

Associates Inc.

128 82786

**Sri Lanka:
The Land Tenure
Problem as a
Constraint to
Housing Finance**

John Miller

Marcia 1993

Prepared for:

**U.S. Agency for International Development
Mission to Sri Lanka**

**Delivery Order No. 2
IQC PCE-1008-I-00-2064-00**

TABLE OF CONTENTS

| | |
|--|-----|
| PREFACE | iii |
| ACRONYMS AND CURRENCY | iv |
| EXECUTIVE SUMMARY | v |
| 1. INTRODUCTION | 1 |
| 1.1 Housing Guaranty Program. | 1 |
| 1.2 Study Premise. | 1 |
| 2. LAND AS SECURITY FOR MORTGAGE LENDING: LAWS AND PRACTICES | 3 |
| 2.1 Legal Framework. | 3 |
| 2.2 Housing Credit Institutions. | 6 |
| 2.3 National Land Titling. | 7 |
| 3. ISSUES | 9 |
| 3.1 How significant a constraint to housing finance is land tenure? | 9 |
| 3.2 Is it relevant whether the problem is in urban or rural areas, or both? ... | 9 |
| 3.3 Do the land tenure problems have similar impacts on the agriculture sector as they do for housing, and consequently are there similar responses? | 10 |
| 4. OPPORTUNITIES AND APPROACHES FOR THE NEAR FUTURE | 12 |
| 4.1 Legal Title. | 12 |
| 4.1.1 Assistance to Borrowers to Secure Legal Title. | 12 |
| 4.1.2 Public Land Acquisition and Provision of Title. | 12 |
| 4.1.3 Land Sharing. | 13 |
| 4.1.4 Land Grants (Special Provision) Act. | 14 |
| 4.1.5 Land Development Ordinance (LDO) Permit. | 14 |
| 4.2 Title Insurance. | 14 |
| 4.3 The Community Based Approach. | 15 |
| 4.4 Collateral in Lieu of Clear Title. | 16 |
| 4.4.1 Mortgage Bond. | 17 |
| 4.4.2 Compulsory Savings Account. | 17 |

TABLE OF CONTENTS (continued)

| | | |
|----------------|--|-----------|
| 4.4.3 | Compulsory Purchase of Shares in a Cooperative Entity. | 17 |
| 4.4.4 | Guarantors. | 17 |
| 4.4.5 | Alternative Property. | 17 |
| 4.4.6 | Power of Attorney. | 17 |
| 4.4.7 | Letter of No Objection. | 18 |
| 5. | RECOMMENDATIONS | 19 |
| ANNEX A | TITLE REQUIREMENTS OF HDFC AND OTHER CREDIT INSTITUTIONS THAT PROVIDE HOUSING LOANS | 21 |
| ANNEX B | PERSONS INTERVIEWED | 23 |
| ANNEX C | SELECTED REFERENCES | 25 |

PREFACE

Some form of financial credit is necessary for families of middle and low incomes to purchase a home, to purchase land for new home construction, or to make improvements to their homes. In order to secure such credit, clear title to property is essential. In Sri Lanka, clear title is not easily established. This report is intended to assist USAID/Sri Lanka in its discussions with Government and private sector housing finance institutions on how long term mortgage credit can be provided in the absence of clear evidence of property ownership. The report is based on two week visit to Sri Lanka from February 20 to March 6, 1993.

Loan servicing and collection by lending institutions has also been identified as a serious problem in housing finance. As part of this same technical assistance, a second report on that subject has been prepared by Phillip Jones, Abt Associates consultant.

Grateful acknowledgement is made to the representatives of the several Sri Lankan institutions who were so forthcoming with their views and information, and to Howard Kane, USAID/Sri Lanka Resident Housing Finance Advisor for his guidance on the assignment, his access to those institutions, and the support provided by his office. Mrs. Preeni Witharanage, an experienced attorney in Colombo, contributed substantially to the land tenure research. Mrs. Ranjani Jayasuriya, Deputy General Manager of the Housing Development Finance Corporation, also assisted, and provided the material in Annex A. Names of persons interviewed are provided in Annex B, and useful documents are listed in Annex C.

John Miller
Abt Associates Inc.

March 1993

ACRONYMS AND CURRENCY

| | |
|--------------|---|
| CBSL | Central Bank of Sri Lanka |
| CDC | Community Development Council |
| GA | Government Agent |
| GSL | Government of Sri Lanka |
| HDFC | Housing Development Finance Corporation |
| HG | Housing Guaranty |
| LDO | Land Development Ordinance |
| NGO | Non Government Organization |
| NHDA | National Housing Development Authority |
| RRDB | Regional Rural Development Bank |
| SMIB | State Mortgage and Investment Bank |
| TCCS | Thrift and Credit Cooperative Society |
| UDA | Urban Development Authority |
| USAID | U.S. Agency for International Development Mission to Sri Lanka |

In March 1993, US\$1.00 equals approximately 45 Sri Lankan Rupees.

EXECUTIVE SUMMARY

Housing Guaranty Program. In continuing its assistance to Sri Lanka for the provision of housing for low-income families, USAID amended its agreement with the Government for Phase IV of the Housing Guaranty (HG) program in March 1991. One ultimate goal of the program is an effectively functioning primary and secondary mortgage market. Housing finance can then be integrated into the overall financial system.

Study Premise. Private sector lenders play a limited role in housing finance for several reasons, one of which is that they will not make mortgage loans on property where titles are not clear, or where title insurance is not provided. And in a country where much of the title to property is subject to old and conflicting claims, the land tenure system is a major constraint to the effective provision of mortgages.

Based on that premise, this study has been undertaken to identify ways in which either clear title can be established to the satisfaction of the private lenders, or in the absence of clear title, a substitute proof of ownership, provision of collateral, or title insurance is available and acceptable.

Legal Framework. Land tenure means the laws, customs, and practices governing the rights, duties and relationships of people to the land. Most important in the context of access to housing in Sri Lanka, a land tenure system provides the security of title that is the basis for a housing finance system. With secure land tenure comes the possibility of using land and housing as collateral for loans. Well-established systems of property rights, secure and transferable land ownership, and protection through adequate foreclosure laws make land and housing desirable as collateral for financial institutions.

Land tenure arrangements in Sri Lanka vary across the country. There are legal, climatic, and cultural differences. Four legal systems influence the use and disposition of private land. The majority of the population is governed by Roman Dutch law, but together with the other three systems -- Thesawalamai, Kandyan law, and Muslim law -- the land situation is complicated. For instance, land ownership is established by a unified deeds registration process but the possession of a valid deed does not necessarily mean that a person has a clear title to a parcel of land when required for a mortgage.

Housing Credit Institutions. Credit from banks and other formal lending institutions is provided almost exclusively to individuals with clear titles, a reflection of the fact that cloudy titles are usually not accepted as collateral by formal sector lenders. Informal households, however, also receive loans, mainly from employers and family members. Although households with unregistered title are almost as likely to borrow as those with registered title, the source of financing differs widely. It is the several public and private financial institutions that must make housing credit available to those without clear title, but whose risk of default is no more than those whose clear title is acceptable collateral.

Virtually every public and private bank in the country is eligible to participate in the HG program. Unfortunately, public banks' management capacity, and private banks' market strategies -- and the need in both cases for clear title for mortgage lending -- are reflected in their limited involvement in the HG program. Except for consumer loans for housing purposes, there is unlikely to be any substantial other housing lending by the banks.

A review of the private banks suggests that clear land title constrains housing lending. Hatton National Bank will likely avoid the land tenure problem by making short term loans in which clear title will not be required for collateral. Seylan Bank insists on clear title, and consequently is not making mortgage loans for the HG target group. The Commercial Bank, Sampath Bank, and Citibank are not participating in the HG program.

With the important exception of the Housing Development Finance Corporation (HDFC), there is little expectation of substantial participation by other state banks. The HDFC is the most interested and able public entity that can take advantage of the HG loan.

National Land Titling. A national land titling program is required in the long term, and in fact the Government is developing a major, national land titling project. A national land titling program will require new legislation. A draft of a Land Titling Act is in review.

Opportunities. Means must be developed to expedite the establishment of clear title on an individual basis, or at least to provide evidence sufficient to satisfy a lender that the property in question, or some other evidence, should be accepted as collateral.

Legal Title. Certainly the establishment of clear legal title will make long term mortgage lending possible. The now costly and time consuming process can be improved.

- . **Assistance to Borrowers to Secure Legal Title.** The Housing Development Finance Corporation has arranged a special program to assist the target group to clear their title with the intention of making available long term housing loans.
- . **Public Land Acquisition and Provision of Title.** The Urban Development Authority (UDA) should consider acquiring property and constructing condominiums for low-income families if it could obtain at least a marginal profit from these ventures. Also, since one of the consequence of UDA's activities is clear title, it can declare a special project area and give part of that area to NHDA to develop for housing.
- . **Land Sharing.** On land with squatter dwellings (mostly in urban and peri-urban areas) owned by private individuals, the owner could ask the NHDA to set aside part of the land for the squatters. This approach provides the owner with a clear title to a part of land, and relocates and/or regularizes small squatter settlements.

- **Land Grants (Special Provision) Act.** Squatters could make representations to the relevant Divisional Secretariat to have lands regularized.
- **Land Development Ordinance (LDO) Permit.** Permits as well as long term leases are issued under the LDO, and the law permits such a lease to be used as collateral for a mortgage.

Title Insurance. The issuance of title insurance by private insurance companies is in many ways the most realistic option to enhance the granting of mortgages. As a result of the competitive nature of the business, title insurance providers have become a bit more flexible in their standards, though not in any way that would make title insurance more accessible to low and median income families. The problem of course is that the target borrowers for this program cannot readily afford the additional expense of title insurance. In addition, they are unlikely to be able to provide the documentation required by the insurance company.

The Community Based Approach. Many housing loans are made by cooperatives without land as security. Rather, social pressure, often through publicity, encourages repayment by the borrower. In Sri Lanka, housing for the informal sector -- comprising poor, rural people -- has largely been financed through small loans provided by cooperative societies, the largest of which are the Thrift and Credit Cooperative Societies (TCCSs). They are well managed and maintain high collection rates, in excess of 90 percent.

Collateral in Lieu of Clear Title. In anticipation of the problem of unclear titles, the HG program documentation suggested that lenders use alternative forms of collateral: Mortgage Bond; Compulsory Savings Account; Compulsory Purchase of Shares in a Cooperative Entity; Guarantors; Alternative Property; Power of Attorney; Letter of No Objection.

Recommendations. This report is intended to assist USAID in its discussions with the Government of Sri Lanka and private sector housing finance institutions on how credit can be provided in the absence of clear evidence of property ownership. The most effective forum to discuss these issues and take action is the Housing Finance Steering Committee. The Committee, established to provide policy coordination and support for housing finance sectoral activities, is comprised of senior representatives of Ministries and housing finance institutions.

USAID should distribute this report to the Housing Finance Steering Committee, solicit their reactions and comments, and convene a meeting to discuss the subject. The Committee should review the approaches discussed in Section 4, developing its own list of opportunities for deeper review and discussion. The Committee should look specifically at the following:

- Lenders should pursue opportunities for mortgage lending for terms shorter than 15 years, and for which they do not require clear title.

- . **Lenders should be able to find ways to make many mortgage loans without clear titles.**
- . **Lenders should consider direct assistance to borrowers to secure legal title.**
- . **Lenders should pursue ways to reduce the 35 year title search tradition.**
- . **Title insurance can be made easier and more affordable by low income groups.**
- . **UDA could use its acquisition and development authority for housing purposes.**
- . **NHDA's land sharing approach merits close review for possible application on a much wider scale.**
- . **Housing lenders should look closely at the operations of the Thrift and Credit Cooperative Societies.**
- . **Lenders should consider accepting some of the many forms of collateral in lieu of clear title.**

1. INTRODUCTION

1.1 **Housing Guaranty Program.** In continuing its assistance to Sri Lanka for the provision of housing for low-income families, USAID amended its agreement with the Government for Phase IV of the Housing Guaranty (HG) program in March 1991. The program has as its objectives:¹

(a) to achieve an equitable and efficient balance between the roles of the public and private sectors in meeting the shelter needs of low income households, which will include making the public sector provision of finance more market oriented, with clear identification of any subsidy elements and limitation of such subsidies to those beneficiaries whose needs cannot be met by market oriented loans and private sector housing finance;

(b) to strengthen the Government of Sri Lanka (GSL) shelter finance system to mobilize capital for shelter, with the National Housing Development Authority (NHDA) expanding its role as a shelter policy and program development agency while private and market oriented financial institutions such as banks and private credit societies increase their role in the provision of housing credit; and

(c) to institute policies and procedures to provide shelter finance that is affordable to low income households and thereafter to recover from beneficiaries costs of government shelter programs so that funds recovered from earlier projects and programs will be available to finance new shelter construction on a sustainable basis.

One ultimate goal of the program is an effectively functioning primary and secondary mortgage market. Then, housing finance can be integrated into the overall financial system.

The HG program is designed to use the Central Bank of Sri Lanka (CBSL) as the apex institution to refinance housing loans made by Sub-Apex approved credit institutions. The Sub-Apexes, comprised of public and private commercial banks, will either make retail loans to target beneficiaries or make wholesale loans to primary lenders that do not qualify to borrow directly from the CBSL.

At the current rate of implementation, the program will not achieve its objectives by its completion date of September 30, 1993. The problems are serious, and well known and well documented by USAID.

1.2 **Study Premise.** The role of private sector credit institutions in housing is confined principally to housing loans for their employees and to their wealthier clients. Even as the HG program goes forward, the private sector continues to play a limited role for several reasons. First, they perceive that long-term lending carries undue credit and interest

¹ Implementation Agreement, as amended.

rate risk; they have been profitable through short-term lending, and see the long-term nature of mortgage loans as too risky. Second, government subsidies to state mortgage agencies distort the market, effectively precluding private lenders from competing at what should be market rates. Third, the private lenders have limited expertise in mortgage underwriting, real estate appraisals, and loan servicing.

It is a fourth reason that the private sector is absent from housing finance that is the subject of this report. Private sector lenders will not make mortgage loans on property where titles are not clear, or where title insurance is not provided. And in a country where much of the title to property is subject to old and conflicting claims, the land tenure system appears to be a major constraint to the effective provision of mortgages.

Based on that premise, this study has been undertaken to identify ways in which either clear title can be established to the satisfaction of the private lenders, or in the absence of clear title, a substitute proof of ownership, provision of collateral, or title insurance is available and acceptable. It should be pointed out that land tenure problems in the housing sector are not by any means confined to the HG program. With or without a HG program, investments in housing are constrained by cloudy titles.

Chapter 2 explains the importance of land tenure, presenting a summary of property and ownership rights in Sri Lanka, the responses of the several housing finance institutions to the problems, and the status of the long term solution, a national titling program. Three important issues that have emerged in this study -- including the basic premise that land tenure is a constraint to housing finance -- are discussed in Chapter 3. The several ideas to the problem identified in Chapter 4 represent the study's conclusions. Finally, based on those ideas, Chapter 5 recommends some actions that should be taken to make some of the approaches viable.

2. LAND AS SECURITY FOR MORTGAGE LENDING: LAWS AND PRACTICES

2.1 **Legal Framework.** Land tenure means the laws, customs, and practices governing the rights, duties and relationships of people to the land. The absence of clearly defined land ownership limits opportunities for investments in public and private land development. Indeed, there are many direct and indirect implications of land tenure to land for human settlements.²

Most important in the context of access to housing in Sri Lanka, a land tenure system provides the security of title that is the basis for a housing finance system. With secure land tenure comes the possibility of using land and housing as collateral for loans. Lending institutions consider land and housing to be inherently good collateral. Well-established systems of property rights, secure and transferable land ownership, and protection through adequate foreclosure laws make land and housing desirable as collateral for financial institutions.

Studies carried out in urban and rural areas, for low and high income households, have shown that clear land title encourages households to invest in shelter and financial institutions to lend to households using the land as collateral.³

Land tenure arrangements in Sri Lanka vary across the country. Several important differences have been identified:⁴

The first is legal, between privately-owned and state-owned land. State land constitutes over 80 percent of the areas of the country and exists in every district... Private land includes smallholdings, plantations and temple land.

The second differentiation is climatic: land in the dry zone is held on terms different from land in the wet zone. Nearly all land in the dry zone is State land, and its use is governed by the Land Development Ordinance of 1935. A majority of land in the wet zone is privately held, although since the Land Reform Laws of the 1970's a substantial amount of formerly private land has been vested in the Land Reform Commission; it does not, however, fall under the State land category.

² It influences densities, it affects accessibility to land, it influences land use, it facilitates public land acquisition and disposal, it determines development potential, it facilitates land transactions, and it is an important factor in the potential of land for taxation.

³ See, for example, World Bank studies in Thailand and the Philippines.

⁴ Peter Bloch, Land Tenure Issues in Sri Lanka, A Brief Overview, Land Tenure Center, University of Wisconsin, November 1988.

The third differentiation is cultural: four legal systems influence the use and disposition of private land in Sri Lanka. The most prevalent one...is Roman-Dutch law [as it governs the low country Sinhalese who constitute the majority population; some aspects of the Kandyan law continue in the central areas and govern the upcountry Sinhalese.] Kandyan law continues in the uplands of the wet zone, the Thesawalamai in Tamil areas [the Thesawalamai covers two aspects: it applies to the inhabitants of Jaffna who could be living in any part of the country and to the land situated in the northern province], and Islamic law in the scattered areas of Muslim settlement. [Muslim law applies to a Muslim living in any part of the country.] Private ownership of land is subject to a system of deeds registration... Under deeds registration, the registry serves as repository of documents relating to transactions, and a cumbersome title search must be conducted each time the land is transferred. A system of title registration, which would simplify transactions procedures, has been proposed regularly for the past hundred years... While all recognize private ownership, they differ especially in terms of inheritance procedures.

A Land Commission study in 1987⁵ reviewed the lack of survey plans in the country, particularly in urban areas. For example, there is no legal cadastre for almost all of Colombo. Although surveys have taken place in rural areas, particularly in association with the Mahaweli project in recent years, cadastral information for developed land is insufficient.

Land teritorial conditions become confused as a result of intestate succession. Several co-owners could claim a small parcel of land in the event a will is not available. If action is filed in court to clarify the situation, it often takes at least ten years for a judgement. If the title to the land is not cleared in this manner, these co-owners become the legal owners of a parcel of "undivided property."

The majority of the population is governed by the Roman Dutch law, but together with the other three systems -- Thesawalamai, Kandyan law, and Muslim law -- the land situation is complicated. Land ownership is established by a unified deeds registration process but the possession of a valid deed does not necessarily mean that a person has a clear title to a parcel of land when required for a mortgage.

Financial institutions require the borrower to deposit the original deed by which the borrower claims the land, a survey plan, and documents from the relevant local authority.⁶ The credit institution then undertakes a title search that usually covers 35 years. If the land is in any way encumbered, the credit institution will ask the client to either remedy the situation or obtain title insurance.

⁵ Report of the Land Commission - 1987, Sessional Paper No. III-1990, Government of Sri Lanka, May 1990.

⁶ Title requirements by lenders is discussed more fully in Annex A.

A title search of 35 years is not always possible as the pages in which particulars regarding the land is registered are often damaged or otherwise improperly ordered. Further, a search would reveal that testamentary action has not been filed upon the death of an owner or co-owner. These are only some instances where the borrower is required to obtain title insurance, often with high premiums as in the case of damaged folios where the "history" to the land cannot be checked and the risks that it would be encumbered are high.

Although there is strong opinion by borrowers that a title search covering a period of 35 years is excessive, credit institutions continue to exercise maximum caution. They believe that in the case of a foreclosure or of a claim on the land by another party, the lender would be without remedy; it would have to take court action which often takes as much as ten to fifteen years.

New law in 1990 granted lending institutions powers of "parate execution", or foreclosure. Though these powers circumvent arduous court procedures, the anticipated response that the lenders reduce the title search from 35 years has not occurred. Continued ambiguities in the mortgage bonds apparently prevent judges from ruling in favor of lenders.

Further, the new laws do not induce credit institutions to give loans to low income families at all, or virtually preclude it. Under the Debt Recovery Act, these special powers are not enforceable for loan amounts less than 150,000 rupees. In order to foreclose on a property on which a loan of less than 150,000 rupees has been obtained, the credit institution must again initiate unwelcome legal action.

As a result of these factors, credit institutions have not changed their cautious ways, and continue the practice of a 35 year title search. Thus, it could be said that the new legislation has not addressed the problem in the manner intended.

Title insurance is the very frequent answer to the lenders' caution. Even title considered as sound as ownership under any other circumstances (such as prescriptive title⁷) is not accepted by credit institutions without title insurance.

A deed executed as a result of a Partition Decree is accepted by a lending institution but not a deed of Amicable Partition. In the case of the latter, the institution will require title insurance. The criterion here is the decree in a Partition case is absolute, while the in the case of an Amicable Partition, it is still open for litigation.

Again, in instances where owners or co-owners of property have died intestate, the testamentary case, if instituted, would take ten to twenty years to conclude. Until then, the property is simply not accepted as collateral. If testamentary action is not instituted, the

⁷ Prescriptive title is obtained by way of a decree in favor of a defendant in an action by proving undisturbed and uninterrupted possession for at least ten years.

lending institution would not be able to identify the legal heirs and would automatically be refer the applicant for title insurance.

2.2 **Housing Credit Institutions.** According to a recent survey,⁸ low-income families finance their housing mostly from individual savings and family sources. Of those expending less than 5,000 rupees to build or obtain their home, well less than 10 percent secure financing from formal credit institutions; of those expending between 5,000 and 25,000 rupees, not much more, less than 15 percent, are served by formal credit institutions.

Credit from banks and other formal lending institutions is provided almost exclusively to an individual with clear titles, a reflection of the fact that cloudy titles are usually not accepted as collateral by formal sector lenders. Informal households, however, also receive loans, mainly from employers and family members. The conclusion is that, while households with unregistered title are almost as likely to borrow as those with registered title, the source of financing differs widely. It is the several public and private financial institutions that must make housing credit available to those without clear title, but whose risk of default is no more than those whose clear title is acceptable collateral.

Virtually every public and private bank in the country is eligible to participate in the HG program. Unfortunately, public banks' management capacity, and private banks' market strategies -- and the need in both cases for clear title for mortgage lending -- are reflected in the limited involvement in the HG program. Except for consumer loans for housing purposes, there is unlikely to be any substantial other housing lending by the banks.

A review of the private banks suggests that clear land title constrains housing lending. **Hatton National Bank** is the oldest and one of the strongest private sector financial institutions in the country. It has a large branch network and a strong rural presence. It will likely be a large participant in HG financing, mostly for short term consumer loans for home improvements. By making such short term loans -- in which clear title will not be required for collateral -- Hatton effectively avoids the land tenure problem. Market interest rates, and the consequent high payments, are simply not affordable by the target group; Hatton will be content with consumer loans (financed by the HG).

Seylan Bank is the country's fastest growing and most aggressive financial institution. After six years in operation, it is as big as Hatton. Seylan insists on clear title, and consequently is not making mortgage loans for the HG target group. In addition, like Hatton, Seylan confronts an affordability problem for the target group.

The **Commercial Bank** has expressed some interest in participating in the HG program, but has taken no action. Two other private banks -- **Sampath Bank** and **Citibank** -- have declined to participate in the program.

⁸ Housing User and Provision Survey, Asian Development Bank, November 1989.

With the important exception of the **Housing Development Finance Corporation (HDFC)**, there is little expectation of substantial participation by other state banks. The HDFC is the most interested and able public⁹ entity that can take advantage of the HG loan.

The **State Mortgage and Investment Bank (SMIB)** is a large supplier of housing finance to the middle class. It suffers from management deficiencies and low collection rates. The Government has scheduled SMIB for privatization. It currently is able to draw on financing from both the HG loan (for land purchase) and a loan from the Asian Development Bank (for home purchase).

The **Regional Rural Development Bank (RRDB)** is a 16 bank system owned by the Central Bank. The Banks are small, village institutions set up to service the needs of people falling outside the range of commercial banks and Non Government Organizations (NGOs). They have a limited absorptive capacity. Although six RRDBs have agreed to utilize HG financing, their low absorptive capacity would indicate a very limited involvement.

People's Bank is a government owned commercial bank. It is a substantial provider of housing funds for the middle class, but it is experiencing financial and management problems, and is technically insolvent. People's is experienced in mortgage lending and titling, and has committed itself to participating in the HG program, but expectations are not high that it actually will.

Finally, the **National Housing Development Authority (NHDA)**, though not a bank, is a major provider of housing funds, either through the budget process in the form of grants to the very poor, or in the form of subsidized loans. NHDA suffers from poor management and low collection rates. It cannot be a Sub-Apex lender under the HG program, so the **Bank of Ceylon** (the country's largest state bank, experiencing financial and management difficulties of its own) has been put in the position of borrowing from the Central Bank under the HG program, and making wholesale loans to NHDA.

2.3 National Land Titling. Improvements in land registration systems are hampered by several problems. First, institutional problems -- the lack of skilled staff, lack of coordination among the various agencies involved and lack of clear policies on the respective roles of the public and the private sector in registration procedures. Second, technical problems -- should one continue with deeds registration or move to full title registration and if so, with what degree of sophistication and occurrence of survey. Third, financial problems -- should registration be regarded a public good or made to pay its way.

For reasons of collateral to secure credit, as well as for many other purposes, all land in Sri Lanka should have clear title. A national land titling program is required in the long term, and in fact the Government is developing a major, national land titling project. A national

⁹ HDFC is scheduled to be privatized.

land titling program will require new legislation. A draft of a Land Titling Act has been prepared and been under review for nearly two years.

The government's preliminary draft of a land titling system proposes three areas of responsibility: The Surveyor Department will do a survey and prepare a cadastre of all land. The Commissioner of Title Settlement will investigate titles. The Registrar General will maintain the register.

A land titling project will be a very costly and lengthy process, and as of this writing, the Government intends to carry it out without external financial support. As it proceeds on a national land titling program, the Government of Sri Lanka must undertake the following activities:

- ▲ assess what land rights are in actual practice, and how they are conveyed;
- ▲ review the existing laws governing land tenure with a view to their reform, updating, reorganization and codification;
- ▲ decide on the course of reforms and choose between a full-fledged code or the development of a simplified system;
- ▲ simplify procedures, mechanisms, and forms used in connection with land transactions; and
- ▲ develop a system of financial incentives and rewards to encourage use of the formal land tenure system.

3. ISSUES

3.1 How significant a constraint to housing finance is land tenure? Only about one-quarter of one percent of the loans planned to be financed by the HG through 1993 had been made through October 1992; very little more was in the pipeline. To what extent is this a consequence of land title and collateral problems?

Anecdotal evidence suggests that title and collateral are indeed serious problems. In addition, it appears that high construction and land costs, and market interest rates, act together to limit banks' participation in the program. Further, as the Sub-Apex lenders are only now beginning to understand, under the present lending arrangements from Apex to Sub-Apex lenders, timing mismatches on the repayment of principal may produce temporary capital shortfalls for the Sub-Apex lender.¹⁰

The only hard data available¹¹ confirms the difficulties created by land tenure, and suggests that there would be additional demand for housing finance in the formal sector if land title were regularized. HDFC had 404 applications pending approval in January 1993. In 112 cases (nearly 28 percent), the applicant was referred for title insurance. An additional 193 cases (nearly 48 percent) were awaiting clarification from the Land Registry and other legal issues. Thus, HDFC approval for nearly three-quarters of current mortgage applications is delayed for reasons related to land tenure.

Of applications for which HDFC requires title insurance, fully 64 percent (72 applicants) of the title insurance is required for reasons that reflect inheritance laws ("undivided shares", "title by inheritance", and "intestate property"). That is, heirs to land own it collectively, and until they legally divide the land, or together seek a loan with all the land as collateral, the lender will require title insurance.

Based on the above, as well as interviews with bankers, one can conclude that land tenure problems seriously inhibit the provision of housing finance for low and median income families, and in fact, despite other constraining factors at work, with titles to land more easily established the HG program would make more significant progress.

3.2 Is it relevant whether the problem is in urban or rural areas, or both?

Experts on Sri Lankan land tenure problems as they relate to housing finance differ on whether the problems are urban or rural in nature. Those that regard land tenure for housing finance as an urban problem view urban squatter communities as those with the most obvious constraints to securing credit. While this may be so, the fact is that Sri Lanka is still very much a rural society. Unlike many developing countries in South Asia and throughout the

¹⁰ See Phillip Jones' companion study on servicing and collection.

¹¹ HDFC records.

world, the rate of urbanization in Sri Lanka is not high. When separated by simple definitions of urban and rural, nearly 80 percent of the country's population live in rural areas. That said, peri-urban areas are found throughout much of the populated southwest part of the country, in heavily agricultural areas to be sure; linkages are strong between urban areas. By definition, however, these are rural residents, and the poorest families in the country, as a rule, live in rural areas. In fact, the great majority of those for whom housing finance may be provided through the HG program are peri-urban dwellers in what is otherwise designated "rural" areas.

The urban or rural issue is not relevant to the effective implementation of the HG program, and the provision of housing credit to families in need. The group targeted for loans is based on income, not location, nor status of current housing (e.g., squatter). Sri Lankan land tenure laws do not distinguish between rural and urban areas. Virtually all of the potential credit institutions maintain offices widely dispersed throughout the country, thus providing access to the rural residents. Loans provided under this program will be used for construction of new housing, for home improvement, and for purchase of housing and land; these can take place virtually anywhere in the country.

3.3 Do the land tenure problems have similar impacts on the agriculture sector as they do for housing, and consequently are there similar responses?

Some form of financial credit is necessary for families of middle and low incomes to purchase a home, to purchase land for new home construction, or to make improvements to their homes. Some form of financial credit is also necessary for small farmers to purchase seeds and equipment, and other inputs, in order to make their farms productive.

Indeed, the land tenure system has consequences on both housing and agriculture:¹²

Inheritance laws and the deeds registration system combine to create strong disincentives to investment on private land in Sri Lanka. This affects the housing market as well as the land market and agricultural intensification: the few surveys that have been done suggest that insecurity of tenure, and especially undivided family landholdings, has been an important constraint to all kinds of land improvements. ...deeds registration does not facilitate the raising of capital, because lending institutions are reluctant to accept deeds as evidence of ownership for the purpose of collateral because of the uncertainties inherent in the title search. This issue is especially problematic with respect to housing...

For housing and for agriculture, the individual is served by specialized credit institutions. For housing credit, the choices -- beyond personal savings, family, and other informal sources (including informal money-lenders) -- are the formal financial institutions that insist on clear title, or title insurance, as collateral. For agricultural credit, the choices -- also

¹² Bloch (1988) op. cit.

besides informal sources and guarantors -- are state agriculture credit institutions (e.g., People's Bank), who make loans for agricultural purposes without title. Collateral is the crop itself. If the season is unproductive, the smallholder does not repay the loan; even in a productive season, collection is limited.

The distinction, and hence the response, is in the repayment term. Agriculture loans are generally short term with repayment based on seasonal production cycles. But in the case of new units or land for housing (as in the HG program, whose objective is to establish a viable housing finance system, with a primary and ultimately a secondary mortgage market), loans are for long terms.

4. OPPORTUNITIES AND APPROACHES FOR THE NEAR FUTURE

Given the inherently lengthy nature of surveying and titling all land, what can be done in the short and medium term? Means must be developed to expedite the establishment of clear title on an individual basis, or at least to provide evidence sufficient to satisfy a lender that the property in question, or some other evidence, should be accepted as collateral.

4.1 Legal Title. Certainly the establishment of clear legal title will make long term mortgage lending possible. The now costly and time consuming process can be improved.

4.1.1 Assistance to Borrowers to Secure Legal Title. The Housing Development Finance Corporation (HDFC) has arranged a special program to assist the target group to clear their title with the intention of making available the long term housing loans. Arrangements have been made to appoint lawyers experienced in title searches and examinations work to act on behalf of HDFC in pursuing title records at the Land Registries. They will be attached to the District Units. Based on their opinion, HDFC will accept title, eliminating the need to call for title reports, extracts of encumbrances, etc., by the borrowers. If the titles are defective, HDFC lawyers will take necessary steps to minimize the risk by making title somewhat acceptable. When the title is accepted and the loan approved, the total cost incurred in clearing title will be deducted from the first disbursement of the loan. An alternative should be considered whereby the cost is included in the amortization of the total loan amount.

The program is similar to HDFC programs that target specific markets (e.g., teachers, journalists, police). HDFC expects about 100 applications per month from each of 17 districts.

HDFC will overlook minor difficulties in title if the mortgagor has undisturbed possession of the property for a reasonable period of time. Affidavits from the parties concerned, examination of tax records affecting the particular land reports from persons residing in the area or having special knowledge of the area such as government appointed representatives (Grama Sevake) or the surveyor, etc., are useful evidence to confirm possession of property. Thus, a bonafide purchaser who has been in possession for a prescriptive period would have title. There must be physical occupancy of the land with an intention to hold the land against the claim of others.

If HDFC lawyers are unable to clear the issues with regard to title, such cases will be referred for title insurance. Title insurance gives protection to the land owner, to the lender against loss or damage that could be sustained due to title defects prior to the date of the policy.

4.1.2 Public Land Acquisition and Provision of Title. The Urban Development Authority (UDA) is a government body authorized to acquire land for development purposes. It acquires property of at least one acre (under the Land Acquisition Law), and

designates it, with clear title, for specific development purposes. The only issue upon which an owner's appeal may be made is on compensation; UDA's acquisition of property is a fast process.

The UDA is also authorized to acquire land for housing and infrastructure, but has not done so. Since UDA must generate funds from its own operations, it necessarily seeks profitable investments; what it regards as shanty upgrading projects are simply not viable. In fact, the Slum and Shanty Division was moved in 1985 from UDA to the National Housing Development Authority (NHDA).

UDA's projects, however, do include the allocation of land to shanty dwellers who are displaced by the acquisition of land for commercial uses. For these purposes, UDA seeks land close to their former dwelling place in the city where informal sector income opportunities prevail. In such instances, the UDA provides land and finance for new home construction. In this way, former shanty dwellers become legal owners of their land plots.¹³

Several possibilities emerge. First, UDA could consider acquiring property and constructing condominiums for low-income families if it could obtain at least a marginal profit from these ventures. Second, since one of the consequences of UDA's activities is clear title, it can declare a special project area and give part of that area to NHDA to develop for housing. Since it is too costly to do this on small parcels of land, small land owners could pool their land into larger parcels.

- 4.1.3 **Land Sharing.** There are lands with squatter dwellings (mostly in urban and peri-urban areas) owned by private individuals. The legal owner of this land is sometimes unable to eject the squatters. And, of course, the owner is unable to make use of this land as the dwellings are often scattered throughout. In such instances, the owner could ask the NHDA to set aside part of the land for the squatters. Although one cannot build a house in an urban area on less than six perches (150 square meters), the NHDA in these circumstances has special powers to build on 1.5 perches (37.5 square meters). Both parties benefit: the squatters would have 1.5 perches legally theirs, and the previous owner would have (at least) part of his land, squatter-free.

In other cases, there are lands which have more than one owner with squatter dwellings. The legal co-owners would have to resort to a court of law to have the land partitioned and to have the shanty dwellers evicted, an arduous process usually avoided. In these circumstances, the NHDA would acquire the land and settle the shanty dwellers as above and compensate the co-owners. The NHDA is aware of a number of privately owned lands where such programs are possible, but has only limited financial resources to acquire such land.

¹³ Some of these grantees sell their plot not long after benefiting, and with the windfall profit, return to their previous conditions; this issue must be addressed.

This approach provides the owner with a clear title to a part of land, and relocates and/or regularizes small squatter settlements.

A similar approach is that the district level government (Secretary of the Provincial Council) identify owners that don't have clear title. Then, each would relinquish a small portion of land in exchange for a commitment from each not to make claim compensation for the land.

4.1.4 Land Grants (Special Provision) Act. There are instances where people have been squatting on land belonging to the State for a considerable period of time. Provided these lands are not ones set aside for public purposes or as reservations, the squatters could make representations to the relevant Divisional Secretariat to have these lands regularized. Such land grants are possible under Land Grants (Special Provisions) Act. Usually such grants are for the low income group (a monthly income of 1,500 rupees or below). These grants are acceptable to credit institutions as title.

4.1.5 Land Development Ordinance (LDO) Permit. Permits as well as long term leases are issued under the LDO, and the law permits such a lease to be used as collateral for a mortgage. Under the LDO, land is given to people under a permit to cultivate and develop. After a period of one to three years the permit holder can ask for it to be regularized. If the authorities concerned are convinced that proper development has taken place the land is granted to the permit holder by way of a Swarna Bhumi deed scheme. These permits are accepted as collateral, provided the conditions laid down in these permits, such as obtaining prior approval from the authorities to mortgage, are strictly adhered to.

Some 28,000 acres have been targeted to be distributed in the above way; about 95 percent of these lands are situated in rural areas. The program was started in 1990 and through 1992, 19,500 acres have been so distributed. The Government's ultimate aim is to distribute about 600,000 acres.

4.2 Title Insurance. The issuance of title insurance by private insurance companies is in many ways the most realistic option to enhance the granting of mortgages. Although one can argue that title insurance is somewhat useless,¹⁴ it provides satisfaction to lenders.

Two insurance companies currently issue title insurance, the Insurance Corporation of Sri Lanka, operating for about 20 years, and Ceylinco, in the title insurance business for about four years.¹⁵ As a result of the competitive nature of the business, both companies have

¹⁴ Insurance is only issued for the safest of risks, excluding the very circumstances that may create title conflicts; one company has had no claims in recent years.

¹⁵ In cases where the risk on the title is slight, an applicant to SMIB may pay a fee for what amounts to an in-house insurance program; higher risk titles require outside title insurance.

become a bit more flexible in their standards, though not in any way that would make title insurance more accessible to low and median income families.

When HDFC is dissatisfied with an application, they recommend the applicant seek title insurance. Nearly all such applicants ultimately secure title insurance.

There are two types of title insurance. In one, to enhance property sales, the owner is indemnified from title difficulty; this satisfies the prospective buyer. In the second, the property is offered as security for the mortgage; this satisfies the lender.

One insurance company receives about 100-150 applications per month. It has a ten percent rejection rate. Five categories of risk have been established, with premiums ranging from 0.5 percent of the value that the lending institution wants to the highest risk premium of 1.2 percent. Title insurance is usually issued within a few weeks of application.

The problem of course is that the target borrowers for this program cannot readily afford the additional expense of title insurance. In addition, they are unlikely to be able to provide the documentation required by the insurance company. One response -- viable if the companies see the potential of the market for their product -- is to provide special services to the applicant to assist him in preparing the documents. Another response -- acceptable to the insurance companies -- is that the lenders pay the premium, and include that amount in the amortized loan to the applicant. This will ease the immediate financial burden on the low income family, and not increase his monthly mortgage repayment by much over a 15 year term.

4.3 The Community Based Approach. Many housing loans are made by cooperatives without land as security. Rather, social pressure, often through publicity, encourages repayment by the borrower. Indeed, studies in many countries have shown that low-income families repay loans -- both long term housing loans and short term consumer loans -- at rates as high or higher than other income groups.

In Sri Lanka, housing for the informal sector -- comprising poor, rural people -- has largely been financed through small loans provided by cooperative societies, the largest of which are the Thrift and Credit Cooperative Societies (TCCSs). They are well managed and maintain high collection rates, in excess of 90 percent. TCCSs are informal, and are kept out of the capital market; they consequently can mobilize funds only from their members. TCCSs offer a variety of loans for purposes of housing (to buy land, construct or improve a unit) as well as agriculture.

The family income criterion is 1,250 rupees per month. Those families which have a monthly income of less than 1,250 rupees are provided credit at eight percent to buy land or

build houses. This group is considered low income. They are also identified as families having less than a one-quarter of an acre.¹⁶

A loan of up to 5,000 rupees is available to those who can provide two guarantors (very often members of the TCCS). A loan from 15,000 to 20,000 rupees can be obtained by a person (not a family) who is willing to mortgage his property. (The amount of the loan varies from one TCCS to another, as they have powers to generate income and survive on their own.) Hence, judging by the member's commitment to the society, the loan amount could be higher.

The middle income group is those with a monthly income above 1,250 rupees. The interest rates on loans provided for housing varies from a minimum of 12 to 14 to 16 percent depending on the particular TCCS. Loans are provided up to 50 percent of the value of the property, and a mortgage of the property is required.

In both schemes, the TCCS requires the member to be the sole owner of the property in order to avoid legal difficulties. A title check is done but for a period of about 20 years. TCCSs depend a great deal on information provided by other members. TCCSs, operating in rural areas, regard this method as highly dependable. Some TCCSs are very small and members know each other and their property very well.

If after granting the loan, the TCCS becomes aware of any problem regarding title which was not disclosed prior to disbursement, they suspend the loan immediately. Such problems are very rare as the mortgagor is under pressure from other members of the society to divulge the truth about the land title as well as to pay the loan installments regularly. The high rate of collection verifies the programs' success.

The TCCSs are not active in urban areas, as they regard the poor in urban areas as too mobile. However, one or two urban programs are being implemented, where many shanty dwellers were found to be living on land which could be regularized by the Divisional Secretariats. The TCCS has built about 40 houses for those who were unable to generate any income at all.

TCCSs have developed an Insurance Scheme for those who have obtained loans so as to prevent the family of a mortgagor from becoming destitute in the event of the death of the mortgagor. The house would automatically pass on to the family; the family is then prevented from selling it in order to recover the debt.

4.4 Collateral in Lieu of Clear Title. In anticipation of the problem of unclear titles, the HG program documentation stated that *primary lenders may use alternative forms of collateral. The form of collateral requirement by primary lenders may be a subject of*

¹⁶ The extent of land belonging to a rural family is considered to be greater than that of an urban family.

*negotiations between Sub-Apex and primary lenders...*¹⁷ The possibilities identified below are explicitly stated in the Central Bank's on-lending documentation to the Sub-Apex lenders.

- 4.4.1 **Mortgage Bond.** The execution of a mortgage in favor of the credit institution is essential at the time of loan disbursement. If the property in question has "bad title", a person could offer alternative land with clear title, or he could offer tangible property, to augment the status of the collateral.
- 4.4.2 **Compulsory Savings Account.** Members of the Employees' Provident Fund may pledge their savings with a bank and draw up to 75 percent of their savings to finance home construction. Mercantile Services Provident Society members benefit from a similar scheme. Other institutions have pension funds from which employees borrow for housing.
- 4.4.3 **Compulsory Purchase of Shares in a Cooperative Entity.** Although a cooperative entity cannot pledge its own shares, a member who has made deposits over a period of time could be made eligible to borrow a percentage of it as an interest free loan, the remainder constituting the loan proper.
- 4.4.4 **Guarantors.** Under normal circumstances, it is a difficult task to find persons who would consent to become a guarantor for a loan. Further, a low-income person would find it particularly difficult to find a guarantor. If he is steadily employed, the individual may seek his employer as a guarantor.

The Debt Recovery Act, however, has worsened the situation by providing that a guarantor cannot transfer (alienate) his property once foreclosure action has been instituted with respect to a loan. Worse, an amendment is proposed to make such an offense a criminal offense if the guarantor transfers (alienates) his property without the permission of court.
- 4.4.5 **Alternative Property.** Under present laws jewelry can be pledged to the People's Bank and the Regional Rural Development Bank to obtain a loan (for unspecified purposes, not necessarily for housing). Amendments are proposed to permit all banks to be able to accept such a pledge. Other property which would be acceptable as collateral to a financial institution would be tangible property, such as tools of the borrower's trade (e.g., tractors, fishing boats, machinery), though these are extremely difficult to recover.
- 4.4.6 **Power of Attorney.** Collateral for a loan on one parcel of land can be an irrevocable power of attorney on a second parcel of land. The power of attorney enables the lender to sell the property if necessary. Most finance companies accept this approach.

¹⁷ HG Program Delivery Plan, October 1991, Section 3.7.6.

4.4.7 Letter of No Objection. When property is in undivided ownership (usually heirs who are siblings), the co-owners may consent to one co-owner mortgaging a part (or all) of the property. This consent is granted in a legal document called a Letter of No Objection.

5. RECOMMENDATIONS

This report is intended to assist USAID in its discussions with the Government of Sri Lanka and private sector housing finance institutions on how credit can be provided in the absence of clear evidence of property ownership. The most effective forum to discuss these issues and take action is the Housing Finance Steering Committee. The Committee, established to provide policy coordination and support for housing finance sectoral activities, is comprised of senior representatives of Ministries and housing finance institutions.¹⁸

USAID should distribute this report to the Housing Finance Steering Committee, solicit their reactions and comments, and convene a meeting to discuss the subject. The Committee should review the approaches discussed in Section 4, developing its own list of opportunities for deeper review and discussion. The Committee should look specifically at the following:

1. Lenders are more willing to make loans without clear title, often without collateral, for short terms rather than for long terms. In the interests of the development of Sri Lanka's financial sector, the establishment of a housing finance system based on long term mortgage lending is essential. That said, however, lenders should pursue opportunities for mortgage lending for terms shorter than 15 years, and for which they do not require clear title.
2. Family mobility is minimal. Families simply do not move often nor far. An employee generally remains with his employer for his whole working life. Foreclosures on housing loans are rare. The stable family has strong feelings of tenure of land and home. Given these facts, lenders should be able to find ways to make many mortgage loans without clear titles.
3. Lenders should consider direct assistance to borrowers to secure legal title. In its own interest to capture a share of the market, HDFC is embarking on this approach now. Although the borrower will ultimately pay for the service, lenders can develop repayment schemes that minimize the burden on the borrower (e.g., deducting the cost from the first disbursement of the loan, or including the cost in the amortization of the total loan amount).
4. Lenders participating in the HG program should pursue ways to reduce the 35 year title search tradition. They should seek standards by which undisputed property ownership can satisfy long term lending requirements.
5. Title insurance can be made easier and more affordable by low income groups. Competition can be increased. Assistance can be provided to applicants. The costs of premiums can be amortized in the mortgage loan itself.

¹⁸ The Committee was the subject of the report The Development of Housing Finance in Sri Lanka, Preparation of a Working Agenda for the Housing Finance Steering Committee, Sally Merrill, Douglas Diamond (Abt Associates Inc.), April 29, 1992.

6. **UDA could use its acquisition and development authority for housing purposes. It could, for example, construct apartments, or transfer land to NHDA for housing construction.**
7. **NHDA's land sharing approach results in legal title for former squatters. This concept merits close review for possible application on a much wider scale.**
8. **Housing lenders should look closely at the operations of the Thrift and Credit Cooperative Societies. Their success on an informal basis provides many lessons to formal sector financial institutions.**
9. **Finally, lenders should consider accepting some of the many suggested forms of collateral in lieu of clear title.**

ANNEX A:

TITLE REQUIREMENTS OF HDFC AND OTHER CREDIT INSTITUTIONS THAT PROVIDE HOUSING LOANS

by Mrs. Ranjani Jayasuriya
Deputy General Manager, Housing Development Finance Corporation

Background. Housing loans are granted on the primary mortgage of immovable property situated in any part of the island provided the borrower has valid title that is acceptable and the market value and the force sale value of the property is adequate. In terms of the State Mortgage Bank Ordinance "No loans shall be granted unless the title of the borrower to the property offered as security is in the opinion of the Board satisfactory". The Bank does not bear any risk whatsoever as regards title and does not accept title unless it is satisfactory. Undivided shares of immovable properties, property in which there are tenements, property occupied by squatters and property to which proper access is not available, etc., are not accepted as security.

Hence, the title requirements of credit institutions render it difficult for borrowers, particularly from rural areas, to obtain long term credit facilities on the mortgage of immovable property (housing loans), for, as it is commonly known, village title is generally unacceptable for the purpose of granting loans by such institutions. Generally, lenders look into 35-40 years of title; a thorough investigation of all facts pertaining to a particular parcel of land is necessary to assure the lender that it is a marketable and valid title.

Examination of Title. At present, banks call for a complete set of title documents which includes the originals of deeds, survey plans, extracts of encumbrances for 30 to 40 years, title report from a panel of lawyers, etc. Other documents are required as well: local authority documents such as Certificate of Ownership which confirms the present owner of the land, latest Notice of Assessment confirming the annual value of the land, tax receipts for the last quarter which would confirm that all rates and taxes of the local authority is paid and the subject property is free of seizure notice and finally the street line certificates which would confirm whether the subject property is affected by street lines that may reduce the value of the property. If the property is not so affected by street lines, a certificate to that effect should be furnished from the local authority. All buildings should be marked and the current assessment numbers inserted. When the property does not abut a public road, proof of access to a public road should be furnished. If there is a right of way, all deeds, plans, documents, and extracts relating to the right of way should be provided.

Borrowers are often unable to collect these documents themselves and must rely on notaries for this purpose. It is clear that borrowers, particularly from low-income groups, will incur considerable expense in seeking mortgages. Consequently, borrowers may turn to "private lenders" who, at a very high rate of interest, provide financial assistance for short periods of

time, such as one year. Often, as security, the private lender will insist on an outright Transfer or a Conditional Transfer.

Problems Related to Land Tenure. The different systems of law such as Roman Dutch Law, Kandyan Law, Thesawalamai Law, Muslim Law, and Statute Law based on Indian and English law have made security of title to land quite complicated. In addition, the absence of accurate surveys has exacerbated the situation; boundaries are often determined by the accumulated records of fragmented actual or potential claims to a particular piece of land. Consequently, property rights especially on small agricultural holdings are indescribably complicated and insecure.

A deed held by a person is not sufficient evidence that he is the actual owner. A deed merely records the seller's intention to transfer his rights of ownership. It does not contain information with regard to the rights, liens, and claims that others may have on the property. In Sri Lanka, as per the Prevention of Frauds Ordinance, every valid transaction relating to immovable property must be notarially executed. Following are three examples of defective title situations:

1. Misdemeanors of property occur when unsophisticated rural people use unscientific methods to measure land. The area of land is stated in such deeds by reference to the extent of sowing, that is, the quantity of seed required to sow the soil. Thus, for example, one Amunu equals 2 1/2 acres; one Pele equals 2 roods and 20 perches (about a sixth of an acre); one Laha/Kuruni equals 10 perches (250 square meters).

The above measures vary from one province to another. The criteria of sowing extent is unsatisfactory because much depends on the type of grain sown. Other measurements are used for other crops. Thus, a planting area of 60 to 70 coconut trees equals one acre; a planting area of 160 to 170 rubber trees equals one acre.

The party affected by errors caused by these methods may sue, although it is desirable that all parties agree to a joint survey made in the presence of witnesses.

2. The prevalence of undivided ownership and the existence of varying systems of law governing inheritance and contracts.
3. Hidden defects are those that do not appear in public records and registers. These include forgery (when revealed, title to several pieces of property may be clouded); a will made by a testator of an unsound mind; undiscovered heirs to the property; existence of an undiscovered last will of a person; undisclosed restrictions on the use of property; or a person entitled to the life interest of the property executing a deed conveying the corpus.

ANNEX B: PERSONS INTERVIEWED

| | |
|--------------------------------|---|
| K.A.L. Premaratne | Director/Human Settlements and Secretary/Housing Finance Steering Committee, Department of National Planning, Ministry of Policy Planning and Implementation |
| Terence Savundranayagam | Director, Development Finance Department, Central Bank of Sri Lanka |
| E. A. Meththananda | Managing Director and Chief Executive, Housing Development Finance Corporation |
| Ranjani Jayasuriya | Deputy General Manager (Legal/Lending), Housing Development Finance Corporation |
| Nimal Gunatilleke | Policy Advisor, USAID Private Sector Policy Support Project |
| George Jelinek | Team Leader/Housing Advisor, Housing Sector Development Study, Asian Development Bank |
| R.M.H. Ratnasooriya | Manager, Urban Housing Development, National Housing Development Authority |
| Gamini Withana | Manager, Urban Housing Division, National Housing Development Authority |
| R.M. Nagalingam | Assistant General Manager, Planning and Monitoring, National Housing Development Authority |
| Mitsuhiko Hosaka | Chief Technical Adviser, UN Centre for Human Settlements (HABITAT), National Housing Development Authority |
| Jan Meeuwissen | Human Settlements Adviser, UN HABITAT, Nairobi |
| S. Berugoda | Surveyor General, Survey Department |
| A. Wedamulla | Additional Director, Lands and Property, Urban Development Authority |
| Yamuna Kanendran | Director, Legal, Urban Development Authority |
| Mangala Seneviratne | Senior Legal Officer, Ceylinco Insurance Co. Ltd. |
| S. Ratnadas | Deputy Managing Director, Ceylinco Insurance Co. Ltd. |

| | |
|--------------------------|--|
| Ruvini Thenabadu | Manager, Central Credit, Hatton National Bank Ltd. |
| Prince R. Nayagam | Chief Manager, Hatton National Bank Ltd. |
| G.T.B. Ekanayake | Deputy General Manager, Credit, Seylan Bank |
| Emil Anthony | Chief Manager, Branch Credit Department, Seylan Bank |
| Viresh Gomes | Department Manager, Branch Credit, Seylan Bank |
| S.B. Niyangoda | Senior Assistant Secretary, Land Policy, Ministry of Lands, Irrigation and Mahaweli Development |
| G. Iddagoda | Deputy General Manager, State Mortgage and Investment Bank |
| K.S.A. Fernando | Legal Officer, State Mortgage and Investment Bank |
| H.B. Samarakoon | Internal Auditor, Federation of Thrift and Credit Cooperative Societies Ltd. |
| Richard M. Brown | Director, USAID |
| George Jones | Deputy Director, USAID |
| Howard W. Kane | Technical Adviser, Housing, USAID |
| Glenn Anders | Chief, Office of Agriculture and Natural Resources, USAID |

ANNEX C: SELECTED REFERENCES

Report of the Land Commission-1987, Sessional Paper No. III-1990, Government of Sri Lanka, May 1990.

Fourth and Fifth Interim Reports of the Presidential Commission on Finance and Banking, Sessional Paper No. VI-1992, Government of Sri Lanka, 27th March 1992.

Land Tenure Issues in Sri Lanka: A Brief Overview, Peter C. Bloch, University of Wisconsin, Land Tenure Center, November 1988.

Housing: Enabling Markets to Work, A World Bank Policy Paper, January 6, 1993.

Sri Lanka Low Income Housing Development Project, Preparation Report, Asian Development Bank, EDU International, October 1990.

Study on Land Tenure for Urban Low Income Families, (First Draft), K.A. Jayaratne, Consultant IRED, July 1991.

Mobilizing Financial Support for Housing, Sally Merrill, Roger Tufts, Harry Garnett (Abt Associates Inc.), November 28, 1989.

The Development of Housing Finance in Sri Lanka, Preparation of a Working Agenda for the Housing Finance Steering Committee, Sally Merrill, Douglas Diamond (Abt Associates Inc.), April 29, 1992.