

LAND REGISTRATION MODERNIZATION IN DEVELOPING ECONOMIES: A DISCUSSION OF THE MAIN PROBLEMS IN CENTRAL/EASTERN EUROPE, LATIN AMERICA, AND THE CARIBBEAN¹

Grenville Barnes
University of Florida, Gainesville, FL 32611
Gbarn@ce.ufl.edu

David Stanfield
Land Tenure Center, University of Wisconsin
Madison, WI 53715
Jdstanfi@facstaff.wisc

Kevin Barthel
Inter-American Development Bank,
Washington, D.C. 20577
Kevinba@iadb.org

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

1. INTRODUCTION

In the ex-socialist countries of Central/Eastern Europe the demand has come from a massive change in land policy and tenure that has provided the opportunity for private individuals to once again hold private land rights. It is argued that a free land market is the engine of economic development. However, providing the infrastructure for such a land market to operate, specifically the first registration of the newly created rights and then the subsequent transfer of those rights, requires a significant effort in the area of land registration.

In Latin America and the Caribbean, where there has been a long history of a land market, at least amongst a small part of the population, the need is emanating from the poorer sectors of these societies who have been largely overlooked in the design of land and cadastral systems.

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

The challenge in these countries is to make land registration more accessible to the large majority of people who most need it.

2. CENTRAL AND EASTERN EUROPE

The countries of Eastern and Central Europe, which after WWII became part of the Soviet Union sphere of influence, began in 1946 the process of transition from capitalist, market oriented economies (based on private ownership of the means of production with state support and some ownership of productive assets) to socialist economies (based on public ownership of the means of production with some private ownership and use). This transition process had moved forward in some countries more rapidly than in others, but always involved the restriction to some degree (often elimination) of existing private property rights and the creation of state property rights over new investments in the land.

By the late 1980's, however, this transition was replaced by another, the transition from socialism back to capitalism in all of these post WWII socialist transition countries. The main feature at the initial stages of this post transition--transition, has been the privatization of publicly owned land and physical assets attached to the land, that is, the re-creation of private rights to land. These private rights include private ownership, which encompasses the right to hold and transfer rights to land, as well as leasehold or other subsidiary tenure forms where the state continues to be the owner of the land. The institutional definition of property rights to land has been at the core of both transitions.

Eastern European countries have experienced various problems with the process of privatization, as well as with the institutional structures which are needed to define what private rights actually exist in practice, to protect those rights, and to limit those rights in order to develop² properly functioning market oriented economies. This section discusses those main problems, and shows that there is little to be gained by the transition countries from technical assistance derived from established market oriented economies which have not experienced massive privatization of rights to land during the post war period. The alternative to every transition country going it alone and inventing property rights institutions for themselves, is to consult among themselves about how these institutional arrangements are being created. This intra-group consultation is, in fact, urgent, so that there is some institutional homogeneity among these relatively small countries, as they attempt to attract foreign investment. Such investment can be facilitated by "similarity of context" so that the foreigners can quickly learn the rules of the capitalist game in each country.

Besides resolving the logistics of massively transferring assets from the state to private holders, the political will to do this transfer has been strong enough to carry out the processes very quickly. Privatization has impacted agricultural and forest land, urban housing, commercial properties, and public rights of way and parks. Privatization mechanisms have included the restitution of rights to owners prior to collectivization, the sale of land and physical assets to its possessors in socialist times, the sale of land by auction to private individuals and companies with the money or other resources to enable them to buy, the gift of land to its holders at the moment of privatization, the sale or gift of shares in corporate

² This section is largely based on the presentations and conclusions of the Second International Conference on the Development and Maintenance of Property Rights, held in Vienna, May 26-29, 1999. That Conference was sponsored by the European Union, the Government of Austria, the United Nations Economic Commission for Europe/Meeting of Officials on Land Administration, and the World Bank.

entities to the general public or to the employees of public enterprises. The forms of privatization have been varied.

Two main problems have arisen out of this process: (i) lack of clarity about who has what right to what property, and (ii) lack of institutional abilities to clarify the situation, and to guide land markets into their proper paths.

2.1 Lack of Clarity about Property Rights

There are seven main problems plaguing the post privatization transition countries:

(a) Multiple claimants to land: Privatization programs of different sorts have operated simultaneously, with one privatization program awarding private rights in specific properties to a set of private holders, and another program awarding rights in the same properties to other holders.

Privatization programs have also awarded rights to groups of people without defining how those people would exercise those rights. The main example of this problem is the privatization of housing units in apartment buildings without having clarified how condominiums are created and should function.

Another example is when restitution opens doors to historic claimants (e.g. East Germany), from different historic periods, such as the case of land holders at the moment of collectivization who had gotten their rights during the War from the Nazi occupation, who in turn had taken the land from Jews or other ethnic minorities. To whom should the properties be restituted? Moreover, restitution is based on the claimants presenting documented claims, which documentation has been lost, and is easily forged³.

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

In some privatization programs, land has been awarded to “the family of X” in family ownership without specifying who compose the family, or to “X”, usually a male as head of family without mechanisms for protecting the rights of the spouse and other members of the family.

(c) Identified but missing holders of rights: Privatization programs have awarded rights to specific people, but due to the massive human migrations and dislocations of the past decade, many of these simply disappear (e.g. Bosnia and Herzegovina⁴).

³ (see Mirvena Laha, “Country Presentation: Albania”, Second International Conference....., p. 21)

⁴ See Zdravko Galic, “Land Registration and Cadastre in Bosnia and Herzegovina”, paper presented at the UNECE MEETING OF OFFICIALS ON LAND ADMINISTRATION, Workshop on managing and developing effective land registration and cadastral services, London (United Kingdom) 23-24 September 1999

(d) Informal holders of rights: Privatization has outpaced the institutional capacity of the state to record and display the rights awarded in a comprehensive and secure system of land registration. People simply transfer their rights when they so desire to other people (or involuntarily when they die, heirs take their rights) but without recording these transfers in legally defined and documented ways (e.g. Hungary, Macedonia).

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

(e) Rights to non-existent parcels: Privatization programs have at times awarded rights to parcels which may have existed at one time, but which are now effectively incorporated into other parcels. This problem has arisen with restitution decisions which recognize private rights to public parks, roads and streets, land under public museums and other public buildings⁵.

(f) Rights to land separate from rights to buildings on the land: In many transition countries, particularly in urban areas, the state retained the ownership of the land, while privatizing the ownership of the buildings on the land (e.g. Slovak Republic, Macedonia, and Hungary). This was partly due to the difficulties in assessing the value of the land, and partly to the well entrenched notion that building spaces could be privately held in socialist times, while the land would not necessarily be privately owned.

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

In summary, except for the problem of informal, undocumented rights to land, which is a problem also encountered in established, market oriented economies, these problems of transition country property rights are not known in those countries.

2.2 Institutional Weaknesses

Two sorts of institutional weaknesses pertaining to property rights plague the transition countries:

(a) No property adjudication institutions: The clarification of property rights and resolution of conflicts has no institutional home in the transition countries, since such problems were not recognized in the socialist systems.

⁵ See Action for cooperation in the Field of Economics, Project P2128R, "THE DEVELOPMENT OF LAND MARKETS IN CENTRAL AND EASTERN EUROPE", Revised Final Report, November 1999. This project was coordinated by Peter Dale and Richard Baldwin.

(b) No land market institutions: One of the main functions of privatization is to stimulate the buying and selling, leasing, mortgaging and inheriting of land, that is, the function of land markets. Yet such markets require institutional support and guidance which does not exist, since market mechanisms were not supported in the previous regimes.

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

3. LATIN AMERICA

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

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

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

3.1 Over-Centralization of Registry Institutions

One of the problems that has plagued many Latin American countries is over-centralization of government institutions, including the property registry. In Guatemala, for example, there were until very recently⁶ only two registry offices servicing the whole country (about the same size as Ohio). For those people living in the northern department of Peten and in other

⁶ With assistance from the World Bank a new office was opened in the Peten on May 7, 1999

remote areas, this arrangement made registration services highly inaccessible with the result that many landholders did not register their land parcels.

3.2 Property Regimes are Limited

Often property is construed of as either private individual (such as in the US) or communal (such as in traditional African communities). This conventional view of property is limited and is problematic when the land tenure system is composed of an overlaying of individual and communal rights (termed community tenure systems in this paper). In the Bolivian highlands, for example, there are communities that have a very strong sense of community (as evidenced by maintenance of community boundary markers and the restriction of land rights to community members) but still work the land on an individual basis. The small size of the individual parcels (sometimes as small as 10 by 10 meters) and the low land value prohibits any intensive surveying to define these parcels. In some instances in Bolivia the community has been given a communal title in which all heads of households are listed. The problem with this approach is that individual holdings are not equal and therefore the share of land in the community is not equal for all families. This unequal allocation is quite rational given that families vary in size and some therefore have more labor resources than others.

3.3 Legal Basis for Pilot Projects

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

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

3.4 Multiple Land Claims

A problem that has occurred in countries such as Nicaragua and Bolivia is the titling of the same piece of land to separate parties. This arises because more than one government agency has the authority to title⁷ land, but there is no clear distinction between their geographic jurisdictions nor is there any co-operation between the two agencies. In the case of Nicaragua, different government administrations have carried out titling as part of their political campaigns. In many cases these titles were not officially registered which further complicated the determination of legitimate claims. When the Chamorro administration took over in 1990, Stanfield (1992) estimated that as many as 40% of the households in Nicaragua were either directly or potentially affected by land conflicts.

⁷ Equivalent to “patenting” in American terms

3.5 No linkage between Registry and Cadastre

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

The more rational approach is to have a graphic depiction of the parcel either in an index map or on a more accurate composite cadastral map. This information is maintained by the legal cadastre agency. Since the non-spatial dimensions of land rights are defined in the registry, it is essential to have an efficient linkage between this information and the spatial information maintained in the cadastre. Typically, where a cadastre agency does exist in Latin America it has either a fiscal cadastre function or is only focused on rural areas. The registry office generally function under the Ministry of Justice or the Supreme Court. With one exception (El Salvador) the cadastral agency is under another ministry. The institutional and technical linkages between the registry and cadastral offices are either non-existent or barely operational (Barnes 1994).

3.6 Complex Land Records

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

3.7 Degradation and Insecurity of Paper Land Records

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

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

4. THE CARIBBEAN

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

While not a comprehensive sample of Caribbean countries, a group, namely Trinidad & Tobago, Jamaica, Guyana, Barbados, Belize and The Bahamas have been selected for review because they share similar historic and current characteristics which are clearly reflected in their views toward real property rights, land tenure and the use and management of land resources (see box below).

TRINIDAD AND TOBAGO, BELIZE, GUYANA, THE BAHAMAS, BARBADOS, JAMAICA

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

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

4.1 Dual Private/Public Real Property Regimes

With historic roots in grants from the Crown at the time of independence, and culturally in order to maintain control over the use and concentration of land, two distinct real property

regimes are perpetuated: publicly-owned and managed property, and private freehold property. In fact, in most countries the majority of land, in terms of percentage of total area, remains in the hands of the government. The existence and, more importantly, the unsustainable operational maintenance of these dual regimes have profound impacts on the land market. The impact is especially noticeable when the rents on leasehold property are artificially frozen at antiquated “peppercorn” rates by a combination of out-dated legislation and political manipulation.

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

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

4.2 Multiple Real Property Rights Systems

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

4.3 Generational Lands (Family Land)

Generational or family lands pose a particularly difficult problem for tenure regularization and registration of property rights. Family land has been described as follows: “customary tenure principles applicable to such lands [where] rights are inherited jointly by all the children, the rights are not forfeited by absence, and the family land should not be sold or

permanently divided” (Center for Property Studies 1998). Registration of these lands under Land Registry systems is difficult as identifying individual ownership is not possible. While family land is not easily accommodated into existing land registration systems, and is said to reduce the economic benefit from the land resource as well as stifle land markets, it is a recognized customary form of land tenure which provides specific benefits to both urban and rural families. One possible answer is to register these lands as some sort of family land trust or as tenants in common. However, in many instances the legal framework for establishing family trusts does not exist. Perhaps more difficult than the legal issue is the willingness of the “family”, especially as extended as they tend to become, to address and clarify this issue.

4.4 Squatting on Public and Private Lands

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

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

4.5 Complex and Out-Dated Registration Process

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

In general, land registration processes either require fundamental legal reform, or financial resources to implement existing property rights laws. For those countries which have already put land adjudication, land tribunal and land registration legislation into place, they have taken the fundamental legislative step. Typically what is essential and outstanding, and more important than financial resources, is the consolidation of political, public and professional services support to implement the legislation. Hopefully, an astute champion, well aware of the cross-disciplinary importance of land rights, land use and land information has on economic development, stands up and leads the process. Most often, a champion needs to be

found and developed. Oftentimes fostering this personal development is where donor funds and communications with the private sector and universities are most useful.

4.6 Lack of Financial Resources Directed to Registry Operations and Maintenance

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

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

4.7 Institutionalized Obstacles to Maintaining the Land Registration System

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

(b) Subdivision Approval: In many jurisdictions subdivision approval is necessary prior to land registration. Given the critical lack of technical and financial resources at the local level devoted to subdivision code enforcement, subdivisions typically take place which, oftentimes providing for the highest and best use of the land, is not made official and remains informal. In these cases, the owner of the parcel may improve and beneficially occupy the land, but (s)he cannot secure a registered title. This

results in the owner not being able to gain the financial, public services and social benefits of registered land ownership because a government agency, peripheral to property rights administration, is unable to perform its mandate.

5. CONCLUSION

All three of the regions discussed in this paper have undergone major land policy shifts which have led to the need to modernize their land registration systems. Modernization means that the existing institutional arrangements must be changed. This includes the organizational structure, the procedures, as well as the balance between private and public functions. In the ex-socialist countries new institutions must be created to deal with various public sector functions that did not exist under the socialist government.

Developing countries in all three regions (in fact globally) can be characterized by the prevalence of informal properties - that is land parcels with no official documentation as to who "owns" or "occupies" the land and no spatial information on the dimensions or extent of the parcel. In many cases this predicament has been caused by over-bureaucratic, expensive and cumbersome titling and registration procedures. The challenge is to design modern land registration systems that provide sufficient incentives for landholders to formalize transactions and subdivisions. The benefits of formalizing property transactions must become tangible so that re-entry into an informal system is no longer a viable choice.

In all three regions the western property concepts appear to be inadequate. Our simplification of the property regime into private individual or communal cannot handle many of the land tenure situations found in developing economies. In particular, this is true in urban apartment communities in Central/Eastern Europe, in rural agricultural communities in Latin America, and in family land situations in the Caribbean. Related to this issue is the emergence of the "family" as the legal landholding entity. Who is included in this group? Children who have reached a certain age? All descendants of an original titleholder? Only living descendants still residing in the area or country?

Many conflicts are arising between people who have valid claims to the same piece of land. This may arise because "ownership" is restituted to the original owner, whether this be an indigenous group or owner prior to the transition to a socialist economy.

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

References

Barnes, G. 1990, "A Comparative Evaluation Framework for Cadastre-based Land Information Systems (CLIS) in Developing Countries." *Land Tenure Center Research Paper 102*, University of Wisconsin, Madison.

Barnes, G. 1994, LIS Challenges in Latin America. *International Journal for Surveying, Mapping and Applied GIS*, 8(4/5), pp. 32-35/29-31 (Two Parts)

Center for Property Studies 1998, Legislative Reform and Related Institutional Strengthening - Jamaican Land Administration and Management Program. Final Report, Center for Property Studies, University of New Brunswick, Canada.

Hendrix and Rockcliffe 1993, The Deeds Registry in Guyana and its Legal and Institutional Framework: Views Toward Promoting Transaction Efficiency. *Land Tenure Center Report*, University of Wisconsin, Madison.

Stanfield, D. 1992, The Insecurity of Land Tenure in Nicaragua. *Land Tenure Center Paper*, University of Wisconsin, Madison.

Stanfield, D. 1996, Creation of Land Markets in Transition Countries: Implications for the Institutions of Land Administration. Paper presented at the International Conference on Land Tenure and Administration, Orlando, November 12-14, 1996.

Thiesenhusen, W. 1995, *Broken Promises: Agrarian Reform and the Latin American Campesino*. (Boulder, Westview Press)