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The Legal Framework for Property Registration in Egypt

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Executive Summary

The condition of Egypt's real estate registration system has been well-studied and well-documented.¹ By some estimates, acquiring and registering a parcel of state-owned land can take between five and 14 years, involving 77 bureaucratic procedures at 31 agencies.² One high-ranking government official jokingly observed that the registration process is so convoluted that an applicant is likely to die before his or her property is registered. Most Egyptians decline to attempt registration in their lifetimes – it is commonly estimated that 90% of Egypt's property is unregistered.

Many Egyptian and international advisors have offered recommendations to improve the system. This report is another attempt to do that. Fixing the system seems daunting because of the sheer number of properties in Egypt. But, many of the solutions are apparent to registry employees, Government officials, and people in the street.

The question is whether Government officials have sufficient political will to implement reform. There are positive signs. The Government has invited USAID and the World Bank to provide assistance. The Prime Minister has appointed Minister Darwish of the Ministry of State for Administrative Development to oversee a committee charged with improving the system. There are also reasons for skepticism. The two government agencies with the largest roles in the system (the Ministry of Justice and the Egyptian Survey Authority) are engaged in institutional posturing that inhibits positive change. Effective reform will require a single-minded vision from the Government and cooperation from all relevant Government agencies.

The good news is that the laws are not the primary source of the problems. Egypt's laws are mostly well-written and establish a workable framework for real estate ownership and transactions. Problems arise primarily from subsidiary executive regulations and instructions, as well as misguided implementation of laws.

Egypt has two registration systems: *Sigueal el-shaksi* (sometimes called the “deeds” system), and *Sigueal el-ainee* (sometimes called the “title” system). *Sigueal el-shaksi* (deeds) is the older of the two and operates in urban areas. *Sigueal el-ainee* (title) was introduced in 1964 with the intent of converting the entire country to a registration-of-title-type system but it has only been implemented in rural areas.

Law 142 of 1964, which governs the *Sigueal el-ainee* (title) system, is a typical registration of title law. It sets up a property-based system in which all matters affecting a particular property are registered with reference to that property. It also governs the transition from *Sigueal el-shaksi* to *Sigueal el-ainee* (a process sometimes called “first registration”). Dramatic improvements to *Sigueal el-ainee* and first registration are possible without immediate amendments to Law 142.

¹ See The Mystery of Capital, Hernando de Soto, and the studies and reports listed in Appendix 2.

² Id. at p. 20.

The Law that governs *Sigueal el-shaksi* (Law 114 of 1946), on the other hand, imposes some impediments to smooth and efficient processing of transactions. It requires the registry to investigate and verify title to a much greater extent than most deeds laws require. The obligation to verify title moves the *Sigueal el-shaksi* system closer to a title-type system. Nonetheless, there are many significant improvements that can be made to *Sigueal el-shaksi* without amending Law 114. In the long run, some amendments would help increase efficiency.

Implementation of the systems contrasts starkly with the requirements of the Laws. The real life procedures under both Laws are labyrinthine, time-consuming, expensive, and sometimes internally contradictory. The procedures are enshrined in Executive Regulations and Ministerial Directives that will need dramatic amending or complete rewriting to allow the systems to operate as intended under the two Laws.

There are a number of ways to improve both *Sigueal el-shaksi* and *Sigueal el-ainee*. The following are recommendations for streamlining both systems and for improving the process of conversion to *Sigueal el-ainee*.

Proposals for streamlining transactions in deeds (*Sigueal el-shaksi*) system:

- Standardize application forms and post information in registration offices – standardize application forms and post information so that applicants understand the procedures and know which documents to submit with their applications.
- Put notaries in registration offices – parties to a transaction must go to a separate office to have their documents notarized, creating an unnecessary trip.
- Notarize contracts at the beginning of a transaction – final contracts are not notarized until the very end of the transaction. There can be a long delay between the preliminary contract and the final contract during which time the seller can become unavailable.
- Submit CIF and Mutation Form with application – the CIF and Mutation Form are maintained by the ESA district office (EDO). Much of the delay in registration is caused by the back and forth between the registration office and the EDO as the applicant tries to get the necessary information from the EDO. This could be eliminated by asking the applicant to obtain the CIF and a copy of the Mutation Form first so that the RO would have all it needs to process a transaction.
- EDO involvement only in cases of division or merger – EDOs should only be involved in transactions when there is a division or merger of parcels.
- Post jurisdictional maps in ROs – most ROs do not have maps showing their jurisdictional boundaries causing an applicant to have to go to the EDO to confirm which RO has jurisdiction over his or her property.
- Divorce registration from other laws – registration is delayed by requirements that applicants prove compliance with tax, building and planning laws before registration. Enforcement of other laws should be divorced from registration.

Because the procedures for registering transactions in *Sigueal el-ainee* are almost identical to those in *Sigueal el-shaksi*, the above proposals also apply to streamlining *Sigueal el-ainee*. The following are additional proposals for *Sigueal el-ainee*:

- One-stop processing – because the *Sigueal el-ainee* records are property-based, it should be possible for the registry to register a transaction in a matter of days.
- Supply ROs with cadastral index maps – in order for a property-based system to work efficiently, the registry offices must have cadastral index maps showing the properties and their unique property identification numbers.
- Simplify Cadastral Form (*Sahiyfa akariya*) – the Cadastral Form is the fundamental property-based document kept in the central registration office on which ownership and other information is kept. It was originally designed for rural properties and includes much unnecessary information. It should be simplified to make registration more efficient.
- Stop transfers of parts of parcels – it is quite common for people to transfer parts of their parcels in off-record transactions. Off-record divisions cause a breakdown in the property-based indexing system and must be stopped to the extent possible.

The conversion from *Sigueal el-shaksi* to *Sigueal el-ainee* in rural areas has not been completely successful. The following proposals are aimed at improving the conversion process and tailoring it for use in urban areas:

- Increase public awareness and public participation – the importance of public outreach cannot be overemphasized.
- Offer incentives – first registration is unlikely to be successful unless people see real benefits to participating.
- Make first registration purely systematic – first registration should be free and should not require submission of an application. The verification process should be the same for all parcels regardless of whether there is a missing link in the chain of title.
- Prepare relatively simple building unit plans – the majority of properties in urban areas will be apartments. To register the huge number of apartments will require use of relatively simple building unit plans.
- Be pragmatic about data collection – data collection should start at the properties themselves and should involve the public as much as possible instead of focusing on information in existing records.
- Consider all evidence – the types of evidence examined during first registration should be expanded to include leases, rent receipts and utility receipts, which in urban areas might be the most reliable indicators of ownership.
- Promote use of consensual agreements – consensual agreements present a good opportunity for clearing title and resolving potential conflicting claims. Their use should be promoted and facilitated.
- Ignore illegal construction and off-record divisions – first registration must be divorced completely from policing of building and planning laws or the process will get bogged down from the outset.
- Offer provisional title in difficult cases – it might not be possible to make absolute determinations of title for all properties. The system should allow for provisional titles in cases in which there are doubts. Provisional titles could convert to absolute titles after a certain period of time if no conflicting claims arise.

Before any legislative revisions can occur, Government officials must consider the options for reform and decide which of several approaches to take.

One option is to automate and streamline the *Sigueal el-shaksi* system, and reorganize the records according to a property-based indexing system. In the short run, this would be less expensive than systematic conversion to *Sigueal el-ainee*. Improvement of *Sigueal el-shaksi* could set the stage for eventual conversion to *Sigueal el-ainee*.

Another option is to systematically convert urban areas to *Sigueal el-ainee*. This would facilitate legalization of title to large numbers of properties and their entry into the registry. In the short run, conversion would be costlier to the Government than upgrading the *Sigueal el-shaksi* system. It would also be riskier in that: (1) if not done correctly, conversion could further undermine the credibility of the registry; and (2) there is no guarantee that people will use the registry even after the conversion to *Sigueal el-ainee*.

The next step is for the three principal government counterparts, the Ministry of Justice, the Ministry of State for Administrative Development, and the Egyptian Survey Authority, to sign the Project Execution Agreement to provide an agreed framework for the project's ongoing activities.

After signing the Project Execution Agreement, the parties should convene a workshop to discuss the recommendations in this Report and others. A serious policy dialogue will be required to facilitate the making of difficult decisions.

Based on decisions coming out of the workshop, lawyers can begin to prepare legislative reforms. Ideally, necessary legislation would be prepared by a small team of Egyptian experts with support from the project.

Implementation of reforms will require training of REPD, ESA and other staff who will be called upon to use new equipment and operate according to new procedures. The training requirements will be significant.

Public outreach will also be critically important. There is a serious risk that improvement of the system will not be enough to convince an apathetic public to start using it. Reforms to the system must provide the public with tangible benefits. The benefits must be communicated to the public if they are to be convinced to change decades-old patterns of avoiding the registry.

1 INTRODUCTION

This one-month consultancy was undertaken as part of the Egyptian Financial Services (EFS) project, a USAID-funded project to assist in the building of the legal and institutional infrastructure required for real estate³ financing and other forms of secured lending. The consultancy was part of Task 2 of EFS (which comprises four main tasks). Task 2 is aimed at improving the operation of the property registration system for urban properties in the Ministry of Justice with the goal of facilitating mortgage finance.

According to some estimates, as much as 90% of Egypt's property is not formally registered and, therefore, cannot be used as collateral.⁴ Whether this figure is accurate or not, it is clear that the vast majority of Egypt's property is held according to a legally-recognized but off-record right that provides "owners" with a modicum of security but does not satisfy the requirements of banks and other lenders.

Although there are many factors that contribute to dormant real estate finance markets – including, macro-economic factors, cultural and psychological factors, and poorly functioning legal systems – the absence of a real estate registration system is a key obstacle. Ultimately, for a real estate finance system to work, owners must have legally recognized "title" which lenders feel is secure. Lenders must be able to register their security interests so that they have confidence in the priority of their claims as against subsequent purchasers or other lenders. A well-functioning registration system will not, by itself, stimulate real estate finance, but without it real estate finance is unlikely to occur.

The consultancy was aimed at analyzing the laws, regulations and other legislation relating to the registration of real estate with the goals of:

- reducing the time delays, complexities and costs of real property registration and other obstacles to the formalization of ownership of urban land and real estate;
- assessing the need to move from the "deeds" system to a parcel-based "title" registry system providing for more substantial proof of ownership and subordinate interests real estate;
- ensuring that appropriate forms for real estate finance are developed and that appropriate procedures exist for their registration and for the prompt registration of subsidiary notices, orders and removals of liens;
- making provision for the insurance of titles against injuries, resulting from errors in registration and in title documentation, either as a component of the registry system or in the form of title insurance, provided by private entities; and

³ As used in this Report, the term "real estate" refers to land and buildings unless specified otherwise.

⁴ See El Akhbar Newspaper, October 1, 2003; *The Mystery of Capital*, Hernando DeSoto; Report of the Baseline Study, Case Study of Elmanshya El Ebrahemia and Trabamba Villages in Damanshour District of Beheira Province, Egypt Cadastral Information Project (ECIM), October 2003 – February 2004.

- establishing the mechanism by which the people, who possess defective titles to real estate can perfect their ownership or other rights. This includes developing efficient procedures for administrative hearings or adjudication, standards of proof and subsequent refinement of legal documents and registry records.

More specifically, the consultant was asked to:

- provide initial review and assessment of basic land law to determine fundamental underpinnings of ownership and other rights provided by existing land legislation;
- propose initial re-organization or amendments to the laws and implementing regulations identifying conflicts, gaps, and overlaps and make initial recommendations on changes that could be quickly adopted so that transaction processes and forms can be simplified and improved;
- determine whether there are prohibitions on alienation and use of urban lands and properties, or other restrictions which can be removed to "clear" defective titles;
- make initial recommendations on appropriate amendments, curative provisions or "grandfathering" legislation, or other innovative techniques that might be used to make initial improvements without requiring substantial legal reformation; and
- interview and assess the capacity of Ministry of Justice staff as to their understanding and ability to interpret and implement existing land legislation

2. METHODOLOGY

2.1 General Approach

The approach taken included the following steps:

- To review reports prepared for the EFS Project and other projects to obtain a general background and awareness of the observations and recommendations made by other advisors. A list of the Reports and other background materials reviewed is attached as Appendix 2. I have attempted to avoid repetition of prior work to the maximum extent possible, but this report inevitably builds on recommendations made by previous advisors.
- To obtain and review all laws, regulations and ministerial directives affecting land and real estate rights, real estate finance, and registration of real estate rights, to identify obstacles to reform of the registration system and other concerns related to stimulation of real estate markets. A Table containing the results of the legal review is attached as Appendix 3. The Table contains a summary of the relevant laws, regulations and directives, comments regarding

how they affect real estate finance, and reform of the registration system, and proposals for necessary reforms.

- To analyze the existing procedures, forms and practices in the registration offices to determine the extent to which they are dictated by law, regulation, ministerial directive, or historical practice.
- To visit local and central registration offices, local Egyptian Survey Authority (ESA) offices and notary offices to compare legal requirements with actual practices. The employees of the various registration, ESA and notary offices were extremely helpful in identifying difficulties encountered in the everyday operation of the system. Many of the ESA employees offered practical recommendations for reforms. The head of the Nasr City Registration Office, Ms. Fatem Taher, was particularly helpful, providing the consultant with a written list of suggested reforms, a summary of which is attached as [Appendix 4](#).
- To interview practitioners such as lawyers, brokers, lenders, as well as government officials and citizens who use the registration system to obtain “real life” perspectives. A list of interviews and site visits is attached as [Appendix 5](#).
- To formulate pragmatic recommendations to achieve short term increases in efficiency and accuracy of the registration system and longer term reforms to ensure its ongoing sustainability and integrity.

2.2 Terminology

Two registration systems are in operation in Egypt: the “deeds” system, which is governed by Law No. 114 of 1964 and in Arabic is called *Sigueal el-shaksi*, and the “title” system, which is governed by Law 142 of 1964 and in Arabic, is called *Sigueal el-ainee*. The terms *Sigueal el-shaksi* and *Sigueal el-ainee* are often used in this Report to facilitate understanding and to avoid confusion in translation. The literal translation of *Sigueal el-shaksi* is “personal registry” (meaning registration of property against the name of a person), and the literal translation of *Sigueal el-ainee* is “registry of real property.” Although the terms “deeds” registry and “title” registry are sometimes used as shorthand for the two different systems, the reader should not attribute the characteristics of a pure “deeds” system to *Sigueal el-shaksi* or the attributes of a pure registration of title system to *Sigueal el-ainee*. The two systems are unique to Egypt, especially in their implementation and operation.

In an attempt to reduce misunderstanding, transliterations of Arabic terms are sometimes added after English terms. The transliterations are based entirely on my attempt to capture the phonetics of a word and do not purport to follow any accepted conventions. The transliterations are also provided in an attempt to develop consistency of Arabic and English terminology in the project. Other advisors and project staff are urged to use terms precisely to enhance the level of communication. This will become increasingly important as the project progresses.

Precision is particularly necessary when referring to the various forms used in the *Sigueal el-shaksi* and *Sigueal el-ainee* systems. English translations sometimes use words like “deed,” “certificate of title,” “cadastral form,” or “change form” inconsistently and indiscriminately when the terms used in the Arabic versions of laws, regulations and directives refer to specific forms. The following is a list of some of the documents commonly encountered in the *Sigueal el-shaksi* and *Sigueal el-ainee* systems, together with a transliteration of each document’s name in Arabic, and a short description of the document’s purpose.

- Cadastral Information Form (CIF) (*kashf tahadeed*) – is the form generate by the ESA district office (EDO) describing the property that is the subject of a transaction. The EDO must provide the CIF to the local registration office (RO) before the RO will proceed with registering a transaction.
- Mutation Form – is the document generated by the EDO when a parcel is created. It contains spatial information regarding the parcel as well as ownership information that is updated each time there is a transaction.
- Cadastral Form (*Sahiyfa akariya*) – the Cadastral Form is used in the *Sigueal el-ainee* system as the form on which ownership information is recorded. Every parcel has its Cadastral Form. The Cadastral Form is akin to what is called a registration card or registration sheet in other countries. It is the document referred to in Article 58 of Law 142 of 1964 (the *Sigueal el-ainee* Law). That Law also refers to the Cadastral Form as a title deed (*sanad al mulkkaya*). The original of the Cadastral Form is kept in the central registration office. A copy of the Cadastral Form is provided only to the original parcel owner. Subsequent owners receive Certificates (*Shaheda*) pursuant to Article 59 of Law 142 of 1964.
- Certificate (*Shaheda*) – is a certificate issued to subsequent owners or third parties under Article 59 of the *Sigueal el-ainee* Law. It certifies that based on a review of the Cadastral Form for the subject property only the listed transactions have occurred.
- Certificate of Authenticity (*Shaheda*) – is the certificate issued pursuant to Article 61 of the *Sigueal el-ainee* Law to confirm the authenticity of a copy of the Cadastral Form or Certificate issued under Article 59.
- Certificate (*Shaheda*) – a certificate may also be issued to an applicant under Article 6 of Law 114 of 1946 (the *Sigueal el-Shaksi* Law). This Certificate is basically the same as the Certificate issued under the *Sigueal el-ainee* Law except that this Certificate lists the transactions that have taken place during a specified period of time with regard to a specific registered contract.
- Registered Contract (*ad el baiya el nehaie*) – is a final contract, sometimes referred to as a deed, registered under the *Sigueal el-shaksi* system. The original is printed on oversized green paper and is kept in the central registration office. A blue copy on laminated legal size paper is provided to the owner.

3. LEGAL ENVIRONMENT

Egypt has a well-developed and comprehensive set of laws governing ownership of real estate, real estate transactions, real estate finance, and registration of real estate rights. There are also laws regulating urban planning, building codes and laws regulating landlord-tenant relations, and real estate taxation. The Table attached as [Appendix 3](#) contains a summary of the laws, regulations and ministerial directives most relevant to real estate rights, transactions, and registration. Readers are referred to [Appendix 3](#) for a more detailed summary of that legislation, including observations about how the legislation relates to registration and the EFS project, and proposals for reform. The description of the legislative environment in the following section is intended to provide a general overview of the legal framework governing real estate in Egypt. Readers who are already aware of the general legal environment are invited to skip ahead to Section 4.

3.1 Land and Real Estate

The Constitution and Civil Code of Egypt recognize three types of ownership of real estate: public, private and cooperative.⁵ Private property is protected against being taken by the State except in cases specified in law and pursuant to a court decision. Private real estate cannot be expropriated except for a public purpose and with payment of fair compensation.⁶

The Civil Code (Law No. 131 or 1948) defines real estate as all things that are settled and fixed in place and cannot be moved without damage.⁷ Thus, land, buildings and parts of buildings, such as apartments, are treated as real estate. All rights to real estate, including ownership rights and court proceedings related to real estate, are considered to be real property.⁸

Ownership of land includes all that is on, above and under the land to the extent necessary for enjoying the use and benefit of the land.⁹ Ownership of the surface of land may, by law or agreement, be separated from ownership of what is on or under the land.¹⁰ This has led to the common situation in which ownership of land is separated from ownership of a building, or a part of a building. In the urban context, this can be particularly complicated because the original land owner and builder of a building might have sold apartments in the building, or the entire building, without explicitly conveying a share of the ownership of the land. Thus, as a technical legal matter, apartment owners are not necessarily secure in their rights to the land on which the building sits.

⁵ Constitution of the Arab Republic of Egypt, Article 29.

⁶ Constitution of the Arab Republic of Egypt, Articles 34 and 35, and Civil Code, Article 805.

⁷ Civil Code, Articles 82 and 802.

⁸ Civil Code, Article 83.

⁹ Civil Code, Article 803.

¹⁰ Ibid

The owner of real estate has the exclusive right to possess, use and dispose of it within the limits of law.¹¹ Real estate can be bought, sold, leased, inherited and given as security for a debt.

Ownership and other rights to real estate cannot be transferred either between contracting parties or as against third parties unless the rights are registered in accordance with laws regulating registration.¹² The registration laws provide generally that an unregistered transfer does not convey a legal estate in the property. An unregistered transaction is treated as a personal obligation of the parties (which, according to Egyptian lawyers, is enforceable in an action for money damages) but has no effect against third parties.¹³

Ownership of real estate can be gained through adverse possession after a 15-year period of uninterrupted possession.¹⁴ Adverse possession cannot be used to obtain ownership of public property.¹⁵ This will be significant in the context of first registration in urban areas where quite frequently buildings have been built completely on or encroaching on public property.

Egyptian law recognizes easements by agreement and easements by necessity. An easement by necessity is created if a landowner is isolated from a public road or cannot reach the road without exorbitant difficulty or expense.¹⁶ An easement is recognized as a burden on the servient estate for the benefit of the dominant estate.¹⁷ Easements may be established on public property as long as use of the easement does not conflict with the public use.¹⁸

Egyptian law also recognizes covenants or conditions imposed on one parcel for the benefit of another parcel.¹⁹ For example, a property owner may agree with a neighbor not to build a building exceeding a certain height. The agreement constitutes a burden on the servient property for the benefit of the dominant property and can be specifically enforced or can provide the basis for money damages.²⁰

¹¹ Civil Code, Article 802.

¹² Civil Code, Article 934.

¹³ *Ibid*, Law No. 114 of 1946, Articles 10, 12, 17 and 19, Law No. 142 of 1964, Articles 26 through 30.

¹⁴ Civil Code, Article 968.

¹⁵ Civil Code, Article 87.

¹⁶ Civil Code, Article 812.

¹⁷ Civil Code, Articles 1020 and 1021.

¹⁸ Civil Code, Article 1015.

¹⁹ Civil Code, Article 1018.

²⁰ Civil Code, Article 1018, paragraph 2.

The concepts of ownership of multistory buildings, apartments, and joint ownership of common areas are also well-established in Egyptian law.²¹ Owners of apartments are deemed to be “partners in ownership” of the land and the other parts of the building provided for common use, such as the foundation, exterior walls, entryways, yards, roofs, elevators, basements and utility pipes.²² The common areas are indivisible and may not be separated from ownership of the apartment.²³ Each owner’s share of the common property is based on the value of his or her apartment in relation to the other owners.²⁴ Apartment owners may form “owners’ unions” to provide for the joint management and maintenance of the building.²⁵

A wall which at the time it is built forms a partition between two buildings is considered to be jointly owned up to the center line unless otherwise agreed.²⁶ Owners of a common wall must use it only for the purpose for which it was intended, without overloading it with more than it can support. If the common wall is no longer fit for its intended purpose, the common owners share in the cost of repairing it.²⁷

Property owned by two or more people without definition of their specific shares is considered to be their common property, shared equally among them.²⁸ Each common partner has the ability to possess, use and dispose of his share without prejudicing the rights of the other partners.²⁹ Each partner has the right to ask for a division of the property, unless the partners have agreed otherwise.³⁰ The right to division may be enforced in court if the other partners do not agree to a consensual division.³¹

²¹ See Civil Code Articles 856 through 869. For much more detail on the issues of individual apartment and condominium-type ownership the reader is referred to “Initial Report of the Legal Framework for Registering Apartment Transactions in Egypt” by Steve McFadzean, Strata Title Advisor, 24 April 2005.

²² Civil Code, Article 856, paragraph 1.

²³ Civil Code, Article 856, paragraph 2.

²⁴ *Ibid.* This provision of the Civil Code might cause some difficulties as it does not specify when the value is to be determined.

²⁵ Civil Code, Article 862 et seq.

²⁶ *Id.* at Article 817.

²⁷ *Id.* at Article 814.

²⁸ *Id.* at Article 825.

²⁹ *Id.* at Article 826.

³⁰ *Id.* at Article 834.

³¹ *Id.* at Article 836.

Every landowner has the right to force his neighbor to delimit the neighbor's property at a shared cost.³²

The concepts of agency and proxy are very important in the context of real estate transactions, largely because of the difficulty in getting transactions registered. Buyers of real estate often pay the seller all or most of the purchase price based on a preliminary agreement that has not been registered. Because registration of the final contract can take a year or more, the buyer will often demand an irrevocable power of attorney from the seller so that the buyer will have the legal authority to sign the final contract on behalf of the seller if the seller is no longer willing or able to sign at the necessary time.³³

Articles 1030 through 1084 of the Civil Code establish a general framework for real estate lending, which is governed more specifically by the Real Estate Finance Law (Law No. 148 of 2001) and its Executive Regulations, discussed in Section 3.6.

An unsecured creditor may, by virtue of a court ruling, obtain a lien right against the real estate of the debtor as security against repayment of the debt.³⁴

Egyptian law gives neighbors and occupants very strong preemptive rights (or rights of first refusal) to purchase real estate before it can be sold to a third party.³⁵ A seller of real estate must notify the holders of preemptive rights of a possible sale. The holder of a preemptive right has the legal ability to replace the buyer with respect to the real property in question. These preemptive rights are formalized in the Civil Code but have a strong basis in Islamic law (*Shari'a*).

3.2 *Shari'a*

The advisor does not purport to be an expert on *Shari'a*. The following short statement is intended only to describe generally the relationship between *Shari'a* and Egyptian civil law.

Islamic law and doctrine occupy a significant place in the legal structure. The Constitution says that principles of Islamic jurisprudence are the principal source of legislation.³⁶ The Civil Code requires courts to be guided by Islamic law in the absence of legal provisions or customs governing a particular issue.³⁷ Islamic law is

³² Id. at Article 813.

³³ Id. at Article 699 et seq.

³⁴ Id. at Article 1085.

³⁵ Civil Code, Articles 935 through 948.

³⁶ Constitution of the Arab Republic of Egypt, Article 2.

³⁷ Civil Code Article 1, paragraph 2.

particularly important as the basis for inheritance,³⁸ preemptive rights, as well as the laws regulating marriage and most other aspects of family relations.

3.3 Planning/Subdivision

Urban planning is for the most part controlled at the local level. Local authorities promulgate detailed area plans that establish the permitted uses of buildings, height limitations, architectural requirements, floor-area-ratios, maximum occupancy limits, and street and utility locations.³⁹

It is illegal to divide a land parcel without approval in accordance with the Urban Planning Law.⁴⁰ The Urban Planning Law defines a division as any partitioning of land in an urban area into more than two plots.⁴¹

The Urban Planning Law also prohibits a landowner from dealing in part of a land parcel until the decision authorizing partition or division has been registered in the real estate registry.⁴² Any contract relating to a divided parcel must make reference to the decision authorizing the division, together with the terms and conditions of division, which are binding on all purchasers and successors.⁴³

Construction or issuance of a building permit for construction on divided land cannot occur until the terms and conditions of the division are fulfilled, including payment for the cost of any utilities that might have been required as a condition to the division.

Despite the good intentions of the Urban Planning Law, many if not most divisions occur without the necessary approvals. Parcels that have been divided unofficially are not captured in the registry. They are sometimes bought and sold several times subsequently resulting in a registry that bears little resemblance to the reality on the ground.

3.4 Building Law

³⁸ See Civil Code, Article 875 which says that inheritance shall be subject to provisions of Islamic Law (Shari'a) and laws promulgated in respect thereof.

³⁹ Urban Planning Law, Law No. 3 of 1982, Article 7.

⁴⁰ Law No. 3 of 1981, Article 12.

⁴¹ Law No. 3 of 1981, Article 11. Read literally, a partition into two parcels does not constitute a division. It is unclear whether this is the intent of the Law or is the result of poor drafting or translation.

⁴² Law No. 3 of 1981, Article 22.

⁴³ *Id.* at Article 23.

Law requires the owner to obtain a building permit for any building or improvement to an existing building with a value that exceeds 5000 LE.⁴⁴ As a practical matter, a permit is required for any new construction or improvement of any significance.

The requirement for building permits is honored in the breach. An astonishing percentage of buildings in Cairo and other cities have been constructed without the necessary building permits. Many permitted buildings have been added onto without obtaining permits for later additions.

The issue of how to handle illegally constructed buildings will be a major policy issue to be considered before any large scale registration can proceed.

3.5 Landlord-Tenant

Landlord-tenant relations have occupied a difficult position in Egyptian law, particularly in light of some of the socialist principles enshrined in the Constitution.⁴⁵ The law imposes very strict rent controls both in terms of initial rents and rent escalations over time. Rent controls are blamed for the dilapidated condition of many buildings. Some tenants in desirable districts of Cairo like Zamalek and Heliopolis pay as little as 5 LE per square meter, and in some cases rents have remained unchanged for 50 to 60 years.⁴⁶ According to a recent newspaper article, rents are so low in some cases that landlords hope that their buildings will fall down so that they will be able to sell the vacant land or rebuild with larger buildings. Two draft laws to remedy the landlord-tenant situation have been presented to the Peoples' Assembly and it is possible that they will be combined into one and considered before the end of the parliamentary term.

3.6 Real Estate Finance

The Real Estate Finance Law (Law No. 148 of 2001) was adopted to clarify the legal framework for real estate secured lending.⁴⁷ A detailed analysis of the Real Estate Finance Law is beyond the scope of this Report. The following summary is meant to describe the general legal environment for real estate lending as well as some of the peculiarities of the Real Estate Finance Law.

⁴⁴ Law Relating to Directing and Organizing Building Works, Law No. 106 of 1976, Article 1.

⁴⁵ See Constitution of the Arab Republic of Egypt generally, including Articles 1, 4, 7, 12, and 23 through 28.

⁴⁶ "Legal Injustice in Old Buildings," Egyptian Mail, 9 April 2005.

⁴⁷ Shari'a forbids usurious loans, which are defined broadly as any loan generating a benefit to the lender. Thus, loans charging interest are technically forbidden. Nonetheless there are ways to structure real estate secured loans that are accepted under Islamic law. Such loans are not typically called "mortgages" in Arabic. The reader should be aware that any English translation using the word "mortgage" is probably catering to a western audience. It is worth digging into the Arabic word being used because there are different classes of loans that have different legal priorities even though they might all be called "mortgages."

The Real Estate Finance Law governs all loans made for the purpose of purchasing, building, repairing or improving houses and other buildings.⁴⁸ Only specifically identified entities may make real estate finance loans, including: (1) companies whose purposes include real estate finance activities; (2) real estate finance companies formed under the Real Estate Finance Law; and (3) banks that register with the Central Bank of Egypt.⁴⁹

One of the peculiarities of the Real Estate Finance Law is that it requires the use of tripartite loan agreements.⁵⁰ In the case of a loan made for the purchase of real estate, for example, the agreement would be among the buyer, seller and lender. It seems that the tripartite mechanism has grown, in part, out of the difficulties with the registration system. Since registration of a purchase and sale could take years, the tripartite agreement allows the lender to obtain a contractual promise from the seller in case the lender needs the seller's cooperation in the future.

All loans secured by real estate must be registered.⁵¹ The application for registration must include the loan agreement as well as the registered deed for the real estate. As a practical matter, this means that only registered real estate may be used as security. According to the Real Estate Finance Law, the registry must issue a final decision or request for additional information regarding a request for registration within a week from the time the application is made.⁵² It is unclear if this deadline is adhered to.

Under Law 114 of 1946 (*Sigueal el-shaksi*), loans are registered on the margin of the registered deed. The marginal note expires after a period of ten years unless it is renewed before expiration.⁵³ This would seem to be a significant issue for lenders who might risk losing priority if they fail to renew their marginal notation.

The Real Estate Finance Law sets forth a mechanism for foreclosure if the borrower defaults on the loan. The lender must provide the borrower with notice of a default at least sixty days prior to proceeding with a foreclosure sale, which can only occur pursuant to a writ of execution from the competent court. An annotation of the writ is made in the registry on the margin of the registered contract for the real estate.⁵⁴

There have not yet been any foreclosures under the Real Estate Finance Law so it is too early to tell if the foreclosure process will achieve the appropriate balance between lenders and borrowers. There are some provisions of the Law which might potentially cause complications. One is the requirement for a minimum bid price

⁴⁸ Law 148 of 2001, Article 1.

⁴⁹ *Id.* at Article 3.

⁵⁰ *Id.* at Article 6.

⁵¹ *Id.* at Article 10.

⁵² *Ibid*

⁵³ Law No. 114 of 1946, Article 43.

⁵⁴ *Id.* at Articles 14 and 15.

determined by appraisers.⁵⁵ Experience with minimum bid prices has been mixed in other countries. Quite frequently bidding does not exceed the minimum bid price so the auction is deemed to be invalid. Minimum bid prices are thought to be necessary to protect borrowers but there are other borrower protections, such as anti-deficiency rules, that can be more effective at protecting the borrower without negating the auction.

Another seemingly problematic provision of the Real Estate Law is Article 23 which says that registration of the writ of execution “purifies” the real estate of all liens whose holders were notified of the writ of execution and the sales proceedings. Read literally this would mean that a foreclosure of a “junior” loan would extinguish all “senior” liens, including senior loans as long as the senior lien holders were notified of the sale. In other words, foreclosure of a second loan would extinguish the lien of the first loan. If this is true, it might be troubling to first lenders who would be at the mercy of junior lenders.

One final concern with the Law relates to the distribution of sales proceeds after a foreclosure sale. Article 26 of the Law says that proceeds are to be distributed to creditors according to their loan types rather than strictly according to their priority in the registry. According to Egyptian lawyers, there are several different types or categories of loans. Proceeds would be distributed to all holders of loans of the same type according to their proportional share of the overall debt. This suggests that registration of a security interest in real estate does not establish clear priority in the sense of ensuring complete repayment of the secured debt prior to repayment of any subsequent debt. While this might not be a problem in Egypt today because multiple loans on the same property are very rare, it could pose a significant problem in the future and should be researched more fully with Egyptian lawyers.

3.7 Inheritance

The right to inheritance is guaranteed by the Constitution.⁵⁶ For Muslims, inheritance is based on *Shari’a*, which is quite formulaic in its approach. For non-Muslim married couples of different religions, *Shari’a* also governs. For non-Muslim married couples of the same religion, the rules of that religion are applied.

Shari’a provides that subject to the payment of funeral expenses and debts, and to the right of the deceased to dispose of up to one-third of his or her estate by will, the remaining property is distributed among the spouse of the deceased and all blood relatives, including ascendants. The distribution is according to a formula that is summarized on the inheritance chart attached as [Appendix 6](#). The practical effect of the inheritance laws is that most of the deceased’s estate, including real property, is distributed in relatively small common shares among a very large group of people. It is quite common for real estate to be co-owned by an extremely large group, especially after more than one generation.

⁵⁵ Id. at Article 18.

⁵⁶ Constitution of the Arab Republic of Egypt, Article 34.

According to law, no heir is entitled to deal as the sole owner of real estate until it has been devolved to him by judicial authority or by agreement with the co-heirs. The law prohibits co-owners from informally dividing the property.⁵⁷ Co-owners may agree to divide their property subject to complying with the requirements of planning law and undertaking the necessary procedures with ESA.

In practice, it is quite common, perhaps the norm, for heirs to carve out their shares of property in off-record *Ourfi* transactions leading to dramatic fragmentation that is never reflected in the registration system. It is also reasonably common for there to have been a mistake between the property description in the registration system and the reality on the ground, even before a death.⁵⁸ The inaccuracy perpetuates and worsens as portions of the property that was erroneously described to begin with are conveyed in subsequent transactions.

By law, rights to inherited property are to be registered or are not enforceable against third parties.⁵⁹

Potential claims of heirs are among the most prevalent and problematic clouds on title to real estate because of the large number of heirs and the infrequent use of the registry. Pragmatic mechanisms for clearing these clouds will be particularly important if first registration is to be successful.

3.8 Individual Rights and Responsibilities

The Constitution guarantees that all citizens are equal before the law and are protected against discrimination on the basis of race, ethnic origin, language, religion or creed.⁶⁰ The Constitution also requires the state to guarantee the proper coordination of the duties of woman towards the family and her work in society, considering women “equal with men in the fields of political, social, cultural and economic life without violation of the rules of Islamic jurisprudence.”⁶¹

4. FINDINGS

4.1 Real Estate Transactions and Registration

4.1.1 *Ourfi* Contracts and Other Off-Record Transaction Mechanisms

⁵⁷ Law No. 3 of 1981, Articles 12 and 20.

⁵⁸ One ESA official involved in “first registration” activities estimated that in almost half the cases the property description did not match the reality on the ground. Quite often the mistake resulted from land reform programs in which a parcel was distributed to a person but the person inadvertently occupied a completely different parcel.

⁵⁹ Law No. 114 of 1946, Article 13, and Law No. 142 of 1964, Articles 27 and 30.

⁶⁰ Constitution of the Arab Republic of Egypt, Article 40.

⁶¹ Constitution of the Arab Republic of Egypt, Article 11.

The vast majority of real estate transactions are never registered because registration is so difficult, time-consuming and costly. In lieu of registering, people find other ways to try to secure their transactions.

Ourfi contracts are by far the most common mechanism for concluding real estate transactions. *Ourfi* contracts are off-record written agreements that are binding between the parties but not effective against third parties. They are recognized by many government agencies that provide subsidies or other benefits to property owners.⁶²

Typically, parties intending to register their transactions will enter into an *Ourfi* contract as a preliminary agreement that binds them pending completion of the registration process. The norm is for the buyer to pay all or most of the purchase price to the seller at the time the *Ourfi* contract is concluded.

People use various mechanisms to try to enhance the security of their *Ourfi* contracts. One technique is to have a number of witnesses to the signing of the document. Buyers often ask the potential heirs of the seller to witness and sign the *Ourfi* in an attempt to estop the heirs from making future claims against the property.

Although the use of witnesses is common, the vast majority of people also go to court to have the signatures verified through a court proceeding called a “signature case” (*sahat towkeya*). Signature cases are conducted before three-judge panels, and, according to some Egyptian lawyers, constitute approximately 50% of the cases in the civil court system. The fee is under 5 LE⁶³ and the case is typically concluded in five to ten minutes. Court authentication of signatures precludes one of the parties from denying that he or she signed the document. Ironically, the registration system does not recognize the court’s validation of the signatures on *Ourfi* contracts. If the parties choose to register their transaction, they complete a new contract as part of the registration process, and their signatures on the new contract are independently verified by the notaries who are part of the REPD. Notarization occurs as almost the very last step in the registration process.

Another technique frequently used by a buyer to strengthen the security of an *Ourfi* contract is to obtain an irrevocable power of attorney from the seller upon the signing of the *Ourfi*. The head of the Nasr City notary office estimated that approximately 45% of the transactions in that office were for irrevocable powers of attorney for real estate transactions. With the power of attorney the buyer replaces the seller with respect to all matters relating to the real estate. This allows the buyer to sign the final contract and other documents on behalf of the seller in case the seller becomes unavailable or unwilling to sign at the end of the registration process. This is a common problem because a seller is not particularly motivated to sign the final contract up to a year or more after having signed the preliminary contract and received the purchase price. Sellers often refuse to sign final contracts and have even

⁶² The tax agencies recognize *Ourfi* contracts in setting up the tax rolls. Agricultural offices in villages as well as village banks also recognize *Ourfi* contracts. *Ourfi* contracts can also serve as the basis for compensation under the Land Expropriation Law.

⁶³ At the time of writing, the exchange rate is approximately 5.8 LE per U.S.\$.

been known to go to court to attempt to obtain more money from the buyer based on inflation or devaluation of the currency since the signing of the preliminary contract.

4.1.2 “Deeds” (*Sigueal el-shaksi*) System

In its simplest form, a registration of deeds system is purely a Government repository for deeds. Deeds recorded in the system gives notice to third parties and take priority over unrecorded deeds or deeds recorded subsequently. Recordation of a deed does not typically confer upon it any legal validity. Recordation does not in itself confirm title to the property, or prove that the parties were legally entitled to undertake the transaction. Recordation only serves to prove that the particular transaction took place. Thus, in a typical deeds registry, the registry copies the deed into the system without any critical investigation of its validity under law. The registry does not conduct any technical or legal investigation as to the parties’ capacity, their claimed rights to the property or other aspects of the transaction, leaving that to the parties, their lawyers, title insurance companies, and the courts.

All deeds registries index the deeds serially by number in the order in which they are submitted. Some deeds registries also use alphabetical “grantor-grantee” indexes, and “tract” or property-based indexes. Tract or property-based indexes greatly improve the organization of the registry by making it possible to access all the documents that affect a certain property without needing to know the names of the parties, or the deed number.

Under a pure deeds system, what is registered is not “title” or ownership of the property but evidence of title, namely the deed.

Measured against these characteristics, the *Sigueal el-shaksi* system is not a pure “deeds” system. Rather, it is a hybrid that includes some features of a deed system and some features of a title system.

The *Sigueal el-shaksi* system is typical of most deeds systems in that the deeds (*ad el baiya el nehaie*) are not indexed according to parcel.⁶⁴ Deeds are entered into the system chronologically in the order in which they are accepted for registration. They are indexed serially and alphabetically according to the names of the parties.

There are at least three ways to find a deed that has been registered at the central registration office. First, the deed number is written on the registered deed. If the property owner has a copy of the deed, the number will be known and the deed will be easy to locate in the registry. Second, if the owner does not have a copy of the deed, the deed can be located using the alphabetical indexes. The alphabetical indexes contain cross references to the deed number, so finding the name of one of the parties in the alphabetic index will lead to the location of the deed. Searching the alphabetical index is quite cumbersome and time consuming because the indexes are in annual volumes and the books in most of the registration offices are in very poor condition. If the year of the transaction is not known, the searcher must inspect all of

⁶⁴ It would be possible to convert to a parcel-based index because the parcel number is included on most deeds.

the volumes back to the desired date until the name is located. Finally, the ESA district offices (EDO) maintain a document called a “Mutation Form” on which ownership information is recorded. When the central registration office finally registers a deed, it sends a notice to the EDO (on Form *15 akariya*) notifying the EDO to update the ownership information on the Mutation Form. The EDO records the deed number on the Mutation Form so this provides another link to the deed in the central registration office.

The *Sigueal el-shaksi* system differs most dramatically from a pure deed system in that Law 114 requires an applicant to prove the ownership or other property right that is the subject of the transaction.⁶⁵ The Law specifies that the only documents that will be accepted to prove the validity of ownership or other property rights are: (1) documents that have been previously registered; (2) inheritance documents that involve a death that occurred prior to the effective date of Law 114 (i.e., prior to 1946); (3) documents that predate 1924 that were not signed or sealed by a deceased person; or (4) documents that predate 1924 that have been validated in previously registered documents, or in documents whereby property was transferred to the recipient before Law 114 became effective, provided they do not contradict the documents of the actual owner.⁶⁶ If the applicant is attempting to claim ownership based on adverse possession, the REPD is required to verify that the applicant has satisfied the requirements of adverse possession under the Civil Code.⁶⁷ Adverse possession claims are considered by a committee at the RO made up of the head of the office, two senior assistant clerks and technical officers.⁶⁸

The legal requirement for investigation and substantiation of the validity of the applicant’s legal right to the property has led to the imposition of a lengthy, convoluted and sometimes inherently illogical or contradictory verification process that can make registration next to impossible. The procedure is shown on the flow diagram attached as [Appendix 7](#) and is enshrined in the Executive Regulations and Ministerial Directives that govern implementation of Law 114 of 1946. Not surprisingly, most Egyptians faced with the prospect of having to substantiate decades-old, undocumented legal rights (that they may feel are secure in any case), decline to register.

The tradeoff for the intensive verification process is that registered owners receive a higher degree of security of title than they would in a typical deed system. Those who persevere and get their transactions registered receive a laminated copy of their registered contract (*ad el baiya el nehaee*) as proof of their rights. A sample of this contract is attached as [Appendix 8](#). The contract is handwritten and typically includes pages of prose describing the property that is the subject of the transaction as well as the chain of transactions or documents that form the basis of ownership.

⁶⁵ Law 114 of 1946, Article 22, paragraph 6.

⁶⁶ Law 114 of 1946, Article 23.

⁶⁷ Law 114 of 1946, Article 23.

⁶⁸ Ibid

A property owner may also apply for a certificate (*shaheyda*) from the registry that confirms that no transactions relating to the registered contract has occurred for a specified period of time. Since registered contracts in *Sigueal el-shaksi* are not indexed to the parcel, the only way for the registry to issue such a certificate is to search the alphabetical indexes. The alphabetical indexes are in annual volumes so the applicant must specify how far back he or she would like the search to go. The fee for the search is based on the number of years covered. The certificate issued by the registry states that based on a search of the records between the year requested in the application and the present, the records indicate that only the specified transactions have occurred. A sample certificate issued under the *Sigueal el-shaksi* system is attached as Appendix 9.

Interestingly, Law 114 does not explicitly state that registered rights prevail against unregistered rights or subsequently registered rights. This is inferred based on language in the Law that requires registration of all rights and says that unregistered rights constitute personal obligations between the parties that have no effect as against third parties.⁶⁹ Based on very limited interviews, it appears that owners who are registered in *Sigueal el-shaksi* feel a strong sense of security.

The result of registration of a subsequent purchase and sale is the issuance of a new registered contract to the new owner. The old contract is not necessarily collected from the old owner, which can lead to multiple parties holding multiple registered contracts relating to the same property. A search of the records would disclose the identity of the real owner but an unaware buyer could be misled by a copy of an out-of-date registered contract.

When transactions like mortgages or leases occur, the original deed and any subordinate documents relating to the new transaction must be submitted to the registry in order to allow “marginal notes” describing the new transaction to be added to the deed.⁷⁰ Additional subsequent changes – for example, removal of a restriction or satisfaction of a mortgage or lien – must also be added as marginal notes. Over time, proof of the legal status of the property becomes a complex linkage of documents with marginal notes, each making reference to other documents and their marginal notes. Ultimately, the determination of the status of title can become difficult and uncertain.

4.1.3 “Title” (*Sigueal el-ainee*) System

In contrast to a “deeds” system, a “registration of title” system is meant to create an authoritative record of ownership and other real property rights. Title systems are property-based; information in the registry is indexed according to a unique parcel or real estate unit identification number. The registered information for a particular parcel or real estate unit is accepted as the only legally binding record of ownership or rights to the property. In many countries the information in the registry is guaranteed

⁶⁹ Law 114 of 1946, Articles 9, 10, 11, and 12.

⁷⁰ Law No. 114 of 1946, Articles 15 and 37.

by the state in order to provide registered owners with complete security of title, although this is not always the case.⁷¹

A properly designed title system is relatively simple to operate because all the legal particulars affecting a parcel or real estate unit are revealed very easily by examining the record for that parcel or unit. A transaction can be processed very quickly by examining the record. If the transaction does not conflict with the information in the registry, the transaction is processed by making an entry in the registry. Relatively simple forms can usually be used for this purpose.

Law 142 was introduced in 1964 with the intention of converting the *Sigueal el-shaksi* system to a registration-of-title-type system. The process of conversion began in the 1970s in rural areas. An estimated 70% to 80% of rural areas have been converted.⁷² *Sigueal el-ainee* has not yet been introduced in any urban area although the Government clearly intends to do so and is currently conducting an experimental conversion process in the *Dokki* district of Cairo.

Measured against the typical characteristics, the *Sigueal el-ainee* system cannot be called a pure registration of title system. Like the *Sigueal el-shaksi* system, it is a hybrid, possessing some of the characteristics of a registration of title system and some of the characteristics of a deeds system.

As described in Law 142 and in its essence, the *Sigueal el-ainee* registry is a registration of title system. It is parcel- or property-based; according to the Law, each “real estate unit” is assigned a unique number and a “sheet” or “cadastral form” (*sahayfa akariya*)⁷³ on which the registered ownership and other rights for that real estate unit are to be recorded.

Sigueal el-ainee is also quintessentially a title registration system in terms of the protection it gives to registered rights. Law 142 is not unlike other registration of title laws in that it does not mention the word guarantee. Security of title is achieved through the legal conclusiveness of the register. According to the Law, only

⁷¹ Germany, Malaysia, Fiji, and Sudan are among the countries that do not provide indemnity against loss, yet the systems in those countries appear to work relatively well.

⁷² Although the conversion process has been conducted in 70% to 80% of the rural areas, conversion has not necessarily resulted in arriving at the “true” ownership for a majority of the parcels in the area that has been converted. The limited data that are available, together with anecdotal evidence, suggest that conversion results in arrival at the true owner in a small percentage of the cases. Potential improvements in the conversion process to increase this percentage are discussed in Section 4.1.5.

⁷³ The consultant has reviewed three different translations of Law 142 of 1964 which use various English terms to refer to this document potentially creating confusion especially in conversations with counterparts. In Arabic the sheet is called “*sahayfa*” in Articles 10, 11, 12, and 15 of Law 142 but is called “*sahayfa akariya*” in Articles 43, 47, 48, and 58 of Law 142. In Article 58 of the Arabic version of the Law, the “*sahayfa akariya*” is also referred to as a “title deed” or “*sanad al mulkaya*.” What is clear from the Law is that this document is meant to be the unique real-estate-unit-based registration sheet on which all transactions affecting a particular real estate unit are to be recorded. In practice, the *sahayfa akariya* is kept in the central office of the REPD. In an effort to avoid confusion, this document is called a “cadastral form” throughout this report and the term *sahayfa akariya* is used in parenthesis. A sample cadastral form (*sahayfa akariya*) is attached as [Appendix 13](#).

information recorded on the cadastral form (*sahayfa akariya*), or on a “certificate”⁷⁴ (*shaheda*) summarizing the information on the cadastral form, is accepted as proof of ownership or other real property rights.⁷⁵ Information in the register is conclusive and no claim inconsistent with the register can be enforced against a registered owner including claims of adverse possession.⁷⁶ Unregistered transactions have no legal force either as between the parties or as against third parties.⁷⁷ Ultimately an owner has legal assurance that ownership is as stated in the register and that no claim inconsistent with the register will be enforced against the registered owner.

No guarantee or assurance fund has been established to compensate registered owners against losses resulting from mistakes in the registry. Law No. 56 of 1978 set up a Title Registration Fund but so far the Fund has only been used for the expansion and operation of *Sigueal el-ainee*. It would be possible for that Fund to provide the basis for an assurance fund should the Government decide in the future that an assurance fund is necessary.

Where *Sigueal el-ainee* diverges dramatically from a registration of title system is in its day-to-day operation. One of the principal advantages of registration of title is that conveyances should be relatively simple. Processing a conveyance in *Sigueal el-ainee* is far from simple. In practice, transaction procedures in the *Sigueal el-ainee* system are almost identical to those in the *Sigueal el-shaksi* system. The transaction process under *Sigueal el-ainee* is shown on the flowchart attached as Appendix 10 and is eerily similar to the flowchart for a typical *Sigueal el-shaksi* transaction (Appendix 7), lacking only two or three of the steps.

It is unclear why the transaction process under *Sigueal el-ainee* is so complicated. If the system were run according to Law 142, almost none of the steps on the flowchart would be necessary. As long as a transaction does not include a change in the geometry of the property unit (i.e., there is no subdivision or merger), registering the transaction should be as simple as verifying and updating the information on the Cadastral Form (*sahayfa akariya*).

It should be emphasized that *Sigueal el-ainee* has never been implemented in urban areas. Thus, there is no experience in treating buildings or parts of buildings such as apartments as “real estate units” under Law 142. In fact, Law 142 does not explicitly permit a building or part of a building to be treated as a “real estate unit.”

⁷⁴ This document is referred to in several Articles of Law 142, including Articles 43, 47, 59, and 60. The Arabic term is “*shaheda*.” For purposes of this report, the English term “certificate” is used to refer to this document. An example of this certificate is attached as Appendix 14. This certificate should be distinguished from the document issued according to Article 61 of the Law. The Article 61 document is also referred to in the Law using the Arabic word “*shaheda*” but is different from the document referred to in Articles 43, 47, 59 and 60. For purposes of this report, the English term “certificate of authenticity” is used to describe the Article 61 document. An example of the Article 61 certificate of authenticity is attached as Appendix 15.

⁷⁵ Law 142, Article 48.

⁷⁶ Law 142, Article 37.

⁷⁷ Law 142, Articles 26, 27, 28, 29 and 30..

Paraphrasing, Article 8 of Law 142 says that for purposes of Law 142, a real estate unit can be: (1) a land plot; (2) a mine or quarry; or (3) a public utility. Since buildings and apartments are not listed, they arguably cannot be “real estate units” and therefore cannot be registered under Law 142.⁷⁸ In the short run this problem can be solved by the Minister of Justice who is given the authority to change the definition of “real estate unit” by Decree.⁷⁹ In the long run, Article 8 should probably be amended to explicitly allow for buildings and parts of buildings to be designated as “real estate units.”⁸⁰

4.1.4 Computerized Records, Public Access, and Privacy

When Laws 114 and 142 were adopted in 1946 and 1964, respectively, there was no anticipation of the automation of the registration systems. Neither Law makes mention of computers or the possibility for the maintenance of computerized records. Both Laws include provisions making specific reference to paper records. This will not prevent automation of the systems in the short run, but amendments to the Laws will be necessary if computerized records are to be recognized as legally binding.

Under *Siguel el-shaksi* any person has the right to ask to review the publicity books, indexes, or any publicized document in the publicity office upon payment of the required fee.⁸¹ Anyone may obtain a certificate (*sheheyda*) from the registry listing all of the transactions and entries for a specific period of time with respect to a specific person, again, upon payment of the required fee.⁸² Anyone may also receive a certificate indicating any marginal notations that have been made.⁸³ Finally, anyone is entitled to receive a certificate of authentication from the registry certifying the authenticity of any copy of a document issued by the registry.⁸⁴

The *Siguel el-ainee* Law (142) does not explicitly give people the right to review the registry. It does, however, give any person the right to obtain a certificate from the registry confirming the information in the registry upon payment of the required fee.⁸⁵

⁷⁸ It should be noted that the Executive Regulations for *Siguel el-ainee* do provide for treatment of buildings as real estate units so there is practical recognition of the need to do so.

⁷⁹ Law 142, Article 8.

⁸⁰ The issues related to implementation of *Siguel el-ainee* in urban areas, especially with respect to buildings and apartments, are covered in great detail in the report entitled “Initial Analysis of the legal framework for registering apartment transaction in Egypt” by Steve McFadzean, Strata Title Advisor, April 2005.

⁸¹ Executive Regulation In Respect of Regulating the Real Estate Publicity Department, Egyptian Gazette 85, August 24, 1946, Article 27.

⁸² *Id.* at Article 28.

⁸³ *Id.* at Article 29.

⁸⁴ *Id.* at Article 30.

⁸⁵ Law No. 142 of 1964, Article 59.

Neither Law contains any provisions regarding privacy. Presumably since anyone can obtain information from the registry there is no expectation of privacy. Law 142 requires the registry to maintain an alphabetical index in which every owner has a record listing all the properties owned by that person.⁸⁶ The maintenance of this kind of list would also diminish any expectation of privacy.

4.1.5 Conversion from Deeds (*Sigueal el-shaksi*) to Title (*Sigueal el-ainee*)

Law 142 of 1964 describes the general legal framework for converting from *Sigueal el-shaksi* to *Sigueal el-ainee*. The Executive Regulations and Instructions flesh out the procedure in much more detail. The procedure is depicted graphically on the workflow diagram attached as [Appendix 11](#), and is described in general terms in the following paragraphs.

The first step in the process is for the Minister of Justice to issue a Decree designating a geographic area for conversion. The Decree must specify the date on which the conversion will become effective, which cannot be earlier than six months following the date of the Decree,⁸⁷ and must be published in the official gazette (*Waq'a'i al Misriya*).⁸⁸ The REPD must also publicize the intended entry into effect of *Sigueal el-ainee* in more than one widely circulated newspaper at least once a week for two months.⁸⁹

After issuance of the Decree by the Minister of Justice, ESA begins the work of defining each real estate unit and compiling ownership information in a survey book referred to as Form 1. A copy of Form 1 is attached as [Appendix 12](#). ESA first obtains all the deeds from the RO with jurisdiction over the area to be converted. It also obtains ownership information from the tax records.

Based on the deeds and information from the tax records, without doing any field verification of ownership, ESA completes a draft of Form 1 that it then forwards to a “legal revision committee” comprising two legal members and a survey expert from ESA.⁹⁰ The legal revision committee prepares summaries of the registered contracts, and revises the draft of Form 1.

Based on the work of the legal revision committee, a cadastral form (*sahayfa*) is created for each parcel.⁹¹ ESA sends notices to each of the people listed as owners asking them for input and inviting them to make claims.⁹² Notices sent at this stage

⁸⁶ Law No. 142 of 1964, Article 5.

⁸⁷ Article 2 of the Decree of the President dated 24 March 1964 enacting Law No. 142 of 1964.

⁸⁸ Instructions for *Sigueal el-ainee*, Article 14.

⁸⁹ *Id.* at Article 15.

⁹⁰ *Id.* at Article 47.

⁹¹ Law 142 of 1964, Article 10.

⁹² Instructions for *Sigueal el-ainee*, Article 51.

tend to go to people who were registered as owners at one time but who, more often than not, are no longer the true owners. The result can be that the true owners never receive notice of the conversion process.

At this stage, owners who have not registered their rights or who are claiming by adverse possession may formalize their rights by applying for registration of previously unregistered documents, or by submitting a Settlement Form, which is a consensual document signed by all persons who might have a right to the property. The Law tries to encourage people to come forward by offering a 50% fee reduction for applications at this stage.⁹³ The applications must be submitted within two months of the notice, although in practice the Minister of Justice often extends this two-month period three or four times.

The overall deadline for submitting claims is one year from the date of the Decree of the Minister of Justice bringing an area into *Sigueal el-ainee*.⁹⁴ The Minister of Justice has the authority to extend the one-year period by another year, and routinely does so.⁹⁵ Claims are considered by a judicial committee consisting of three members, under the chairmanship of the chief magistrate of the court of first instance, and including a legal representative and an engineer.⁹⁶ The judicial committee has exclusive jurisdiction to consider claims filed in the first year. Most decisions of the committee may be appealed to the court of appeals.⁹⁷

Conversion to *Sigueal el-ainee* has occurred in an estimated 70% to 80% of Egypt's rural areas with varying degrees of success. By some estimates, information in the *Sigueal el-ainee* system only accurately represents the "real" ownership in approximately 25% of the cases.⁹⁸ Although some of the inaccuracy is the result of the failure of property owners to register subsequent transactions, some observers have called the first registration process a failure.⁹⁹ Some have claimed that conversion to *Sigueal el-ainee* has made the situation worse by triggering lawsuits among claimants who were otherwise dormant, and by further undermining the credibility of the Government and the registry.

⁹³ Law No. 142 of 1964, Articles 18 and 19.

⁹⁴ See Law 142 of 1964, Article 21. Read literally, Article 21 seems to establish the exclusive jurisdiction of a "judicial committee" to consider claims submitted within a year. It does not explicitly establish a one-year deadline for submission of claims, although it is interpreted in practice to do so.

⁹⁵ Law 142 of 1964, Article 22.

⁹⁶ Law 142 of 1964, Article 21.

⁹⁷ Law 142 of 1964, Articles 23 and 24.

⁹⁸ Report of the Baseline Study conducted in Elmanshya and El Ebrahemia and Trabama Villages in Damanhour District of Beheira Province, by the Egyptian Cadastral Information Project (ECIM), October 2003 – February 2004.

⁹⁹ See, e.g., Egyptian Cadastral Information Management Project, Midterm Review, Ian Corker, December 2003 – January 2004.

Among the deficiencies in the first registration process that have been identified anecdotally and in other reports are the following:

- tendency to rely on inaccurate records in the *Sigueal el-shaksi* system and tax records without taking account of *Ourfi* contracts, and actual possession or input of people in the field;
- insufficient human and financial resources;
- sever shortcomings in public awareness of *Sigueal el-ainee* and its purpose, or the implications of the first registration process;
- unwillingness of people to participate in the process (attributable in part to insufficient public awareness and publication);
- charging fees for first registration;
- insufficient training of *Sigueal el-ainee* staff;
- failure to follow standard procedures; and
- reluctance on the part of *Sigueal el-ainee* staff to make difficult decisions because of fear of personal liability for mistakes.¹⁰⁰

Another reason for the mixed results in conversion stems from ambiguity in Law 142 about whether first registration is a purely systematic adjudication. A purely systematic process is a “process whereby throughout an expressly designated area all the land rights, both public and private and whether or not they amount to full ownership, are authoritatively ascertained in one operation by an officer specially appointed for the purpose....The process does not, by itself, alter existing rights or create new ones. It merely establishes with certainty and finality what rights exist, by whom they are exercised, and to what limitation, if any, they are subject.”¹⁰¹

In contrast, sporadic adjudication involves the examination and assessment of title to a single parcel on its own merits, frequently based on an application by the property owner, before it can be registered.

In its intent, the conversion process described in Law 142 is a systematic process. The Decree of the Minister of Justice is apparently intended to trigger the conversion of all of the land within a designated area at one time. The process is also intended to result in the determination of the ownership information for every parcel in the designated area, together with any limitations or restrictions to which that ownership may be subject. For owners who have registered documentation proving their chain of ownership, the process is systematic and results in the receipt of a cadastral form (*sahayfa akarya*) confirming their ownership.

¹⁰⁰ Baseline Study.

¹⁰¹ Simpson, p.197.

The systematic approach breaks down, however, in cases in which the chain of title is not established in previously registered documents. In these cases, Law 142 requires the owner to apply for registration of the unregistered rights.¹⁰² This entails payment of a registration fee (reduced by 50% from the normal fee to encourage registration), followed by a detailed investigation of the registration application by both the Registration Office and the ESA office very much akin to the verification undertaken under the *Sigueal el-shaksi* system. Effectively, the systematic first registration turns into a sporadic verification of rights on the parcel in question.

A similar situation results if parties with conflicting claims wish to use a Settlement Form to reach agreement during the first registration process. The parties involved must apply to use the Settlement Form.¹⁰³ The application is then treated very much like an application under the *Sigueal el-shaksi* system. Again, what was intended to be part of a systematic adjudication becomes a parcel-specific verification process requiring the payment of registration fees (at a 50% reduction).

If the Government decides to convert to *Sigueal el-ainee* in urban areas, it will most likely have to take steps to refine the first registration process to make it a more purely systematic adjudication. Recommendations regarding how to do this are set forth in Section 5.5.

4.1.6 Use of Registration to Enforce Tax, Building and Planning Laws

There is recognition on the part of the Government that registration has in the past been used to police compliance with tax, building and planning laws, and that the REPD has been used as a “collection agency” for other Governmental departments.¹⁰⁴ This has been done by requiring applicants for registration to show proof of compliance with a wide range of laws before being allowed to proceed with registration. Because so many of Egypt’s urban properties have been built without formal building and subdivision approvals, there is a clear feeling among many Egyptians that requiring proof of compliance with tax, building and physical planning laws as a condition to registration is one of the main reasons that urban property owners refuse to register.

The Government has made some attempts to remedy this problem, most notably with the adoption of Law No. 6 of 1991. That Law amended six other laws, regulations and decrees¹⁰⁵ that had previously tied registration to proof of payment of taxes, building permit and other fees. The overall intent of Law No. 6 of 1991 was to

¹⁰² See Law 142 of 1964, Article 18 and Instructions for *Sigueal el-ainee*, Article 22 et seq.

¹⁰³ See Law 142 of 1964, Article 19 and Instructions for *Sigueal el-ainee*, Article 27 et seq.

¹⁰⁴ Instruction No. 1, Real Estate Publicity Department, Law No. 6 of 1991 which acknowledges that the REPD was being used as a “collection agency” for other governmental departments.

¹⁰⁵ Law No. 6 of 1991 amended various provisions of the Decree promulgated under Law No. 70 of 1964 Regulating Fees for Notarization and Land Registration, the Civil and Commercial Procedures Law promulgated by Law No. 13 of 1968, and Laws Nos. 222 of 1955, 107 of 1976, 136 of 1981 and 288 of 1989.

remove the obstacles that were hindering registration by limiting the documents required for registration to those related solely to registration, and eliminating requirements for documents relating to the enforcement of other laws.¹⁰⁶ Specifically, Law No. 6 of 1991 did away with the requirements:

- to obtain a certificate from the Planning Department in governorates or city councils to certify that improvement fees have been paid or that the property is not subject to such fees
- enforced by Article 3 bis (4) of Law No. 107 of 1976 relating to the establishment of a Fund for Financing Economic Housing Projects which banned the issuance of building permits on vacant land that had not been registered¹⁰⁷
- to pay vacant land taxes prior to registration
- to submit certificates proving payment of or exemption from inheritance taxes prior to registration.¹⁰⁸

What Law No. 6 of 1991 gave with one hand it took back, at least in part, with the other. Although proof of payment of the fees and taxes described above cannot be made a precondition to registration, Article 8 of Law No. 6 of 1991 requires the REPD to notify the agencies responsible for collecting such fees and taxes of any registration that occurs. In effect, the Law allows people to register but only postpones their pain because once government agencies are notified they come after the registrant. Registration is rightly perceived by the people as likely to trigger enforcement activities by other government agencies.

Although Law No. 6 of 1991 did away with the requirement that applicants provide proof of payment of various taxes and fees, it did not address the issue of the use of registration to police overall compliance with taxation, building and planning laws. There are provisions of other laws that prohibit registration without proving compliance. Most notably, Article 12 bis 1 of Law No. 106 of 1976 (the Law on Directing and Organizing Building Works) says that no sale contract or lease of urban property may be registered unless it includes specific data on the building permit for the building. The irony is that registration is not required to obtain a building permit so most permits are issued based on *Ourfi* contracts.

¹⁰⁶ Commentary to Instruction No. 1, Real Estate Publicity Department, Law No. 6 of 1991. The Commentary noted further that laws other than the registration laws are to be enforced by other agencies that have adequate authority and power to force compliance.

¹⁰⁷ Note, that Law No. 6 of 1991 provides enforcement of payment of taxes by saying that building permits for vacant land cannot be issued without proof of payment of taxes. Law No. 6 of 1991, Article 7.

¹⁰⁸ Law No. 6 of 1991, Article 10.

The two registration Laws (Law No. 114 of 1946 and Law No. 142 of 1964) also contain some provisions relevant to this issue. Those provisions are discussed below in Sections 5.2 and 5.3 specifically recommending amendments to those Laws.

There may very well be other laws, regulations or decrees that touch on this subject. A further review by Egyptian lawyers may be necessary to ensure that others have not been overlooked.

4.2 Real Estate Finance and Registration

A reliable and efficient registration system is fundamental to development of an active and healthy mortgage finance system. Lenders must be able to verify quickly and with a high level of certainty that the borrower owns the collateral and that by registering a mortgage the lender will establish priority against third parties.

The Egyptian Real Estate Finance Law (148 of 2001) formalizes what is axiomatic to any lender relying on real estate collateral – it requires the lender to register the lien right in order to be able to take advantage of the foreclosure and other provisions of the Real Estate Finance Law.

Since the Real Estate Finance Law requires registration, there can be no significant increase in mortgage lending until unregistered properties are brought into the registry. That makes improvement of the registry a necessary condition to any significant increase in mortgage lending. It should be noted that improvement of the registry alone will not be enough to stimulate mortgage lending. Lending depends in part on overall economic conditions which are well beyond the ability of the EFS project or any other project to influence. There are other changes that must occur as well, including dramatic increase in public awareness and reform of the judicial system so that lenders will feel confident in their ability to enforce mortgages should the need arise.

The good news is that the lenders interviewed reported that it was relatively easy for them to register mortgages against properties that were already registered. Whether this was due to the relatively high level of sophistication of the lenders and their relatively easy access to the registration system, they did feel that they could register their mortgages once a property was registered.

Many of the people with whom I spoke felt there was no need to improve the registration or mortgage systems because banks still make loans, having designed other mechanisms for taking real estate as collateral, such as installment contracts and powers of attorney. More frequently they take non-real-estate collateral such as personal checks and liens on personal property. This highlights the degree to which the psychology of the people will have to be changed in order for mortgage activity to increase. Until dramatic change occurs and is accepted by the people, lenders will use alternative means for securing their loans, and people will assume that there is no need for mortgage lending. Thus, Egypt's vast real estate wealth will go untapped.

The Real Estate Finance Law, like the Civil Code and some of Egypt's other laws, represents a clear intent to move to a modern mortgage system. In general, it establishes a good legal framework for mortgage lending, although most of its

provisions have never been tested. Looking ahead to when it is tested, there are some provisions that should probably be reexamined. Those provisions were highlighted in Section 3.6. Any amendments to the Real Estate Finance Law should probably be viewed as long term prospects after the Law has been tested.

4.3 Further Definition of Task 2

This consultancy was undertaken during the early stages of Task 2 at a time when the project objectives and activities are still being formulated and discussed with Government counterparts and USAID. It is anticipated that the project will undertake pilot activities that will include the streamlining of transaction procedures, upgrading of records and modernization of two registry offices in Cairo. Some possible locations are being discussed, but no final decisions have been made.

The precise scope of the pilot activities has not yet been defined and depends on a number of factors including limits on project resources and overall objectives of the Government. At the simple end of the continuum, the pilots could involve modernization and streamlining of the existing *Sigueal el-shaksi* (deed) system in two offices. This could include refurbishing of the offices and equipping them with office furniture, computers, copy machines and other modern office equipment and supplies. It could also include: (1) streamlining of the procedures for processing transactions in the *Sigueal el-shaksi* system; and/or (2) automating and reorganizing all of the records according to a parcel-based indexing system.

Conversion to a parcel-based indexing system would require some production of index maps showing the real estate units together with their unique property identification numbers. A simple conversion to a parcel-based index would not necessarily include a significant effort to independently verify the veracity of the ownership information in the registry. It would focus primarily on reorganizing existing information so that future transactions could be processed more efficiently and with a greater degree of confidence in the accuracy of the outcome.

Even the simplest modernization effort would include attempts to streamline the registration process and thus would require amendments to the Executive Regulations and Ministerial Directives governing *Sigueal el-shaksi* as well as significant retraining of office staff. Specific recommendations for streamlining *Sigueal el-shaksi* procedures are set forth in Section 5.3 below.

At the other end of the continuum, the pilots could involve the systematic conversion from *Sigueal el-shaksi* to *Sigueal el-ainee* in all or part of the pilot areas. The decision in 1964 to adopt Law 142 and introduce the *Sigueal el-ainee* system was based on the Government's intention at that time to undertake a phased conversion to *Sigueal el-ainee* throughout the country. The conversion is ongoing in various rural areas, but has not yet been attempted in any urban area.¹⁰⁹ A systematic conversion

¹⁰⁹ The Ministry of State for Administrative Development is currently undertaking an experimental project in the Dokki neighborhood of Cairo which includes many of the steps that would be necessary to accomplish a conversion, but the intent of the Dokki project does not appear to be a formal, legal conversion to *Sigueal el-ainee* because the procedures required by Law 142 (such as the issuance of a Decree of the Minister of Justice announcing the conversion) have not been followed. The Dokki

effort would involve some of the same activities as reorganizing the *Sigueal el-shaksi* records into a parcel-based system, namely the creation of index maps showing real estate units and their numbers. But it would include the added step of verifying information through public notice and comment, adjudicating rights, and, ultimately, attempting to create a definitive registry including all the properties in the pilot area. Conversion to *Sigueal el-ainee* would also involve modernization and equipping of offices, as well as retraining of staff.

The project, together with Government counterparts, must decide whether the pilots are going to be used to try to streamline and improve *Sigueal el-shaksi* or convert to *Sigueal el-ainee*. That decision, to a large extent, will be based on the level of project and Government resources as well as resources from other sources like the World Bank. Ultimately, that decision will determine the legal reforms that will be necessary to implement the pilots. At this stage of the project, the recommendations in Section 5 of this Report are by necessity made in the abstract. They will have to be reexamined and refined once the pilot activities are more clearly defined.

The following table is provided as a tool to help decision-makers consider some of the advantages and disadvantages of different pilot activities. The table is by no means all-inclusive. It is meant to be a starting point for decision-makers.

	Automate and Streamline <i>Sigueal el-shaksi</i>	Convert to <i>Sigueal el-ainee</i>
Advantages	<ul style="list-style-type: none"> • Less expensive; could cover more territory with fewer resources • Organized records will speed searches and transactions • Could be first step in eventual conversion to <i>Sigueal el-ainee</i> 	<ul style="list-style-type: none"> • Systematically brings large number of properties into system • Efficiently regularize title to large numbers of properties • Public might perceive higher degree of security in <i>Sigueal el-ainee</i> than in <i>Sigueal el-shaksi</i> • Opportunity for fresh start with public
Disadvantages	<ul style="list-style-type: none"> • No improvement of the quality of information in the registry • No immediate increase in number of properties in the system • Number of properties in the system only increases in the long run if people begin to use the system 	<ul style="list-style-type: none"> • More expensive; would cover a smaller area with limited resources • Risk that people will not use the register even after conversion • Risk of further deterioration of credibility if conversion is not well implemented

project is expected to provide valuable information regarding techniques that are successful (or not) in attempting to verify ownership in urban areas.

5. RECOMMENDATIONS

5.1. Legal Reform

Additional analysis of the legal environment and proposals for legal reform are set forth on the Table attached as Appendix 3. The extent to which laws need immediate amendment depends in part on the definition of the pilot activities. Very significant streamlining of both registration systems can occur without amending either Law 114 or Law 142. In the long run, changes to Law 114 will be necessary to make the *Sigueal el-shaksi* registration process more efficient. Similarly, long term amendment to Law 142 would facilitate a more efficient and effective first registration process. Some of the recommended changes to both Laws are highlighted in Sections 5.3 through 5.5.

Improving first registration under *Sigueal el-ainee* and streamlining registration of subsequent transactions under both *Sigueal el-ainee* and *Sigueal el-shaksi* will require extensive amendments to the Executive Regulations, Instruction and Forms. The decision about whether to amend the documents or rewrite them completely will depend on the nature of the changes that are made to the process. From a practical standpoint, it may turn out to be easier to rewrite the documents instead of trying to preserve some sections and amend others. Completely rewriting the documents has several advantages, including: (1) serving as a springboard for reconsideration of procedures that have not been particularly effective in the past; (2) creating a clear and comprehensive framework for future activities that would not have any connection to past procedures; and (3) serving as a tool for re-training staff who are accustomed to working under the old Regulations and Instructions.

5.2 Separate Registration from Tax, Building and Planning Laws

As stated in Section 4.1.6, despite Government efforts to divorce registration from verification of payment of taxes and fees, registration is often delayed by attempts to verify overall compliance with tax, building and planning laws.

Although it is common for governments to attempt to use registration to enforce compliance with tax and other laws, there is little evidence that to do so is effective. Registration systems in many countries, including England and the United States, have very little connection to the valuation of properties for tax purposes, or with the collection of taxes. Despite the lack of connection, appraisal of properties and collection of taxes occurs relatively efficiently and regularly. There is considerable force to the argument that mixing registration with taxation bogs the registration system down with unnecessary data and procedures, and scares users away from using the system. There is anecdotal evidence as well as official recognition of this problem in Egypt.¹¹⁰

Similar considerations apply to enforcement of building and physical planning norms. Many registers of title do not show areas of land parcels and almost none show the

¹¹⁰ See, e.g., Instruction No. 1, Real Estate Publicity Department, Law No. 6 of 1991 which acknowledges that the REPD was being used as a “colleciton agency” for other governmental departments.

type of development or the value of land or buildings. Maintaining this kind of information is unnecessary for registration, complicates registration procedures, and adds to the cost of maintaining the registration database. It also scares users away from the system because of fears of enforcement proceedings by building or planning officials.

Ultimately, the Government should consider eliminating all ties between registration and other laws if it wants to encourage registration.

5.3 Proposals for Streamlining *Siguel el-shaksi* Transactions

There are some significant short term improvements that can be made to the *Siguel el-shaksi* system to improve the quality of the information in the system and make it more responsive to users. The following are some recommendations for immediate reform.¹¹¹

5.3.1 Standardize Application Forms

Law 114, the Executive Regulations and Ministerial Instructions all contemplate the use of standardized application forms for various types of transactions.¹¹² For one reason or another, forms are not typically available at ROs leaving applicants to produce their own applications, usually hand written on small scraps of paper that frequently lack the required information and must be sent back to the applicant. A well-designed application form would eliminate many of the initial problems faced by applicants. Law 114 gives the Minister of Justice the authority to approve forms by Ministerial Decree. The project should work together with the Ministry on designing new forms.

5.3.2 Post and Distribute Information in REPD Offices

It would be relatively easy and inexpensive to post information in the registry offices to give applicants a general overview of the registration process as well as guidance on the requirements for applications. During site visits to registry offices it was observed that the vast majority of inquiries involved attempts to get very basic information about the application and subsequent procedures. These basic inquiries are a constant interruption to the registry staff as well as an irritant to members of the public who sometimes have to wait for hours to obtain very basic information.

5.3.3 Notary in REPD Offices

A visit to the Nasr City notary office should be a requirement for all officials of the Government of Egypt as well as foreign advisors with an interest in reforming the registration system. The scene is chaotic, bordering on inhumane for both the

¹¹¹ Some of these recommendations have been proposed by other consultants. Many of them were also proposed by Ms. Fatem Tahir, the head of the Nasr City Registration Office. The input of Ms. Tahir was most valuable in helping me understand the current procedures and the possibilities for reform. Her input was greatly appreciated.

¹¹² See, e.g., Article 19 of Instructions for Real Estate Publicity Department.

employees and the public. The head of the Nasr City Registration Office and the Head of the Nasr City Notary Office both concur that the situation could be improved dramatically by placing a notary or two in the Registration Office. This would be much more convenient for the public and would also lessen the workload on the Notary Office, which has many duties unrelated to real estate transactions.

5.3.4 Notarize Contracts Earlier in Process

As shown on the flowchart attached as [Appendix 7](#), the final contract typically is not signed by the buyer and seller or notarized until the very end of the registration process. This leads to a very high percentage of cases in which the seller is no longer available to sign, having already collected the purchase price based on a preliminary contract signed and verified by a court at the very beginning of the process. The parties typically work around this situation either by getting a notarized power of attorney from the seller at the beginning of the process, thereby creating unnecessary work for the notaries, or by seeking a court decision authorizing registration in the absence of the seller's signature (*saha nafaz*), thereby clogging the court system with unnecessary cases.

5.3.5 Require Submission of CIF and Mutation Form with Application

Currently, applicants come first to the Registration Office to lodge their applications. The RO then sends the application to the ESA District Office (EDO) to obtain a fee estimate for the EDO's investigation of the property, and eventual issuance of a property description, called the CIF (*kashf tahadeed*). This process results in significant back and forth between the RO and EDO all of which could be eliminated by requiring the applicant to obtain the CIF from the EDO before submitting the application to the RO.

Further, under existing practice, once the CIF comes back to the RO from EDO, the application goes to an RO "survey investigator" who goes back to the EDO to review and hand copy the information from the Mutation Form for the property held at the EDO. One dramatic long term improvement would be for copies of all Mutation Forms to be kept at the RO or for the EDO to have a copy machine so that the survey investigator would not have to hand copy the information from the Mutation Form. In the short run, until copies of the Mutation Forms are transferred to the RO, it would streamline the process significantly if the applicant were required to obtain a copy of the Mutation Form along with the CIF at the very beginning before submitting the application to the RO.

These steps would disentangle the RO and ESA and would mean that the RO would have everything it needed from ESA to process the transaction. In theory, processing of an application in the RO would go very quickly if it already had the CIF and a copy of the Mutation Form.

These changes would have some implications for priority since priority is currently obtained by submitting an application to the RO but parties would get used to this and the rules would be the same for everyone.

5.3.6 Limit EDO Involvement

In cases when a transaction does not involve any change in the geometry of the property, there is no need for the EDO to do a field investigation. Investigation should only occur when there is a subdivision or merger of the property. Furthermore, if the applicant already has a CIF or a description of the property from a prior deed, there is no need for any involvement of the EDO.

5.3.7 Revise Mutation Form

One of the difficulties with the current system relates to the use of the Mutation Form as a means for storing both geographic and ownership information about a real estate unit. The Mutation Form should be revised so that it only includes essential geographic information, which should be maintained by the EDO. The RO should become the central repository for ownership information. The RO could either use the Mutation Form, or even better, design its own form akin to the cadastral form used in the *Sigueal el-ainee* system to store ownership information. This would become a potential first step towards creating a parcel-based system that would facilitate eventual conversion to *Sigueal el-ainee*.

5.3.8 Jurisdictional Maps in ROs

None of the ROs visited had maps showing their jurisdictional boundaries. The Laws require ESA to provide such maps to the ROs but they have not done so largely because ESA is supposed to operate only on a fee for services basis and the ROs seem unwilling to pay for the maps. The end result is that applicants are sent back and forth between the RO and the EDO just to determine which RO has jurisdiction over their property. This is inexcusable and would be easy to remedy very quickly.

5.3.9 *Sigueal el-shaksi* and Enforcement of Tax, Building and Planning Laws

Article 22, paragraph 5 of Law 114 of 1946 says that applications for registration must include “information” concerning the real estate and the “chain of ownership register,”¹¹³ if the subject of the document will require a change in the “chain of ownership register.” Registration authorities interpret this provision to require the applicant to submit a tax payment receipt (*kashf mushtamalet*) with their application. Tax authorities will not issue the receipt unless the applicant has paid all taxes. In the short run, the REPD could stop requiring submission of the tax receipt without any amendment to Law 114 because Article 22, paragraph 5 only requires the applicant to provide “information” concerning the “chain of ownership register” it does not require the applicant to prove payment. The REPD could replace the tax payment receipt with a simple form filled in by the applicant saying that, to the best of the applicant’s knowledge, the applicant is the taxpayer identified in the chain of ownership register.

¹¹³ Translation of the term “ownership change register” is a little unclear. The term used in Arabic refers to a book maintained by tax authorities.

There is nothing in Law 114 that requires the REPD to verify compliance with building or planning laws prior to allowing registration. Therefore, no amendments to the Law would be needed to change this practice. Article 12 bis 1 of Law No. 106 of 1976 requires the details of the building permit to be included in any sale contract or lease of urban property. This requirement should be eliminated.

5.3.10 Preemptive Rights

The Civil Code (Articles 935 et seq.) grants to neighbors and common owners a preemptive right (right of first refusal) to purchase property before it can be sold to a third party.

According to many real estate practitioners, preemptive rights can be a significant obstacle to the smooth consummation of a real estate transaction. At a minimum, they significantly complicate even a straightforward transaction by requiring the seller to offer the property to multiple holders of preemptive rights and to obtain a waiver of their preemptive rights before the property can be sold. The process can expose the parties to delays, uncertainty and attempts at extortion by potential preemptors. It is not entirely clear how big an obstacle to real estate markets these preemptive rights pose, but they are not particularly appropriate in the context of modern urban real estate transactions.

Attempts to eliminate the preemptive rights, even if limited to urban areas or apartment transactions, must be considered carefully and should be undertaken slowly, if at all, because the preemptive rights are based on *Shari'a*.

5.4 Proposals for Streamlining *Siguel el-ainee* Transactions

Because the processes for registering transactions in the *Siguel el-ainee* and *Siguel el-shaksi* systems are virtually identical, almost all of the recommendations in the previous section would apply equally to simplification of the *Siguel el-ainee* system. Some of the recommendations are repeated here with reference to the specific Articles of the *Siguel el-ainee* Executive Regulations that would require amendment. Other recommendations unique to the *Siguel el-ainee* system are also presented.

5.4.1 One-Stop Transactions

In theory it should be possible to process a transaction very quickly as long as it does not involve the creation of a new real estate unit, either by division or merger. For any transaction that does not require creation of a new real estate unit, there should already be a “cadastral form” (*sahayfa akariya*) for the relevant property. Thus, there is no need for EDO involvement. The REPD should be able to make the required change to the cadastral form (*sahayfa akariya*) in a matter of days. The only reason the transaction cannot be processed on the spot in the RO is because the cadastral forms (*sahayfa akariya*) are kept in the Central Registration Office, not the RO.

Consideration should be given to decentralizing the records so that each RO would have the cadastral forms for all the properties in its jurisdiction. This would allow the RO to record a transaction on the cadastral form immediately, without any involvement of the Central Registration Office. Backup copies of the cadastral forms

could be sent to the Central Registration Office when changes are made by the RO. The location of the cadastral forms will become less significant once systems are automated, because ROs and central registry offices could have access to the same database, although only one office would have authority to enter changes in the first instance.

5.4.2 Supply ROs with Cadastral Index Maps

In order for a parcel-based system to work, each RO must have a copy of cadastral index maps showing all the real estate units within its jurisdiction. This is already required by Article 93 of Regulations but for various political and financial reasons ROs do not have the necessary maps. The situation must be remedied in order for the registration process to go more smoothly.

5.4.3 Reduce Information on Cadastral Index Maps

Articles 93 and 94 of the Regulations require the maintenance of unnecessary information on the cadastral maps (such as application numbers and years). The cadastral index maps are intended only to serve as indexes of the various real estate units. They need only show the boundaries of the real estate units and their unique identification numbers. Any other information clutters the map and makes it more difficult to read and keep up-to-date. Other information need not be stored on the index map since it can be accessed using the parcel identification number of the real estate unit.

5.4.4 Reduce Information on Mutation Form

As stated above, the Mutation Form should contain only spatial information, not information about ownership or other rights. ESA should maintain the spatial information on the Mutation Form but the RO should maintain the ownership information on the cadastral form (*sahayfa akariya*). Again, the information will be linked through the use of the same parcel identification number so there is no need for ESA to keep ownership information or for the RO to keep detailed spatial information. Continued updating of the ownership information on the Mutation Form duplicates efforts and undermines the effort to create one definitive record in the REPD. Article 96 of the Regulations will have to be amended to implement this change.

5.4.5 Simplify Applications

Article 85 of the Regulations should be amended to allow for simplification of applications. Application should contain the names of the parties, the parcel number, and the type of request. There is no need for an application to include the religion of the applicant, the basis of ownership, the size/area of transferred part (especially since only full parcels can be transferred), or the *hod* name and number, since the parcel number includes this information.

Similarly, Article 86 of the Regulations should be amended to simplify applications in cases of inheritance. The application need only include the name of the deceased, the names of the heirs, the parcel number, and the documents proving inheritance rights

5.4.6 Simplify Cadastral Form

The format of the Cadastral Form should be reexamined in light of trying to streamline the registration system and eliminate the duplication of information. The form was originally designed for agricultural and land reform purposes which are not appropriate to the urban context. In practice many sections of the Cadastral Form are not used because they are unnecessary or ill-suited to their purpose. The form should be simplified to the maximum extent possible, ideally containing three principal sections: (1) a property section, which would identify the property by reference to the property identification number and any other necessary information; (2) an ownership section, which would show the names of owners, their shares of ownership and any other essential ownership information; and (3) an encumbrance section, which would show any mortgages, liens or other limitations on the property.

5.4.7 Enforce Article 88 of Executive Regulations

Article 88 of the Regulations says that if an application does not require a change in the geometry of the real estate unit, then application does not go to ESA. There is no reason for ESA involvement in an application unless the application involves a proposed division or merger.

5.4.8 Limit ESA to Collection of Spatial Data

For those applications that require a change in geometry of real estate unit ESA should do its field work to create a new plot survey. ESA's field work should not include any verification of ownership documents as is currently required by Article 88 of the Executive Regulations.

5.4.9 Eliminate Multiple Logbooks

Article 95 of the Executive Regulations requires the RO to maintain a separate book to record multiple applications affecting one real estate unit. This is an unnecessary and counterproductive requirement. For purposes of determining priority and providing notice, it is best for all applications to be shown in one book. This makes it much easier to find all pending applications in one spot. Maintenance of two books just creates need to check two books instead of one and increases the chances for mistakes.

5.4.10 Stop Transfers of Parts of Parcels

No transfers of parts of parcels – There is a tradition, whether legally sanctioned or not, to allow an owner of a commonly owned parcel to carve off and sell his or her share without the consent of the other co-owners and without necessarily going through the process of formal subdivision. This occurs in everyday transactions and is especially common in inheritance cases when one heir wishes to sell his or her share of the inherited parcel without formally dividing it from the share of the other heirs. Although this practice has been common in the past, it cannot be tolerated in a parcel-based registration system such as *Sigueal el-ainee*. Registration offices should not accept applications for any sale of a portion of a legally recognized parcel until

that parcel has been divided into a legally recognized parcel with a unique parcel identification number.

5.5 Conversion to *Sigueal el-ainee* in Urban Areas

For purposes of this section of the Report, it is assumed that the Government will decide to do a systematic conversion to *Sigueal el-ainee* on a phased basis in urban areas.

The lack of success at converting to *Sigueal el-ainee* in rural areas underscores the need to revise the conversion process to remedy the problems encountered in rural areas, and to modify the process to account for the specific characteristics of urban properties. Some of the following recommendations would require amendments to Law 142 of 1964. Where amendments to Law 142 are necessary, they are noted. Almost all the recommendations would require amendment to or rewriting of the Executive Regulations and Ministerial Instructions.

5.5.1 Public Awareness and Public Participation

There is wide-spread agreement that first registration in rural areas did not elicit nearly the level of public participation necessary to result in compilation of a comprehensive and accurate registry. Without full public participation, the results of first registration are likely to be inaccurate and will lack public credibility. At best, this further undermines public confidence in the system; at worst, it triggers lawsuits contesting the results.

One of the reasons for poor public participation seems to have been inadequate public awareness of the process and its benefits. Law 142 and its implementing regulations and instructions require publication and posting of announcements in newspapers and at various high profile sites in the area. These official notices are good start but they tend to be quite legalistic and have not been sufficient to mobilize an apathetic public.

In order to be successful, first registration in urban areas will have to build on the notification campaigns that have been used in rural areas but will have to include more sophisticated and more widespread public outreach efforts. Local community leaders and neighborhood residents will have to be more actively used as advocates and messengers. Public information will have to be packaged in less legalistic terms that will convince the public of the benefits of participating in the process. And distribution of information will have to be much more comprehensive including postings in affected buildings, at neighborhood mosques, churches, stores, bus stops and other high-traffic locations. The Dokki pilot being conducted by MSAD is testing some of these techniques so future projects will be able to build on them.

5.5.2 Incentives

Government should consider providing first registration free of charge to all property owners to encourage participation and to try to regain credibility for the registration system. The registry in Egypt has very serious public relations problems which are evidenced by the fact that only a very small percentage of people use the system. When property owners weigh the costs of registering (both in terms of time and

money) against the perceived benefits of registration, they usually decide not to register. Given that so few people currently use the registry, and that people are likely to fear that Government will use the information it acquires in first registration for purposes of enforcement of tax, building and planning laws, it is unlikely that first registration will be successful if a fee, however low, is charged.

There is some recognition of this in Law 142 which allow for 50% fee reductions for certain types of first registration cases.¹¹⁴ It is doubtful that the 50% fee reductions will be sufficient to encourage the level of participation necessary to compile an accurate record. Without accuracy from the start, the system is doomed to fail. In the short run, it is possible for the Government to offer fee reductions that are more substantial than the 50% fee reductions called for in the Law. In the long run, it would be desirable to amend the Law to explicitly allow systematic first registration for free.

Government should consider offering other incentives to encourage people to participate in first registration. Some people may feel that free registration and the additional security of tenure that comes with it should be incentive enough, but the registry in Egypt is digging itself out of such a deep public relations hole that other incentives may be necessary. Other incentives might include a property tax holiday (say for one or two years) for registered parcels, or forgiveness of back taxes for a certain period.¹¹⁵

Government might also offer incentives to encourage people to continue to use the system after first registration has been completed. The first registration process will accomplish nothing if people do not use the system for subsequent transactions. Incentives might include free processing of the first subsequent transaction, or free processing of mortgages for a certain period of time after first registration. Experience in other countries demonstrates that Government would more than recoup the cost of short term incentives through dramatically increased long term revenues generated by increased use of the system.

5.5.3 Make First Registration Purely Systematic

The conversion process described in Law 142 and its Executive Regulations and Instructions is systematic in intent, but becomes sporadic in practice, especially in cases in which owners do not possess previously registered documents proving their chain of ownership. In such cases, property owners are required to submit applications either to register previously unregistered documents or to register a Settlement Form to resolve conflicting claims. They are charged a registration fee (reduced by 50% from the normal fee), and their applications are investigated on an individual basis in much the same way they would be if they applied for registration under *Sigueal el-shaksi*. Effectively, the burden of proof is shifted to the applicant and he or she is faced with an investigatory process very similar to the cumbersome

¹¹⁴ Law 142 of 1964, Articles 18 and 19.

¹¹⁵ The Civil Code already imposes a three year statute of limitations on collection of back taxes. Civil Code Article 377. The Government could build considerable goodwill by extending that forward or by forgiving all three years of delinquent taxes.

verification procedure under *Siguel el-shaksi*. The result in rural areas has been that many property owners have declined to participate in first registration.

In order to be successful, the conversion process in urban areas should move towards a purely systematic approach. The goal should be to formalize title to every parcel in the designated area, and the approach taken should be the same for every parcel regardless of whether the owner possesses previously registered documents. There should be no need for any property owner to submit an application. There should be an effort to gather the best evidence of title to every parcel in the conversion area. Sometimes that evidence will include previously registered documents. Other times the best evidence might be a lease, rent receipt, or a consensual agreement like a Settlement Form. After balancing the evidence, the authorities should post a preliminary determination of ownership and should solicit public comment and submission of conflicting claims. Again, this should be done for all parcels and should not require any application or payment of fees. At the end of the process, title to all properties should be determined, whether finally or provisionally and each property owner should be provided with a cadastral form (*sahayfa akarya*).

To implement this kind of approach will require amendments to Articles 18 and 19 of Law 142 as well as the corresponding sections of the Executive Regulations and Instructions (Articles 22 through 93). It will also require retraining of staff so that they understand the change in philosophy.

5.5.4 Building Unit Plans

The *Siguel el-ainee* law does not currently contemplate the registration of buildings or parts of buildings as “real estate units.” As a short term measure, the Minister of Justice can issue a decree amending the definition of “real estate units” to include buildings and parts of buildings.¹¹⁶ This will be an essential short term measure to allow first registration in urban areas. In the long run, Article 8 of Law 142 should be amended to explicitly allow buildings and parts of buildings to be considered as real estate units.

One of the biggest challenges in implementing *Siguel el-ainee* in urban areas will be producing cost-effective building unit plans on which buildings and parts of buildings can be identified and assigned with property identification numbers. This topic is addressed in detail in reports by Steve McFadzean, strata title advisor, and Noel Taylor, cadastral survey advisor. The plan criteria will have to be formalized in the executive regulations and instructions.

5.5.5 Pragmatic Data Collection

Nobody seems to have a reliable estimate of the number of property units (including apartments) in Cairo. Whatever the exact number, the task of systematically registering all of Cairo is massive. Faced with such a huge number of units, any first registration process will have to use the most pragmatic and cost-effective methods possible to collect data and determine ownership information.

¹¹⁶ Authority is given to the Minister of Justice in Article 8 of Law 142 of 1964.

In rural areas data collection started with ESA's preparation of the "survey book" (Form 1), based entirely on data from deeds and other records. The data collection procedure – at least with regard to ownership information – was largely an office exercise that involved little or no field verification or input from the public. The result was that notices more often than not went to people who were the registered owners in outdated deeds but who were not the true owners. The true owners frequently did not participate in the process so the final registered information turned out to be inaccurate.

In urban areas the process will have to be tailored to try to arrive as quickly and efficiently as possible at the true ownership information. This probably means data collection should start with site visits, instead of with an office-based compilation of information from existing records.¹¹⁷ Anecdotal evidence suggests that a visit to the property is by far the most efficient way to uncover accurate ownership information. This is because most apartments in Cairo are occupied by tenants. Again, anecdotally, it would appear that as high as 90% of the tenants in Cairo have written leases, rent receipts from their landlords, and/or utility receipts. A buyer of a leased apartment almost always insists on updating the lease so that the buyer can be assured of the right to collect future rent from the tenant. Tenants almost always insist on receiving receipts for rental payments because receipts are accepted as evidence in court and are viewed as the tenant's ultimate proof of the tenancy. People have a very high degree of confidence in the ownership information shown in leases and rent receipts because in the absence of a functioning registration system these documents have been used for decades to provide security of tenure and validation of rights.

Field data should be collected by a well-trained team that understands that the primary goal is to assist people in substantiating their claims rather than to challenge occupants or the information they provide. Teams should include three experts: one focusing on the mapping of the building/apartment; one specializing in reviewing ownership documentation; and a third trained to help residents fill out necessary forms and gather additional evidence to substantiate their claims.

Field data should be verified against information from other sources such as deeds in the Central Registry, tax records, and Mutation Forms in the EDO but only after the best evidence has been gathered in the field. If other evidence does not directly contradict the evidence collected in the field, the field evidence should be accepted as the best evidence at least for purposes of the preliminary determination of ownership and solicitation of further public comment and conflicting claims.

5.5.6 Expand Acceptable Evidence

The list of the types of documents that will be accepted as evidence of ownership in first registration should be expanded. Documents such as leases, rent receipts, and utility bills are often the most reliable indicators of ownership and should be accepted as evidence. Authorities should also accept affidavits from occupants and neighbors

¹¹⁷ The inaccuracy of the records produced during first registration in the rural context is reason enough to rethink data collection methods for urban areas. It appears that the pilot project in Dokki is relying heavily on site visits.

who are often in the best position to know the identity of the real owners of the property. The list of possible evidence should be as broad as possible recognizing that the goal of the initial data collection is not 100% accuracy. The goal must be the highest level of reliability possible given the time and resources available. More aggressive public notice and increased public feedback will serve to verify the preliminary determinations so that the final ownership determination will be as accurate as possible. Authorities should realize that no process will be 100% accurate. There will always be some mistakes so the process should include mechanisms for dealing with inaccuracies such as assurance funds or provisional titles which are discussed in Section 5.5.11.

5.5.7 Promote Consensual Agreements

Again, because the task is so large, any first registration in urban areas will have to embrace pragmatic methods for legalizing titles in cases where there are missing links in the chain of title. Law 142 already includes some mechanisms like “Settlement Forms” authorized by Article 19. As already noted, Article 19, while a partial step towards easing first registration, does not go far enough. Use of consensual agreements like Settlement Forms should be encouraged because they offer a quick and relatively cost-effective way of resolving potential disputes.

The two month window for using Settlement Forms set forth in Article 19 of Law 142 is too short to accomplish the objective of finalizing ownership to as many properties as possible. In practice, the two month deadline is routinely extended three or four times by the Minister of Justice. While extensions offer more time to submit Settlement Forms, they undermine the credibility of legal deadlines. It would be clearer if Article 19 of the Law were amended to allow for a longer and more realistic deadline that did not need to be routinely extended.

Whether or not the deadline is lengthened, people should be provided with as much assistance as possible in completing consensual agreements. Legal advisors should conduct neighborhood workshops to counsel and assist those wanting to use Settlement Forms.

5.5.8 Protect Officials Against Personal Liability

Some commentators have speculated that during first registration registry officials are reluctant to make difficult ownership decisions because of fears of personal liability for mistakes. The Civil Code provides some protection against personal liability for government officials acting in their official capacity under orders they believe to be mandatory.¹¹⁸ On the other hand, the Civil Code seems to impose a fairly high level of personal responsibility on supervisors for the illegal acts of their subordinates.¹¹⁹ This issue should be studied further and, if necessary, laws should be amended to provide officials with clear protection against personal liability for difficult decisions made in good faith in the conduct of their official their duties.

¹¹⁸ Civil Code, Article 167.

¹¹⁹ Civil Code, Article 174.

5.5.9 Illegal Construction

The first registration process should be based on the premise that entering a property into the registry or issuing a title to the property does not in any way confer government approval of the building or certification of compliance with building laws. This is probably the only way to compile a registry in Cairo where so many of the buildings have been built without required permits. Government will have to sever its role as a building code enforcer from its role as keeper of the registry in order for first registration to have a reasonable chance of success.

It might also be possible for Government to offer some kind of amnesty as an incentive to registration. The local Governor apparently has the authority to issue retroactive approval to buildings that did not obtain necessary permits. In practice, an amnesty program would be likely to get bogged down in difficult political wrangling so it would have to be very carefully crafted. The easier approach is to divorce registration completely from building laws.

5.5.10 Off-record Divisions

Similarly, the first registration process cannot be used as a way of retroactively enforcing planning laws or it will get hopelessly bogged down. Pragmatic standards for formalization of divisions evident on the ground must be adopted.

5.5.11 Phasing of Title – Absolute vs. Provisional Title

Because of the complexities involved in first registration, the Government could consider a phased approach to granting title. Under this approach, absolute title, meaning final and conclusive title, would only be granted in cases in which owners already hold registered deeds or in cases when no potential clouds on title emerge during the first registration process. In other cases, possessory or provisional title would be granted. If the possessory or provisional title is unchallenged for a specified period of time (for example, five years to correspond to the statute of limitations for claims on real estate in the Civil Code, or 15 years to correspond with the period for establishing adverse possession), then it would automatically convert to absolute title. Phasing of title would allow first registration to move forward expeditiously even in cases in which there might be some doubts as to title.

Another possibility for phasing would be to convert the *Sigueal el-shaksi* records to a parcel-based indexing system as a first step. Systematic conversion to *Sigueal el-aine* could occur at some later time after the records have been reorganized.

5.6 Human Resources and Public Awareness

5.6.1 Capacity of REPD Staff

A comprehensive assessment of REPD staff was impossible during the timeframe of this consultancy. The impression given during site visits was that most RO staff understand the systems and procedures and are doing their best to implement them under relatively poor working conditions. They are well aware of the absurdly complicated procedures that impose burdens on applicants and create unnecessary

work for staff. The heads of the offices were particularly open about discussing ways to improve systems and procedures, and were enthusiastic about changes that would make it to run their offices.

The offices visited were strikingly short of basic office supplies such as pens, paper, files, and staplers, as well as comfortable chairs and desks. Basic forms for operation of the system were absent or in very short supply. Archive facilities were universally crammed to capacity with documents in various states of disorganization and decay.

Despite these extremely challenging working conditions, RO staff seemed willing to accept change and in many cases expressed hopes that they would be trained in the use of computers and other new technology. It seems that policymakers will find willing and able staff to implement change if it is embraced at higher levels.

5.6.2 Training

Regardless of the direction taken in the pilot projects, the need for training will be significant. There was not a single computer in use in any of the offices I visited. The few computers that were present were not turned on and did not appear to be connected. If existing staff are to be retained, any attempt at automation will have to include training in very basic computer use so that staff can become familiar and comfortable with using computers before they are asked to learn specialized registration applications.

Simplification of registration procedures and elimination of unnecessary steps could lead to surplus staff in some offices. The Government will be challenged to find ways to employ people productively in the new system. If the Government decides to do systematic conversion to *Sigueal el-ainee* in urban areas, there will be a huge need for competent staff to assist in the process. Existing employees could be deployed in this effort, but they would have to be trained in the first registration procedures.

5.6.3 Key Role of Public Awareness

It is arguably a waste of time and money to improve the registration system unless improvement is going to be accompanied by a sustained effort to make people aware of the changes, and to encourage them to use the system. A perfect system is of no benefit if people do not use it.

The unfortunate reality is that Egyptians have been operating outside the system for decades and are unlikely to change their behavior overnight. Years of poor performance cannot be overcome with empty promises conveyed in short-term public relations campaigns. Meaningful reforms and improved services are the first step. It is critically important that the experience of people using the system be as positive as possible. Real positive change must be supported by sustained public outreach so that gradually people start to have faith in the new system.

6. NEXT STEPS

6.1 Project Execution Agreement

The Ministry of Justice, the Ministry of State for Administrative Development, and ESA are currently considering a draft Project Execution Agreement that would provide the framework for cooperation among the three Government agencies and the EFS project. Finalization of that Agreement is a top priority so that the parties can move forward with further defining next steps and allocating specific responsibilities. The parties are urged to sign the agreement as quickly as possible to allow the project to move forward.

6.2 Policy Dialogue

There has been much study of the registration system from the legal and other perspectives. Many problems have been identified and recommendations have been made. The next step is for the Government either independently or together with USAID and the EFS Project to begin to consider all the recommendations, reach consensus on direction, and map out an implementation plan. The recommendations include many policy issues that must be considered by the Government. Difficult decisions must be made on issues such as how to handle un-permitted buildings, proposed changes in the first registration process, and proposed streamlining of the registration processes. Reaching consensus on these issues will require extensive dialogue among the various Government agencies involved and the project. Until decisions have been made, it is difficult to move forward with legislative changes and their implementation.

One possible venue for a policy dialogue would be a workshop convened jointly by the signatories to the project execution agreement. The workshop would have to be of sufficient duration to allow for thorough consideration of the issues, discussion and decision making. That would probably mean all or parts of two to four days. Ideally, the workshop could be held at a place where decision makers could be isolated from their daily routines to allow them to focus on registration.

6.3 Legislative Change

Once consensus has been reached, there will have to be further legislative review to identify additional legal reform that will be necessary to implement the program. It is anticipated in any event that implementation of changes will require amendment to or rewriting of Executive Regulations and Instructions. The level of effort will be significant especially if meaningful change is undertaken.

Legislative reform of the type necessary to implement the changes recommended in this Report will not be effective if it is initiated or undertaken by foreign consultants without active participation of Egyptian experts. Ideally, the legislative reform will be prepared jointly by Egyptian experts from the relevant government agencies

working together with foreign advisors. This process inevitably takes longer than expected because difficult issues arise that must be confronted and resolved. In the end, the collaborative process results in a product that is more likely to be accepted by all parties, and is, therefore, more likely to be implemented successfully.

6.4 Training

The legislative reforms will reflect dramatic changes in the procedures for first registration and for processing of subsequent transactions. Staff at all the relevant Government agencies will need extensive training in the new procedures. Training will need to focus on use of new technologies as well as reorientation of government employees towards serving the public.

6.5 Public Relations

The importance of public education and outreach has already been mentioned but it cannot be stressed enough. No amount of improvement of the registration system will cause people to use it unless they perceive the benefits. Public perception is going to be very difficult to change given the extreme lack of trust in the system. Real improvements must be supported by sustained public outreach in order for reform to be successful.