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**THE CARIBBEAN REGIONAL CADASTRAL SURVEY
AND LAND REGISTRATION PROJECT**

BY

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1975

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PREFACE

Each year the Overseas Development Administration (ODA) commissions a number of ex-post evaluation studies with two aims in mind; firstly, to assess the effectiveness of its aid activities and secondly, to learn lessons for improving the effectiveness of future aid activities.

This evaluation is one such study.

Evaluation studies are undertaken by individuals or by teams especially recruited for their particular knowledge with regard to the subject under study. Sometimes these teams will include personnel from ODA (increasingly teams are a mix of ODA and external personnel).

In all cases the reports and conclusions are attributable to the authors, who are finally responsible for their contents, and not to ODA.

Evaluation Unit
Manpower and Evaluation Department

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A. BACKGROUND

I. Registration of Deeds and Registration of Title

1. There has never been any uniform system of dealing with rights to land in the Commonwealth Caribbean. Basically there are two types of land registration system, which appear in different countries in various forms and combinations. These are :-

- (i) Registration of deeds
- (ii) Registration of title.

2. It is universally recognised that Registration of Title is superior to Registration of Deeds, mainly because the method of recording land rights does not depend so much on documents and human beings, which are subject to movement and mistaken identity, as on parcels of land affected, which are immovable, indestructible and precisely definable. Under the Registration of Title system a land register is produced, supported by a register map giving a clear description of the land, the state of ownership and other rights related to the land. The register is kept according to clearly defined units of land (parcels) grouped in blocks or sections defined on the register map and referred to by name and number in the register itself. The most important feature of the system is that the basis of the register is the durable land unit, not the temporary owner of rights in the land. Under the Registration of Title system, Government usually guarantees all rights shown on the Register, and if anyone engaged in a transaction on the basis of the information contained in the Register and incurred a loss because of fraud or a mistake in it, he is entitled to compensation. With such a land register in operation, there is no need to go back to the deeds to be sure of the title to land. The Register itself is the final authority on who owns what. Under the Registration of Title system, a title ensures security.

3. Under the Registration of Deeds system, rights to land are determined by private deeds. The deeds themselves do not guarantee the legality of land transactions that they record, they simply describe the transaction. They cannot provide indisputable land ownership rights and therefore they cannot provide security of title. The system, furthermore, is far more cumbersome and time-consuming to operate than the Registration of Title system - deeds, often going back several hundred years, have to be checked whenever a land transfer takes place. The deeds themselves are often vague in their description of property boundaries, and old deeds may refer to long-disappeared features in describing property boundaries. Survey plans were produced in some instances to support property transactions (where the value of the property justified the expense). In most cases however the work was not done to any set specification or tied into an overall survey

framework, and was open to challenge.

II. Land Registration Systems in the Caribbean

4. In the Caribbean there is a mix of land registration systems. All territories have had a system of deeds registration since the late eighteenth century, In some islands this remained the sole system for dealing with land ownership, while in others a kind of registration of title system was introduced in the late nineteenth century, and the two systems operated side by side. These old-fashioned Registration of Title systems are not to be confused with the modern Registration of Title system being set up in certain territories by the UK regional cadastral survey and land registration project. The fundamental difference between the two is that under the older system, registration of title was non-compulsory and initial title investigations to land were carried out sporadically, as and when landowners wished. Land ownership rights were established in Court and reference was not made to the ground. Often there was no related survey work to support the Register (and no maps) and, even where there was, co-ordination between the legal and survey processes was often weak or non-existent. Conversely, under the modern registration of title system (a) registration is compulsory, (b) coverage is 100% working area by area, (c) work is carried out on the ground, (d) supporting maps are produced. Although the early registration of title systems were an improvement on the earlier deeds system - basically because they simplified the process of title searches - they still suffered from many of the shortcomings of the deeds system. They could not guarantee indisputable title for land, while the system was still cumbersome and led to delays in land dealings.

III. The Regional Cadastral Survey and Land Registration Project in the Caribbean

5. The decision to go ahead with the on-going Caribbean regional cadastral survey and registration project was prompted by the findings of the 1966 Tripartite Economic Survey which recommended, *inter alia*, that cadastral surveys (or, as they should more properly be called, land registration projects) should be carried out in all the Eastern Caribbean dependencies and Associated States as part of a wide parcel of suggested reforms and programmes designed to further development. The T.E.S. emphasized that the uncertainty of legal rights to land, the exact boundaries of property, etc. was having an adverse effect on development. Two years later the Governor of the Bahamas, reporting in 1968 on the work of the C D & W Land Adjudication and Registration Project in the Turks and Caicos, also suggested that the work of setting up modern land registers be extended to other Caribbean dependencies (including the Associated States). He was supported by Dr Leach, the Survey Adviser in the Bahamas, and W.H. Young, the DOS Regional Survey Officer in the Caribbean. As a result of these recommendations, the ODM set up a regional technical assistance project in the Eastern Caribbean in 1970. It was envisaged that a team, consisting of a nucleus of UK staff, would be made available to work

territory by territory through the British dependent territories and Associated States in the area. Progress by the team can be summarised as follows:-

- (1) FVI - work will be completed by December 1974
- (ii) Anguilla - " " " " " mid 1975
- (iii) Caymans - " " " " " mid 1976
- (iv) Antigua - work is scheduled to start in mid 1975.

6. There have been demands for the services of the team from the Governments of Montserrat and the two Windward Islands, St. Vincent and Dominica, and interest has been expressed by St Lucia. A previous DOS Regional Survey Officer in the Caribbean, W H Young, is on record in 1969 as saying that to carry out a cadastral survey in each of the Associated States would be "a colossal exercise" and that it would make sense for the team to work in priority areas in these islands, rather than cover the whole island. With annual expenditure of UK technical assistance funds now running at around £200,000, the Development Division felt that the time had come, firstly, to re-assess the case for continuing with the cadastral survey and land registration project and, secondly, if that were proven, following W H Young's line of thought to determine whether the present island-wide approach should and could be replaced by a more restricted approach. Consequently in September 1974 the following terms of reference were drawn up by Development Division for an economic appraisal of the work of the project :-

Terms of Reference

1. To analyse the cost of performing a Cadastral Survey and to advise on the likely savings which could be achieved by confining it to selected areas.
2. To analyse the benefits arising from a Cadastral Survey in quantitative and qualitative terms, distinguishing the benefits to the public and private sectors. The analysis should include a study of the frequency, type and geographical distribution of dealings on the register.
3. To advise on the feasibility and desirability of restricting the Cadastral Surveys to those areas of the territory which have most developmental importance, and to propose criteria for selecting such areas.

7. In addition the ODM requested that a further point be considered, namely, the possibilities for recouping the cost of bringing land on the register, from those who will benefit therefrom. This aspect was duly looked at in the appraisal in addition to those points proposed by Development Division.

IV. The operations included in a cadastral survey and land registration project

8. As the process of establishing a land register and its associated terminology may not be familiar to the readers of this report - as was the case with the writer of the report before becoming involved in this study - this section will briefly summarise the stages involved.

(a) Preliminary Work

Investigations are made into existing land and survey records and estimates are made of the extra survey control and mapping that will be required. A preliminary report is written.

The appropriate land laws must be passed :

- (The Land Adjudication Law
- (The Land Survey Law
- (The Registered Land Law

The first law covers the systematic process of sorting out land ownership and extent in an area.

The second lays down the organization and control of surveys after land has been registered, eg. private surveyors doing land registry work have to be licensed and regulated.

The third covers the organization and operation of the land Registry (and generally amends, consolidates and simplifies existing land laws).

(b) Publicity

To explain the cadastral survey, adjudication and registration processes to government, professional bodies and the general public. Statutory notices of adjudication areas, sections and demarcations.

Time taken: 3-6 months.

(o), (d), (e) and (f): Demarcation, Surveying, Recording and Drawing are integrated processes. An average size area of about 5 sq.km. in a rural area takes 4-5 months to complete.

(o) Demarcation

Identifying on the ground by claimants the boundaries of each parcel of land claimed. This involves walking round each property and marking it out. Diagrams are drawn to show the shape of the land claimed, age and nature of boundaries - owner's names, claim numbers, rights of way, other interests (eg. leases, mortgages etc.) who were present are noted. A certificate is issued to the claimant, incorporating gathered information. Claimant takes the demarcation certificate and his documents, or other evidence of ownership, to the recording office. The demarcator resolves minor boundary problems and decides what survey work is required to show the boundaries on the index map.

(d) Survey (of boundaries)

The amount of survey depends on whether boundaries are wholly identifiable on the mapping, partly identifiable or where mapping is non-existent or out of date. Boundaries are surveyed, prior to their being plotted at stage (f).

(e) Recording

Completing an adjudication record form for each parcel of land by entering details of ownership and other interests.

NB. It has been found in the small West Indian islands, with the staff available to the project, that it is generally advantageous to combine the demarcation/recording work, i.e. the surveyor in charge of the demarcation unit is also responsible for recording within a specified zone of the section.

(f) Drawing

Production of data index sheets. Plotting up boundary surveys and ancillary details (eg. type of boundaries).

(g) Adjudication

Inquiries to settle disputes and/or petitions.

Time taken: an average inquiry is completed in one working day.

(h) Display

Periods during which the public can view adjudication records and demarcation maps for completed sections, after which these are sent to the Registrar.

Time taken: period varies according to the law (2-3 months).

(i) Registration

First registration is achieved by the transcription of property, ownership and other details of each parcel from the adjudication records to the Registers: opening parcel files, indexing proprietors and other interested persons.

Time taken: about one month for average size section.

(j) Appeals

Appeals to the Court against first registration are allowed within a limited period; restricted to points of law or procedure.

Time taken: appeals usually take a short time (2-3 hours) but delays in hearing appeals of more than a year have been experienced.

(k) Maintenance

Up-dating of registers, index maps and parcel files, etc.

The project is directly responsible for (a)-(h) and is also available to advise on (i) and (k).

V. Cadastral Survey Methods

9. Cadastral surveys are undertaken in order that plans can be prepared to support the Register, which will define unambiguously parcels to be entered in the Register. There are various ways in which parcels of land can be surveyed, depending on the degree of accuracy which is required, but there are basically only two main surveying systems, one based on topographical detail and the other based on monuments. Under the first system, physical details of hedges, walls, streams are used to define property boundaries. Large scale topographical maps are produced, by photogrammetric methods and by simple field methods, which are used in the preparation of property index maps. Explanatory maps are entered on the index maps where property boundaries do not coincide with the physical detail shown on the maps. Under the second system, properties are defined by mathematically co-ordinated monuments. The surveyor places monuments on the ground which precisely delineate the parcel--monuments are placed at all changes of direction of boundaries. He undertakes sufficient survey by triangulation or traverse, or by more simple survey methods, to be able to derive unique co-ordinates for the monuments. Bearings and distances between monuments and the area deduced from the co-ordinates are given. A property boundary map is produced from the

survey, showing all the monuments and the boundaries between monuments. Within these two alternative survey systems, the actual surveying can be to varying degrees of accuracy. The degree of accuracy is determined by the precision with which a control point could be re-positioned by a subsequent survey - to within plus or minus 5 centimetres in the most extreme case, to within three feet in less extreme cases.

10. In the Caribbean the cadastral survey and land registration project is registering land under the first system. The main advantage of this system is that it is considerably cheaper than the monument system. Within the topographical detail system the standards of survey vary within islands, according to various factors, eg. the need to set a realistic standard of survey related to the value of land, the desire to speed up initial registration to get all properties on the Register and to introduce better standards for subsequent subdivisions of parcels. It is not the intention of the project to survey property boundaries to high levels of accuracy - rather the purpose is to provide an index of land ownership rights. Where individual properties have already been surveyed, by private surveyors, the boundaries can be recorded on the Register as firm boundaries to the degree of accuracy to which the land was surveyed. Where landowners have not had their properties' boundaries surveyed, the project establishes boundaries to within three feet. If a landowner subsequently wishes to have a more accurate survey of his property carried out, he is at liberty to do so.

11. It is not the intention of this paper to comment on the methods and standards of surveying to which the project is working. This section on cadastral survey methods is simply meant to be informative, and complementary to Section IV.

B. AN ECONOMIC APPRAISAL OF THE CADASTRAL SURVEY AND LAND REGISTRATION PROJECT

12. In part B of this paper the pre-conditions which should exist in order that land registration will be of some benefit to an economy are spelled out, the conditions that are necessary for the successful operation of the land register are listed, and the benefits that can accrue to the individual landowner and to the Government are itemized. These points are taken from a paper entitled 'The Role of Land Registration in Developing Countries' by H W West, of the Department of Land Economy at Cambridge University. The paper then goes on to see to what extent these points apply to the three islands visited, Turks & Caicos, Caymans and Antigua. In the case of the Turks and Caicos an attempt is made to do a cost benefit analysis of the land registration project. In the cases of the Caymans Islands and Antigua the appraisal concentrates on trying to define priority areas and estimating the cost of restricting the project to those areas rather than cover the whole island, and attempts only a simple calculation of expected annual benefits which would follow from the introduction of registration of title.

13. The Preconditions for Registration of Title

Where most of the following conditions hold, there will be some benefit to the economy from the introduction of registration of title.

1. Where actual or potential land values are high and/or rising;
2. The development of a market in land;
3. Where insecurity, uncertainty or inadequacy of title to land is holding up development;
4. Where there is a high incidence of litigation concerning land;
5. Where there is an increasing number and complexity of land rights;
6. Where some form of planning is contemplated;
7. Where there is a need to establish a credit base;
8. As an aid in the introduction or improvement of systems of taxation based on land.

Conditions Essential for the Success of the Land Register

1. Landowners and interested parties must generally understand and support the introduction of registration;
2. Actual or potential land values must be high enough to warrant the expense;
3. Property rights and property boundaries must be clearly recognisable and definable;
4. Government must be prepared to maintain the Register.
5. Survey and Registry staff of requisite ability must be available.

The Benefits from Registration of Title

A. Benefits to Individual Landholder

1. Greater confidence and sense of security;
2. Dealings in land can be carried out more reliably and cheaply;
3. The reduction in the possibility of loss, fraud or mistake;
4. Absentee and reversionary interests and restricted right holders are protected;
5. Defects in title may be finally cured;
6. Land owners may become credit-worthy.

B. Benefits accruing to Government

1. The efficiency of Government is improved in many ways :-
 - (a) The collection and assessment of rates and/or land taxes is facilitated;
 - (b) The prevention of duplication and confusion when several public utilities or government departments keep their own records and carry out their own ad hoc surveys;
 - (c) The unequivocal identification of government lands;
 - (d) The responsibilities of Government under physical planning legislation can be exercised with greater confidence and expedition.
 - (e) Provides machinery for control of land dealings.

The Turks and Caicos Islands

The Land Registration System prior to the Introduction of Registration of Title

14. Prior to 1855 land was mainly held under licence from the Chief Magistrate, although grants of land had been made in the 1790's to American loyalist families.

After the 1855 law, grants of land were made to anyone either having a licence or applying for a grant, after the payment of certain fees. Applications for grants were a voluntary measure and many people did not take advantage of the provisions offered under the law. The Crown Lands Ordinance of 1896, therefore, attempted to overcome the shortcomings of the earlier law by making it compulsory for land occupiers to petition for a Crown grant (if they had not already done so). From the early 1900's to 1919, when a qualified surveyor was working in the Turks & Caicos, rights to land were recorded efficiently under a Registration by Deeds system, and supported by high standard survey work. Unfortunately incompetence in the Crown Lands Department, especially in failure to record subsequent land transactions, quickly led to chaos after the surveyor's departure. Transfers of private land obtained under a Crown grant often took place on a receipt basis, or even verbally, as registration of transactions was not compulsory. The Deeds Registry and the survey and land records became more and more incomplete over time.

15. The main causes of title confusion in the Turks & Caicos can be identified as :-

- (i) the absence of a uniform standard of conveyancing;
- (ii) the lack of trained surveyors to undertake survey work on subdivisions of land parcels;
- (iii) delays and neglect in registering land transfers;
- (iv) the absence of any form of land roll or rent roll which would require, at least, an annual statement of ownership;
- (v) the destruction of land marks over time - used in boundary surveys - by wandering stock, hurricane and tidal waves.

The Preconditions for the Introduction of Registration of Title

16. By the 1960's land and survey records were in a mess and land ownership rights were in some confusion. However at the time that it was decided to establish a land register in the Turks & Caicos, very few of the preconditions for the introduction of registration of title, given in paragraph 13, held. Actual land values were low, around £20 per acre on the main island and £2 per acre on the furthest inhabited island, although it was hoped to attract foreign capital into the islands and to develop a tourist industry. It was hoped that once the development of tourism got under way land values would rise. The potential value of the land was felt to be dependent on the success of the Turks and Caicos Government in stimulating the development of tourism. The scope for any other sort of development was felt to be limited - the islands are too dry, and their soil too poor, for agricultural development on a commercial scale. The salt and sisal industries were finally closed down in the 1960's because they were uneconomic, and it was hard to see any other industries taking their place. The introduction of a land register was therefore recommended in order to attract outside investors into the islands, by showing them that the land laws in the Turks & Caicos were the most simple and most efficient in the Caribbean, and hence land transactions could be carried out quickly, cheaply and with complete security of title. Therefore,

while insecurity and uncertainty of title to land was not actually holding up development, the new Register was seen as the major incentive to private developers that Government could offer.

17. In the 1960's the numbers of dealings in land were very low. From 1962 to 1965, for example, there were 23 land transfers per annum on average. Almost all of these were what is known as deed of gift - in other words land was being transferred free and not sold. Most of these transactions would take place between members of a family, from father to son, uncle to nephew, etc., and some reflected the settling of debts to shopkeepers. It is true to say that prior to the small beginnings of the tourist industry there was no real market in land in the Turks & Caicos Islands. Land had a low value, and rarely changed hands for money. During the 1960's there was almost no litigation over land, as one would expect in an economy where agricultural land was plentiful in relation to the needs of the population, there was no shortage of land for urban development, and land values were low. There were some long-standing disputes over land, especially in the Caicos Islands, but the absence of lawyers and the necessity to go outside the Turks and Caicos Islands for a hearing put the costs of litigation outside the pockets of most landowners. Land litigation, as against squabbles over land, cannot be said to have been a problem in the Turks and Caicos prior to the introduction of a land register.

18. The establishment of the land register was never seen at the time either as an aid in the introduction of land taxation in the islands, or as an aid to future physical planning. However should the Turks and Caicos ever want to introduce land taxation, they would be able to do so far more quickly, cheaply and easily than they could without the existence of the register. Also the work of the UN physical planner, now preparing land use plans on Providenciales, while having completed plans for Grand Turk, South Caicos and Salt Cay, is facilitated by the existence of large scale maps of the territory.

19. And finally, local people had very limited access to credit funds prior to the setting up of the land register, and the volume of borrowing was very low. The first commercial bank did not establish itself in Grand Turk until 1966 because the anticipated volume of business was too small - the credit rating of the private sector was too low to generate much business. In this sort of situation one would expect the granting of Government guaranteed title to land to have a significant effect on bank lending, and this is in fact what happened.

20. The five points given in para 13 as essential conditions for the success of registration of title existed. Both the Government and the people supported its introduction, and the Government was also prepared to see that the Register ran efficiently once it was established, and to allocate sufficient funds for it in the recurrent budget. Staffing of the Registry presented no insurmountable problem, although the Survey Department has to rely on technical assistance to fill the

Chief Surveyor's post, and will do so for the foreseeable future. In the Caribbean the concept of individual and family rights to land is well-established; the land ownership patterns common in Africa, eg. tribal land, land used periodically by nomads, which create problems for the establishment of modern land registers, do not exist in the Caribbean. It is therefore a relatively easy matter to establish rights to property and define property boundaries. Although actual land values were low at the time the setting up of the land register was being planned, the main objective was to get all parcels on to the Register as quickly as possible before development took place and got out of hand. Potential land values were thought to be - and this was justified by events - far higher than the levels then prevailing. During the period 1966 to 1970 land prices climbed from £20 per acre to £1000 per acre in the main island, Grand Turk, and from £2 per acre to £500 per acre in the furthest inhabited islands.

Appraisal of the Economic and Fiscal Effects of Registration of Title

Dealings on the Register

21. Table I shows the relevant transactions that have been recorded in the land register since its inception to October 1974, broken down by type of transaction and by island.

| <u>Number of Dealings</u> | <u>Type of Dealings</u> | <u>Geographical Distribution</u> |
|---------------------------|-------------------------|----------------------------------|
| 234 | Deed of Gift | All islands |
| 1000 | Transfer of Land | All islands |
| 800 | Lease | All islands |
| 400 | Caution | Mostly Grand Turk |
| 600 | Charge | Mostly Grand Turk |
| 300 | Variation of Charge | Mostly Grand Turk |

Glossary of Terms

- Deed of Gift - the free transfer of land from one person to another.
- Transfer of Land - the sale of land and consequent transfer of ownership.
- Caution - used by holders of unregistrable interests to protect their interests, eg it is used by a bank to protect equitable mortgages or bank overdrafts - it is also used extensively to protect private interests such as agreements for sale. When a caution is placed on the Register, it prevents the landowner from engaging in dealings re his land without notice to the cautioner.
- Charge - a registrable interest in land securing a loan or a legal mortgage.
- Variation of Charge - this is noted on the Register when an additional loan or an extension of the repayment period is negotiated with the bank.

22. The volume of transactions on the Register over approximately a six-year period is considerable for a territory with a total population of only 5,000. The dealings on the Registry reflect clearly the flurry of activity that has occurred as a result of the small land boom which began in the late 1960's and is continuing today. In the 1960's no land sales are recorded in the Deeds Registry.

In the last six years there have been 1000 land sales. This number will largely reflect the activity of the real estate companies, especially on Providenciales, where extensive areas of land have been bought by Provident Ltd. and Blue Hills Ltd., but land has also been bought on South Caicos by the Caicos Holding Company, on North Caicos by Seven Cays Ltd., and on Pine Cay. The real estate companies then subdivide their land and sell individual plots to North Americans, as sites for holiday or retirement homes. The number of plots which have been sold on a hire purchase basis rather than sold outright is not recorded on the Register. No transfer of ownership is deemed to have taken place until the plot is completely paid for and consequently the transaction does not qualify as a dealing from the Register's point of view. Outright sales from the real estate companies to North Americans are recorded under the dealing on the Register, Land Transfer. Some land has been leased to real estate companies rather than sold. There are 800 leases recorded on the Register, which refer partly to land leased to these companies, but also to land leased to local people, as is elaborated below.

23. There has also been a small boom in private house building by local islanders since 1969, which is also reflected in the transactions recorded in the Register. The Government, in the late 1960's, was determined to ensure that local people should not be put at a disadvantage by rising land values, and be priced out of the land market. They therefore decided to lease undeveloped Crown land in certain areas to people who wanted to build a house, at very modest rents, and to grant freehold title to the land, at a nominal price, as soon as the house under construction had reached an agreed stage. The house building that has occurred in the last five years has been largely concentrated on Grand Turk and South Caicos. On Grand Turk between 30 and 40 houses have been built at the Palm Grove estate, just outside Cockburn Town, while on South Caicos houses are being constructed at the Victoria Layout and the Basin Wells Layout, both just outside Cockburn Harbour. There are probably about a dozen houses on each estate in South Caicos to date. In other areas direct sales were made to squatters who already had simple houses built on the land, again at nominal cost. These local dealings in land, as distinct from activity by real estate companies, have helped to swell the numbers of transactions recorded under the two headings, transfer and lease, although the main body of these dealings is accounted for by the companies.

24. The third major area of interest revealed by the Register is the sizeable volume of credit that has been created along with the creation of the Register. The relevant headings to look at in this context are charge (plus variation of charge) and caution. The number of charges recorded on the Register will reflect the number of legal mortgages and medium-sized loans advanced by Barclays bank to the private sector. The bank normally places a charge on the Register when it advances credit of more than £2000 to £3000. The Register shows that some 600 medium-sized loans have been advanced by Barclays bank over the last five years -

- the average size of these loans is estimated by Barclays as around £5000.

Barclays bank places a caution on the Register when it advances small loans (average size £1000) to the private sector, either in the form of equitable mortgages or bank overdrafts. However, cautions are also entered on the Register by anyone who wishes to protect their unregistrable interests. In the absence of better information, it is assumed that half of the cautions placed on the Register refer to activity by Barclays bank and the other half refer to private interests. On this assumption some 200 small loans have been made available by Barclays to the private sector since 1969.

25. Finally, the Registry shows that there have been 234 deeds of gift throughout all the islands since 1969, around 45 per annum, compared with 23 p.a. from 1962-65. However recording of land transfers is now universal - before the establishment of the Register this was not the case. In 1967 there were 116 land transfers recorded under the registration of deeds system, as people rushed to record dealings in land that had taken place but had never been registered, so as to protect their interests before the land registration exercise got going in a big way. The number of land transfers recorded in 1967 represents almost entirely the amount of under-recording of land transfers over the previous ten or so years. The actual number of land transfers between local people would appear to have hardly altered with the establishment of the Register.

Benefits

26. The establishment of the Register has led to significant quantifiable benefits, as well as a number of non-quantifiable benefits. The benefits are discussed in turn below.

1. The Stimulation of a small land boom

27. The key question to ask is - to what extent was the replacement of registration by deeds by registration of title an inducement to foreign real estate companies to buy tracts of land in the Turks and Caicos, and what part was played by other factors? And having settled that difficult question, the next query that springs to mind is - how has the land boom benefited the economy of the Turks and Caicos Islands?

28. Many people I spoke to in the Turks and Caicos emphasised that the knowledge that a land register was to be set up was a crucial factor in stimulating interest among several real estate companies in the islands. In fact the largest company, Provident Ltd., are actually supposed to have said that they wanted confirmation that a land register would be established before they would consider buying land in the Turks and Caicos. On the other hand, land was very cheap in the Turks and Caicos up till the late 1960's, while land prices in the neighbouring Bahamas were much higher. It seems a plausible argument that relatively cheap land prices were an equally important factor in attracting real estate companies into the islands, in the early stages of the land boom. However once land prices started to rise, which they did quite spectacularly over a short period, then the

relative importance of the uncomplicated land ownership system, in attracting foreign capital into the islands, must have also risen. The Turks and Caicos had to try and sell itself to overseas companies because, while it had attractive beaches to offer the tourist, it had little else. It is much less accessible to North America than the Bahamas which is probably the main group of islands with which it is competing for foreign capital, and it needed therefore to have that slight edge on the non-developed Bahamian islands. Its lower land prices plus its simple, straightforward land registration system appear to have given it that edge. It seems true to say that the setting up of the land register both hastened the start of the land boom - some land sales would surely have taken place sooner or later under the old deeds registration systems - and accentuated it, as it gave it an impetus it might not have had under a deeds registration system.

29. How has the land boom helped the Turks and Caicos economy? My impressions from visiting the various islands in the Turks and Caicos group are that the real estate development is very much a self-contained operation with an extremely small spin off effect on the rest of the economy. The activities of the real estate companies have had very little impact on the employment situation and a negligible multiplier effect on the demand for goods and services within the economy. The major immediate economic benefit has been synonymous with the financial benefit to the Turks and Caicos Government. Revenue from land sales, land rentals and stamp duty on land transfer dealings, as recorded in the Estimates, overwhelmingly represents a transfer of funds from foreigners (real estate companies) to the local economy. A very small proportion of revenue from land sales or rentals comprises a transfer of income within the economy, partly because the number of such transactions involving local islanders is a small proportion of the total number of such dealings, but more important, because of the preferential price charged to local people for the sale or lease of Crown land. In the case of stamp duty, the same percentage of revenue is assumed to be accounted for by transfers within the economy, from the private sector to Government account, as is assumed for revenues from land sales and rental, is a large share of the total will represent duties raised from transactions carried out by overseas companies. Government income from dealings in land therefore represents an inflow of funds into the Turks and Caicos over and above what would have occurred in the absence of a market in land developing. Table II below shows the total income accruing to Government over the period 1967 to 1974 resulting from the land dealings. Some adjustment to the figures in order to measure the economic benefit from land registration as against the fiscal benefit is made in Table III.

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TABLE II

| <u>Year</u> | <u>Land Rentals and Sales</u> | <u>Stamp Duty</u> | <u>£ Total Revenue</u> |
|-------------|-----------------------------------|-----------------------|--------------------------------|
| 1967 | 134 | 330 | 460 |
| 1968 | 12,927 | 2,733 | 15,660 |
| 1969 | 28,295 | 8,265 | 36,560 |
| 1970 | 30,956 | 15,480 | 46,436 |
| 1971 | 30,641 | 17,562 | 48,203 |
| 1972 | 31,469 | 41,130 | 72,599 |
| 1973 | 20,294 | 30,414 | 50,708 |
| 1974 | 27,530 | 39,580 | 67,110 |

30. During the period 1967 to 1974 the currency of the Turks and Caicos Islands changed from the £ sterling (the official currency up to and including 1968) to the Jamaican dollar (1969-1972) to the US dollar introduced in 1973. All costs and benefits in this appraisal are converted into the £ sterling at the following exchange rates - J.\$2 = £1, US.\$2.4 = £1.

31. In order to convert Government revenues, as presented in the estimates, into economic benefits to the Turks and Caicos economy, it is necessary to make a number of adjustments to the figures in Table II.

32. Column 1 refers to revenue received from both local people and overseas real estate companies. In 1968, the only year in which revenue from these two sources was separated out in the Estimates, revenue from local people only accounted for around 5 per cent of total revenue from land rental and sales. In the absence of better information, this figure is taken as representative of the proportion of total revenue made up of local revenue throughout the period under review. In view of the concessionary terms offered to local people, the ratio is probably not far out. Assuming that the land register was a major factor in stimulating the growth of a commercial land market, 50 per cent of the income received from real estate companies is ascribed to the pull of the register. This is another way of saying that in the absence of the land register, under a registration by deeds system, about half the land sales that have taken place would have occurred. This is obviously a rather arbitrary assumption, and one that is not easy to defend. However it is apparent that the existence of registration of title was a major influence in stimulating the land boom, and ascribing 50% of actual land sales to its existence is simply an attempt to measure its impact in a rather crude fashion.

Column 2 refers to a composite grouping of revenues consisting of stamp duties, office fees and company registration fees. When these three items were first shown separately in the Estimates, in 1973, office fees comprised 6% of total revenues under this head and company registration fees comprised 18% of revenues. In order to estimate the economic benefit derived from the land boom that can be ascribed to the existence of the land register, the figures in column 2 for the years 1968-1972 are first reduced by 24 per cent - so that they only refer to stamp duties proper, then figures for all years are reduced by 5 per cent, so

that duties received from local people are eliminated, and are then reduced by a further 50 per cent, so that the remaining figure reflects only the additional stamp duty raised from overseas sources as a result of the existence of the register. Table III shows the economic benefits which take the form of extra Government income, from 1968-1974, that are directly a result of registration of title.

TABLE III

| Year | I Land Rental | II Stamp Duty | III Total Revenue | £ |
|----------------------|------------------|---------------------|-------------------------|---|
| 1968 | 6,140 | 987 | 7,127 | |
| 1969 | 13,440 | 2,983 | 16,423 | |
| 1970 | 14,704 | 5,588 | 20,292 | |
| 1971 | 14,554 | 6,340 | 20,894 | |
| 1972 | 14,948 | 14,848 | 29,796 | |
| 1973 | 9,640 | 14,447 | 24,087 | |
| 1974 st) | 13,077 | 18,800 | 31,877 | |

33. Additional overseas private funds which have flowed into the Turks and Caicos Islands from 1968 to 1974, as a result of the establishment of the land register, are estimated at £150,496 - say £150,000. This is a significant sum over a seven year period for a small territory like the Turks and Caicos. It seems that the Government is now receiving between £20,000 and £30,000 in additional revenue each year, which it would have foregone in the absence of registration of title.

2. Increased Credit Availability

34. Barclays Bank opened a branch office on Grand Turk in 1966. Before the land register was set up Barclays was in business in a very small way. Bank lending was restricted to people in Government employment who, because they had very little that they could offer in the way of collateral on loans, were generally restricted to borrowing small loans of less than \$1000. If land registration had not taken place, Barclays bank would almost certainly have remained a branch of the head office in Nassau, because the volume of business would have remained very small. However, since 1970 Barclays has advanced considerable sums of money to the private sector. With the advent of registration of title, landowners are able to offer their land as collateral on loans. Those landowners who are also in receipt of a regular income are now able to borrow much larger sums of money from the bank than previously - loans of more than \$5,000 are not unusual. However those landowners who do not earn regular incomes are not in a position to raise a loan from the bank. Barclays calls these people "the land-poor" and, as the bank would only take a debtor to Court for non-repayment of a loan in the most extreme circumstances - it much prefers to rely on the fact that a charge or caution has been lodged on the Register against the borrower's property as encouragement enough to prompt people to pay - the land-poor are not considered credit-worthy by the bank.

However a large section of the population can meet the stipulations laid down by the bank - there are 800 civil servants in Turks & Caicos alone, as well as other salaried employees working for the American bases and Cable & Wireless, hotels, etc. Since 1970 Barolays has made some 200 small loans - the average size of which they estimate to be around \$1000 - and some 600 larger loans, the average value of which is probably around \$5000. Multiplying these figures by the appropriate entries on the Register reveals the astounding fact that Barolays has made loans available to the private sector over a 5-year period of approximately \$3.2 million

$[200 \times 1000 = \$200,000, 600 \times 5000 = \$3,000,000]$. Even if the manager of Barolay's bank has over-estimated the average size of loans made to Turks islanders; even if he has over-estimated by a factor of two and the inflow into the economy of credit funds was only \$1.6 million, this is still a large sum of money in the context of the Turks & Caicos Islands. Table IV below shows an estimated breakdown of loan advances on an annual basis over the period 1970 to 1974, based on advice given by Barolays.

| Year | \$m | £m |
|-------|-----------------|---------------|
| 1970 | 0.3 | 0.125 |
| 1971 | 0.5 | 0.208 |
| 1972 | 0.5 | 0.208 |
| 1973 | 0.8 | 0.333 |
| 1974 | 1.1 | 0.458 |
| Total | <u>\$3.2 m.</u> | <u>£1.332</u> |

35. If Barloays bank had remained a branch office offering small loans to the private sector in the absence of what they would consider to be adequate collateral, total loans to the private sector would probably have fluctuated between \$100,000 and \$200,000 p.a. Additional credit made available to the private sector as a result of the establishment of the land register is probably in the order of \$2.2 million to \$2.7 million from 1970 to 1974 (£0.9 million to £1.1 million). Almost all of this money has gone into private house construction or improvements, in the absence of other investment opportunities in the economy.

3. Cheaper Conveyancing Charges

36. Because relatively little land changes hands between islanders, one would not expect the reduction in conveyancing charges to represent a significant saving in costs to the economy. The reduction in conveyancing charges enjoyed by the real estate companies is not considered in itself to be a benefit to the Turks and Caicos Islands. Any benefit to the economy of the latter is represented by the fact that the companies are attracted into the islands, and this will manifest itself in additional government revenues, as discussed under the land boom section. There have been 234 deed of gifts recorded since the inception of the Register and it is estimated that there have probably been a similar number of land sales from Government to local people (sales to squatters, sales to householders) plus a very small number of sales between local people. There have probably not been more than 500

transfers of land ownership (including deed of gift) between local interests from 1969 to 1974. In the Turks and Caicos Islands the lawyers charge a minimum fee for conveyancing work of \$25, compared with estimated minimum fees of \$75 to \$100 in the Bahamas for similar (low) value land. The Bahamas have no registration of title and so the difference in fees could be said to represent the savings resulting from registration of title. Total saving over the period would therefore be between \$25,000 and \$37,500 (£10,420 and £15,625) or \$4.167 (£1,736) and \$6,250 (£2,604) per annum. To the extent that not all people would have bothered to go to a lawyer before the land register made recording of dealings compulsory, these figures may represent a slight over-statement of the benefits resulting from registration of title.

4. Other Benefits

37. The pressure of demand for land was never so great in the Turks and Caicos Islands as to lead to many quarrels over land. No land litigation cases were brought to the Courts in the 1960's, although there were some individual feuds over property rights, conducted at the personal level. Reduction in litigation concerning land, one of the major benefits in many countries, is not a relevant factor in the context of the Turks and Caicos Islands.

38. There will have been a small increase in Registry fees following the establishment of a land register, as a result of the increased number of dealings. The actual sum involved will be very small - at \$1.10 fee per recording and with an estimated extra 1000 dealings per annum, the additional revenue would be only \$1100 p.a. (£458).

39. Turning to benefits which by their nature cannot have a monetary value ascribed to them, a principal benefit derived from registration of title is the protection of rights of the individual. While the Register is being compiled it is easy for Government to formalise existing land ownership patterns, eg. to grant formal title to land to people who previously simply enjoyed customary use of it, hence giving them security of title. In the Turks and Caicos, as in other islands, people were commonly living on the land without being able to prove legal title to their plots. Once land values begin to rise there is always the danger that those people (or companies) able to afford the most expensive legal advice would be able to move other people, who could not prove title to their land in a court of law, off the land. This is in fact what happened in the Bahamas, people who had enjoyed the use of the land over a long period of time had to forfeit all claim to it when the land speculators moved in. This could not happen in the Turks and Caicos because all landowners now have guaranteed title to their land.

40. A final point to consider is the potential benefits of land registration which are not being realised by Government. Government has benefited from the introduction of registration of title, in the form of extra revenues (see Table III) and from the establishment of an efficiently-run department. However, potential revenues are being lost each year, because Government is reluctant to increase stamp duties on land transactions and registry fees on recorded dealings, or to

introduce a land tax or land rating system. Registry fees are very low - \$1.10 per dealing recorded on the Register - and are not even covering the recurrent cost of maintaining the Register. Given that stamp duties are the only form of direct taxation, they could also be increased from their present rate of 2½% on transactions below \$5000 and 5% on transactions of \$5000 and above. The Register provides an inventory of land ownership patterns, and it would be administratively easy, and cheap, to introduce some land taxation system.

5. Costs

41. The capital cost of setting up the land register in the Turks and Caicos was approximately £117,000. This sum includes (a) that part of the initial mapping costs that would not have been incurred in the absence of the cadastral project (b) expenditure under the initial C D & W scheme from 1966 to 1968 (c) expenditure by the Land Registration and Survey Department from 1969 to 1975 - 100% of departmental expenditure in 1969 and 1970, 95% of expenditure in 1971 and 25% of expenditure from 1972 to 1975. The figures for capital expenditure by the Land Registration and Survey Department on finalizing the establishment of the Register are derived from advice given by James Wright, ex-Chief Surveyor in the Turks and Caicos Islands until earlier this year, on the percentage of time spent by that department on land registration matters. While it is acknowledged that landowners will also have borne some costs in the adjudication and registration stages of the project - both in terms of time and money - eg. lawyers' fees for putting in claims for each piece of property, marking of boundaries, registration fees etc., in the absence of knowledge as to exactly what these costs were in the Turks and Caicos, they have been excluded from the costings. They will have been a very small proportion of the total costs of establishing the Register. The cost of maintaining the Register is calculated in a similar manner. Table V below brings together the total estimated costs of establishing and running the Register from 1968 to 1975 and the estimated benefits over the same period (no figures have been calculated for benefits in 1975).

| | TABLE V | | | | | | | |
|--|---------------|--------|---------|---------|---------|------------|---------|--------|
| | 1966- 1968 | 1969 | 1970 | 1971 | 1972 | £ sterling | | |
| | | | | | | 1973 | 1974 | 1975 |
| <u>Capital Costs</u> | | | | | | | | |
| CD&W scheme | 35,000 | | | | | | | |
| Initial mapping | 7,500 | | | | | | | |
| Expenditure by Land Registration & Survey Dept | | 21,023 | 16,731 | 5,588 | 6,904 | 7,448 | 8,379 | 8,854 |
| <u>Recurrent Costs</u> | - | - | 2,786 | 11,177 | 13,808 | 14,895 | 16,758 | 17,703 |
| <u>Total Costs</u> | 42,500 | 21,023 | 19,517 | 16,765 | 20,712 | 22,343 | 25,137 | 26,062 |
| <u>Benefits</u> | | | | | | | | |
| Increased Govt. Revenue | 7,127 | 16,423 | 20,292 | 20,894 | 29,796 | 24,087 | 31,877 | - |
| Increased Credit | - | - | 83,000 | 166,000 | 166,000 | 292,000 | 419,000 | - |
| Savings in Conveyancing Charges | - | - | 2,600 | 2,600 | 2,600 | 2,600 | 2,600 | - |
| Extra Registry Fees | - | - | 458 | 458 | 458 | 458 | 458 | - |
| <u>Total Benefits</u> | 7,127 | 16,423 | 105,892 | 186,894 | 195,796 | 316,087 | 451,477 | - |
| <u>Net Benefits</u> | -35,373 | -4,600 | 86,833 | 170,587 | 175,542 | 294,202 | 426,798 | - |

42. The overwhelming conclusion to be drawn from Table V is that, on the assumptions taken in the appraisal concerning the importance of the Register in influencing events, benefits far outweigh costs. Even if much less weight is given to the influence of the Register in increasing Government revenues and increasing credit availability to the private sector, its beneficial effect on the economy would still remain considerable. The general conclusion of an appraisal of the economic effects of registration of title in the Turks and Caicos Islands must be that it has stimulated activity and benefited the economy considerably.

The Cayman Islands

An Analysis of the costs of a Land Registration project

43. The chief purpose of visiting the Cayman Islands was to analyse the costs of undertaking a cadastral survey and registration project in order to estimate what was the proportion of fixed to variable costs, and hence the likely savings which could be achieved by confining the cadastral survey and registration project to selected areas. The following appraisal looks at the cost implications of restricting the work of the project to the western half of Grand Cayman (which includes Georgetown and environs plus West Bay and Seven Mile Beach) and excluding the eastern half of Grand Cayman, Little Cayman and Cayman Brac. The western half of Grand Cayman is assumed to be synonymous with the area of greatest developmental potential in the territory. The cost figures used in the appraisal were very kindly calculated by Mr Howells, the Project Manager of the cadastral survey and registration project in the Caribbean.

The overheads of the project consist of :

- (a) initial mapping work undertaken by DoS ... £5,000
- (b) visits by the project manager, initial publicity, setting up office, preliminary survey work, and the training of local staff. This was estimated to have been £34,424, broken down between :

| | |
|--------------------------------|---------------|
| equipment | £ 3,785 |
| local costs (mainly staff) | 7,761 |
| UK costs (printing, publicity) | 3,478 |
| salaries, UK staff | 19,400 |
| | <u>34,424</u> |

The cost of the initial pilot project (registration of 120 parcels, dealing with 155 claims and 8 petitions) is included in the overhead costs.

44. The cost of surveying and registering parcels of land in West Grand Cayman, excluding the overhead costs of the project, was estimated to be £161,024. This

cost estimate was calculated by taking total project expenditure from October 1972 to August 1974, when the team was working simultaneously in West Grand Cayman and in Cayman Brac, and subtracting costs attributable to work in Cayman Brac and the overhead costs of the project from total project expenditure. The total cost of establishing registration of title in the Cayman Islands is estimated to be £529,000. The cost of surveying and registering parcels of land in the eastern half of Grand Cayman, in Cayman Brac and in Little Cayman is estimated as £329,000 ie. -

| | | | | | | | | | | |
|--------------------|----------|-------|----------------|---------|-------|-----------------------------------|----------|--------|-----------------------------------|----------|
| total project cost | £529,000 | minus | overhead costs | £39,000 | minus | cost of work in West Grand Cayman | £161,000 | equals | cost of work in rest of territory | £329,000 |
|--------------------|----------|-------|----------------|---------|-------|-----------------------------------|----------|--------|-----------------------------------|----------|

45. Table VI shows the comparative (variable) costs of establishing registration of title in what has been defined as the priority and non-priority areas of the Cayman Islands.

Table VI

| <u>Area</u> | <u>Total Number of claims/parcels</u> | <u>Total land area, sq.km</u> | <u>Cost per parcel</u> | <u>Cost per sq. km.</u> |
|-------------------------|---------------------------------------|-------------------------------|------------------------|-------------------------|
| West Grand Cayman | 5295 | 41 | £30.4 | £3927 |
| Total non-priority area | | | | |
| of which: | <u>8076</u> | <u>206</u> | <u>£41.0</u> | <u>£1523</u> |
| Midland (Grand Cayman) | 3000 | 100 | | |
| East End (Grand Cayman) | 3000 | 50 | | |
| Little Cayman | 500 | 30 | | |
| Cayman Brac | 1576 | 36 | | |

46. The figures for West Grand Cayman and Cayman Brac refer to actual outcomes, the figures for the remaining three areas are necessarily estimates with regard to the expected number of claims, and hence the average cost per claim.

47. The difference in unit costs (per parcel and per square kilometre) between the priority and non-priority areas of the Cayman Islands, as defined here, may be explained by two factors. The cost per parcel is higher in the non-priority areas than in West Grand Cayman because the average size of parcel is much larger, and so it takes longer to demarcate the boundaries. In addition, the inaccessibility of much of the central swamp area in the eastern half of Grand Cayman, which has to be reached on foot, adds considerably to the cost of demarcating and surveying each parcel. The unit cost per square kilometre in the non-priority areas, however, is lower than in West Grand Cayman, because there are fewer parcels of land to the square kilometre and so less work to do.

48. The basic conclusion to be drawn from this desk exercise is that to restrict the work of the cadastral survey and registration team to selected areas would not raise the unit costs of work in these areas. The ratio of fixed to variable costs is low, and total costs will rise in proportion to the volume of work to be done. Within this general rule, however, the actual cost of completing any particular section of land is determined very much by the average size of the parcels to be demarcated, surveyed, adjudicated and registered, and the accessibility of land where work is to take place.

An Estimate of the Benefits of Registration of Title

Dealings on the Register:

49. In the Cayman Islands there was a dual system for dealing with land ownership rights with a hybrid title by registration law superimposed on the earlier deeds registration system. With the introduction of the modern register of title system, under the work of the regional cadastral survey and land registration project there will be three land registration systems.

50. From a fairly cursory examination, which was all that was possible in the time available, it would seem that the impact following from the introduction of modern registration of title in the Cayman Islands will be fairly small. Land values started to rise in the Cayman Islands in 1964, reaching a peak in 1972, as the territory began to develop its offshore financial activities and as real estate companies began to buy up land for subdivision and sale for holiday and retirement houses. The lack of registration of title did not deter the developers who found the development prospects in the Cayman Islands sufficient attraction in themselves. (A modern land register is an important inducement to developers only when a territory has less to offer than its competitors, eg. Turks & Caicos.) The growth in transactions on the old land register over the period 1960 to 1974 clearly reflects the burst in economic activity that occurred from 1964 onwards. Table VII refers to four main categories of dealings - transfer, lease, charge and caution - and excludes recordings of a more purely legalistic nature.

TABLE VII

* Relevant Dealings on the Register of Lands

| <u>Year</u> | <u>Volume of dealings</u> | <u>Year</u> | <u>Volume of dealings</u> |
|-------------|---------------------------|--------------------|---------------------------|
| 1960 | 69 | 1967 | 1096 |
| 1961 | 335 | 1968 | 1093 |
| 1962 | 146 | 1969 | 1070 |
| 1963 | 225 | 1970 | 984 |
| 1964 | 503 | 1971 | 824 |
| 1965 | 555 | 1972 | 1047 |
| 1966 | 765 | 1973 ^{*1} | 1261+128 ^{*1} |
| | | 1974 ^{*2} | 930+129 ^{*1} |

*1 Dealings on the new land register

*2 Dealings up to 18/10/74

It was not possible to examine the transactions on the old Register of Lands in anything like the detail in which transactions in the Turks and Caicos were examined. This was partly because of the greater number of transactions, and partly because the Registry itself did not record transactions in any detail - all relevant information for purposes of analysis had to be consulted in the Public Recorder's Office, which would have been a very time-consuming business. The old Register of Lands could only show the total volume of dealings in land, and the number of loans raised on land given as security against the loan; it could not show the geographical location of activity or the breakdown of activity between local people and outside interests. The division of the Cayman Islands into

priority and non-priority areas, based on an examination of the past volume of economic activity by area, and an assessment of the development potential of different areas, was made after discussion with various people who were familiar with the Caymanian economy, rather than after consultation with dealings on the land register.

Benefits from the Introduction of Registration of Title

51. There would appear to be three main benefits that can be expected to follow from the introduction of registration of title in the Cayman Islands -

- (a) cheaper conveyancing
- (b) cheaper credit
- (c) less litigation over land.

(a) Savings in conveyancing charges

52. I was told by a member of the legal profession in the Cayman Islands that conveyancing charges should fall from their present level of 1% of the value of the land to $\frac{1}{2}$ % of the land value, once title to land was recorded on the new land register. In order to calculate what the likely savings in conveyancing charges will be, it is necessary to know what is the annual value of land changing hands in the Cayman Islands. This was estimated from stamp duty revenues. The stamp duty on land transfers is $7\frac{1}{2}$ % and revenues from land dealings are thought to comprise around 90% of stamp duty revenues. (1% duty on mortgages brings in the other 10% of stamp duty revenues.) Table VIII shows stamp duty revenues from 1970 to 1974 and the savings in conveyancing charges that would have occurred if charges had been $\frac{1}{2}$ %, instead of 1%, of the value of land.

CI £

TABLE VIII

| Year | (1) Stamp Duty | (2) 90% of (1) | (3) Value of Land $[(2) \div 7\frac{1}{2} \times 100]$ | (4) Present Conveyancing Costs 1% of (3) | (5) Savings in Conveyancing Costs $\frac{1}{2}$ % of (3) |
|------|-------------------|-------------------|--|--|--|
| 1970 | 267,000 | 240,300 | 3,204,000 | 32,040 | 16,020 |
| 1971 | 281,000 | 252,900 | 3,372,000 | 33,720 | 16,860 |
| 1972 | 495,000 | 445,500 | 5,940,000 | 59,400 | 29,700 |
| 1973 | 561,000 | 504,900 | 6,732,000 | 67,320 | 33,660 |
| 1974 | 500,000 | 450,000 | 6,000,000 | 60,000 | 30,000 |

53. If all land had been on the new register since 1970, annual savings in conveyancing charges would have risen from CI £16,000 in 1970 to an estimated £30,000 in 1974. To the extent that land was being bought and sold between overseas interests and not Cayman Islanders, the economic benefit of savings in conveyancing costs is reduced accordingly. Only savings accruing to Cayman islanders should be counted as benefits to the economy. It is certainly the case that a large proportion of land sales (possibly even the largest share in terms of land values) in the Cayman Islands has been accounted for by foreign private investors, especially real estate developers and banking corporations. Future benefits, in the form of savings in conveyancing charges to Cayman islanders, will depend on

the value of land sales taking place between local people, or land sales by local people.

(b) Cheaper Credit

54. Barclays Bank have had an office in the Cayman Islands for 21 years. The Bank's reaction to the new land register being set up is not that they will be prepared to lend more, but that bank charges on advances will fall. At present land is the usual collateral offered as security for loans. On all loans over CI \$4,000 the bank carries out title searches, for which it charges the borrower 1% of the value of the loan. On loans of less than CI \$4,000 the bank is prepared to lend the funds unsecured. The annual savings in bank charges, attributable to the cost of title searches, was again calculated with reference to stamp duty revenues. Assuming that 10% of stamp duty revenues from 1970 to 1974 accrued from the duty levied on bank mortgages, then this was equivalent to \$26,700 in 1970, rising to \$50,000 in 1974. Table IX refers.

| CI \$ Year | (1) Stamp Duty | (2) 10% of (1) | (3) Savings in Bank charges |
|---------------|-------------------|-------------------|-----------------------------------|
| 1970 | 267,000 | 26,700 | 13,350 |
| 1971 | 281,000 | 28,100 | 14,050 |
| 1972 | 495,000 | 49,500 | 24,750 |
| 1973 | 561,000 | 56,100 | 28,050 |
| 1974 | 500,000 | 50,000 | 25,000 |

Stamp duty, at 1% of the value of the mortgage, is equivalent to bank charges, also fixed at 1% of the loan. Bank charges have therefore risen from CI \$26,700 in 1970 to CI \$50,000 in 1974. Barclays could not say off the cuff what the reduction in bank charges might be, following the establishment of registration of title.

On the assumption that charges would fall to 1/2% of the value of the mortgage and if all land had been on the new register over the period 1970 to 1974, then bank charges would have been reduced by \$13,350 in 1970 and by \$25,000 in 1974. The benefit to the Cayman Islands is once again determined by the breakdown of bank lending between Cayman islanders and outside interests. The ratio is probably higher in the case of bank lending than in the case of land transactions, but some advances will be made to foreign private firms.

(c) Less Litigation over Land

55. There have apparently been some 12 to 18 land litigation cases each year since the mid-1960's, i.e. since land started to rise in value. At US.\$300 per day to the litigant and with an average case lasting one to two weeks, the cost could be between \$1500 and \$3000 per case, and between \$18,000 and \$54,000 p.a. in total. The possible savings in litigation costs is, taking an arithmetic average of the two extreme values given, approximately \$36,000 per annum.

Summary of Benefits

56. Table X brings together the three major benefits that might be expected from the introduction of registration of title, if 1974 is taken as a representative year for relevant economic activity.

TABLE X

| CI % | <u>Savings in conveyancing costs</u> | <u>Savings in bank charges</u> | <u>Savings in land litigation costs</u> | <u>Total Savings</u> |
|------|--------------------------------------|--------------------------------|---|----------------------|
| | 9,000 ⁱ | 12,500 ⁱⁱ | 36,000 | 57,500 |

i Assuming 30% of land sales involve Cayman islanders

ii Assuming 50% of bank mortgages are made to local people

57. The largest single benefit would seem to be a reduction in litigation costs (over land). The values ascribed to the other two benefits depend on an assumed split between savings accruing to foreign concerns and those accruing to local people. The mix assumed is based on impressions gained from talking with people in the Cayman Islands, rather than from studying bank balance sheets or lawyers' records.

58. The total cost of setting up registration of title in the Cayman Islands is established at £529,000. Annual benefits flowing from the establishment of the register are calculated as just under CI \$60,000 (£30,000). This seems a small return for a large capital outlay.

59. If it were politically feasible to do so, I would recommend that the cadastral survey and land registration project confines its future work in the Cayman Islands solely to the coastal strip of eastern Grand Cayman where several local settlements are sited, eg. Bodden Town, East End and others. I do not support the project covering the central swamp area in eastern Grand Cayman, which is unpopulated, or Little Cayman, where I believe 11 people live and very little goes on. The cost of work in the two areas which it is recommended be excluded from the project's coverage would be high, largely because of the inaccessibility of the areas, and, in the case of Little Cayman, the lack of residential and office accommodation which would also contribute to the pushing up of costs. There should be no problem in having three land registration systems operating side by side since most land transactions should take place in areas covered by the modern registration of title system - almost the entire local population lives in areas already covered by the project or recommended for coverage, and most economic activity takes place in western Grand Cayman, where registration of title is completed. If and when it became economically justifiable for registration of title to be extended to other areas, this should be done by the Land Registry and Survey Department, with some outside assistance in the form of two seconded surveyors from the UK.

Antigua

The present land registration system

60. Antigua operates a dual system for dealing with land ownership rights, running a registration of title system (referred to as certificate of title in Antigua) alongside a deeds registration system. However, the supporting survey work for the registration of title system was insufficiently controlled to make the system as efficient as it should have been. The volume of land transfers

recorded under each system for 1973 suggests that the Registry of Deeds is still the more important system in terms of the numbers of transactions recorded. There were 390 conveyances recorded under the deeds registration system in 1973, compared with 300 conveyances recorded under the registration of title system (certificate of title). It is interesting to note that 241 new mortgages are recorded on the Registry of Deeds in 1973, compared with only 94 mortgages against certificate of title.

Potential Benefits from the Establishment of Efficient Registration of Title

61. There is no evidence to suggest that uncertainty over land rights is or has been detrimental to economic development in Antigua. A combination of favourable factors encouraged the development of tourism in Antigua after the second world war, in advance of its development in other Eastern Caribbean islands - beautiful beaches, guaranteed sunshine during American wintertime, cheap land and an airport capable of accommodating international aircraft. The tourist industry is now firmly established in Antigua and, in the present economic climate, hotel capacity is thought to be over expanded. The major constraint on agricultural development in Antigua has always been the lack of a sufficient reliable rainfall - with the development of tourism this disadvantage has been compounded by a growing lack of interest in the land. The average age of present farmers is high and rising - a census of farmers in the Table Hill Garden area showed that, whereas in 1961 25 per cent of farmers were age 55 or over, in 1973 the proportion was 57 per cent.

62. Realisable benefits following from registration of title would seem to be similar to those noted in the Cayman Islands, viz. less litigation, cheaper conveyancing, and cheaper credit, with the additional social/political benefit of using a cadastral survey and land registration project as a convenient opportunity to clear up the squatter problem.

Reduction in Litigation

63. Disputes over land are growing. In 1973 approximately 100 cases were registered to be heard in the Courts - 33 in the High Court and 60 in the Summary Court. Disputes over land represented 12 per cent of all cases registered with the High Court in 1973. The Courts are overworked and there is typically a five- to six-year delay between registering land litigation petitions with the Courts and the case coming up in the Court. The total cost of a land litigation case which is heard in the High Court is currently about EC \$1000 (lawyer's fees plus the Court's time) and in the Summary Court about EC \$350. The estimated cost of the cases waiting to be heard therefore totals EC \$56,100 (33,000 + 23,100). Assuming that only 20 land litigation cases are heard in any one year - the other side of the coin, from there being a 5 to 6 year waiting list for cases to come up - then the maximum potential annual savings from reducing the number of land litigation actions is EC \$11,550 (7 High Court cases x \$1000 = 13 Summary Court

cases x £350).

Cheaper Conveyancing

64. Conveyancing fees are based on the value of property and there are two scales of fees, one for the deeds registration system and another for registration of title (certificate of title). Although I was told that conveyancing charges for the former were much lower than for the latter - because less work was involved in the title search - a simple arithmetical example did not bear this out.

(a) scale of fees ... deeds registration

£100 for the first £5,000 of the value of the property
£ 75 " " second £5,000 " " " " " "
£ 75 " " third £5,000 " " " " " "
thereafter 1% of excess.

(b) scale of fees - certificate of title

£26.16 for the first £480 of the value of the property
£10.08 " " second £480 " " " " " "
1% for the next £3,840 " " " " " "
thereafter 1% of each succeeding £4000.

65. Examination of both Registers showed that most land transactions were taking place in the more wealthy residential areas, many around St Johns, and generally in the northern half of the island. The average value of property in these areas is probably between EC £50,000 and EC £100,000.

Conveyancing costs on property worth EC £50,000 would be as below :

(a) under title by deeds

£100 + £75 + £75 + £350 = £600

(b) under certificate of title

£26 + £10 + £57 + £450 = £543

There is about a 10 per cent saving in conveyancing charges under the scale of fees charged for certificate of title, compared with that charged for the deeds registration system. However both scales of fees are set at approximately 1% of the value of the land.

66. Taking EC £50,000 as representative of the average value of property being exchanged in 1973, conveyancing fees in that year would have totalled EC £396,900 -

| | | |
|-----------|---|----------------|
| 600 x 390 | = | 234,000 |
| 543 x 300 | = | 162,900 |
| | | <u>396,900</u> |

The lawyers in Antigua did not know what difference the new registration of title could have on conveyancing charges. Therefore assuming that fees fell to 1/2 per cent of the value of transactions - as in the Cayman Islands - then, at 1973 levels of activity in the property market, and taking EC£50,000 as representative of the average value of property, potential annual savings in conveyancing fees would be EC £224,000 (396,000 minus 172,000). I did not manage to establish during my visit to Antigua what was the proportion of total house sales involving local people and the proportion involving expatriates. Further investigation

ould be necessary to determine what this breakdown was. From the social point of view it would seem desirable to maximise benefits to local rather than expatriate residents, and this has bearings on the views expressed in the following section - the establishment of a priority area in Antigua.

Cheaper Credit

67. There were 335 new mortgages recorded on the two registers in 1973. With an average value of loan of EC\$ 10,000 and a 1 per cent charge for the title search, bank charges on these loans would have totalled EC\$33,500 in 1973. Potential savings in bank charges by reducing them to $\frac{1}{2}$ per cent of the value of the loan are therefore EC\$ 16,750 on the 1973 volume of bank lending to the private sector.

Summary of Benefits

68. If registration of title were introduced throughout Antigua potential savings in legal and banking charges could, at 1973 levels of activity, be as great as EC \$250,000 p.a, viz:

| | |
|----------------------------------|----------|
| Savings in land litigation costs | £ 11,550 |
| Savings in conveyancing charges | £224,000 |
| Savings in bank charges | £ 16,750 |
| Total | £252,300 |

say EC \$250,000.

Defining the Area which could Benefit most from Registration of title

69. The impression gained after four days in Antigua was that the area that would gain most from the introduction of modern registration of title would be the northern half of the island. Defined more precisely it is an area bounded on the south by Potters (just outside St Johns) All Saints and Bethesda, bounded on the east and north by the sea and on the west by a line drawn from the airport to Potters. This area, roughly 25,600 acres, could be surveyed and registration of title established for £110,000, at 27 per cent of the estimate cost of covering the whole of the island (£0.4 million). This cost is made up of an estimated £38,000 fixed cost element (setting up the project, carrying out the pilot survey) and a further £72,000 variable cost element (registering title in the whole of the northern area). The reasons why this northern area, comprising about 40 per cent of land area in Antigua, could be completed relatively cheaply are -

- (a) the area is made up of large parcels of land, so minimising the volume of boundary work to be carried out;
- (b) much of the land is Crown land, therefore the work of the team in establishing title is expected to be straightforward.

70. The northern area, as defined above, was chosen as the priority area because many of the property sales are probably taking place within its boundaries and reduction in conveyancing fees is the major potential benefit following from the introduction of registration of title. It covers the area of greatest agricultural potential and, although lack of clear title has not been a constraint on

agricultural development, there would seem some advantage in having the more productive rather than the non-productive (especially the mountainous) areas of Antigua accurately surveyed and placed on the new register. And finally, there is the political advantage of including two areas where squatting is a considerable problem - All Saints and Willkiee - which Government want to see included at an early stage in a cadastral survey and registration project.

71. The Government wants to sort out the squatter problem, although I was unable to get anyone in the Civil Service to define exactly what this meant, eg. turning squatters off the land, granting them freehold and/or leasehold, giving or selling them the land, etc. However it is the stated wish of the Government that the cadastral survey and registration team should help them sort out the problem of the 500 plus families squatting on what is thought to be Government land. It should be emphasised here that the project itself can do no more than define which is Crown land and which is private land. It is then up to the Government to make up its mind what to do with the squatters. All the project can do is to define the extent of squatting and give Government the information to help it to take a stand against future encroachment by squatters onto Crown land. A cadastral survey and registration project cannot change legally enforceable land ownership patterns, it can only state what they are. However the advantage of including two areas where there are large numbers of squatters on Crown land is that Government will give the project its support.

72. Prior to a final decision being made on which area in Antigua should have registration of title established first, it would seem sensible to carry out further investigation to clear up a couple of important points.

(a) In which areas have house sales been concentrated over the last five years (as a minimum)? The analysis in paragraphs 64-66 inclusive is based on 1973 figures only and may not be representative over a period. What was the breakdown between sales involving local residents and sales involving expatriate residents over the last five years? What was the average value of property changing hands by area over the same period? Given that savings in conveyancing costs are thought to be the major quantifiable benefit following from the introduction of registration of title, it would seem advisable to have more information on who would benefit, and by how much, within different areas in Antigua.

(b) What is the standard of survey for different areas of Antigua? This has a bearing on the cost of the subsequent work of the cadastral survey and land registration project. Obviously the higher the standard the less the cost of survey work that will have to be undertaken by the project, and vice versa. This investigation would highlight which were the high cost and which the low cost areas from the surveying point of view, for the cadastral survey team to work in.

(c) In which areas would it be relatively quick and painless to establish claims to ownership? A first reaction would be to say Crown land and possibly St Johns,

where a rating valuation was recently carried out, but further investigation might not bear this out. A final choice of the priority area should be supported by more facts than are currently available.

73. The merit of restricting the work of the cadastral working team to a part of the island, rather than covering the whole island, is -

- (a) in two years the team can cover a sufficiently large area for it to be worth while introducing a third land ownership system $\frac{40}{100}$ of the total land area in the case of the northern area as defined in paragraph 69;
- (b) the services of the team would be released very much sooner for use in other islands.

I therefore recommend that the cadastral survey and registration project restrict its work to a priority area (to be precisely defined after further investigation along the lines suggested in paragraph 72), which can be completed within two years of the team becoming fully operational. The local Survey Department would then be expected to extend registration of title to other areas as and when the need arises, assisted if necessary by technical assistance. I support the surveyors' view that sporadic registration (parcels of land becoming registered as and when the owners wish) is not to be favoured because of the difficulties of adjudication. It is preferable that the local Survey Department should gradually extend the Register, working area by area in order of importance.

C. WAYS OF RECOUPING PROJECT COSTS FROM LANDOWNERS

74. It is desirable that the costs of bringing land onto the Register should fall on those who benefit from its establishment. In those territories in the Caribbean where secure title to land is being or has been established, it has been provided free of charge to landowners. This section discusses ways and means of charging landowners for the service provided to them.

Willingness to Pay

75. In discussion with many people both in the Turks & Caicos and the Cayman Islands, I have tried to assess how willing people would be to pay for the benefit of having their land ownership rights and extent guaranteed by Government, by raising the question regularly with people I met. The overwhelming body of opinion was that people would not be at all willing to pay for the service, and, in fact, any suggestion before the project got under way, that they would be asked to pay, would result in non-cooperation and even downright opposition to the work of the cadastral team. It was even pointed out that in the Cayman Islands the project was publicised by Government as a free service, and that when people found that they had to clear their boundaries themselves, had in some cases to use lawyers to help them prove title to their land, there was discontent. I feel that this was partly the result of misunderstanding - it should have been made clearer to the people that there were certain costs and efforts involved in it for them - but it is also symptomatic of a general attitude in the Caribbean towards contributing to

the cost of any activity which is firmly believed to be Government's responsibility.

Ways of Recouping Costs

76. What methods are open to Government to charge the private landowner for this service? Basically there appear to be three alternatives. The first is to tell people that they will have to pay before their land will be entered on the Public Land Register. The success of this approach depends on people's willingness to pay, and therefore does not appear to be a practical solution to the problem in the Caribbean. The second method is to enter a charge on the Register on each parcel of land which would prevent any dealing in land until an initial fee had been paid. In order to do this some provision for this action would have to be made in the Land laws. This might be difficult to introduce at the time when the land laws, which precede the work of the cadastral team, are being discussed. Initial reaction to the project is often not favourable, both from groups with vested interests, such as the legal profession who think they will lose financially, and also from ordinary people who often think that the project is a ploy by Government to take their land away from them.

77. The third solution is simply to put up registry fees to a level sufficiently high to cover both the capital and the running costs of the project, all the capital costs bringing land onto the land register and the running costs of that part of the work of the Survey Department which deals with the Land Registry. In order to know at what level to pitch the registry fees, it is necessary to estimate how many dealings there will be each year and to decide over what period the Government should aim to get its money back. This third alternative has the great merit of simplicity, spreads the burden of recouping the capital cost of bringing land onto the Register more widely than the second alternative, and is likely to be less controversial than the other alternatives, and is therefore recommended.

D. SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS FOR THE FUTURE WORK PROGRAMME OF THE CARIBBEAN CADASTRAL SURVEY AND LAND REGISTRATION PROJECT

General Conclusions

78. a. The stimulus to tourism provided by registration of title is usually low in the Caribbean. It may help to "sell" the less attractive areas, but the prime sites will be their own sufficient attraction.
- b. The stimulus to agriculture may be higher, where the establishment of registration of title is part of a general land reform programme and where agricultural potential is being constrained by the land tenure system. This hypothesis could not be tested in the islands visited, since only in Antigua was agriculture of any significance, and the impact of registration of title on agricultural development in Antigua was expected to be neutral.
- c. In the territories where agricultural potential is low, the major

quantifiable benefits are : (i) reduction in conveyancing costs (ii) reduction in litigation costs (iii) cheaper credit. Benefits will be greatest therefore where actual/potential land values are high, where land transfers among nationals are high and where litigation is high.

d. The major non-quantifiable benefits are :

- (i) the efficiency of Government is improved: the assessment and collection of rates is facilitated: physical planning is facilitated: Crown land can be unequivocally identified;
- (ii) the rights of the individual are protected.

e. Potential revenues are being lost by Government because

- (i) registry fees are too low,
- (ii) stamp duties could be raised (when considered that they are often one of the very few forms of direct taxation),
- (iii) the Register is not being used as means to levy rates or land taxes.

f. The ratio of fixed to variable costs of the project is low, therefore the work of the cadastral team could be restricted to priority areas within an island, without raising unit costs more than very slightly.

Turks and Caicos

The Turks and Caicos has benefited from the establishment of registration of title.

- (i) Increased credit has been made available to the private sector, amounting to between £1.0m. and £1.2m. from 1970 to 1974.
- (ii) Additional private overseas funds have flowed into the economy from 1968, of which around £150,000 has been transferred to Government account and helped swell recurrent revenues.
- (iii) There have been savings in conveyancing charges, amounting to between £10,000 and £15,000 since 1969. Total savings are small because relatively little land changes hands between local people.
- (iv) Reduction in land litigation is not an important factor, basically because land is plentiful in relation to demand.
- (v) Potential revenue is being foregone by Government because registry fees are very low - \$1.10 per dealing - and stamp duties are also low, at 2½% on transactions below US \$5000 and 5% on transactions of \$5000 and above.
- (vi) Total capital cost of establishing registration of title was approximately £17,000.

Cayman Islands

The benefits stemming from the establishment of registration of title throughout the territory are expected to be small. Three main benefits were identified and quantified, based on the volume of activity in 1974 and on the assumption

that registration of title was established in all three islands.

- (i) Savings in conveyancing costs would be CI. \$9,000 p.a., on the assumption that 30 per cent of land sales involve Cayman islanders.
- (ii) Savings in bank charges would be CI. \$12,500 p.a. on the assumption that 50% of loans are to local people.
- (iii) Savings in land litigation costs would be CI. \$36,000 pa. on the assumption that all litigation cases are between local people.
- (iv) Total expected annual savings to the Cayman economy of CI. \$57,500 (less than £30,000) seem meagre in comparison with the total expected capital cost of £529,000.

Antigua

The benefits of setting up registration of title in Antigua are greater than in the Cayman Islands, largely because costs would be lower (£0.4 m. capital cost), while the number of dealings in land would be much higher in an island with a population of 72,000 than in a territory of 12,000 population. If registration of title were established in Antigua, the following benefits could be expected to follow (based on the volume of economic activity in 1973).

- (i) Savings in conveyancing charges EC \$224,000 p.a.
- (ii) Savings in bank charges EC \$ 16,750 p.a.
- (iii) Savings in land litigation costs EC \$ 11,550 p.a.

Recommendations for the Future Work of the Team

79. It is recommended that :

- (a) The cadastral team and land registration project should work only in priority areas within islands, and then the local Survey Department, strengthened as and when necessary by TA, should continue the work.
- (b) That sporadic registration is not to be favoured, but that the Survey Departments should work systematically in establishing registration of title in the rest of the territories.
- (c) That Development Division give the cadastral team more flexibility to plan ahead. It is a lengthy process (i) getting the appropriate land laws passed (ii) getting preliminaries under way prior to the arrival of the main body of the team. This factor becomes especially important if the team is to work in several territories simultaneously.
- (d) In view of the time taken to reach the stage where the cadastral team can start work in a territory, urgent consideration should be given to deciding which territories should be tackled next. An estimate of expected costs and benefits should be made in each territory which is a possible candidate, and priority areas within territories should be established. Major benefits are likely to be savings in conveyancing costs, bank charges and land litigation costs, but in the agricultural islands the whole question of land reform will need to be considered.

- (e) Given the time constraint on setting up the team in work in new areas, the team should complete work in Anguilla. (They are expected to finish in Anguilla by mid-1975.) However if the necessary preliminaries can be got through in time for the team to move to another territory, work should be run down in the Cayman Islands.
- (f) That, subject to the views of Mr Howells and Mr Wesley, the team might work simultaneously in more than two territories, as at present, depending on the need to establish registration of title in the various territories.

80. Schedule of territories which have requested the services of the cadastral survey and land registration teams

- (a) Antigua - work scheduled to start in mid-1975.
- (b) St Vincent - currently scheduled to follow Antigua. The Government is examining the model land legislation which it would have to pass before the team could begin work. Considerable preparatory mapping work and ground control is completed.
- (c) Dominica - little preparatory work has been done other than large scale mapping of selected areas. There has been a comprehensive system of title surveys, which vary widely in accuracy, which could be partially used by the team. There are considerable land tenure problems and a significant amount of litigation over land.
- (d) St Lucia - no real preparatory work has been done. There are serious land tenure problems because of the results of the Code Napoleon practices. Land reform would be a pre-requisite of establishing registration of title.
- (3) Montserrat ; - little preparatory work has been done and mapping and control would be necessary before the project could get under way.

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20 January 1975