LAND REGISTRATION MODERNIZATION IN DEVELOPING ECONOMIES: A DISCUSSION OF THE MAIN PROBLEMS IN CENTRAL/EASTERN EUROPE, LATIN AMERICA, AND THE CARIBBEAN[1]

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Abstract: This paper presents the challenges and issues facing countries in the ex-socialist countries, Latin America, and the Caribbean as they attempt to formalize land rights and facilitate a land market. By focusing on issues and problems we hope to influence the design orre-design of land registration systems. Although similar initiatives are being undertaken in other regions of the world, the three regions covered in this paper encompass a large majority of land registration modernization initiatives. The paper is based on the authors' experience in working with projects funded by the World Bank, the Inter-American Development Bank, USAID, DANIDA and other development agencies. The discussion of each region includes the general background followed by a short description of the major problems being faced in these regions. While these regions differ substantially in terms of their history, culture and socio-economic status, certain common problems emerge in their effort to document the legal and spatial dimensions of land rights and facilitate the efficient transfer of these rights.

1. INTRODUCTION

A massive change in land policy and tenure has provided the opportunity for private individuals to once again hold private land rights in the ex-socialist countries of Central/Eastern Europe. It is argued by many development specialists that a free land market is the engine of economic development (Brandão and Feder 1995; Feder and Nishio 1998). However, providing the infrastructure for such a land market to operate requires a significant effort in the area of land registration. This infrastructure facilitates the first registration of newly created rights as well as the subsequent transfer of these rights.

[1] The views expressed here do not necessarily reflect those of the institutions to which the authors belong

In Latin America and the Caribbean, where there has been a long history of a land market (IDB 1998), the need for modernization is emanating from the poorer sectors of these societies who have been largely overlooked in the design of land and cadastral systems. The challenge in this region is to make land registration more accessible to the large majority of people who most need it.

The literature (written in English) on this topic has typically been dominated by publications focusing on the British Commonwealth countries. The two classical references are Simpson (1976) and Dowson and Sheppard (1956). Hogg's (1920) treatise also provides a geographically broad treatment of land registration, but this focuses more on legal aspects. Simpson's book covers various aspects of registration including its historical development in England and France, Torrens versus registration of deeds, cadastral surveying and systematic adjudication for first registration. Even though this book was written almost 25 years ago, it remains the principal reference for countries influenced by the former British Empire.

While there are some references with a broader focus, such as on the ex-Soviet Union or the Newly Independent States – NIS (MacNeill, Ford and McGrath 1998), most of the literature on property registration in Central and Eastern Europe tends to be country-specific, covering countries such as Russia (Anderson 1997; Ouzonova and Hayes 1996), Belarus (Butler 1996) and Albania (Stamo and Singer 1997). An interesting general overview of registration systems in Europe is given in ECE/MOLA (1998).

In Latin America and the Caribbean the relationship between land registration and rural development has been studied for several decades (IDB 1998; Stanfield 1985; Stanfield 1990). However, the literature on the modernization of land registration systems in Latin America, especially in English, is sparse. Initiatives in Peru have been widely publicized (McLaughlin and de Soto 1994) and the Inter-Summit Property Systems Initiative (IPSI) in Central America has led to a focus on land registration systems in Central America (USAID/CNR 1999; USAID/OAS 1999; Fisher 1999). A successful land titling project completed in St. Lucia in the mid-1980s generated some literature on this topic in the Caribbean (LTC 1988; Syrett 1986), but once again references tend to be country specific in this region (IDB 1997; Centre for Property Studies 1998; Hunting Technical Services 1998).

2. CENTRAL AND EASTERN EUROPE

After WWII many countries in Eastern and Central Europe became part of the Soviet Union sphere of influence. In 1946 the transition from a capitalist, market oriented economy (based on private ownership of the means of production[2]) to a socialist economy (based on public ownership of the means of production) began. This transition process moved forward more rapidly in some countries, but it always involved the restriction or elimination of existing private property rights and the creation of state property rights over new investments in the land.

By the late 1980s a new transition emerged involving the reversion from socialism back to capitalism. The main feature at the initial stages of this reversion to capitalism has been the privatization of publicly owned land and physical assets attached to the land. These new private

[2] Land, labor and capital

rights include private ownership, which encompasses the right to hold and transfer land. It also includes leasehold or other subsidiary tenure forms, where the state continues to be the owner of the land. The institutional definition of property rights to land has been at the core of both transitions.

Eastern European countries have experienced problems with the privatization process and the development of institutional structures. These structures are needed to define what private rights actually exist in practice, to protect those rights, and to regulate those rights in order to develop properly functioning market oriented economies. This section discusses these problems and argues for a different approach than that followed by market-oriented economies which have not experienced massive privatization of rights to land during the post war period. Instead of modeling institutions on longtime market economies, or developing these institutions without outside support, a more regional approach is being adopted. This approach promotes consultation among those countries that are experiencing similar transitions to privatization and face similar institutional hurdles. This intra-group consultation is critical if there is to be some institutional homogeneity among these relatively small countries, as they attempt to attract foreign investment. Such investment can be facilitated by "similarity of context" so that the foreigners can quickly learn the rules of the capitalist game in each country.

Resolving the logistics of massive transfers of assets from the state to private holders has been a major challenge for all of these transition countries. However, the political will to do this transfer has been strong enough to carry out the processes relatively quickly. Privatization has impacted agricultural and forest land, urban housing, commercial properties, and public rights of way and parks. Privatization mechanisms have included: the restitution of rights to owners prior to collectivization; the sale of land and physical assets to the possessors of these assets during socialist times; the sale of land by auction to private individuals and companies with the money or other resources; the gift of land to its holders at the moment of privatization; and the sale or gift of shares in corporate entities to the general public or to the employees of public enterprises. The privatization mechanism have varied from one country to the next.

Two main problems have arisen during this privatization process: (i) lack of clarity on who has what right to which property, and (ii) lack of institutional capacity to clarify the situation, and to guide land markets so that they play a positive role in the economic development of the country.

2.1 Lack of Clarity about Property Rights

The primary problems plaguing the post privatization transition countries are:

> **(a) Multiple claimants to land:** Privatization programs of different sorts have operated simultaneously, with one privatization program awarding private rights in specific properties to a set of private holders, and another program awarding rights in the same properties to other holders.
>
> Privatization programs have also awarded rights to groups of people without defining how those people would exercise those rights. The main example of this problem is the

privatization of housing units in apartment buildings without having clarified how condominiums are created and should function.

Another example is when restitution opens doors to historic claimants from different political regimes (e.g. East Germany). An example of this is the case of land holders at the moment of collectivization who had acquired their rights from the Nazi occupation of WWII, who in turn had taken the land from Jews or other ethnic minorities. To whom should the properties be restituted? If restitution is based on the claimants presenting documented claims. This is also problematic as much of the documentation has been lost, destroyed or is easily forged.

(b) Unidentified owners of rights: Restitution programs (e.g. Albania) have often been forced by the compressed period of privatization to designate holders of rights as "the heirs of X", which results in an unidentified set of rights holders, until some procedure is in place to determine who these heirs are.

In some privatization programs, land has been awarded to "the family of X" in family ownership without specifying who constitutes the family. In other cases it has been awarded to "X", usually a male head of family, without any mechanisms for protecting the rights of the spouse and other members of the family (Lastarria and Wheeler, 1998).

(c) Identified but missing holders of rights: Privatization programs have awarded rights to specific people, but due to massive human migrations and dislocations over the past decade, many of these people have simply disappeared (e.g. Bosnia, Herzegovina).

(d) Informal holders of rights: Privatization has outpaced the institutional capacity of the state to record and display the rights awarded in a comprehensive and secure system of land registration. People simply transfer their rights to other people when they so desire. Alternatively, the transfer may be done involuntarily when the owner dies and his/her heirs simply take their rights. In many cases these transfers are not recorded by following legally defined and documented procedures (e.g. Hungary, Macedonia).

People also simply occupy public land and make it their own, daring public authorities with dramatically reduced resources and popular support, to re-assert public control over the land (e.g. Albania, Romania, Croatia, Czech Republic). Inaction is the typical response, leaving the occupants with effective but informal rights to the land.

(e) Rights to non-existent parcels: Privatization programs have at times awarded rights to parcels which may have existed at one time, but which are now effectively incorporated into other parcels. This problem has arisen with restitution decisions which recognize private rights to public parks, roads and streets, as well as land currently under public buildings.

(f) Rights to land separate from rights to buildings on the land: In many transition countries, particularly in urban areas, the state has retained the ownership of the land, while privatizing the ownership of the buildings on the land (e.g. Slovak Republic, Macedonia, Hungary). This has been partly due to the difficulties in assessing the value

of the land, and partly to the well entrenched notion that building spaces could be privately held in socialist times, while the land did not need to be privately owned.

(g) Tenants versus owners: Restitution programs have created rights of ex-owners to buildings where the present occupants have made significant investments over the years, and where the present occupants have in legal terms acquired ownership rights over their apartments or businesses (Bulgaria, Latvia, Slovak Republic). Restitution in effect creates obligatory landlord-tenant relationships which were not negotiated, or creates claims to properties which are in direct conflict.

With the exception of informal, undocumented rights to land, the problems with property rights in transition countries are not typically encountered in established, market-oriented economies.

2.2 Institutional Weaknesses

The major institutional weaknesses pertaining to property rights in transition countries are the absence of property adjudication and land market institutions. One of the main functions of privatization is to stimulate the buying, selling, leasing, mortgaging and inheriting of land (the land market). Yet such markets require institutional support and guidance which does not exist, since market mechanisms were not supported in the previous regimes. The clarification of property rights and resolution of conflicts also has no institutional home in the transition countries as problems of this kind were not recognized in the socialist systems.

Additional details on the institutional challenges in this region can be found in Sherko (1997) and Stanfield (1996).

2. LATIN AMERICA

Most countries in Latin America were at one time or another colonies of Spain or Portugal. Naturally, the legal system and registration practices have evolved from these colonial beginnings. But, like in North America, these European colonists were not the first inhabitants in the region. Many different groups of indigenous groups lived there prior to colonization. Today there are still semi-isolated indigenous groups but they are increasingly coming under pressure to integrate with the main stream cultures. This cultural diversity creates a similar diversity in the land tenure system with a continuum varying from individual private to communal to community tenure (a mix of both individual and communal).

Agriculture is still a major economic or subsistence activity in Latin America, although the urban sector is beginning to dominate in terms of population (Center for Latin America and Caribbean Studies 1997). Like many developing countries, there is a large gap between the rich and poor and this is perhaps most obvious when examining land distribution. Poor rural landholders (*campesinos*) occupy the majority of rural land parcels, but these parcels are generally very small and situated on marginal lands. In most cases these poorer landholders have no formal documentation of the nature or extent of their land rights. Land reform programs, particularly in the 1960s and 1970s, attempted to expropriate large landholdings (*latifundias*) and transmit these to smaller farmers (see Thiesenhusen 1995). While experiencing some success, the problem of

inequitable land distribution continues today. In addition, the number of undocumented parcels is growing, creating a massive informal sector.

The land registration literature in this region is scattered and largely unpublished. In Peru, a compelling case for modernizing urban land registration systems was made by the Peruvian economist Hernando de Soto in his widely read book, *The Other Path* (de Soto 1989). De Soto argued that the informal sector played a vital economic role and that reforms were needed in the formal registration system to accommodate those living in informal settlements. A more socially oriented approach (as opposed to the technical approach used previously) toward land registration was subsequently presented in McLaughlin and de Soto (1994).

Beginning in the 1980s a number of land registration, land titling, land administration and cadastral projects tried to address small holder problems by making land formalization (including titling, registration and surveying) more accessible to the poorer sectors of Latin American societies (Barnes 1990). USAID, the World Bank, the Inter-American Development Bank (IDB) and various bi-lateral agencies have provided resources to facilitate this process. In executing these projects they typically have to address certain fundamental problems related to land registration. The main problems are listed and discussed below.

3.1 Over-Centralization of Registry Institutions

One of the problems that has plagued many Latin American countries is over-centralization of government institutions, including the property registry. In Guatemala, for example, there were until very recently only two registry offices servicing the entire country (about the same size as Ohio). For those people living in the northern department[3] of Peten[4] and in other remote areas, this arrangement made registration services highly inaccessible with the result that many landholders did not register their land parcels.

3.2 Property Regimes are Limited

Often property is construed of as either private individual (such as in the US) or communal (such as in traditional African communities). This conventional "binary" view of property is limited and is problematic when the land tenure system is composed of an over-layering of individual and communal rights. In the Bolivian highlands, for example, there are communities that have a very strong communal ethic (as evidenced by maintenance of community boundary markers and the restriction of land rights to community members) but still work the land on an individual basis.

In some instances the community is given a communal title in which all heads of households are allocated equal rights. The problem with this approach is that in reality individual holdings are not equal and therefore the share of land in the community is not equal for all families. This unequal allocation is quite rational given that families vary in size and some therefore have more labor resources than others. However, if tax obligations are based on the legal record, this would not be in tune with actual land distribution.

[3] Most Latin American countries are divided administratively into departments not states
[4] With assistance from the World Bank a new office was opened in the Peten on May 7, 1999

3.3 Legal Basis for Pilot Projects

Most land administration or land titling projects typically start with one or more pilot projects (e.g. Peru, El Salvador, Bolivia) that are designed to test proposed procedures and gain a better understanding of the problems presented in the field. These pilots also attempt to test the proposed adjudication approach for clarifying rights and boundaries to land.

In order for the results of pilot projects to be meaningful, the pilot activities must have the same end results as the main project - such as a clear record of all land rights maintained in a sustainable land registration system. To attain this, the teams working in the field must have the legal authority to conciliate differences and resolve land disputes. This authority is usually provided through a law, such as a land adjudication act or decree, that specifically grants this authority and lays out procedures to be followed. But, the act really requires the information from the pilot project in order to be most effective. This results in a classical "catch 22" situation in which the phasing of the activities (law before pilot project) conflicts with the order of the information needs (pilot before law).

3.4 Multiple Land Claims

A problem that has occurred in countries such as Nicaragua and Bolivia is the titling of the same piece of land to separate parties. This can arises when more than one government agency has the authority to title[5] land, but there is no clear distinction between their geographic jurisdictions nor is there any co-operation between the two agencies (e.g. Bolivia). It can also occur as a result of different government administrations issuing titles to different parties as part of their political campaigns. In many cases these titles are not officially registered which further complicates the determination of legitimate claims. In Nicaragua when the Chamorro administration took over in 1990, Stanfield (1992) estimated that as many as 40% of the households in Nicaragua were either directly or potentially affected by land conflicts.

3.5 No linkage between Registry and Cadastre

The role of a legal cadastre is to maintain the current spatial dimensions (e.g. distances, area, coordinates, direction) and topological relationships (e.g. parcel adjacency) of all land parcels within a community. In Latin America legal cadastres (*catastros juridicos*) are scarce. Instead, the deeds in the land registry include a long written bounds description that lists the adjacent owners to the north, east, south and west of the subject parcel. This approach does not work in areas where there is an active land market or where land is frequently subdivided.

The more rational approach is to have a graphic depiction of the parcel either in an index map or on a more accurate composite cadastral map. This information is typically maintained by the legal cadastre agency. Since the non-spatial dimensions of land rights are defined in the registry, it is essential to have an efficient linkage between this information and the spatial information maintained in the cadastre. Generally, where a cadastre agency does exist in Latin America, it has either a fiscal cadastre function or is only focused on rural areas. The registry office generally

[5] Equivalent to "patenting" in American terms

functions under the Ministry of Justice or the Supreme Court. With one exception (El Salvador) the cadastral agency is under another ministry (Trackman, Fisher Salas 1999). The institutional and technical linkages between the registry and cadastral offices are either non-existent or barely operational (Barnes 1994).

3.6 Complex Land Records

In many Latin American countries property deeds (*escrituras*) are highly complex legal instruments that run to several pages. Most of the more recent deeds are typed, making them at least more legible than their predecessors. However, the key elements of the deed (identification of parties, rights being conveyed, covenants restricting land use, parcel identification) are generally buried amongst a long legalistic account of the transaction and its legal basis. The end result of this is that (i) a lawyer is needed to interpret the document, (ii) the cost of the transaction is raised unnecessarily, (iii) land records are bulkier occupying more space in an office where space is at a premium, and (iv) the landholders cannot easily understand the terms and conditions of the transaction.

3.7 Degradation and Insecurity of Paper Land Records

The large bulk of the information in registries in Latin America is submitted and maintained in a manual form. Since the registration process provides legal security to right holders through the publicity of transactions, the records in the registry are a key element for assuring tenure security. In countries like the Dominican Republic, where this information and the survey information kept in the cadastre are frequently consulted by the public, property records are literally falling apart and the office is strewn with the remains of those that have already become unreadable. In many registry offices insects are also slowly eating away the paper documents.

Most registry offices have no protection against fire, floods and other natural disasters. In addition, they have no backup copies. The result is that the legal security provided by the registration process is at risk. The famous Chicago fire, which burnt the registry as well as a large part of the city, is an example of how a single disaster can eliminate a jurisdiction's land records. With the recent upswing in hurricane activity in Central America, this issue should be given a higher priority.

4. THE CARIBBEAN

The development of efficient land markets is crucial to the long-term growth and development of the economy of Caribbean nations. These countries share a past based on plantation agriculture which resulted in a land administration system that was more geared toward the control of real property rights and land use, as opposed to the allocation of land resources to the highest and best use. These policy inconsistencies between the economic need to develop efficient land markets and the government's desire to maintain a controlling presence in land ownership and land use, present a unique economic development challenge. At the core of this challenge is the development of an efficient land market which relies on a functional, accessible and reliable land registration system.

This section focuses on a group of Caribbean countries (Trinidad & Tobago, Jamaica, Guyana, Barbados, Belize and The Bahamas) that share similar historical and present day characteristics which today are clearly reflected in their views toward real property rights, land tenure and the use and management of land resources. These common characteristics are:

- British colonial history
- Slavery and/or East Indian indentured servitude on plantations
- Finite land area, mostly small island economies
- Impact of trade liberalization and loss of preferential export markets
- Need to diversify economy from over-reliance on sugar/oil/tourism/rice
- Antiquated property law developed to accommodate few transactions on large properties by wealthy owners
- Inaccessibility to land
- Widespread speculation and squatting
- Informal and unchecked property subdivision and development

To support the stimulation of the land market, the governments of these countries are embracing legal, institutional and technical reforms which seek to make the land administration systems more market responsive and efficient. The ultimate purpose of these reforms is to build and diversify the economy while addressing social and environmental issues, primarily the need for low income housing and to protect environmentally sensitive and reserved areas. Each of the countries listed above has turned to the international donor community for assistance to complete projects that aim to improve land administration. An essential part of each of these projects is the modernization of the land registration system. A list of typical problems encountered in designing and implementing these projects is presented and discussed below.

4.1 Dual Private/Public Real Property Regimes

With historical roots in grants from the Crown at the time of independence, and culturally in order to maintain control over the use and concentration of land, two distinct real property regimes are perpetuated: publicly-owned and managed property, and private freehold property. In fact, in most countries the majority of land, in terms of percentage of total area, remains in the hands of the government. The existence and, more importantly, the unsustainable operational maintenance of these dual regimes have profound impacts on the land market. The impact is especially noticeable when the rents on leasehold property are artificially frozen at antiquated "peppercorn[6]" rates by a combination of out-dated legislation and political manipulation.

The debate over leasehold versus freehold continues without convincing evidence on either side. In most cases, governments have rejected outright market-based auction of public land and have elected to retain leasehold tenure, but liberalize leasehold policies, make allocation processes more transparent and strengthen lease management systems. In turn, the conditions of the lease have changed – longer terms, easier transferability and mortgagability, land use conditions limited or abolished - in order for the lease instrument to 'approximate' freehold. The outcome of this approximation of freehold on land markets and economic development has yet to be determined.

[6] Trifling amounts

To further complicate effective land administration in these countries, the management of land records related to these two regimes tend to be the responsibility of two (or more) government agencies. Typically, private land records fall under the ministry of legal affairs or finance, with public land records being the responsibility of a commissioner of lands office, generally in the ministry of agriculture, natural resources or housing. This separation of responsibility for land records management requires the management and maintenance of two or more registries of land information, neither of which have the resources to operate properly. In addition, the existence of various registries severely constrains the land market as landowners, providers of credit and investors need not only make a property rights investigation, but also determine in which registry the land records, or conflicting claims, may reside. This becomes a time consuming and costly process with the costs being passed on to the client, or worse, restricting credit availability as transaction costs per loan become uneconomical and not profitable for the lenders.

4.2 Multiple Real Property Rights Systems

A compelling problem, not altogether unique to the presented group of countries, but certainly of interest due to its negative impact on secure tenure, reliable registries and the functioning of the land market, is the existence of multiple real property rights systems in many of the countries. In many instances in our selected group of countries, governments are now involved in the process of a transition from a Deed recording to a Title registration system. During transition, these dual systems add to an already complicated mix of tenure statuses and real property rights systems that exist, including communal, generational, informal and public land lease. The public land lease category adds an additional array of complicated formal lease instruments together with crop agreements, occupation agreements, location tickets, provisional leases, certificates of comfort, purchase agreements, etc.

4.3 Generational (Family) Lands

Generational or family lands pose a particularly difficult problem for tenure regularization and registration of property rights. Family land has been described as follows: “customary tenure principles applicable to such lands [where] rights are inherited jointly by all the children, the rights are not forfeited by absence, and the family land should not be sold or permanently divided” (Center for Property Studies 1998). Registration of these lands under Land Registry systems is difficult as identifying individual ownership is not possible.

While family land is not easily accommodated into existing land registration systems, and is said to reduce the economic benefit from the land resource as well as stifle land markets, it is a recognized customary form of land tenure which provides specific benefits to both urban and rural families. One possible answer is to register these lands as some sort of family land trust or as tenants in common. However, in many instances the legal framework for establishing family trusts does not exist. Perhaps more difficult than the legal issue is the willingness of the “family”, especially as extended as they tend to become, to address and clarify this issue.

4.4 Squatting on Public and Private Lands

Where land is restricted either by physical limitations, or by control from the government, scarcity and inaccessibility lead to squatting on both private and public lands. In many cases the

occurrence of squatting is more profound on public land as there is an absence of vigilance and limited political will to reverse invasions. While squatting may satisfy an immediate need for the individual, it causes insecurity of tenure for both the landowner and the squatter. In turn, this insecurity results in land market inefficiencies, poor government land administration and lack of access by the squatter to the benefits associated with full land-ownership or as a recognized tenant.

While some of our selected countries have prepared written policies to address this issue, none have taken the essential next step to develop operational strategies to either recognize and regularize squatter rights or to provide resources to outright prevent squatting. In many cases it seems a compromise position is warranted. For example, on private land, through direct monetary compensation to owners for relinquishing their rights, or through freely negotiated land rental agreements between the owner and squatter. On public land, if the possessor can show beneficial occupancy, as well as positive recognition by the community, the land should be delivered to the 'squatter' through an official leasehold agreement.

4.5 Complex and Out-Dated Registration Process

While the land registration process in most of these countries requires reform to reduce transaction time and cost, as well as corruption, perhaps the most immediate need is computerization. All of the registration systems of the presented countries would benefit immediately from the computerization of existing land records. Even without modernization of laws and streamlining of registration processes, physical restoration and computerization would stop the loss of essential land records which are disappearing due to simple neglect, continual lack of financial resources, purposeful destruction or removal, and the ravages of the tropical climate.

In general, land registration processes either require fundamental legal reform, or financial resources to implement existing property rights laws. For those countries that have already put land adjudication, land tribunal and land registration legislation in place, they have already taken this fundamental legislative step. Typically what is essential and outstanding, and more important than financial resources, is the consolidation of political, public and professional services support to implement the legislation. Hopefully, an astute champion, well aware of the cross-disciplinary importance that land rights, land use and land information has on economic development, stands up and leads the process. Most often, a champion needs to be found and developed. Oftentimes fostering this personal development is where donor funds and communications with the private sector and universities are most useful.

4.6 Lack of Financial Resources Directed to Registry Operations and Maintenance

Registration fees are typically low and out of step with market prices. Furthermore, these fees and revenues are transferred directly to the central treasury, leaving the Registry Agencies to fight for budget from other non-revenue generating operations. Typically, the budget allocation from central treasury provides for salaries and, on occasion, supplies, but does not provide for the upgrading of services or proper security of documentation.

Even with low fees, registry offices typically generate a significant cash flow for the government purse. For example, in Guyana, where by all professional and anecdotal accounts the Deeds Registry is not functioning, the fees and revenues collected in 1993 amounted to the equivalent of over US$1,000,000, while the annual budget allocation to the Deeds Registry amounted to just over US$46,000 (Hendrix and Rockliffe 1998). There is no contradiction to this financial message. Obviously without more cognizance of the significance of real property systems, and the importance of the land registries as the backbone of these systems, land registry offices will continue to be under-staffed, poorly managed and unable to meet the needs of a modern society and to support a dynamic land market.

4.7 Institutionalized Obstacles to Maintaining the Land Registration System

(a) Collection of property tax through property transfer tax: In the absence of a private property tax, or an operational system, many jurisdictions attempt to capture portions of avoided property taxes at the time of sale. This is typically done through a property transfer tax. While the absence of a property tax itself results in land market distortions such as speculation and under-utilization of land, the use of a transfer tax provides a direct disincentive to register title and, in turn, has direct impact on the maintenance of the land registration system. In many countries, where properly registered title is not the norm, buyers and sellers take an informal route of property transfer to avoid the transfer tax. In other countries, such as Jamaica, where properly registered title is seen as desirable, buyers and sellers often collude to falsify the stated sales price and in-turn reduce the transfer tax due. Typically in these cases, the registration process is stopped for months or even years as the Title Referee, who is part of the Titles Office, requests an official government assessment of the property from the Valuations Department - who, of course have their own resource limitations and priorities. Certainly, we cannot fault the Title Referees from doing their job, but the message is to avoid institutionalizing incentives for property owners to either evade or subvert the registration process - as each unregistered transaction reduces the reliability of the registration system and in the end erodes the functioning of the land market.

(b) Subdivision Approval: In many jurisdictions subdivision approval is necessary prior to land registration. Given the critical lack of technical and financial resources at the local level devoted to subdivision code enforcement, subdivisions typically take place which, oftentimes providing for the highest and best use of the land, is not made official and remains informal. In these cases, the owner of the parcel may improve and beneficially occupy the land, but (s)he cannot secure a registered title. This results in the owner not being able to gain the financial, public services and social benefits of registered land ownership because a government agency, peripheral to property rights administration, is unable to perform its mandate.

5. DISCUSSION

Developing countries in all three regions (in fact globally) can be characterized by the prevalence of informal properties - that is, land parcels with no official documentation as to who “owns” or “occupies” the land and inadequate spatial information on the dimensions and extent of the parcel. In many cases this predicament has been caused by over-bureaucratic, expensive and cumbersome titling and registration procedures. In the ex-socialist countries the new systems put

in place to facilitate a private land market have not kept pace with the volume of transactions and in some cases the system and its benefits are not understood. The message to designers of modern land registration systems is to focus on removing disincentives, such as high registration costs and inaccessibility, and promoting tangible incentives, such as access to credit. The modernized formal system must out-perform the informal system, otherwise landholders will return to the latter system.

In all three regions simplified western property paradigms appear to be inadequate. The simplification of the property regime into private individual or communal cannot handle many of the land tenure situations found in developing economies. In particular, this is true in urban apartment communities in Central/Eastern Europe, in rural agricultural communities in Latin America, and in family land situations in the Caribbean. Related to this issue is the emergence of the "family" as the legal landholding entity. This raises questions as to who is included in this group? Should this include children who have reached a certain age? Should this include all descendants of an original titleholder or only living descendants still residing in the area or country? Property system designers should address the complexity that this introduces in maintaining a current record of right holders. Also, if only the head of household is formally registered as the "owner," how are the rights of women and children protected?

Many conflicts, and potential conflicts, are arising because of multiple claims to the same piece of land. This may arise because "ownership" is restituted to the owner prior to the transition to a socialist economy, or to an indigenous group with historical roots in the land. Fundamental changes in land policy inevitably result in such multiple claims. In the case of Latin America this has also been caused by titling campaigns driven by political motives, such as rewarding individuals, or members of a specific party, who have provided support in national elections. The rapid turnover in political administrations can result in several competing parties claiming the same piece of land with each party possessing a formal title sanctioned by the government of the day. Adjudication procedures should address the issues raised by multiple titles (all legally valid) to the same parcel of land.

In the Caribbean and ex-socialist countries there is a problem with missing landholders, that is those who have a valid claim to the land but cannot be found. In the Caribbean this has resulted from huge migrations from the islands to the US, Canada and the UK for employment purposes. In the ex-socialist countries this has been due to population dislocation and migration caused primarily by political upheaval and economic hardship. What rights do individuals have if they were overseas at the time of adjudication? Can they reclaim once they return to the country? What happens if their family has sold that land in the interim to another party or parties?

Institutions supporting land registration and other land administration functions have become paralyzed or extremely inefficient in countries where there is a history of private land markets. In the ex-socialist countries there were no such institutions as they began their journey back to capitalism in the early 1990s. In one sense, this "clean slate" may be regarded as a designer's heaven as it seemingly allows for more creative solutions. In fact, creating these institutions from the foundations up is arguably more difficult and complex. Not only are new institutional structures being created but brand new concepts are also being introduced. This paradigm shift brings unanticipated challenges to system designers. A society that has grown up without

property of their own have a very different perspective on property boundaries and private property concepts that westerners take for granted.

In Latin America, and to some extent in the Caribbean, one of the biggest challenges is to develop a linkage between the legal textual set of records and the cadastral spatial records. This breakdown in communication between these two offices results in the registry developing its own spatial parcel descriptions, which in most instances follow the historical method of describing the names of adjoiners. Not only is this inadequate, as discussed in the article, but it means that the description is duplicated. This confuses landholders and raises questions as to which is legally valid. USAID and the World Bank recently sponsored a workshop on this topic in an effort to seek effective strategies to deal with this problem (USAID/OAS 1999).

"Modernization" to many professionals means computerizing or automating the system. Clearly, we have interpreted this much more broadly, but one of the key opportunities that computerization offers is the conversion from paper records to digital records. Land registration systems that have existed for some time (many have records going back to the previous century) are all facing the problem that these records are disappearing through excessive use, moisture or from insects eating the paper. Ignoring the rash of computer viruses we have endured recently, digital records will improve the security in the system by creating a copy of the old paper record.

6. **CONCLUSION**

This article has summarized the key problems challenging the modernization of land registration systems in three broad regions of the world. It has also drawn together some of the disparate literature on this topic. In writing this article we were motivated by the belief that a treatment of the major problems would help those involved with modernization to ask the right questions. In addition, we hope to emphasize the futility of merely transferring models from the more developed market economies which have very different environments – culturally, institutionally, economically, technically and legally.

All three of the regions discussed in this paper have undergone land policy shifts that have led to the need to modernize their land registration systems. Underlying most of these modernization initiatives is the assumption that a free land market will facilitate economic development and ultimately lead to increased standards of living and better land management. As countries emerge from socialist or post-colonial administration, there is a need to continually re-examine this assumption and ascertain whether or not it holds up under the conditions prevalent in such regions as Central/Eastern Europe, Latin America and the Caribbean.

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