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MODERNIZATION OF THE LAND PROPERTY REGISTRY IN EL SALVADOR

FINAL REPORT

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FINAL REPORT



**Management Systems International
Corporate Offices**

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Anti-Corruption Interventions in Economic Growth

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EXECUTIVE SUMMARY

This report assesses the impact of a modernized land registration system on the corrupt practices of the old land registry in El Salvador. The principal objective of the report is to highlight lessons that can assist USAID anti-corruption interventions in other countries.

A land registry is essential for creating and protecting the property rights of both small and large land owners and a key element in the legal and regulatory framework for broadbased economic growth. One aspect of special importance is that it protects small proprietors who would otherwise be excluded from access to credit and mobility of their assets within the economic order.

The modernization process of the registry system in El Salvador started in the early 1990s and is still continuing. Donor intervention, initially from USAID and later from the World Bank, has played an instrumental role. Although the modernization program has improved the quality of registration services and reduced corruption, there is no evidence that it has made significant inroads in alleviating the problems of socioeconomic exclusion.

Land registration is conducted by the *Centro Nacional de Registros* (CNR). Established in 1994 to replace the old, manually administered registry, the CNR uses modern technology to process registration applications. In doing so, it has borrowed the best practices of the *Registro Social de Inmuebles* (RSI), which was established in 1991 with support from USAID¹. The group originally targeted by the RSI was low-income people, but soon after the registry's inception its authority expanded to handle a variety of registrations for other property.

This report attempts to test the following hypotheses:

1. The introduction of the RSI led to the simplification of bureaucratic procedures for property registration in the CNR. Automated and streamlined procedures introduced by cadres of skilled and highly motivated professionals contributed to reducing petty corruption among employees tasked with registration services. By extension we might expect the same to be true in other countries.
2. The CNR has become a more efficient registry but has yet to become accessible to large numbers of potential users, especially low-income rural people. If the costs of a modernized register are fully charged to the users, the charges may be high enough to exclude many such low income people. This is a particular problem because land registers are not only private goods for landowners, but a public good, a key part of the legal and regulatory framework for the economy.

The hypotheses were investigated by a review of literature and by extensive interviews conducted in San Salvador from November 28 to December 5, 2005. The principal findings and conclusions are the following:

1. Because the CNR operates with automated and streamlined procedures, it is a more efficient land property registry than the *Registro de la Propiedad Raíz e Hipotecas* (RPRH).
2. The CNR has succeeded in stamping out the petty corruption that tainted the operations of the old registry.

¹ USAID provided technical assistance to the *Instituto Libertad y Progreso* which in turn established RSI.

3. Since a complete legal framework regulating the operations (as distinguished from the structure) of the CNR, the significant gains that have been obtained in the fight against petty corruption may not be sustainable.
4. The CNR is a financially self-sustaining institution, but a large proportion of landowners, especially those who eke out a living in the informal economy, are excluded from the registry because they cannot afford the registration fees.

Lessons from this case study that can be of value for possible interventions are the following:

1. Activities that are designed to overhaul public registries, including the introduction of more automated and streamlined procedures that raise the efficiency of service delivery, contribute to stamping out petty corruption. In doing so, it is more effective to target flexible public agencies (as opposed to the central public registry itself) or non-governmental organizations using pilot programs can be designed and implemented. USAID interventions could indeed bring substantial benefits if these pilots are conceived as embryos of positive changes that can unfold through a process of benign metastasis.
2. Interventions aimed at modernizing land property registries must consider the benefits of facilitating access to the registry by low-income people. Failure to serve low income people results in the weakening of title-to-market linkages and, ultimately, in the retarding of inclusive, less uneven economic growth. For this reason, a public registry that ignores the problem of exclusion can not make a lasting contribution to economic development, no matter how efficiently it is run and how free from practices of petty corruption it has come to be.
3. In countries, where public registries are not fully regulated by adequate legal frameworks, any significant gain that can be obtained in the fight against petty corruption is not likely to be sustainable in the long run and undermine the improved technology of the registry.

This report makes the following main recommendations:

1. Any project on land title registration should be based on an institutional evaluation of the property registry. The explicit purpose of the evaluation should be to detect strengths and weaknesses, while the implicit, unstated objective should be to make recommendations for the introduction of administrative reforms that safeguard the transparency of procedures. The evaluations must include surveys on user satisfaction. Such surveys should also include queries on corrupt practices and should be conducted *ex ante* and *ex post* the introduction of the proposed reforms.
2. Any project aimed at the modernization of the land registry should be preceded by technical assistance to governments in enacting a property registration law and of a regulatory framework for the operations of the registry.
3. Land registry modernization projects should carefully balance the objective of transforming the institution into an efficiently-run, transparent organization, with that of ensuring maximum access to the registry by low-income people.

1. INTRODUCTION

This report addresses the impact of a modernized land registration system on the corrupt practices on the land registry in El Salvador. The report spells out donor activities that critically contributed to the process of modernization, and highlights main lessons for possible USAID interventions in the anti-corruption front.

A land registry is essential for creating and protecting the property rights of both small and large land owners and a key element in the legal and regulatory framework for broadbased economic growth. One aspect of special importance is that it protects small proprietors who would otherwise be excluded from access to credit and mobility of their assets within the economic order.

A land registration system is part of land administration in any country, including efforts, if any, to make the distribution of properties more equitable. A highly unequal distribution of land ownership was one of the factors that ignited the civil war in El Salvador in the late 1970s. The situation was so delicate that the government, in its zeal to address the claims of a restive population, implemented an unprecedented program of land reform. Assisted by USAID, the El Salvador government decreed in 1980 that land parcels larger than 245 hectares were to be confiscated for transfer to small farmers. As a result, more than 400,000 hectares—20 percent of the country's area and almost 50 percent of the country's total productive land—was affected, benefiting approximately 830,000 people.

Thereafter, and after the end of the civil war in 1992, El Salvador embraced the principles and practices of a market-assisted approach to land reform. A successful approach to land reform is supported by three pillars: (1) a property rights system that includes efficient regularization of land titles, an updated cadastre, a modernized registry, and agile mechanisms for the resolution of land disputes; (2) efficient information systems for land and other factors of production, so that buyers and sellers, lenders and borrowers can participate in market transactions; and (3) a land market structure that encourages competition.

An assessment of the preconditions and results of the market-assisted approach to land reform in El Salvador lies beyond the scope of this report. Suffice it to say that the incomes of the rural poor tend to rise when governments implement land administration systems that strengthen the title-to-market linkages. Such systems underline a symbiotic relationship between streamlined, modern processes of land titling and registration on one hand, and transparent, enforceable, efficient laws and regulations that rule the transfer of property, the operation of the land registry, and the use of property as collateral, on the other. Not only does land titling provide landholders formal property rights and security to their land, but by so doing, it gives landholders collateral through which they can access formal credit. This linkage with formal financial markets can trigger a virtuous circle whereby more access to credit at better terms enables landholders to purchase farm inputs, expand output, make capital investments, and practice sustainable use of their land—all of which raise farm productivity and leads to higher household incomes.

An efficient land administration system has the added advantage of reducing land disputes and conflicts. The importance of this in Latin America can hardly be overestimated. A recent assessment of land conflict issues in Guatemala revealed economic implications that hurt households and farm businesses, mainly because of higher legal, security, and transportation costs, postponement of investment, and time spent in solving disputes instead of in productive activities; regional development, as local governments dedicate time and resources to addressing land disputes which, in the end, diminish the resources available to improve the provision of public services; and the national economy, as a large number of

unsolved land disputes exposes institutional weaknesses that bear heavily on private investment decisions.²

Land tenure problems in El Salvador do not come close to the severity of land conflict that characterizes Guatemala. In part, this is due to the timely intervention of USAID³ through the *Programa de Transferencia de Tierras* (PTT), executed in 1992-96, and the *Programa de Seguridad Jurídica Rural* (PROSEGUIR), implemented in 1997 – 2001. These projects departed from the expropriation-and-confiscation approach that had characterized the 1980 attempt at land reform and focused more on securing property rights in lands that were available for resettlement. In doing so, USAID embraced an inclusive, participative, and comprehensive approach to land redistribution.

Still, two factors may fuel conflict in the long run in El Salvador. The first is that the title-to-market linkages are still far from robust. The other, which is the subject matter of this case study, is corruption. This paper concludes that great strides have been made in reducing corruption. For example, the deliberate overvaluation of land targeted for transfer to small farmers that occurred in the first years of land reform and was alleged to involve corruption was corrected in the 1990s. In addition, the land registration system is more transparent. Nevertheless, corruption is a lingering threat that could undo the success of the last two-and-a-half decades of improved land titling.

In land administration, corruption can manifest itself in state capture or petty or administrative corruption. The Guatemalan case illustrates state capture.⁴ Petty or administrative corruption is tied to legal frameworks that are either improperly designed or poorly enforced. As the Ulstein Anti-Corruption Resource Center postulates

Many problems related to [petty or administrative] corruption in land policy and reform are rooted in insufficient or incoherent and improperly enforced legal provisions, such as the lack of a comprehensive and unambiguous regulatory framework governing access to and use of land, confusion over existing rules, and failure to enact those rules and regulations whose presence is likely to reduce corrupt opportunities. The result is an institutional environment in which uncertainty and confusion facilitate the exercise of corrupt practices and where the risk of detection is reduced due to the insufficient nature of law enforcement agencies.⁵

Petty or administrative corruption is usually tied to the weak institutional capacities of public agencies in charge of land administration—poor remuneration of staff, lack of technical and ethical training programs for staff, lack of access to equipment necessary for executing technical tasks. Corruption is rife in land titling agencies in many countries. Corruption in this context can involve bribes for registering titles or changes of titles, taking bribes to change or record titles in favor of the bribe payer, or requesting unauthorized fees for services. In many developing countries, improving the administration of land title registration by making the process more standard and transparent can reduce the opportunity for corruption significantly.

² Brown, Michael and Jorge L. Daly. Land Conflict in Guatemala. Reported presented to USAID (mimeo). 2005

³ The European Union and GOES greatly assisted in the funding of PPT.

⁴ In Guatemala, the public agency in charge of addressing legal disputes, ensuring the regularization of titles, and facilitating access to land to beneficiaries (*Fondo de Tierra*) also facilitates access to subsidized finance and technical assistance. The agency seems to have been captured by an unholy alliance that includes (1) leaders of peasant organizations who have become unrepresentative of their constituencies; (2) officials of the agency itself; and (3) farmers interested in selling their land at above-market prices. Lack of vigilance has led to widespread corrupting practices in both financial transactions for land access and technical assistance.

⁵ Utstein Anti-Corruption Resource Center, U4 Helpdesk Query, off the Internet.

The modernization of the registration system was the widespread object of USAID interventions in the 1990s throughout the world. This initiative has been continued with World Bank assistance, though USAID retains a critical role. In essence, the modernization program constituted an explicit recognition that it was necessary to move beyond land titling if stronger title-to-market linkages were to have any hope. As one expert observed,

The experience of the land titling projects of the 1980s demonstrated that [it is] simply [not possible to] hand out land titles and expect recipients to register subsequent [commercial] transactions.... After examining reasons why titleholders do not report subsequent transactions, it was realized that the main problem lay with the cadastral and registration systems themselves. These systems were overly bureaucratic, costly, inaccessible, centralized, corrupt and not transparent to the users.⁶

El Salvador was no exception to this rule.

⁶ Grenville Barnes, "Lessons Learned: An Evaluation of Cadastral Initiatives in Latin America over the Past Two Decades," FIG XXII International Congress, Washington, DC, April 19-26, 2002.

2. BACKGROUND

This section addresses four topics. First, it provides a snapshot of the political economy of El Salvador. Second, it provides statistics on registration procedures and levels of corruption. Third, it describes the process of reform of the land property registry. And fourth, it details USAID interventions that contributed to the modernization of the property registry.

CORRUPTION AND PROPERTY REGISTRATION INDICATORS

World Bank data on the cost and the time it takes to complete property registration procedures suggest that there is room for improvement in El Salvador. Time spent to complete the procedures is 52 days, which compares favorably with the average of 56 days in Latin America. Still the country lags far behind top performers. In Costa Rica, completing property registration procedures takes 21 days, in Chile, 31. Even in Honduras, usually considered more bureaucratic and with poorer institutional capabilities, it takes just 36 days. The cost of registering property (including fees, real estate transfer taxes, stamp duties, and payments to lawyers and notaries) expressed as a percentage of property value is 3.5 percent, below the Latin American region average of 5.6 percent and about the same as in Costa Rica (3.6 percent) but higher than in Chile (1.4 percent).⁷ The cost could be reduced significantly if the real estate transfer tax, reportedly 3 percent on land sale prices over \$28,000, was lowered or eliminated.

El Salvador is reputed to suffer from significant levels of corruption. However, this problem is reputedly much more prevalent in some sectors than in others. The size of the informal sector and irregular payments in judicial decisions affect economic growth.

According to The Global Competitiveness Report 2004–2005, roughly 50 percent of all business is performed in the informal sector,⁸ and approximately 10 percent of Salvadoran firms' senior managers' time is spent "dealing/negotiating with government officials."⁹ Moreover, irregular payments in judicial decisions make El Salvador rank 78 of 104 countries surveyed.¹⁰

These findings are corroborated by other empirical data. The World Economic Forum reports that among the 14 most problematic factors for doing business, inefficient bureaucracy ranked third, and overall corruption ranked seventh.¹¹ Comparison with other countries with respect to anticorruption indicators shows that much remains to be done: of 209 countries surveyed, El Salvador ranks above 43 percent, well below Chile and Costa Rica, the top regional performers (88 percent and 77 percent respectively). In Central America, El Salvador is outranked by Panama (55 percent) and Nicaragua (46 percent) and performs better than Honduras (30 percent) and Guatemala (27 percent).¹²

Still, important positive changes should not be ignored. Government institutions, such as customs, the tax collection agency, and law enforcement agencies, have been thoroughly reformed in recent years. One

⁷ The World Bank, *Doing Business in 2004*. The World Bank Institute conducts corruption surveys in several countries, including El Salvador.

⁸ The Global Competitiveness Report 2004-2005. Geneva: World Economic Forum, 2004, p. 540.

⁹ *Ibid.* p. 524.

¹⁰ *Ibid.* p. 584

¹¹ World Economic Forum, *Executive Opinion Survey (2004)*.

¹² The World Bank: *Governance Research Indicator Country Snapshot. Comparison for Control of Corruption across a number of countries, 2004.*

result of such reforms has reputedly been a significant reduction in the levels of petty corruption. As this paper makes clear, this positive development is also visible in the national land property registry.

REFORM OF THE PROPERTY REGISTRY

The land title registration system is administered by the *Centro Nacional de Registros* (CNR). It was established in 1994 to consolidate the operations of two registries—the *Registro de la Propiedad Raíz e Hipotecas* (RPRH) and the *Registro Social de Inmuebles* (RSI). A brief historical digression will help us understand the differences that in the past separated the RPRH from the RSI.

Until the early 1990s, land was registered in the RPRH. Established in 1886, its purpose was to “inscribe and publicize rights and interests in real property by recording transactions that involve the creation, transfer, modification or cancellation of rights.”¹³ In the early 1990s, RPRH was staffed by 600 employees and operated a central office in San Salvador and nine regional offices, each with departments that dealt with “sorting, administration, document reception, copying, microfilming, legal cadastre, records office, binding, document archives, folio archives, indexing and certifications.”¹⁴ The registry was bureaucratic, and every person interviewed for this case study holds the view that the operations of the registry were rife with petty corruption, manifested in bribes collected to speed up the registration process, tear up folios, eliminate liens wrongfully, and the like. In the mid-1990s 150 employees were dismissed, with no visible impact on staff morale or productivity. Before the RPRH was incorporated into the CNR, the registration process was executed manually. Not surprisingly, the process would “typically take between 2 months for error-free applications and 2 years for complex applications requiring corrections.”¹⁵ It was inefficient and riddled with corruption.

The RSI was established in 1991¹⁶. It was part of the RPRH, but with powers to function independently, including the establishment of its own regulations and procedures—it was a parallel registry. Originally, RSI “was endowed with the authority to register ownership and other interests pertaining to all land development projects carried out in the public interest – i.e., any project that directly or indirectly benefits low income families.”¹⁷ Before long, however, RSI’s authority was expanded to allow it to handle a variety of registrations of other property not related to “social interests.” Thus, RSI has the same authority as the RPRH—that is, with authority to “inscribe any existing right or interest that pertains to real property under its jurisdiction, including ownership, mortgages, liens, foreclosures or seizures, receiverships, servitudes, usufructs, inheritances, trusts, sales, or leases, as well as any transfer, modification, or cancellation of such rights.”¹⁸

The RSI was launched with the strong backing of government and donors, which had concluded that the RPRH was ineffectual. Since its inception, RSI has been housed outside the offices of the RPRH, in the Ministry of Justice. Although the RPRH maintained final authority over registrations, in practice the RSI would process registration cases efficiently then send them to the RPRH for rubber-stamp approval. What ensued was a process of benign metastasis by which the old registry was forced to adopt, gradually, the

¹³ Brian Trackman, William Fisher, and Luis Salas, “The Reform of Property Registration Systems in El Salvador: A Status Report,” October 1999, Central American Project Series, <http://www.cid.harvard.edu/hiid/725absw.html>. The discussion in this section borrows heavily from the findings of this study.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ USAID provided technical assistance to the Instituto Libertad y Progreso which in turn established RSI.

¹⁷ Ibid.

¹⁸ Ibid.

automation of its own registration systems. The process culminated with the creation of the modernized registry, the CNR, which embraced automation. In summary, the RSI made an important difference:

- The RSI was designed as a modern, completely computerized registry. The advantages were there for all to see: applications to register rights and interest in real property could be scanned and stored in electronic form, and the sorting and examination of these applications could be conducted electronically, not manually. Therefore,

“because [it] uses scanners to digitize documents, rather than microfilm or other copiers, it [did] not need the photocopying and microfilm staff and facilities found in RPRH offices.....Instead, the RSI offices [could] rely upon a technical department, responsible for ensuring that the computer system functions properly and that RSI records are properly saved and backed up in case the main system fails.”¹⁹
- Unlike in the RPRH, registration applications in the RSI included maps or site plans made by a licensed topographer. The maps made updating cadastral records possible so legal rights could be matched to geographical reality.
- Because it was conceived as a mechanism to incorporate unregistered properties belonging to the underprivileged, the RSI offered a user assistance department to help users prepare documents for registration.
- The staff of the RSI had better pay, skills, and motivation than RPRH staff. Furthermore, the RSI did not suffer from public perceptions of corruption that plagued the operations and tainted the image of the RPRH. This was confirmed by every interviewee and focus group contacted.

USAID AND WORLD BANK INTERVENTIONS

The success of the RSI is tied to USAID interventions. First, USAID provided timely technical assistance to the *Instituto Libertad y Progreso* (ILP), the government entity entrusted with the assistance to the Ministry of Justice in the development, installation, and administration of the RSI. The RSI constituted the basis for the establishment in 1994 of the modernized registry, the CNR.

Second, the PTT and the PROSEGUIR projects funded the salaries of skilled, competent, highly motivated professionals who played an instrumental role in streamlining registration procedures and in nurturing demand for land registration, which ultimately led to the installation of a more efficient automated registration system in the RSI.²⁰

The World Bank has focused on providing technical assistance to the CNR, including the financing and installation of state-of-the-art technologies that are now used in cadastral tasks and property registration procedures.

There is no question that these interventions improved the efficiency of land administration in El Salvador. As suggested before, the participatory approach that USAID supported in the PTT and PROSEGUIR projects corrected the abuses that had tainted the land titling process in the early years of land reform. Again, this was confirmed by those contacted by the study team. In this regard, donor

¹⁹ Ibid.

²⁰ Through the PTT project USAID gave more than \$60 million to the financing of land reform that gave titles to approximately 36,000 new landowners.

intervention in El Salvador has been of critical importance because it introduced valuable lessons learned from projects implemented elsewhere. These lessons are not limited to diminishing corruption, but include improvements in the efficiency and quality of property registration services as well. In fact, El Salvador has been cited as a model of how to improve cadastre and registration systems to increase the security of property rights. According to some experts, the country belongs to an elite league of successful reformers in this area.^{21,22}

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<http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/LACEXT/ELSALVADOREXTN/0,,contentMDK:20156013~menuPK:448812~pagePK:141137~piPK:217854~theSitePK:295244,00.html>

²² Other successful reformers include Laos, Moldova, Peru, Bolivia, Paraguay, China, Mongolia, Costa Rica, Indonesia, and Lithuania. But Thailand's stands out as the most efficient system. In Thailand, land can be titled and registered in two days.

3. HYPOTHESES AND METHODOLOGY

The report tests the following hypotheses:

1. The introduction of the RSI led to the simplification of bureaucratic procedures for property registration in the CNR. Automated and streamlined procedures introduced by cadres of skilled and highly motivated professionals contributed to reducing petty corruption among employees tasked with registration services. By extension we might expect the same to be true in other countries.
2. The CNR has become a more efficient registry but has yet to become accessible to large numbers of potential users, especially low-income rural people. If the costs of a modernized register are fully charged to the users, the charges may be high enough to exclude many such low income people. This is a particular problem because land registers are not only private goods for landowners, but a public good, a key part of the legal and regulatory framework for the economy.

The project documentation on USAID activities in land titling in El Salvador does not mention reduced corruption as a specific project objective. The anticorruption impact of land tenure reform in El Salvador cannot be determined using before and after surveys. These constraints made the measurement of anticorruption impact difficult.

The study team therefore chose an approach that relied principally on structured interviews and focus group meetings with knowledgeable parties. After a literature review, interviews were held with individuals who were knowledgeable about past and present land registration procedures. These individuals are listed in Annex 1. Interviews were carried out with former and current government officials, donor specialists, research analysts, and journalists; focus groups were also convened, composed of users of the registration system—buyers and sellers of land, lawyers and notaries and the results noted.

Three lines of inquiry were pursued with interviews and focus groups. The first focused on efficiency and sought to determine if the CNR reduced the time and cost of registration. The second focused on access to the registry by low-income property owners. And the third addressed issues associated with the transparency of procedures, which includes petty and grand corruption in the CNR. This last line of inquiry addressed issues such as the modality of corruption in the old registry, the causes of anticorruption improvements in the CNR, and corruption-related factors that stem more from registration in the CNR. To guide the interviews, a questionnaire was prepared. It is detailed in Annex 2.

4. FINDINGS AND CONCLUSIONS

The principal findings are detailed under three subheadings: organizational characteristics of the property registry; impact on petty corruption (hypothesis 1); and impact on access for the low-income population (hypothesis 2).

ORGANIZATIONAL CHARACTERISTICS OF THE CNR

Executive Decree 62 of December 1994 created the CNR and another in June 1999 established its subordination to the Ministry of the Economy. These provided a legal basis for the organization of the CNR. There is no specific legal framework that regulates the operations of the CNR. Since 1995, it has had jurisdiction over the National Geographic Institute, the Registry of Commerce, and the National Cadastre. The purpose of these allocations of jurisdiction was to consolidate all land cadastre and registration functions in one institution. In our view, this was reasonable, because it improved coordination of two important matters related to land administration. However, land-titling legalization is missing. CNR General Director Garrid Safid said that the CNR does not even contemplate the creation of legalization as one of its objectives.

The main objective of the CNR is to ensure “transparency, legality, and the juridical security of records, taking advantage of available technological advances for obtaining, preserving, and safekeeping information.”²³ The required legal and survey technical work that accompanies the registration process is subcontracted to private surveyors and lawyers, a practice that was borrowed from the PROSEGUIR project.

The CNR operates in a decentralized fashion. As a result, the system improves access by bringing cadastral and registration services closer to users who live outside the capital and main urban centers. The CNR has evolved into a public agency with administrative and financial autonomy. Its finances are managed under the bylaws that govern the National Budget, but at present the CNR does not depend on the national government to finance its operating budget. Weak oversight may be an unintended consequence of this exceptional feature. It freely prices its products and generates its own resources from the services it provides to individuals and institutional users, including the Social Housing Fund, the Salvadoran Institute for Land Transformation (ISTA) and the banking system.

Assistance from the World Bank has facilitated the introduction of GIS and air photo technologies that are used to document the terrain so as to bring more technical precision to cadastral tasks and ensure better matching of measurement with registry information. In addition, the World Bank has facilitated the introduction of a system of computerized records that are maintained and managed in a transparent manner. The overall result has been the “transformation of the registration process through new technologies, a decentralization process and institutional strengthening.”²⁴ By the end of 2005, according to the general director of the CNR, 60 percent of the 1.8 million land parcels in the country had been registered in the new system.

In early December 2005, the CNR was about to sign a loan for \$40 million from the World Bank to undertake a more ambitious scope of activities. This loan will support (1) the demarcation of 150 ecologically protected and cultural zones; (2) an agreement with the ILP to legalize housing titles and

²³ Cuellar, Paula, Guadalupe Cuellar, Jeaneth Guevara and Antonio Alvarez: “The Process of Land Transactions in El Salvador: Actors and Costs.” Mimeo, December 2004

²⁴ Felix Garrid, “Building Land Information Policies in El Salvador,” October 2004 off the internet.

provide assistance to the ILP to continue processing registration for low-income people, whose applications are sent electronically to the CNR for final approval; (3) completion of the cadastral tasks and registration of the remaining land parcels of the country; and (4) an agreement with local governments for the demarcation of municipal limits which, in the end, will enable them to establish zoning policies, one of the most critical components of municipal economic development. The impact of this World Bank project is bound to be significant; it will constitute the basis for the design and implementation of local taxation.

That the CNR has evolved into an efficient, modern institution is beyond doubt. It borrowed from the best practices of the RSI and has built on some of its own impressive accomplishments, especially technical competence and operational efficiency. That it has done so by overcoming constraints such as the scarcity of experts in registration law and cadastral techniques is commendable. At its helm is an energetic general director who is convinced of the benefits of modern technology. He has participated in international seminars, where he describes the CNR's experience with system reform. The institution, consequently, has earned international prestige. The general director enjoys the trust of higher level government officials. It is therefore not surprising that the government has selected the CNR as the one-stop stop entity that will enable businesses to clear all sorts of registration, permits, and licensing requirements in significantly shorter time and lower cost.²⁵

IMPACT ON PETTY CORRUPTION

Petty corruption in the old registry was rampant. Our informants reported that staff of the RPRH would regularly approach the commercial banks in person to collect their bribes. RPRH had earned the dubious reputation, with customs, as one of the two most corrupt institutions in the country.

With the installation of automated systems, productivity improved immediately. Registrars could process 180 registrations per day, and completing a registration now took a maximum of two days. This efficiency is still in evidence, especially for bank mortgages, which are simple to process. Bank mortgages and simple commercial operations that involve the transfer of property from one party to another constitute the bulk of the registrations of the CNR. In the case of bank mortgages, commercial banks originally set up specialized in-house units to handle a large volume of mortgage registrations.

More recently, however, commercial banks have outsourced these functions to private enterprises that specialize in securing rapid registrations. There are currently six of these enterprises. Four lawyers who directly compete with these firms complained that some of these firms seem to enjoy privileged access to the CNR. We were not able to investigate these matters.

Although registration of bank mortgages and other simple transactions can now be processed speedily, there is less efficiency in the processing of more complex applications. Most interviewees stated that the recording of land transactions at the CNR that are not subject to legal disputes could take up to six months. The reasons for the delays are varied. For example, lawyers may not prepare documentation properly, sometimes perhaps mishandling cases deliberately to extract higher fees from their clients. But other causes pertain to the domain of CNR operations. Recently, cadastral tasks take longer to complete than right after the introduction of reforms, acting as a bottleneck in the registration process. Furthermore, cadastral and registry information sometimes does not match. Finally, some CNR staff may be inadequately trained or afraid to make decisions. When problems such as these arise, periodic visits to the CNR to solve the problems are required. Yet, none of the interviewees suggested that CNR staff attempt to extract bribes to expedite the registration process.

²⁵ At the moment of the field visit, the functioning of the one-stop shop within the CNR was about to start.

Users of the CNR, especially those who have enough money, have different ways to cope with the CNR registration delays. As noted, these do not include bribes. Instead, they hire topographers and other technical experts to execute the cadastral activities that the CNR is supposed to do. They set up specialized units or assign personnel full time to dealing with CNR officials to speed up the registration process. Consequently, for these users, transactions costs are higher. Unfortunately, users who cannot afford these costs will either accept the delays with the tangible costs that this entails, or put off the registration of their properties altogether. This option weakens title-to-market linkages.

The CNR has introduced measures that enable users to file complaints about staff performance. This is positive and underlines the intention to provide services to the public in a transparent manner. The unintended consequence, ironically, is that registrars may delay complicated cases for fear that they will make a mistake and incur the wrath of influential users. But the opposite is also true. Registrars expedite registrations for influential users without appropriate documentation for fear of eliciting complaints according to some informants. Although a lack of adequate staff training may be an important reason for these problems, the lack of a clear legal framework for CNR operations of and land titles themselves has some role here, because registrars perform their functions without the benefit of clear, unambiguous guidelines. In any event, no interviewee expressed the view that the delays or unduly expedited cases were linked to the taking of bribes by CNR staff.

In a clear departure from sound practices, registration cases are no longer assigned to registrars randomly. They are assigned on basis of the clientele that registrars have built and maintained with the passage of time. This situation may breed petty corruption although none of the interviewees believed that CNR staff were using this opportunity to take bribes. Rather, what this practice reflects, is the preference for personalized relationships between users of a service and public servants that is characteristic not only of El Salvador but of other Latin American countries. In this context, trust is developed not by clear rules of engagement but by the continuity of a personal contact. Users of the registry feel more confident when their cases are handled by a “known quantity.” The closeness of the relationship is even reflected by the fact that dispensation of gifts in kind is accepted as normal practice. This was interpreted by the interviewees not as involving bribes but as a cultural norm that is deeply rooted in Salvadorian society.

ACCESS TO THE CNR BY THE LOW-INCOME POPULATION

Estimates of the proportion of landowners that have not registered their properties vary widely. Some analysts believe that it is 30 percent. The ILP, however, estimates 50 percent. Other experts ventured estimates as high as 70 percent. The general director of the CNR believes it is 3 percent. His estimate, however, may be based on cases of unregistered cases in the formal economy, and in the areas of the country that have already been measured with the cadastre.²⁶ In this study we use the figure of 60%.

Empirical studies are needed to measure more accurately the magnitude of this problem. However, a safe assumption is that a significant proportion of small landowners, especially those without financial resources, are either unwilling or unable to register their properties. For the large majority of them, a daunting obstacle is in the legalization of their titles, a step that precedes registration. According to a study conducted by the United Nations, the problem particularly affects poor farmers who own very small parcels of land. They find costs of land titling and registration too high to pay. As of 1998, the cost of registering a land area of 3.5 *manzanas* was \$1,800. For farmers who on average earned \$120 per month, this cost was definitively excessive.

²⁶ According to Mr. Frederic de Dinechin, senior land administration specialist of the World Bank, the percentage of land properties in the department of Sonsonate that have not been registered is approximately 5 percent. In the department of Chalatenango, however, which will be covered in Phase II of the World Bank’s Land Administration project, this percentage is significantly higher.

The registration costs depend on the size of the land parcel and usually include surveyor and legal fees. The latter, in particular, are outside the domain of the CNR because, as noted before, it deliberately stays away from issues associated with land-titling legalization.

One of the principal reasons for exclusion caused by the high land titling costs is that the CNR operates in a commercial fashion. Because the CNR does not depend on budget allocations from the national treasury, generating its own revenues from fees charged to the public. The prices it charges for these services are determined by what the market can bear.

The good news is that the Phase II of the World Bank Land Administration Project explicitly addresses exclusion.²⁷ Some of the most serious problems of exclusion are expected to be remedied by this project. How serious this problem is at present can be illustrated by the relationship between the CNR and ISTA. The ISTA is in charge of providing legal titles and registration for the land owned by the beneficiaries of the land reform. Its leaders, however, complain that the CNR does not give proper priority to the cases that fall under its jurisdiction. To begin with, ISTA, unlike the ILP, does not have an agreement with the CNR to process registration cases. More relevant is the lack of legal and regulatory clarity in determining which entity should perform the cadastral tasks of the land affected by the land reform, and whether ISTA should be charged registration fees. According to ISTA, it is CNR's responsibility to execute the cadastral tasks and it should charge no fees for registering the ISTA-administered land parcels. But in practice, the CNR does not perform cadastral tasks on ISTA lands. The ISTA therefore is forced to allocate its scarce resources to update the cadastre on the land parcels that it administers and pay the registration fees charged by the CNR. Consequently, the registration of properties that belong to land reform beneficiaries has been delayed. Approximately 22,000 land parcels with legal titles cannot be registered because ISTA does not have the funds to pay the CNR registration fees.

The relationship between the CNR and ISTA is illustrative of a problem that goes beyond the lack of clarity in the legal framework. This relationship involves the interplay between visions, priorities, and allocation of resources that shape the design of economic and social policy in El Salvador. To many observers within and outside the government, ISTA is a remnant of land reform policies that were anchored in the expropriation and confiscation of lands. These policies, it is fair to say, were somewhat discredited by the corrupt practices that they engendered in the 1980s. Moreover, the mission of ISTA is perceived as welfare driven, which is at odds with the more free market beliefs of the present economic authorities. It is not surprising, therefore, that the government gives a low priority to ISTA. That ISTA operates with limited resources is beyond doubt. This stands in sharp contrast with the administrative and financial autonomy that characterizes the operations of the CNR and with its reputation as a self-sustaining, forward-looking, modern institution.

Exclusion is reinforced by two worrisome trends. The first relates to the operations of the ILP. This entity has focused since its inception on the regularization of legal titles of properties that belong to low-income families. In addition, as noted above, it is endowed with the authority to process the registration of cases that are ultimately registered by the CNR with discounted fees. However, given its limited budgetary resources, it is questionable how large a volume of cases it can register annually—no more than 3,000 at this point. Again, it is expected that the second phase of the World Bank project will reinvigorate the institutional presence of the ILP. Still, it remains to be seen if the ILP can make a significant difference and reach levels of activity obtained in previous years, even with the benefit of this assistance.²⁸

²⁷ Loan conditions include the allocation of \$2 million to the ILP for the registration of at least 15,000 properties belonging to low-income families. The project also mandates the CNR to coordinate with ISTA for the delimitation of lands affected by the land reform.

²⁸ In contrast, the PROSEGUIR project, which was housed in the ILP, processed 36,000 cases in four years.

The second trend concerns alleged errors of measurement that, in the end, weaken the link between the cadastre and the registry. Several interviewees complained that the staff miss land holdings that are properly registered. Under these circumstances, the cadastre identifies and defines land parcels as owned either by nobody or by the state when, in fact, they are legally owned by communities, private enterprise, or individuals. As a result, land parcels may end up being erroneously allocated.

The question is whether grand or petty corruption is employed to secure such allocations. Some interviewees suggested that corruption could not be discounted. They pointed, for example, to cases in which lands legally belonging to individuals and/or enterprises were wrongfully adjudicated to the state and eventually sold to people with privileged access at low prices. There is also concern that the Salvadoran-owned enterprises subcontracted to carry out the cadastral tasks may be employed more for reasons related to either nepotism or the connection of their owners with officials than for the technical qualifications they exhibit. And finally, two interviewees indicated that officials of the CNR have a commercial interest in lands that are speedily registered without the benefit of a thorough investigation of legal ownership. These allegations, however, were not possible for the study team to investigate or corroborate.

Conclusions

The experience of El Salvador with respect to the modernization of the land property registry offers three valuable lessons for possible USAID anti-corruption interventions in other countries.

First, activities that are designed to ensure decisive organizational overhaul, including the introduction of more automated and streamlined procedures that raise the efficiency of service delivery, contribute to stamping out petty corruption. As evidenced by this report, there is conclusive evidence that the CNR, in comparison with the RPRH, completes inscription procedures in significantly shorter timeframes, and with visibly fewer incidences of administrative corruption. Not surprisingly, users are more satisfied with the quality of services, and demand that these high standards be kept or raised further. In this context, users are more empowered, and the existence of institutional mechanisms that serve to hold public servants accountable, engenders in turn more transparency and further efficiency. A virtuous circle, then, ensues.

In designing possible interventions that can be applied in other countries, it is important to select carefully the point of entry. In El Salvador, the aforementioned accomplishments are based on the achievements of the earlier RSI. Another important lesson then follows: instead of focusing in the institutional reform of old, traditional public registries, it may be far more effective to target more flexible public or non-governmental organizations with which pilot programs can be designed and implemented. USAID interventions could indeed bring off substantial benefits if these are conceived as embryos of positive changes that can unfold through a process of benign metastasis. This is precisely what happened in El Salvador, a valuable experience that can be replicated in other settings.

Second there are limits to the benefits of reforms that depend on the financial sustainability of land property registries. To be sure, the presence of an efficient public institution that generates its own revenues and that is not financially dependent on the treasury is certainly appealing. But such an impressive accomplishment can carry a hefty cost. One important lesson that can be gleaned from the El Salvador case is that too much emphasis in financial sustainability can result in the exclusion of a large proportion of landowners from the registry because they cannot afford the registration fees.

USAID interventions in countries that are aimed at modernizing their land property registries must weigh the benefits of facilitating access to the registry by low-income people against those of fiscal self-sufficiency. The exclusion of low income landowners leads to the weakening of title-to-market linkages and, ultimately, to the retarding of inclusive, less uneven economic growth. For this reason, a public

registry that remains indifferent to the problem of exclusion cannot make a lasting contribution to economic development, no matter how efficiently it is run and how free from practices of petty corruption it has come to be. Public registries that are operated with transparency and efficiency on one hand, and that facilitate access by low-income people, on the other, are options that should not be viewed as mutually exclusive.

Third, in contexts where public registries are not regulated by adequate legal frameworks, any significant gain that can be obtained in the fight against petty corruption will not be sustainable in the long run. This anomaly, indeed, threatens to undo the impressive reforms engineered by the CNR in El Salvador. For this reason, interventions that are mainly focused in reforming the “hardware” of public registries, while not giving enough attention to the adequacy of the “software” (the legal and regulatory framework), should be considered very risky undertakings.

In contexts devoid of legal frameworks that can adequately regulate the operations of public registries, schemes of grand corruption can emerge more easily. One unfortunate consequence is that the problem of exclusion can be exacerbated. This is a latent threat because the power of high-ranking public officials, who act in collusion with private groups to wrongfully capture land holdings, is virtually unchecked. There is anecdotal evidence that some African countries are cursed by this problem. The allegation that grand corruption was a problem in El Salvador land registration was not corroborated. Yet, given the overall institutional weakness that permeates the political economy of El Salvador, including that of the state agency in charge of administrative oversight of the CNR, this possibility cannot be ignored.

In closing, it is worth reflecting on an interesting fact: El Salvador is considered a world-class reformer with respect to the property registry—a tested and proven case of successful modernization. At the same time, although this report does not allege that the property registry has been wrongfully “captured,” it nevertheless points to the presence of inherent threats. Put simply, this report cannot ignore the fact that modernization and economic progress just for the few, for so long the curse of El Salvador, is playing out again. Why this trend sharply differs from the more egalitarian developments that underline the registry reform processes in other countries should be the subject of investigation.

5. RECOMMENDATIONS

1. Any project on land title registration should be based on an institutional evaluation of the property registry. The explicit purpose of the evaluation should be detection of strengths and weaknesses, while the unstated, implicit objective should be recommendations for the introduction of administrative reforms that safeguard the transparency of procedures. The evaluations must include surveys on user satisfaction. These surveys can also include queries on corruption practices and should be conducted *ex ante* and *ex post* the introduction of the proposed reforms.
2. Any project aimed at the modernization of the land registry should be preceded by technical assistance to governments in the enactment of a property registration law and of a regulatory framework for the operations of the public registry.
3. Land registry modernization projects should carefully balance the objective of transforming the institution into an efficiently-run, transparent organization, with that of ensuring maximum access to the registry by low-income people.

ANNEX 1 – LIST OF PEOPLE INTERVIEWED

I. Individual Meetings

1. David Henríquez, Director, Instituto Libertad y Progreso (ILP)
2. Reyna de Cuestas, Operations Director, Instituto Libertad y Progreso
3. Héctor Pleitez Mazzini, General Manager, Industrias Agrícolas Venecia
4. Mauricio Vargas, former Director of the Instituto Libertad y Progreso
5. Garrid Safie, Director of the Centro de Registro Nacional (CNR)
6. Roberto Vidales, Research Specialist, Fundación Salvadoreña para el Desarrollo Económico y Social (FUSADES)
7. Ana Luz de Mena, Project manager, USAID
8. Oscar Romero, journalist
9. Carlos José Glower, economist
10. Silverio Henríquez, former Director of the CNR
11. Georges Burri, consultant and former Director of Project San Agustín
12. Roberto Paredes, founder Director of the ILP and founder of the RSI
13. Miguel Tomás López, president of Instituto Salvadoreño de Transformación Agraria (ISTA)
14. Frederic de Dinechin, Senior. Land Administration Specialist, Rural Development, World Bank

II. Focus Groups

1. Oscar Luna, lawyer
2. Gladys Marina Chávez, lawyer
3. Patricia de Morales, legal notary
4. Milagros de Ramos, legal notary
5. Marta Lidia del Castillo, lawyer
6. Marina Medina, lawyer
7. Antonio Alvarez, lawyer

ANNEX 2 – QUESTIONNAIRE

1. Do you consider that the timeframe for completing registration procedures is adequate? If not, what are the principal reasons?
2. Are there any significant variations in the time it takes for registration according to type and size of property?
3. In comparison with the traditional registry (a) is the time it takes to register property in the CNR significantly reduced? (b) are overall procedures more efficient and the service provided to users of higher quality? (c) are overall procedures more transparent?
4. If, in general, the CNR offers services of higher quality than the traditional registry, what in your view are the principal reasons?
5. Do you believe that there is a serious lack of access to the registry by the low-income population?
6. Do you believe that small landowners desist from registering their properties because of (a) cumbersome bureaucratic requirements? (b) high registration fees?
7. Are you aware of illegal payments to CNR staff to expedite registrations? If so, do you consider them to be common as opposed to sporadic cases?
8. What opinion, if any, do you have of the procedures that the CNR applies to contract enterprises that are assigned to perform cadastral tasks? Do you believe that the enterprises are technically competent? If not, what are the principal reasons?
9. Are you aware of modalities of grand corruption in the CNR? If so, can you please provide examples? Can this evidence be corroborated?
10. What recommendations would you present to the donor community to address the problems of the CNR?

REFERENCES

- Brown, Michael, and Jorge L. Daly. 2005. Land Conflict in Guatemala. Report presented to the USAID Mission in Guatemala (mimeo).
- Centro de Estudios Jurídicos. 2005. Actualidad Jurídica Salvadoreña No. 1. Universidad Francisco Gavidia, San Salvador.
- Cuellar, Paula, Guadalupe Cuellar, Jeaneth Guevara and Antonio Alvarez. 2004. "The Process of Land Transactions in El Salvador: Actors and Costs" (mimeo).
- Greenville Barnes. 2002. "Lessons Learned: An Evaluation of Cadastral Initiatives in Latin America over the Past Two Decades," FIG XXII International Congress, Washington, DC, April 19-26, 2002.
- Instituto Libertad y Progreso. 2001. Programa de Seguridad Jurídica Rural, Informe de Gestión. San Salvador.
- Safie, Garrid. 2004. "Building Land Information Policies in El Salvador," paper presented at the Inter-Regional Special Forum on "Development of Land Information Policies in the Americas." Aguascalientes, Mexico, 26-27 October 2004. Obtained from the Internet.
- Trackman, Brian, William Fisher, and Luis Salas. 1999. "The Reform of Property Registration Systems in El Salvador: A Status Report," October 1999, Central American Project Series, Harvard University, Massachusetts.
- Ulstein Anti-Corruption Resource Center, U4 Helpdesk Query, response to queries about anti-corruption measures in the land sector. Undated. Obtained from the Internet.
- The World Bank: Doing Business in 2004. Washington DC.
- The World Bank: Governance Research Indicator Country Snapshot. 2004. Washington DC.
- World Economic Forum. 2004. The Global Competitiveness Report 2004-2005. Geneva Switzerland.
- World Economic Forum, Executive Opinion Survey (2004).