the dispute. When the mayor cannot reach a decision, or the mayor's decision is not accepted by one of the interested parties, the mayor orders the certification of this fact and issues a type of interlocutory decree under which the boundaries remain as they were before the conflict arose. The violation of this decree is subject to financial sanctions. The parties' only recourse at this stage is to resort to civil litigation.

Expenses of the visual inspection are borne by the two interested parties, if they mutually agreed on the request, or by the party who requested it.

Judicial actions to resolve questions of property lines are heard before a Civil Court. The objectives of the action are to set, clarify, or rectify property lines based on public or private documents, testimonies, and visual inspection on the site. The procedure for this action is established by the Civil Procedural Code.[60]

As of January, 1964, there were 678 lawsuits concerning the determination and marking of boundaries pending in the Municipal Civil and Mixed Jurisdiction Courts.[61] During 1964, 243 cases

---

[60]Jorge Ortega Torres, Código de Procedimiento Civil (C.J.) (Bogotá: Editorial Temis, 1960), Second Book, Tit. 26.

[61]DANE, Anuario General de Estadistica, 1964, Tomo III, Justicia (Bogotá: 1968), Graph No. 199.

were decided or transferred to higher courts, and 282 new cases were initiated. Thus, there were 727 cases pending at the end of the year, and of these 492 were in a state of suspension--there had been absolutely no movement in these cases during the year.

The work of the courts in that year included 396 testimonies, 92 visual inspections of sites, 6 replies to interrogatories, 1,167 writs, and 25 sentences.

While this pace of the judicial process seems very slow, it should be realized that the magnitude of the problem is enormous. The judicial procedure normally takes two years, and once again, the length of time, high costs, legal formalities and other difficulties create great inconveniences for the parties and delay clarification of the problem.

VI. CONCLUSIONS AND RECOMMENDATIONS

This study has indicated that the transfer of rural property consists of innumerable complex formalities. The most acute problems currently facing the notarial and registry systems in regard to legal security of real estate are those of organization, quality, method, and content. Both the notary and registry systems fail in their objectives of fully legalizing and guaranteeing acts and contracts within their incumbency.

The process of legalizing property ownership is arbitrary and inconsistent. Certain legal requirements are not fulfilled because of political, social, or economic influences, causing demoralization and uncertainty for most property owners. The number of complementary certificates, for which the client is responsible in order to legalize transfers through sale or succession, inevitably involves prolonged wait, discouragement, and unethical administrative practices. It is impossible, for example, for notaries to certify that they know all of the clients utilizing their service, a practice now required of them.

The requirement of special witnesses to guarantee personal acquaintance with the contracting parties is seldom met. The obligation that the notary be present to authorize an act also is usually not fulfilled, nor is the prohibition against extra-legal charges observed.

While certain legal requisites are not met, others are contradictory. The notary, for example, must warn of the presence of unlawful clauses in a contract, but must authorize these on the insistence of the clients. Notary acts that have been registered are supposedly authentic, yet such authenticity may be challenged through legal actions.

Notarial and registry services are public but are administered and managed by private individuals. An official performing notary or registry functions must be a lawyer, unless he has held the position for a certain time before this provision was instituted; a circumstance which annuls the prerequisite. Inherent legal contradiction and general laxity in following the law could be demonstrated indefinitely.

Selection and designation of notaries and registrars are frequently based on strictly political factors, with little consideration of technical or professional criteria; accordingly, efficiency and exactness cannot be expected.

This study has also examined the private property negotiations which exist outside the formal legal processes. The acceptance of informal or customary systems suggests that the formal institutional mechanisms are inaccessible to many people. Letters of sale, promises of sale, buying and selling of possession rights, amicable inheritance divisions, and other amicable divisions of land have value only insofar as the contracting parties act in good faith. The anomalous ownership in these cases can result in legal, economic, and social conflicts after the original contractors are no longer available for consultation.

Adverse possession actions, which legalize the possession of land after a specified number of years, do not provide a rapid and inexpensive solution for interested parties. The majority of farmers trying to obtain titles by adverse possession are either frontier settlers or squatters on land belonging to absentee owners. Both groups have few financial resources; this lack, under present circumstances, makes it difficult for them to obtain justice, particularly under such burdensome procedures.

One cause of title confusion is the existence of unliquidated inheritances. Although some inheritances have been divided extrajudicially, they lack juridical individuality since they have not been submitted to legal processes. Causes of this problem are the cost, length, and complexity of probate proceeedings. Heirs are afraid to submit to the legal procedure because, in the outcome, others may receive the property left by the decedent. Legal proceedings as a means of making recognized rights effective seem to be influenced directly by the financial possibilities of the parties. Money permits access to justice.

The passive role of judges in civil cases is exasperating. All processes are initiated and advanced by the parties in the action. Judges' work consists of seeing that procedural mechanics are rigidly observed. In cases where despair, fatigue, or lack of funds on the part of the initiating party does not paralyze the case, the final decision may be appealed before higher courts. Appeal of course involves additional expenses and time.

For the litigating lawyer, rapid conclusion of a case often depends upon his friendship with judicial officers. Clients commonly search out such a lawyer, presumably to assure some promptness and a favorable outcome to their suit.

Identification and measurement of rural property is usually carried out through antiquated means surviving from the colonial era. Boundaries of at least 80 percent of Colombian rural land are not clearly identified or surveyed, either physically or juridically. Existing surveys are often unclear and unprecise, causing legal, financial and social conflicts among owners. Although it should be recognized that some government agencies, such as INCORA, are attempting to put into practice new techniques for measuring and settling boundaries, this work is slow.

On the basis of these observations and conclusions, the following recommendations are proposed.

MODIFICATION OF THE PRESENT SYSTEM

A. Location of Notarial and Registry Circuits

Taking into account that notarial and registry circuits are presently organized under strictly political criteria, it is recommended that the geographic location of notarial and registry circuits be revised on the basis of one or more of the following criteria: the volume of real estate transactions, transportation facilities, and travel time and distance. Applying these criteria would eliminate some notarial and registry circuits and create some new ones.

B. Selection and Qualifications of Notarial and Registry Officials

Certain general prerequisites should be required. Existing legislation requiring that all notaries and registrars be lawyers should be fully implemented as rapidly as possible. Special training courses should be made available to upgrade skills of officials and auxiliary employees. Simultaneously, a new salary and promotion scale should compensate efforts for improvement. Seniority, as the only determinant of promotion, is not conducive to developing initiative on the part of these employees.

Law schools should organize seminars on notary and registry law as electives for students. The Superintendence of Notaries and Registries should take the initiative in establishing and supervising training programs, in collaboration with Public Administration and Law Schools, for auxiliary employees and officials of these offices.

Selection and designation of principal officials should be done by the Superintendence of Notaries and Registries. Superior Courts of a judicial district could continue the present practice of preparing a list of three candidates for each notary and registry circuit. However, special application forms of the Superintendency should be presented by applicants with evidence of their qualifications. The aplicant could also designate places where he wanted to work.

Upon selection, the notary or registry candidate should obtain fidelity and performance bonds. Evidence of appointment and bonding should be requisites for being sworn in before a superior court or city mayor. Certified copies of the above acts should be filed in the Superintendency and the Superior Court.

Auxiliary employees should be chosen by the notary or registrar in accordance with guidelines established by the Superintendency.

C. Relations with Commercial Entities

Since some notary and registry offices contract for or are given covers for binding deeds from various commercial firms, it is suggested that the Superintendency contract for these directly with such firms.

D. Modifications in the Notarial Service

1) The notary office should sell the required official paper and stamps, thus avoiding the inconvenience of obtaining these items at other locations.

2) The special witnesses should be eliminated. They are useless since the notary will not refuse to draw up a document merely because he does not know the contracting parties. Similarly, the requisite ritual phrase certifying that the notary knows the contracting parties should also be eliminated since it is usually untrue.

3) The present practice of permitting any bystander or "professional witness" to serve as an attesting witness should be discouraged and the contracting parties should be urged to provide their own witnesses.

4) The requirement of a signature in the name of an illiterate contracting party has no practical value, since the party usually picks up anyone he finds in the office or street to sign for him. It should be sufficient evidence to have a declaration of illiteracy noted on the document by the presiding official.

5) A series of useless requirements should be eliminated, use of a certain kind of pen, specification of the number of words allowed in a line, description of how and where to leave blank spaces, etc. Such regulations complicate preparation of the document and make it difficult to read and understand.

6) All forms, conditions, and purely technical terms registered in the Civil Code should be eliminated from the contents of the deed. The document should register only the particular data pertinent to the property negotiation, such as: number of the deed; date and office of issuance; name of the transaction; price; references of the deed of acquisition of the selling party; cadastral number and identification; boundaries by directions and distance; liens, limitations or conditions and beneficiaries; signatures of the contracting parties, and signature and seal of the official. No eloquent extraneos matter should be included.

7) The present practice of preparing additional certified copies results in extra expenses and waste of time for both client and official. Carbon copies or other reproductions of the original document, signed and sealed by the notary, should be legally acceptable.

8) Regarding the official books, the following steps are recommended:

a) Eliminate the minute book, which contains drafts of acts and contracts. Many offices have already stopped this practice, and others keep it irregularly. Several notaries commented on the uselessness of the book and the need to reduce paper work in notary offices.

b) A special notarial protocol book should be maintained exclusively for real estate property acts and other types of acts.

c) At present, interested parties must search through many books to locate the deed they want. Since the index of judicial records is included as an appendix at the end of each book, a card index should be prepared to facilitate location of necessary deeds. Each card would contain basic references of the act or contract and the book where it is recorded. Based on this general card index, cross reference card indices could be prepared according to transaction or type of activity. These would be organized like card catalogs in libraries.

9) It is unnecessary for notaries to record all of the acts of probate or inheritance proceedings in order to issue individual deeds to a divided estate. It should be sufficient to record only the act of partition and the judicial act of approval. Likewise,

recording the entire current proceedings of "ownership" or adverse possession actions should be eliminated. It is sufficient to record the final verdict.

E. Modifications in the Registry Service

1) The registry would concentrate exclusively on the inscription of property acts and contracts. Other transactions should be assigned to other agencies. For example, acts regarding commercial association should be handled exclusively by the Camara de Comercio (which serves as a commercial registry). Private documents, powers of attorney for representation and administration, transfer of rights and inheritance shares which do not affect real estate, transactions on future harvests, etc., could be handled by the National Income Administration (Administracion de Hacienda Nacional). This agency has local offices generally accessible to the public, and the people frequently visit them to obtain officially stamped private documents.

2) Direct collaboration should be established between the registry and cadastral agencies in order to modernize measurement procedures and identification systems for rural property. Official topographers should go to farms to set the boundaries and to make measurements, especially to those farms at which the direction and distance method has not been used. Consideration should be given to the eventual establishment of a "mobile survey group" for each registry circuit in order to facilitate this work. These coordinated activities would permit the progressive physical and legal identification of rural property throughout Colombia. Financing of such services

could at least be partially covered by increased registry fees, which would be shared with the cadastral agencies.

3) The complex system of bookkeeping records should be eliminated. The system should be replaced with one in which:

a) A real estate record-folder would be used for inscriptions. The real estate record-folder could be similar in form to that presently used for the Cadastral Office in Cundinamarca. The design would have spaces or columns for data such as cadastral number, registry number, name or identification and address of the owner, notary and registry references of the present title, name and identification of the transferor, price of the transaction, boundaries designated by direction and distance, liens, mortgages or conditions, cancellations, and signature of the official.

The cadastral number would be the same as presently used--a code that identifies the property by type (rural or urban), location, and lot number. To this, the registry inscription number would be added by special coding. Notary and registry references of the title would be transcribed on the document, as is present practice. If the deed does not contain boundaries designated by direction and distance, nor its area measured in metric terms, this space should be left in blank until the required cadastral information is available. A list of

simple, succinct terms describing various encumbrances, limitations or conditions (such as: family patrimony, attachment, lease, partnership, usufruct, improvements, easements, mortgage, etc.) should replace the present system of full elaboration of these items.

In front of each encumbrance its eventual cancellation would be noted. An important part of the proposed real estate record-folder is the juridical history of the farm during the twenty-year period established by law. Historical references would be taken from those that presently are incorporated in the notary document. Upon registering a title or requesting certification on release, ownership, or complementation, the respective real estate record-folder will be opened. The traditional boundaries, of course, will be necessary references for the establishment of the new identification of the property.

b) An <u>owner record-folder</u> will be used for property owners. This file will contain the key references of the real estate record-folder. It will serve for recording acts such as attachments, civil suits, interdiction verdicts, etc., if they deal with a registered owner.

c) Since the use of computers is becoming more widespread in Colombia, it should be extended to the registry system.

4) By keeping the property registry as indicated, registry certificates would provide sufficient evidence of title. Presently, aside from these certificates, the interested party must obtain the

title history of the property for the past twenty years. If the real estate record-folder and owner record-folder are not adopted, then at least the registry certificates should be modified so as to contain the necessary notary and registry references of successive transfers.

5) In order to reduce the risk of double sales and to assure the principle of registration priority as provided for in current legislation, a receipt should be issued to the client in which is indicated the exact date and hour when the document was presented for registration.

6) Inscriptions of general attachments, civil claims, or interdictions should be stricken immediately upon the termination of the corresponding judicial action. To accomplish this, more efficient communications should be established between the courts and registries.

7) The registrars should be encouraged to use their power to refuse inscribing deeds in which obvious omissions, contradictions, or imprecisions are found.

F. Inheritance Proceedings

As noted, one of the greatest problems regarding the titles of real estate property originates in the many unliquidated successions or inheritances. The following recommendations are made:

1) Inheritance divisions or partition of common property carried out through amicable procedures directly by the interested parties, or with the intervention of police officers, should be accepted. In these cases, and with publication of two notices in one month, simple judicial approval would be sufficient for a title.

2) For inheritance cases of property of less than a specified value, ex-officio actions before local judicial authorities could be initiated on the request of the interested parties or of a municipal authority and at the expense of the heirs or of the inheritance estate. Publication of two notices in a month and one notification to the tax collector would be required.

3) Civil judges should have precise instructions on how to preclude obstructions and deviations clogging the inheritance process.

4) Legal inheritance actions should not be suspended, nor should the parties be left without a hearing, simply because of the failure to use official paper. The necessary fees for validating unofficial paper should be collected upon termination of the proceedings.

5) The innumerable notices to the inheritance tax collector's office are useless and a waste of time. One notice immediately before final judgment should be sufficient to comply with fiscal requirements. The final judgment would depend upon the receipt of tax payment.

6) In order to avoid arbitrary delays in judicial partitions by one or more interested parties, the decision of the judge should be recognized as definitive after personally hearing the opponents in private hearing.

G. Prescription or Adverse Possession Proceedings (land claim through physical and economic possession for over 10 years.)

In order to accelerate property titling and to reduce inconveniences of legal proceedings for adverse possession, it is suggested that:

1) Adverse possession cases in favor of public entities such as municipalities should be resolved through ex-officio action upon a report from the personero municipal to the local judicial authority. To protect the rights of other interested parties, two published notices within one month would be sufficient. These would be simultaneously published in local or regional newspapers and displayed on the municipal judicial bulletin boards. The definitive verdict would follow a visual inspection of the property and its identification by direction and distance. The final verdict, which would include boundaries and measurements of the property, would permit preparation and registration of the deed.

2) Adverse possession proceedings for private persons should be classified according to the extension and the commercial value of the property. To make accessible a rapid titling procedure, an ex-officio action would be established to handle cases involving small properties.

3) Notice to the personero municipal should be discontinued, since it serves no useful purpose in cases involving private persons. If these notices are not discontinued, then at least they should be reduced to a single one at the beginning of the proceeding.

4) All adverse possession cases should be carried out before local judicial authorities. This would avoid delays inherent in transferring the cases to other courts.

5) The required time to gain title to land by adverse possession should be reduced to ten years.

H. Private Document Transactions

In regard to transactions of agricultural land in private documents, the following is recommended:

1) A grace period of one year should be established during which an ex-officio action could be initiated to legalize private transfers of possession rights. This legalization would be applicable only in those cases where the private transfer occurred at least five years previously and where there are no conflicting claims, and it would be free of charge for small properties.

I. Taxes on Property Transfers

Taxes on property transfers should be eliminated. Imposition of these taxes frequently encourages falsification of the true value of the transaction, and offers inducements for avoiding the registry system altogether.

PROPOSAL FOR A NEW SYSTEM

These suggestions for simple modifications to the present system result from the ideas of farmers, notary and registry officers, and lawyers connected in one way or another to the problems discussed herein. The objectives of the suggested changes are to legalize property rights as recognized by national law, so that the title of ownership is firm and sure, and to accelerate the legalization of land transactions.

However, a new more sweeping design of these systems could be organized around the following ideas: nationalizing the registry service, eliminating the notary function in real estate transactions,

giving registry functions to the personero municipal, centralizing the administration of the registry process, integrating the registry and cadastral functions, adopting real estate record-folders and owner record-folders, adopting provisional inscriptions and temporary title certificates, bonding the registrars, and more widely adopting accepted registry principles.

In order to provide direct government responsibility for the legal protection of ownership, the registry services should be nationalized. Nationalization would include:

a) Declaring that the documents and files of the present notary and registry agencies are public, so that these are at the disposition of state officials.

b) Paying registry officials and employees from national funds in accordance with a wage scale based on qualifications.

c) Ideally, providing services free of charge to eliminate discrimination against those lacking financial resources. If this is not feasible, registry fees should follow a progressive scale based on the value of the transaction and the physical size of the property.

Under the new system notaries would be eliminated and their functions distributed as follows:

a) Civil registry functions would be assigned to mayors' offices so that the service is provided in all communities, thus reducing costs of transportation and promoting the use of the service. Also, double and triple civil registry would be reduced, a practice which now results in extra-

judicial declarations in which a new entry in a different notary is obtained.

b) All acts relative to commercial associations would be given to the Camara de comercio.

c) Powers of attorney and other certifications would be recorded in other offices--either in the mayor's office or the local Internal Revenue Offices, which are now frequently utilized in such matters by farmers.

d) Signature could be authenticated by judges or mayors, providing prompt service at less expense.

The personero municipal, who at present has no definite function, could serve as an important link in the property registry process. Supplementary wages for this service would be paid by the government, and the personero would have to be bonded.

The new structure, then, would include the national office, registry circuits, and the personeros municipales. The personeros would be the local agents for immediate contact with the client, especially in those towns without a registry office, and would be responsible for the following: receiving the original transfer, mortgage, or lien contracts; charging the normal registry fees; assisting the client in obtaining the necessary tax certificates; sending copies of the documents and receipts to the registry circuit of the area; and delivering the provisional and final ownership deeds.

The circuit registry would have the following functions:

a) Upon receipt of the documents from the personero or directly from the client, an official would make a legal study of the contractual act so he could order or refuse its inscription.

b) If the documents or records lacked the necessary survey or cadastral information, the circuit registrar would then inform the cadastral mobile unit or cadastral agency of his circuit, so that they could proceed with measuring the area, setting the boundaries, identifying the location, and assigning a cadastral number to the farm.

c) At the same time that the cadastral unit is operating, the juridical history of the property would be established in the registry.

d) Having these legal antecedents, the temporary inscription would be ordered and entered on the real estate record-folder and the owner record-folder. Likewise, a provisional deed card would be sent to the personero or delivered to the client.

e) The temporary inscription would be considered definitive upon receiving and registering the cadastral information. At such time, the definitive title card would be prepared and sent.

f) Copies of all final entries in the real estate and the owner-record folders would be sent to the national office.

The National Registry Office would be managed by a Commission composed of five officials designated by the President of the Republic for a period of five years or more. The director would be selected each year from among the commission members and elected by the commission. The commission would consist of two lawyers specialized in agrarian law, civil law, or registry law; two survey engineers specializing in cadastral measurements and computers respectively; and one specialist in public administration.

Their functions would be the following: 1) maintaining and organizing the file of all property inscriptions in the country; (2) issuing, as do circuit registries, records and certificates required by officials or interested parties; (3) implementing the regulations as specified by the Registry Board for control and vigilance; (4) making provision for the training of registrars and employees in order to promote the development of a professional service; (5) preparing standard forms for receipts, records, cards, acts, contracts, etc.; (6) organizing new registry circuits as required; (7) disciplining registry officials if and when required; (8) providing the circuits with materials and supplies for efficient operation; and (9) selecting and appointing circuit registrars.

A Registry Board of Control and Vigilance, local and national, would be composed of delegates whose term of service would be five years. Each of the following agencies or associations would designate one delegate to serve on the National Registry Board: the National Federation of Community Action, the National Federation of Users, the

National Federation of Agrarian Unions, the National Union of Lawyers, and either the "Agustin Codazzi" Geographic Institute or INCORA. The delegates to the local board will be named by the National Board from their affiliated organizations. These Control Boards at National and Circuit levels would investigate complaints relative to the services of the registry.

Registry is incomplete without technical cadastral information, and conversely, a cadastre without a legal property registry would provide no title guaranteee. Combined action of the two agencies, either through integration of the cadastral and registry offices or through closer cooperation would assure complete identification and legal endorsement of the recognized property.

A simple card could represent the ownership deed, just as a simple card summarizes the identification of a citizen. This card would be kept up to date with respect to any mortgages, liens, or other encumbrances on the property. The adoption of this card system would greatly ease land transactions. To transfer property it would be sufficient to deliver the card accompanied by a contract of sale signed by the owner and with the seal and signature of the mayor or a judge. The purchaser could then file these documents with either the personero or the registrar and request inscription in his name and annulment of the previous inscription. A similar procedure would be used for establishing any additional encumbrances or limitations on the property.

In regard to judicial dispositions by which property is transferred or a right is recognized, or of adjudications made by INCORA, it would be sufficient to present the respective legal disposition in order to make the respective inscription. In these cases, the

title would be definitive and original, and a title card would be issued. Civil claims, interdiction, and legal attachments would be inscribed in the owner record-folder, as well as on the title card. This issuance of duplicate copies would be subject to a special procedure established by the National Registry Commission.

The present functions of the notary and registry have not fulfilled their purposes of providing an efficient, accessible, and inexpensive process to transfer property and secure the titles so obtained. Part of this is due to the formal structure of the system itself, but most of the blame lies in the manner in which it is implemented. The above recommendations, if adopted, would tend to eliminate the bottlenecks that have been observed.