

# Development Discussion Papers

## *Central America Project Series*

### **The Reform of Property Registration Systems in El Salvador: A Status Report**

Brian Trackman, William Fisher,  
and Luis Salas

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# DEVELOPMENT DISCUSSION PAPERS

## CENTRAL AMERICA PROJECT SERIES

A PROJECT OF HARVARD UNIVERSITY, INCAE AND  
THE CENTRAL AMERICAN BANK FOR ECONOMIC INTEGRATION



### **The Reform of Property Registration Systems in El Salvador: A Status Report**

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#### **Abstract**

El Salvador is in the midst of a substantial reformation of its real-property registration system. The purpose of this paper is to provide the foundation for an analysis of how that reform process might be accelerated and improved. To that end, the paper describes the current condition of the Salvadoran registry and the changes that have been instituted to date. Sections II and III describe the history, authority, jurisdiction, and structure of the principal land registries in El Salvador – the Real Property and Mortgage Registry (RPRH) and the Social Property Registry (RSI). Section IV outlines the ways in which the RPRH and RSI are currently financed. Section V sets forth the ways in which the registries seek to fulfill their obligations to record, guarantee, and publicize private property ownership and other rights and interests pertaining to land. Sections VI and VII catalogue the respects in which the registries are currently being reformed. Among the dimensions of change are: the conversion of existing records and the integration of the registries and the cadastre under the auspices of the Proyecto Plan Nacional de Modernización del Registro Inmobiliario y del Catastro; the pilot automation project in Sonsonate province; and the efforts associated with the Salvadoran Registry Modernization Project to overhaul legislation pertaining to the registries. Section VIII considers the relationship between registry reform and the Salvadoran system of “supplementary title.” Finally, Section IX outlines the ways in which disputes that arise out of the registry process currently are being resolved.

**Key words:** Central America; El Salvador; property; registry

**JEL Codes:** K11; O13; O54

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## **The Reform of Property Registration Systems in El Salvador: A Status Report**

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### **I. INTRODUCTION**

First colonized in 1524, El Salvador gained its independence in 1839 after the Central American Federation disintegrated. Unlike most countries in the region, El Salvador at the time it became independent was not afflicted with the latifundio-minifundio system -- in which wealthy elites controlled both the economy and political system. Most Salvadoran citizens had access to land, and the distribution of wealth and political power was more equal than elsewhere in the Central America.<sup>1</sup>

This situation changed in 1882, when all common lands were expropriated and consolidated into latifundios. These latifundios produced coffee and other export crops on a grand scale, but their creation consolidated Salvadoran wealth and power into fewer and fewer hands.<sup>2</sup> As happened elsewhere, this consolidation of arable land initiated a cycle in which landless peasants either worked on the large estates<sup>3</sup> or searched for new lands to clear and farm. Once cleared, however, the land would usually become unproductive or, alternately, would be annexed to existing latifundios, forcing more migration. Social unrest grew, peasant rebellions became more commonplace, and those in power took measures to quell these insurrections.<sup>4</sup>

In the depths of the Great Depression, social discontent in El Salvador reached a new pitch. In 1931, Arturo Araujo took office as President. His opposition accused him of having ties to the Communist Party, founded and then run by Agustín Farabundo Martí. In December of that year, after only months in office, Araujo was removed in a military coup. A national revolt followed, and in early 1932, a massive military crackdown began. Ultimately, over 30,000 Salvadoran citizens were killed. These events gave rise to an alliance between El Salvador's upper class and

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<sup>1</sup>See William C. Thiesenhusen, *Broken Promises: Agrarian Reform and the Latin American Campesino* (1995).

<sup>2</sup>Under the latifundio system, about 2 percent of the population eventually controlled 75 percent of El Salvador's available land.

<sup>3</sup>The Vagrancy Law of 1881 and the Agrarian Law of 1907 were designed to require peasants to work on the coffee plantations. See Thiesenhusen, *supra* note 1.

<sup>4</sup>Note that, despite a socio-economic evolution similar to other countries in the Central America, El Salvador was unique in that the agriculture industry remained locally owned. Foreign-owned companies like United Fruit were largely absent.

the military that persisted for over fifty years. Formal democratic elections continued, but elected leaders worked under the shadow of this alliance. Whenever they ceased protecting the interests of the wealthy landholders, a military coup followed.<sup>5</sup>

In the 1970's, violence, perpetrated especially by paramilitary forces, increased. During the same period, pressure to redistribute wealth in favor of Salvadoran peasants increased both within El Salvador and internationally. Finally, José Napoleon Duarte was appointed acting President in 1980. He began an unprecedented program of land and wealth redistribution.<sup>6</sup> One-fourth of El Salvador's territory was expropriated and awarded to peasant cooperatives, while banks and export industries were nationalized. Nonetheless, unrest intensified, and a civil war developed, reaching its apex in 1989.<sup>7</sup> Peace negotiations began in 1990, and the Peace Accords were signed in 1992.

Since 1992, El Salvador has worked to reinvigorate its economy. Initiatives have focused on privatization, demilitarization, assimilation of former combatants, land redistribution, and the improvement of national infrastructure and government institutions.

Because El Salvador is the most densely populated country in Central America and has no remaining unclaimed territory or uninhabited forest, establishing, publicizing, and guaranteeing the rights of landholders are especially important. Continued implementation of the Peace Accords, attraction of foreign investment, and continued economic growth depend on accurate property records and overall land tenure security. It is no surprise, then, that registry reform has been given high priority. The creation of a modern, well-respected property registry is an urgent national need and well on its way to realization.

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<sup>5</sup>General Maximiliano, first leader after the coup which toppled President Araujo, retook power in 1944, Lieutenant Colonel Jose María Lemus overthrew the elected government in 1960, and General Carlos Humberto Romero Mena led a coup in 1979. In addition, military leaders were elected as candidates of the Party of National Conciliation ("PCN"). Colonel Molina in 1972 and General Romero in 1979 are two examples.

<sup>6</sup>The view that unequal land distribution was, in fact, responsible for rebellion in El Salvador or elsewhere has been challenged. While a possible factor and a political tool to arouse public support for insurrection, lack of ownership and formal titles is probably not itself the primary cause of unrest. See Steven Hendrix, *Myths of Property Rights*, 12 *Ariz. J. Int'l & Comp. L.* 183 (1995).

<sup>7</sup>The election of President Christiani, a member of the ARENA party, brought about an intensified assault by the FMLN insurgency, and a renewed campaign of urban terrorism perpetrated by both the socialist and right-wing factions. Perhaps the most poignant event of this dark period was the assassination of six sleeping Jesuit priests at the university where they taught. International pressure following this event is credited with bringing both sides to the negotiating table. See Tommie Sue Montgomery, *Revolution in El Salvador: From Civil Strife to Civil Peace* (1995); United Nations, *El Salvador Agreements: The Path to Peace* (United Nations, NY, NY 1992).

## II. AUTHORITY

El Salvador's first registry was established in 1860 in accordance with the Civil Code enacted that same year. Only mortgages could be inscribed, and the registry itself was administered by a registrar named by the President. The institution was significantly reformed in 1887 when the new Mortgage Law ("Ley Hipotecaria") took effect.<sup>8</sup> This law was significantly influenced by the Spanish Mortgage Law passed in 1861 and its reform in 1869. The new real estate registry recorded a variety of rights and was organized according to the Folio Real system.<sup>9</sup>

A new registry law was passed in 1897 and its terms were subsequently incorporated in the Civil Code of 1904.<sup>10</sup> Inspired by the Chilean property registry system, this new law replaced the Folio Real with a Folio Personal.

While certain improvements to the property registry were made in 1955 and extended in the early 1970's,<sup>11</sup> the basic structure of the real property registry remained unaltered until 1976. During this period, the various regional registry offices operated autonomously. In 1976, the Legislature passed Decree 502, creating an umbrella group to oversee the registry system.<sup>12</sup> The Registry Board ("Dirección General de Registros" or "DGR") was, like the Registries themselves, part of the Ministry of Justice. Its function was to oversee and manage the Registries, making changes or improvements as necessary. A Director and Deputy-Director supervise the Registries. According to a 1985 amendment to the Decree, both are appointed by the executive function within the Ministry of Justice.<sup>13</sup> With respect to policy decisions and strategies for registry reform, the DGR exercised authority, and the individual registry offices had little power.

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<sup>8</sup>See Ley Hipotecaria (Mar. 21, 1881) (replacing the Ley Hipotecaria that had been passed on March 11, 1873, but never took effect).

<sup>9</sup>Another law passed in 1884 further refined the institution. See Ley Reglamentaria del Registro Público (Apr. 16, 1884).

<sup>10</sup>See Ley de Registro (May 14, 1897); Código Civil, Título VI del Libro Segundo (1904).

<sup>11</sup>See Decreto-Legislativo 1873 (Jun. 24, 1955). This law, which required the registry to keep copies of titles as opposed to merely transcribing title abstracts, originally applied only to San Salvador, but was extended to apply nationally in 1971.

<sup>12</sup>See Ley de la Dirección General de Registros, Decreto-Legislativo 502 (Apr. 29, 1976) (published in the Diario Oficial 88, tomo 251, May, 1976).

<sup>13</sup>See Decreto-Legislativo 320 (Jan. 18, 1985) (published in the Diario Oficial 33, tomo 286, Feb. 14, 1985).

It was not until 1986 that El Salvador's National Assembly undertook a major restructuring of the real estate registry.<sup>14</sup> According to the new legislation, the property registry was officially renamed the Real Property and Mortgage Registry ("Registro de la Propiedad Raíz e Hipotecas" or "RPRH"). The principal purpose of the law was to take advantage of modern technology in order to maintain and protect registry information.<sup>15</sup> The law calls for an RPRH office in each department -- each office headed by a Chief Registrar, who reports to the Director of Registries. The legislation also mandated a return to the Folio Real system. Finally, the law allowed the use of microfilm to store registry records, alleviating the need to maintain the large, paper registry books that had been deteriorating. The accompanying registry regulations, clarifying the responsibilities of the RPRH were adopted in April of 1986<sup>16</sup> and updated in 1988.<sup>17</sup>

Most recently, in 1994, the responsibilities of the DGR were transferred to a new organization, the Centro Nacional de Registros ("CNR"), which currently manages the national registries and oversees reform and other policy initiatives.<sup>18</sup> Both the CNR and the RPRH are overseen by the Ministry of Justice. The executive office of the Ministry names the Director and Deputy-Director of the CNR, who in turn propose candidates for the chief positions in the RPRH. All reform proposals must be approved by the Ministry of Justice.<sup>19</sup>

El Salvador has a real property registry, the RPRH, and a separate commercial registry ("Registro de Comercio"). Within the RPRH, the three traditional registry books required by the Civil Code have been integrated. Thus, all rights and interests relating to a parcel appear together in a single record.<sup>20</sup>

The central purposes of the RPRH are to inscribe and publicize rights and interests in real property by recording transactions that involve the creation, transfer, modification, or

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<sup>14</sup>See Ley de Reestructuración del Registro de la Propiedad Raíz e Hipotecas, Decreto 292 (Feb. 13, 1986) (published with corrected text in the Diario Oficial 40-bis, tomo 290, Feb. 28, 1986).

<sup>15</sup>See Ley de Reestructuración, Art. 2.

<sup>16</sup>See Reglamento de la Ley de Reestructuración del Registro de la Propiedad, Raíz e Hipotecas, Decreto 24 (Apr. 29, 1986) (published in the Diario Oficial 76, tomo 291, Apr. 29, 1986).

<sup>17</sup>See Decreto-Ejecutivo 47 (Oct. 4, 1988) (published in the Diario Oficial 183, tomo 301, Oct. 4, 1988).

<sup>18</sup>See Decreto-Legislativo que Complementa al Decreto Ejecutivo No. 62, Que Creó el Centro Nacional de Registros, 462, Art. 3 (Oct. 5, 1995) (published in the Diario Oficial 187, Oct. 10, 1995); Creación del Centro Nacional de Registro y su Régimen Administrativo, Decreto-Ejecutivo 62 (Dec. 5, 1994) (published in the Diario Oficial 227, tomo 325, Dec. 7, 1994).

<sup>19</sup>Note that, almost always, the Ministry summarily approves appointments proposed by the CNR.

<sup>20</sup>See Código Civil, Art. 674 ("El Registro se compone de tres secciones: 1a) De la Propiedad Raíz; 2a) De Sentencias; y 3a) De Hipotecas.")

cancellation of rights.<sup>21</sup> All property transactions must be registered for the rights to have effect against third parties.<sup>22</sup> Although property rights cannot officially be enforced against third parties without having been officially registered,<sup>23</sup> so much property remains unregistered in El Salvador that a large unofficial land market has developed. To regularize such claims and to improve overall the security and fluidity of the land market, the Salvadoran government has initiated various programs, including land titling initiatives, Registry modernization, and law reform.

Registry modernization first got underway in 1986.<sup>24</sup> In 1991, the National Assembly stepped up the effort, by creating a new entity within the Registry that would provide parallel registrational functions for certain designated property.<sup>25</sup> This entity was named the Social Property Registry ("Registro Social de Inmuebles" or "RSI").<sup>26</sup> At the same time, the Christiani government created a new agency called the Freedom and Progress Institute ("Instituto Libertad y Progreso" or "ILP") whose function was to assist the Ministry of Justice with the development, installation, and administration of the RSI.<sup>27</sup>

The RSI was endowed with the authority to register ownership and other interests pertaining to all land development projects carried out in the public interest – i.e., any project that "directly or indirectly" benefits low-income families.<sup>28</sup> In addition to this broad mandate, the legislation leaves open the possibility that the Ministry of Justice may expand the RSI's authority.

The original goal of the RSI was to facilitate the registration of property belonging to low income families who lacked registered title and could not gain access to credit.<sup>29</sup> Under the supervision of the ILP, the RSI acquired technical equipment and contracted with a variety of service providers to begin gathering the data necessary to register undocumented property.

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<sup>21</sup>See Ley de Reestructuración, Art. 5; Reglamento de la Ley de Reestructuración, Arts. 48, 61.

<sup>22</sup>See Código Civil, Arts. 667-672; Reglamento de la Ley de Reestructuración, Art. 46 (declaring that rights are constituted in public documents).

<sup>23</sup>See Código Civil, Art. 683.

<sup>24</sup>One of the first changes noticed by RPRH users were increased service fees. These additional revenues helped defray the costs of reform.

<sup>25</sup>See Ley de Creación de la Unidad del Registro Social de Inmuebles, Decreto-Legislativo 734, (Apr. 5, 1991) (published in the Diario Oficial 73, tomo 311, Apr. 23, 1991).

<sup>26</sup>See Ley de Creación de la Unidad del Registro Social del Inmuebles, Art. 1.

<sup>27</sup>See Creación del Instituto Libertad y Progreso, Decreto-Ejecutivo 16 (Feb. 26, 1991) (published in the Diario Oficial 40, tomo 310, Feb. 27, 1991). At the same time, the government created a special program, "El Salvador País de Propietarios," which, working within the Instituto Libertad y Progreso was to identify innovative methods to legitimize unregistered property and prevent further marginalization of individual owners, illegal building and development, and legal insecurity relating to land ownership. See Creación de un Programa Especial Denominado "El Salvador País de Propietarios," Decreto-Ejecutivo 17 (Feb. 26, 1991) (published in the Diario Oficial 17, tomo 310, Feb. 26, 1991).

<sup>28</sup>See Ley de Creación de la Unidad del Registro Social de Inmuebles, Art. 3.

The broader purpose of the RSI was to integrate this property into the larger Registry system and hence reduce legal uncertainty. In 1994, however, the Ministry of Justice greatly expanded the authority of the RSI, allowing it to handle a variety of inscriptions relating to property that does not meet the definition of "social interest property" set forth in Decree 734.<sup>30</sup> Like the RPRH, the RSI may inscribe any existing right or interest that pertains to real property under its jurisdiction, including ownership, mortgages, liens, foreclosures or seizures, receiverships, servitudes, usufructs, inheritances, trusts, sales, or leases as well as any transfer, modification, or cancellation of such rights.<sup>31</sup> However, the RSI may not register rights pertaining to certain classes of property: national reserves and parks, archaeological sites, tourist zones, land underlying public streets and railroads, and any other legally excluded property.<sup>32</sup>

Although the RSI is part of the RPRH, it functions independently.<sup>33</sup> The RSI establishes its own regulations and operating procedures.<sup>34</sup>

With respect to liability, RPRH registrars can be held liable by injured parties for errors that they make in discharging their official duties.<sup>35</sup> Similarly, for transactions carried out by the RSI, the responsible registrar may be held liable for damages when inscription applications are wrongfully denied, when an inscription itself is defective or erroneous, or whenever the RSI does not adhere to legal mandates and damages result.<sup>36</sup>

### **III. STRUCTURE AND ORGANIZATION**

The Salvadoran registry system is administered by the National Center for Registries ("Centro Nacional de Registros" or "CNR") which was established in 1994. Under its jurisdiction are both the RPRH and the RSI.

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<sup>29</sup>See Ley de Creación de la Unidad del Registro Social de Inmuebles, Preamble.

<sup>30</sup>See Ministerio de Justicia, Acuerdo 213 (Feb. 15, 1994).

<sup>31</sup>See Ley de Creación de la Unidad del Registro Social de Inmuebles, Arts. 8, 9, 10; Reglamento de la Ley de Creación de la Unidad del Registro Social de Inmuebles, Arts.13-19 (establishing what may be inscribed in the RSI).

<sup>32</sup>See Ley de Creación de la Unidad del Registro Social de Inmuebles, Art. 4.

<sup>33</sup>See Ley de Creación de la Unidad del Registro Social de Inmuebles, Art.2. See also Reglamento de la Ley de Creación de la Unidad del Registro Social de Inmuebles, Art. 2; Ley de Reestructuración, Art. 2; Reglamento de la Ley de Reestructuración, Art. 2 (establishing that the real property registry is one unified entity).

<sup>34</sup>See Ley de Creación de la Unidad del Registro Social de Inmuebles, Art. 13; Reglamento de la Ley de Creación de la Unidad del Registro Social de Inmuebles, Art. 8.

<sup>35</sup>See Reglamento del Registro de la Propiedad, Raiz e Hipotecas, Art. 40 (annex to Código Civil, Título VI).

<sup>36</sup>See Ley de Creación de la Unidad del Registro Social de Inmuebles, Art. 20; Reglamento de la Ley de Creación de la Unidad del Registro Social de Inmuebles, Decreto-Ejecutivo 49 (May 20, 1992) (published in Diario Oficial 91, tomo 315, May 20, 1992), Arts. 39-45.

Currently, the RPRH is comprised of a central office in San Salvador and nine regional offices in Ahuachapan, Santa Ana, Sonsonate, Chalatenango, La Libertad, La Paz, San Vicente, Usulután, and San Miguel.<sup>37</sup> Each office has several departments. In addition to central administration, these offices include Sorting, Administration, Document Reception, Copying, Microfilming, Legal Cadastra, Records Office, Binding, Document Archives, Folios Archives, Indexing and Certifications.<sup>38</sup>

The RSI has three offices, one in Santa Ana, another in San Miguel, and the principal office in San Salvador.<sup>39</sup> The institution is administered by a Chief Registrar who is assisted by deputy registrars, all of whom are appointed by the Ministry of Justice in consultation with the CNR.<sup>40</sup> A total of 143 employees currently staff the RSI.<sup>41</sup> Each RSI office has a number of departments, including intake or submission, sorting, and inscription. While many of these departments parallel those found in RPRH offices, two important distinctions should be noted. First, the RSI incorporates a user assistance department, which is assigned the task of helping users prepare documents for registration. Second, because the RSI uses scanners to digitize documents, rather than microfilm or other copiers,<sup>42</sup> it does not need the photocopying and microfilm staff and facilities found in RPRH offices. Instead, the RSI offices rely upon a technical department, responsible for ensuring that the computer system functions properly and that RSI records are properly saved and backed-up in case the main system fails.

Both the RPRH and the RSI record ownership and other interests in real property, including liens, mortgages, servitudes, and usufructs.<sup>43</sup> Analogous information is maintained for condominiums and other "horizontal property." Finally, legal events or documents that affect the

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<sup>37</sup>Note that originally, El Salvador had a separate Registry in each of its departments. Each of these offices operated independently under the management of a registrar. Coordination existed only to the extent that each registrar prepared annual reports for the national government, indicating the number and type of transactions the office had handled, as well as the legal status of land in the jurisdiction.

<sup>38</sup>See Reglamento de la Ley de Reestructuración, Art. 5. Note that some offices have a slightly different department structure, but all offices are equipped to perform the same registry functions as described in the Civil Code and registry regulations.

<sup>39</sup>See Ley de Creación de la Unidad del Registro Social de Inmuebles, Art. 14; Reglamento de la Ley de Creación de la Unidad del Registro Social de Inmuebles, Arts. 4-5 (dictating that the central office be established in San Salvador but allowing other offices to be created as needed).

<sup>40</sup>See Ley de Creación de la Unidad del Registro Social de Inmuebles, Art. 14; Reglamento de la Ley de Creación de la Unidad del Registro Social de Inmuebles, Art. 7.

<sup>41</sup>The entire Salvadoran registry system – i.e., the CNR and all the institutions it oversees -- employs over 2000 staff.

<sup>42</sup>Copies of titles and other documents submitted to the RSI are scanned (digitized) as soon as they are accepted and are then maintained in electronic form. The original paper documents are returned to the registry user.

<sup>43</sup>See Código Civil, Art. 686.

status of real or juridical persons with regard to property may also be recorded. Examples include wills and testaments, notices of death or absence from the jurisdiction, and court orders.<sup>44</sup>

The real property registry in El Salvador is organized according to the Folio Real system.<sup>45</sup> Each tract of land ("finca") is assigned a number ("ficha") and has its own corresponding record in the registry where all rights and interests pertaining to that parcel are recorded. Thus, all transactions that relate to a particular parcel can easily be identified. Each written record contains two large pages. As in other systems, the left-hand page tracks ownership and use rights, while the right-hand page records mortgages, liens, and other financial interests in the property. Record pages form folios, and these folios are then organized into books ("libros"), which are stored in the Registry. If room on the page runs out, a new page is designated and noted with cross-references.

Many records in El Salvador's property registry are now in electronic form. Both the RSI and the current pilot project in Sonsonate use optical disks to store digitized registry records. These records may be searched by parcel number.<sup>46</sup> Other records are being converted to microfilm. Both systems obviate the need for cumbersome books and eliminates the need for cross-referencing.

The process of converting the RPRH to automated processes is progressing by department.<sup>47</sup> So far, the transition is approximately forty percent (40%) complete. In departments where modernization has not yet begun, however, the traditional manual system of registration continues.

#### **IV. FINANCES**

The budgets of the RPRH and RSI are administered by the CNR as well as that of the National Geographic Institute ("Instituto Geografico Nacional" or "IGN").<sup>48</sup> The CNR, in turn,

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<sup>44</sup>See Código Civil, Art. 687.

<sup>45</sup>See Ley de Reestructuración del Registro de la Propiedad, Raíz e Hipotecas, Art. 21. Note that the transition to the Folio Real from the Folio Personal is not yet complete in all RPRH offices.

<sup>46</sup>For inscriptions completed in the RSI, documents are assigned a separate cadastre number, which can also be used to localize the parcel. The pilot project uses the same number to retrieve both registry (juridical) and cadastral (geographic) information about the parcel.

<sup>47</sup>Departments are analogous to counties in the United States; their authority derives from the national government, just as counties derive their authority from the respective state governments.

<sup>48</sup>The IGN was created in 1946 under the Ministry of Public Works ("Ministerio de Obras Públicas") to coordinate mapping of El Salvador with U.S. agencies as part of a continental geography project. See Denise Stanley et al.,

enjoys both administrative and financial autonomy.<sup>49</sup> Revenues collected for the provision of services by the RPRH and RSI are deposited in the general account of the CNR.<sup>50</sup>

Both the RPRH and the RSI collect payments for registry services according to the official registry fee schedule ("Arancel del Registro").<sup>51</sup> This fee schedule is proposed by the CNR's executive body and submitted for legislative approval.<sup>52</sup> Fees for inscribing ownership, mortgage, and other real property rights are calculated by a millage, which for most transactions is currently 5 colones with a minimum charge of 50 colones.<sup>53</sup> Annotations and mortgage cancellations likewise cost 50 colones. For mortgages valued above 50,000 colones, an additional millage of 1 colón is added. Literal certifications cost 50 colones plus 2 colones per printed page.<sup>54</sup> Fees charged by the RSI are the same as those charged by the RPRH with minor exceptions.<sup>55</sup>

The registry regulations specifically forbid any registry employee to accept additional payments for speedier service or any other reason. The penalties for violation of this rule include removal from office and repayment of any amount received.<sup>56</sup>

## **V. FUNCTIONS AND OPERATIONS**

According to El Salvador's Constitution, "The right to private property is recognized and guaranteed as a social function."<sup>57</sup> The RPRH is charged with performing that social function, by recording, guaranteeing, and publicizing private property ownership and other rights and

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Land Information Sources in Latin America: Vol. II: Central American Countries (June 1996) (prepared for the Land Tenure Center, University of Wisconsin-Madison), at 14.

<sup>49</sup>See Decreto Legislativo que Complementa al Decreto-Ejecutivo No. 62, que Creo el Centro Nacional de Registros (Oct. 5, 1995) (published Diario Oficial 187, tomo 329, Oct. 10, 1995), Art. 1.

<sup>50</sup>See Decreto Legislativo que Complementa al Decreto-Ejecutivo No. 62, que Creo el Centro Nacional de Registros, Art. 4.

<sup>51</sup>See Reglamento del Registro de la Propiedad Raíz e Hipotecas (annex to Código Civil, Título VI) (as reformed by Decreto-Legislativo 439 (Jan. 21, 1993) (published in D.O. 31, Tomo 318, Feb. 15, 1993) and Decreto-Legislativo 524 (May 6, 1993) (published in D.O. 92, Tomo 319, May 20, 1993)).

<sup>52</sup>See Decreto Legislativo que Complementa al Decreto-Ejecutivo No. 62, que Creo el Centro Nacional de Registros, Art. 5.

<sup>53</sup>See Reglamento del Registro de la Propiedad Raíz e Hipotecas, Art. 48(1). A notable exception to the 5 colon rate are mortgages used to finance the acquisition of property. For those, the millage is 3 colones.

<sup>54</sup>See Reglamento del Registro de la Propiedad Raíz e Hipotecas, Art. 48(2)-(8). Abstracts of certifications cost at least 25 colones and typically 50 colones.

<sup>55</sup>See Reglamento del Registro de la Propiedad Raíz e Hipotecas, Art. 48(12).

<sup>56</sup>See Reglamento del Registro de la Propiedad Raíz e Hipotecas, Art. 49. The rule is meant to provide legal backing to El Salvador's broader efforts to eliminate both hard and "soft" corruption within public institutions, including the RPRH and RSI.

<sup>57</sup>See Constitución de la República de El Salvador, Art. 103.

interests pertaining to land.<sup>58</sup> The recording and guaranteeing of rights occur through the process of inscription. Any party with a property interest, whether a citizen or foreigner, may register that interest with the RPRH.<sup>59</sup> Similarly, anyone may consult registry records or inquire about any issue relating to property ownership.<sup>60</sup>

As indicated above, the specific rights that may be inscribed in the RPRH include ownership, inheritance or testamentary trusts, usufructs, servitudes, housing leases, mortgages, and liens.<sup>61</sup> The Civil Code, however, does not rule out the possibility of inscribing other kinds of rights.

The RPRH records rights, but does not create them.<sup>62</sup> In other words, the Salvadoran property registry system is declarative.<sup>63</sup> The sole exception to this principle concerns mortgages. To be legally enforceable, a mortgage must not only be created in a public instrument ("escritura pública"), but also inscribed in the RPRH.<sup>64</sup> Other rights and interests must be registered to be legally enforceable against third parties.<sup>65</sup>

Corollary functions of the property registry system include providing the public with information about using and accessing the Registry, providing information to other government agencies, collection of registry fees, as well as budgeting and office administration.

With respect to the priority of claims, El Salvador has adopted the rule "first in time, first in right" according to which rights and interests that are inscribed earlier in time at the RPRH have priority over those contained in titles submitted subsequently.<sup>66</sup>

## **A. Registry Usage**

Demand for Registry services has been increasing. For example, during the first nine months of 1998, approximately 84,500 service requests including inscription applications were processed. As demand increases, efficiency will be even more crucial for the Property Registry.

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<sup>58</sup>See Código Civil, Art. 682. See also generally Código Civil, Arts. 673-744. Even though it functions autonomously, the RSI is legally part of the RPRH and serves similar functions.

<sup>59</sup>See Código Civil, Art. 678. Note that other laws limit foreign ownership of lands near the coast and national borders.

<sup>60</sup>Código Civil, Art. 675. The registry system and its records are public.

<sup>61</sup>See Código Civil, Art. 567.

<sup>62</sup>See Código Civil, Art. 667 (indicating property rights are constituted in public instruments).

<sup>63</sup>See Código Civil, Arts. 651-672, 680, 683, 739; Reglamento de la Ley de Reestructuración, Art. 62.

<sup>64</sup>See Código Civil, Art. 2160.

<sup>65</sup>See Código Civil, Art. 680.

<sup>66</sup>See Código Civil, Arts. 711-712; Reglamento de la Ley de Reestructuración, Art. 41.

## **B. Inscription**

For the inscription of rights and interests in real property, three independent models are currently utilizing the traditional RPRH model, the RSI model, and the Sonsonate model. All models share six basic stages:<sup>67</sup>

- (1) Preparation of documents by the Registry user for the inscription application,<sup>68</sup>
- (2) Submission of the application to the Registry,
- (3) Examination of the application,
- (4) Correction of defects and errors,
- (5) Inscription, and
- (6) Return of registered title to the applicant.

The details of the inscription process, however, vary between the three models.

In the traditional RPRH model, an inscription application must include documents that indicate the following:<sup>69</sup> (a) the nature,<sup>70</sup> location, borders, area, and official number of the parcel; (b) the nature, value, duration, and conditions of any rights already pertaining to the parcel; (c) the nature, value, duration, and conditions of the right the applicant seeks to register; (d) the full name, profession, and address of both the party that is granting the rights or interests and the beneficiary;<sup>71</sup> (e) the type of title and its date; (f) the full name of the notary that authorized the title; and (g) the date and time that the application is submitted.<sup>72</sup> In addition the owner must include personal tax information, a complete list of property holdings, and tax receipts. These documents must be public instruments ("escrituras públicas") that have been signed and stamped by a notary.<sup>73</sup>

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<sup>67</sup>These six stages each include several steps. For example, inscriptions submitted to the RSI are registered in processes ranging from 8 to 19 steps. See Lic. Patricia del Rosario Díaz de Morales, Gerencia de R.S.I. (Aug. 7, 1997) (user guide prepared by RSI). The purpose here is merely to outline the general inscription procedure.

<sup>68</sup>Such documents must describe the right or interest to be inscribed, the person or persons who have such rights or interests, and the land to which such rights or interests pertain. See Código Civil, Arts. 688, 697. In the case of servitudes, both the dominant and servient estates must be indicated. See Código Civil, Art. 690; Reglamento de la Ley de Reestructuración, Arts. 42, 49-63.

<sup>69</sup>See Código Civil, Art. 688.

<sup>70</sup>Among other things, "nature" refers to whether the tract is urban or rural, and whether it was previously privately or state owned.

<sup>71</sup>It is possible that the same individual is both the grantor and beneficiary -- for example, where the owner of a tract divides it into smaller tracts and submits inscription applications for each of these new parcels.

<sup>72</sup>This information is added by the registry employee who accepts the document in the submission area.

<sup>73</sup>See Código Civil, Arts. 676-677.

In addition to the requirements already mentioned, inscription applications in the RSI and Sonsonate models must also include maps made by a licensed topographer where the property boundaries are being altered as a result of the transaction.<sup>74</sup> These maps provide a means to maintain and update cadastral records in order to ensure that legal rights correspond to geographic reality. Where the inscription involves property that has already been registered and assigned a parcel number ("ficha"), the applicant may refer to the relevant properties directly by their registration and cadastra numbers, obviating the need for less accurate legal descriptions of the land common in the traditional RPRH inscription model. Additional requirements may be necessary because its purpose and function for certain types of transactions as determined by the registrar.<sup>75</sup>

The preparation stage of the inscription process differs somewhat in the RSI model – in ways that can be explained on the basis of the RSI's purpose and function. As indicated above, the RSI was intended to provide a mechanism to incorporate previously unregistered properties, especially those belonging to marginalized sectors of society, into the Registry. To facilitate this process, the RSI itself checks all documents and assists users with the preparation of materials free of charge. Thus, access to the registry system is enhanced, and with registered titles to property, the owners have easier access to credit, and the property can be traded more easily in the real estate market. The value of the property generally increases after registration, and the public interest is served because El Salvador's property ownership regime is more secure.

Once prepared, the application materials must be submitted to the registry by the interested party.<sup>76</sup> Moreover, the application must be made to the office with jurisdiction over the parcel's location.<sup>77</sup> In all three inscription models, the application will be summarily checked to ensure that the appropriate registry fees and taxes have been paid and that the documents appear to be legitimate. The application is then stamped with the time and date, and assigned a unique number.<sup>78</sup> In the RPRH model, a small abstract of the transaction is prepared and attached to the

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<sup>74</sup>See Reglamento de la Ley de Creación de la Unidad del Registro Social de Inmuebles, Art. 15 (providing general requirements for RSI applications).

<sup>75</sup>Two such examples in the RSI model are inscriptions relating to the division of parcels ("desmembración") and their unification ("reunificación") See Reglamento de la Ley de Creación de la Unidad del Registro Social de Inmuebles, Arts. 16, 17.

<sup>76</sup>See Código Civil, Art. 678 (establishing the "Principio de Rogación").

<sup>77</sup>See Código Civil, Art. 679.

<sup>78</sup>The number assigned is simply the next consecutive number in a continuous list. In this way, any particular document can be compared to any other in order to see which underlying transaction has priority. The transaction number and time/date stamp are complementary mechanisms to maintain priority.

application. A copy of this abstract is returned to the applicant and serves as a receipt. The applicant or her designated representative must present this receipt to pick up the title and other application materials after the inscription process is completed. The document is then scanned into the computer system,<sup>79</sup> and a note of the document's submission is recorded in the Diario. This is a separate registry book that tracks all documents that enter and leave the RPRH, as well as brief notes about their content and disposition. In the RSI and Sonsonate models, the application is scanned and is stored digitally.

The examination stage of the inscription process consists of several steps in each of the three models. In the traditional RPRH model, the application passes to a registry operator who checks its legitimacy and validity.<sup>80</sup> This sorting process ("calificación") removes applications that do not meet formal or substantive requisites.<sup>81</sup> The RSI model is similar that the sorting and examination is conducted electronically.<sup>82</sup> An important part of this review is ensuring that the application materials establish a clear chain of title.<sup>83</sup> The registrar assigned to process the application will ensure that the grantor of the right or interest actually possessed the right or interest and had the legal capacity to transfer it to the beneficiary.<sup>84</sup> According to the law, within six days of the document's presentation, this check must be completed<sup>85</sup>

If no problems are discovered during the examination stage, the title can be recorded. If the document has minor defects, a note ("observación") is entered, and the applicant must correct the deficiency in order for the inscription to proceed.<sup>86</sup> Finally, in cases where the examination

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<sup>79</sup>The RPRH in San Salvador is in the process of converting all registry records to digital (scanned) form. As documents related to parcels whose records have not yet been converted enter the registry, the paper record is found and "closed" by means of a notation. The record is scanned and, from that point forward, any transactions relating to the parcel are completed on-line. The conversion process is approximately 40% complete. Note that not all RPRH offices are as advanced as the one in the capital.

<sup>80</sup>See Código Civil, Arts. 692-693.

<sup>81</sup>This stage in the inscription process is meant to uphold the Principle of Legality ("Principio de Legalidad"), according to which only titles that comply in form and substance with legal requirements may be inscribed. See Reglamento de la Ley de Reestructuración, Arts. 11, 44.

<sup>82</sup>See Reglamento de la Ley de Creación de la Unidad del Registro Social de Inmuebles, Arts. 29-35.

<sup>83</sup>See Código Civil, Arts. 684, 695.

<sup>84</sup>See Reglamento de la Ley de Reestructuración, Arts. 21-22, 43.

<sup>85</sup>See Reglamento de la Ley de Reestructuración, Art. 12. While the RSI and Sonsonate models are quite efficient, compliance with this legal requirement has been a problem in the RPRH model. Indeed, the slowness of the traditional inscription model was a key factor driving interest in system reform.

<sup>86</sup>A distinction is made between errors that may be corrected ("errores subsanables") and those that may not be rectified ("errores no subsanables"). It is the Registrar who ultimately has the authority to determine whether defects may or may not be corrected. See Ley de la Dirección General de Registros, Arts. 20 et seq.; Reglamento de la Ley de Reestructuración, Arts. 85 et seq.

Because El Salvador uses a "race" rule to determine priority of claims, this policy can have significant effects. By completing the registration of slightly defective documents, rightful applicants such as creditors will not

reveals either fraud or an uncorrectable impediment to inscription, the application is rejected, a note is made in the Diario, and any subsequent application pertaining to the parcel will be assigned a new priority number and date.<sup>87</sup> For example, a party submitting an inscription application to register title to a home that was previously sold by the same seller to another party who has already inscribed her ownership will be rejected.<sup>88</sup>

If the transaction is approved, the inscription may proceed. In each model, the relevant rights or interests are officially recorded.<sup>89</sup> The traditional RPRH is increasing its use of computers, but inscriptions may still be completed manually.<sup>90</sup> Where paper records are kept, microfilm copies are made to protect record security.<sup>91</sup> In both the RSI and Sonsonate models, the recording of rights is completely computerized. Original records and back-up copies are kept on optical disks.<sup>92</sup>

The original application and inscription are both signed and stamped in the name of the chief registrar, and the newly-registered title is returned to the submission section where it may be picked up by the applicant.<sup>93</sup> The final disposition of the application is noted in the Diario as well as the time and date when it is picked up. These notations are also entered by computer in the RSI and Sonsonate models.

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lose their claims for immaterial errors in an inscription request. Thus, in a sale transaction where a mortgage is obtained by the purchaser, the failure of the creditor to spell the name of the mortgagee correctly or to specify the exact location of the border on the map accompanying the registration number of the parcel will not prevent that creditor from provisionally recording the mortgage. The creditor is thus protected from the possibility that the borrower would quickly sell or re-mortgage the land, leaving the creditor without any recourse.

<sup>87</sup>See Reglamento de la Ley de Reestructuración, Art. 13.

<sup>88</sup>See Código Civil, Arts. 711-712 (describing priority rules).

<sup>89</sup>In the RSI model, necessary adjustments to pre-existing records that reflect the presence of public roads, rights-of-way, and projects that relate to the submitted application are also made. Pursuant to its authority, the RSI may complete mandatory divisions of property ("desmembraciones obligatorias") in these cases. Note that generally, the presence of electric wire, drainage, and other public utilities are not noted in Registry records. Other laws prevent interference with or removal of them. The exception to this rule occurs in the case a new project is completed, requiring a taking by the competent government body. Such takings are noted. See Ley de Creación de la Unidad del Registro Social de Inmuebles, Arts. 9-11.

<sup>90</sup>It should be noted that the traditional RPRH inscription model has become much less cumbersome. Historically, the process of inscription and other Registry transactions involved almost 200 steps, including the preparation of documents by a notary, gathering testimony from neighbors and witnesses, proceeding through the Registry's procedures, interviews, and information gathering, and finally the actual inscription. That number has been drastically reduced with the introduction of computers and the elimination of redundant checks and formalities. Note that most of the more efficient processes used by the Registry were first developed and tested within the RSI.

<sup>91</sup>See Reglamento de la Ley de Reestructuración, Art. 17.

<sup>92</sup>When the party's receipt is lost or destroyed, the Registry has that authority to create another equally valid title or receipt for the user.

<sup>93</sup>Procedures are similar in RSI offices. See Reglamento de la Ley de Creación de la Unidad del Registro Social de Inmuebles, Art. 34.

The length of time necessary to complete the inscription process varies depending on the complexity of the underlying transaction and the number of defects in the application as well as the inscription model used. The traditional RPRH model typically takes between 2 months for error-free applications, and 2 years for complex applications requiring corrections.<sup>94</sup> The RSI model inscriptions are generally completed within three to five business days. The Sonsonate model may be even quicker.

## **VI. CURRENT REGISTRY PROJECTS AND GOALS FOR IMPROVEMENT**

### **A. National Strategic Plan**

In 1995, El Salvador initiated a National Project for the Modernization of the Real Property Registry and the Cadastre ("Proyecto Plan Nacional de Modernización del Registro Inmobiliario y del Catastro"). The purpose of the Project is to improve land tenure security in the country. In pursuit of this goal, the Project focuses on two major areas. First, the Project seeks to bring existing registry records up to date. Through this process, gaps or conflicts in the registry records can be discovered and such problems can be resolved.<sup>95</sup> The second focus of the Project is the creation of an integrated registry-cadastre system that is efficient, simpler than existing systems (both for users and registry staff), and financially self-sustainable. Currently, the Project has received sufficient funding from the World Bank and the Salvadoran government to continue through 2003.<sup>96</sup> It appears unlikely, however, that the Project could be fully implemented nationally before 2005.<sup>97</sup>

The first major Project initiative was the creation of the CNR. As indicated above, this new organization took administrative responsibility for the RPRH, the RSI, and the IGN -- a necessary first step to establish closer inter-institutional coordination and cooperation. The CNR was assigned the task of developing and implementing a new institutional structure and an

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<sup>94</sup>Registry users indicate that these times may be shortened substantially by offering payments to registry workers.

<sup>95</sup>Note that the Project does not involve dispute resolution. It seeks merely to highlight these cases so that problems may be corrected and the registry update.

<sup>96</sup>The World Bank and the Salvadoran government have committed \$50 million and \$20 million, respectively. Project directors emphasize that, despite World Bank funding, the Property Registry project was developed and has been carried out by El Salvador. They proudly point out that the World Bank has replicated innovations developed in El Salvador in other countries.

<sup>97</sup>In addition to the apparent two-year shortfall of funding, some observers have expressed doubts as to whether the funds already appropriated will last through 2003. Thus, the financial shortfall may actually be three years or more.

integrated registry-cadastral system that could be applied, tested, and refined in a relatively small pilot project.

The government selected the department of Sonsonate as the site of the official pilot phase of the Project -- the "Fase Piloto." Work began in 1996. The second phase will entail applying the Sonsonate model nationally. With the Sonsonate pilot project nearly completed, this second phase ("Fase Nacional") is ready to begin.<sup>98</sup>

The long-term goal of the Project is to replace the existing property registry structure. Rather than have three separate entities, the RPRH, RSI, and IGN, each report to the CNR, four integrated regional registry-cadastral offices will take their place. Besides the Sonsonate office, the Registry reforms are located in the same location that current plans call for the others to be located in San Vicente, San Miguel, and San Salvador. These offices will, by means of computer networking, be interconnected, and will be able to share and access national Registry information rapidly. The purpose of the reform is to decentralize access to registry records, while at the same time unifying topographic and legal information.

The fact that the cadastral is developed is a significant advantage. Thus, once an area is updated, the records are complete and integrated. The modernization effort is completed in one step.

## **B. Pilot Project in Sonsonate**

Sonsonate was chosen as the site for the Pilot Phase of the national registry modernization project because it contained a variety of urban and rural parcels, ownership structures, and complexity useful for developing a model to be applied nationally, and because of its manageable size. Sonsonate has 120,000 parcels and approximately 360,000 inhabitants. From the outset, the pilot project had several specific goals:

- Create an automated Folio Real registry that incorporated cadastral data
- Clarify the functions and responsibilities of the CNR, its organizational structure, its rules, and its administrative and financial procedures
- Initiate the decentralization of registry services with the establishment of a new regional registry office

- Establish the legal framework required to implement the Sonsonate model nationally.
- Update information relating to lands in Sonsonate by means of a complete inventory of rural and urban properties.

The Project has been executed through a special task force, the UAP ("Unidad de Administración del Proyecto"), the board of directors of the CNR ("Consejo Directivo"), and a National Project Coordinator ("Coordinador Nacional"). Work has proceeded simultaneously in three interrelated areas: the updating and purging of registry and cadastre information for Sonsonate; the design, installation, and use of a new registry-cadastre system; and the design, implementation, and institutional development of a new entity responsible for registral and cadastral activities.

With respect to updating cadastral and registry records, current geographic data was derived from new aerial three-dimensional photos and from pre-existing maps from the IGN.<sup>99</sup> Orthophotos were then made for rural areas,<sup>100</sup> and restitution maps for urban areas.<sup>101</sup> These maps were further refined with GPS data, accurate to within 10 centimeters. For both rural and urban areas, the geographic maps were then overlaid with preliminary parcel boundary information.<sup>102</sup> Then, field teams were deployed to verify information and collect more exact data regarding land improvements.<sup>103</sup> At the same time, these teams gathered information relating to ownership, possession, and land use to confirm or corroborate existing registry records. Where discrepancies were discovered, either in relation to the cadastral or registry information, these

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<sup>98</sup>Legal authority to expand the Sonsonate registry-cadastre model is contained in a bill still pending before El Salvador's Congress. Nonetheless, necessary preparations with respect to infrastructure and preliminary data gathering are being made. The next two departments to be completed are Ahuachapan and Santa Ana.

<sup>99</sup>The IGN had some maps from the early 1970's, when plans for a comprehensive physical cadastre were first conceived as "a survey of physical resources and the establishment of a viable, functioning system for the identification of property, its ownership, valuation, and registration, and for the maintenance and use of data to achieve high tax revenue as well as other development objectives." Denise Stanley et al., *Land Information Sources in Latin America: Vol. II: Central American Countries* (July 1996) (Land Tenure Center, University of Wisconsin), at 14 (citing Cox, P.T. "National Cadastre: El Salvador" (USAID, San Salvador, 1975).

<sup>100</sup>Orthophotos take the earth's curvature into account and provide a more exact picture of a given area.

<sup>101</sup>Restitution maps are much more costly to produce but also more detailed. Hence, these are used only for urban areas where parcels are smaller and precision to inches is required.

<sup>102</sup>Where clear borders between fields appear, for example, these are noted -- as are roads and other improvements.

<sup>103</sup>A field team typically consists of a law student and surveyor. Notice is given before the field checks so that property owners are prepared with their documents.

were noted.<sup>104</sup> Parties to the dispute were then invited to come to the central office and consult with a notary.<sup>105</sup>

When a field team found someone other than the listed owner in possession of a particular parcel, the identity of the occupant was noted, and an inquiry to locate the owner and/or legal documents was made. If the occupants claimed ownership but could not produce valid documents, the field team noted this and a more in-depth title search was completed.

At the end of the process, when the cadastre was being finalized, maps were issued to each parcel owner, indicating the boundaries of his or her tract and the features of the surrounding territory. Unless the owner challenged the validity of the map, the information was incorporated in the legal description of the owner's property which was then registered.

At the end of the process in Sonsonate, approximately seven percent (7%) of the parcels remain unregistered. Most of this land is either abandoned or the alleged owners lack proper documentation of their interests. Disputes account for only about one percent of this total. Much of the reason for this very low dispute ratio can be attributed to the high sense of confidence, respect, and trust accorded to both cadastra and registry staff, and the national agencies by the general public. Another important factor is the strong legal regime that supports the titling effort and registry reform more generally.<sup>106</sup>

### **C. Registry-Cadastra Information System (SIRyC)**

The pilot project has also developed a new computer system, known by the acronym "SIRyC,"<sup>107</sup> to maintain the newly integrated registry-cadastra records. After resolving initial glitches in the software, the system is now operational. With SIRyC, registry operators and users can simultaneously view legal and geographic information about a parcel. In addition, registry records in the SIRyC system are interactive. For example, maps of parcels and surrounding areas may be examined in various scales, and records may be searched on line. The SIRyC system also allows Sonsonate registry users to access registry information or to conduct searches

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<sup>104</sup>Field teams make an effort to get the parties to work out differences whenever possible. Any resolution that is reached in the field, however, is not binding, and may later be challenged by any interested party. The resolution is marked and a note made. Before the final map is made and the boundaries of parcels are registered, notice is sent to interested parties, who may contest the outcome at that time. Most parties do not exercise this option.

<sup>105</sup>Resolutions of disputes are not simply "compromises" where differences are split. In boundary disputes, for example, the final resolution often corresponds to one of the party's claims as some new, different border.

<sup>106</sup>Fostering cooperation between the registry and the judiciary to facilitate registry reform and titling efforts has been an express goal from the outset of the initiative.

using the parcel's registry number, its cadastra number, the property owner's name, or the number of any document in the system pertaining to the parcel. Moreover, the legal history of each party is not only available in abstract form, but each document that affected the parcel is linked to the record. Thus, title searches take minutes, rather than hours or days.

SIRyC also tracks access to registry records and safeguard their security. To adjust records, a registry employee must first enter a personal key code. The possibility of altering or destroying records is reduced.

Finally, SIRyC has been designed to be user-friendly. "Pull-down menus" and help functions have greatly decreased the time registry staff have needed to learn to use the system in Sonsonate, and it is hoped, will be similarly effective elsewhere.

## **VII. RELATED INITIATIVES**

### **A. Records Conservation**

Records conservation is straightforward in the RSI, because all of the records are maintained digitally, stored on the main system servers, and backed up on optical discs. The main challenge is ensuring that back-ups of Registry records are kept current, safe, and accessible. Two copies of all computerized records are maintained at secret locations.

### **B. Law Reform**

A goal of the Salvadoran Registry Modernization Project has been to overhaul existing laws that govern the registry system in order to create a new, streamlined, unified registry institution. Currently, the Salvadoran Congress is considering a new registry law that would replace the existing registry structure, in which the RPRH, RSI, and IGN are administered by the CNR, with one in which the CNR would oversee four regional integrated registry-cadastra offices. Nonetheless, no date has been set for a vote on this bill.

Another area of focus has been civil procedure, especially for land cases. There is a general recognition that processes need to be streamlined so that disputes and uncertainties can be resolved more speedily.

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<sup>107</sup>The letters stand for "Sistema de Información de Registro y Catastro."

### **C. Education and Training**

A corollary issue to law reform concerns legal education and training -- a continuing challenge in El Salvador. At one level, the judiciary needs to be kept abreast of registry modernization, especially with regard to new laws and their effects. Too often judges apply outdated laws even though new ones exist.

Lawyers are also in need of training, not only to understand registry and notary law, but also to learn to work effectively in an increasingly interdisciplinary environment. For example, notaries currently must have some understanding of computers and the information provided by the geographic cadastra to provide the best service to their clients, yet many notaries report that they or other colleagues do not feel adequately prepared.<sup>108</sup>

Likewise, Registry staff must be trained to use computers and the new system. Registrars also need training not only in the use of modern technology and computer systems, but in the legal consequences and implications of these systems for the registry as a whole. The CNR sponsors continuing education clinics that focus on these issues.

Perhaps most important, Salvadoran citizens need information about the new system, how it operates, and the advantages it offers. In this way, individuals will be more likely to use and rely on the RPRH, which will facilitate the maintenance of its records, and help to maintain the system's public legitimacy.

### **VIII. SUPPLEMENTARY TITLE (ADVERSE POSSESSION)**

El Salvador's first law recognizing supplementary title was adopted in 1892. The legal basis of the doctrine is now contained in Articles 699-710 of the Civil Code. The rules of supplementary title in El Salvador are very much like those of other countries in the region. The doctrine is invoked in two situations. First, it can be used by a long-term possessor of land to obtain legal title to the property. Because El Salvador has relatively little unclaimed or abandoned territory, this use of supplementary title is rare. Much more common is its use in cases where a landowner has documents and papers that can establish a chain of title and valid claim to the land, but lacks a registered title.

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<sup>108</sup>The current director of the CNR is both a lawyer and topographer, reflecting the interdisciplinary vision of the new registry system.

To obtain a supplementary title, an individual must file a claim in the local Court of First Instance<sup>109</sup> with evidence that demonstrates at least ten years of quiet, peaceful, and continuous possession of the property at issue.<sup>110</sup> In addition, the petition must contain a description of the property; an account of the manner in which the claimant acquired possession; personal information about the claimant and (where possible) former owners and possessors; the date when the claimant took possession; the reason the claimant lacks good title to the property; and whether others also have possessory interests in the tract.<sup>111</sup> Finally, the applicant must include paperwork from the municipal property office ("Síndico Municipal") indicating the claimant's address and any other information relevant to the supplementary title petition.<sup>112</sup>

Notice of the action will be published three times in a national newspaper, and posted at the courthouse, and on the property.<sup>113</sup> If a registered owner comes forward, the claim will be immediately dismissed.<sup>114</sup> If another party claiming supplementary title appears, the judge will determine which party has the stronger claim.<sup>115</sup> If no one appears in opposition within 15 days of the last publication, the action may proceed.<sup>116</sup>

At least three witnesses who are themselves property owners and neighbors of the claimant must corroborate the information submitted by the claimant.<sup>117</sup> The judge may ask for more evidence,<sup>118</sup> and may also visit the property in person.<sup>119</sup> In the case of land administered by the RSI, that entity will also submit a report relating to the claim. If the claim meets all legal requisites, is presented in good faith, and demonstrates a valid interest in the tract, the judge will grant a supplementary title.<sup>120</sup> The court order can be used to register the newly-granted title in the RPRH.<sup>121</sup>

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<sup>109</sup>A Court of First Instance is equivalent to a state court of general jurisdiction in the United States.

<sup>110</sup>See Código Civil, Art. 699.

<sup>111</sup>See Código Civil, Art. 700.

<sup>112</sup>See Código Civil, Art. 699. Such information may include information about the property, its former owners, testaments and heirs, and neighbors.

<sup>113</sup>See Código Civil, Art. 701.

<sup>114</sup>See Código Civil, Art. 706.

<sup>115</sup>See Código Civil, Art. 705.

<sup>116</sup>See Código Civil, Art. 702. If a party appears later, after the claim has been approved, but before it is registered, the judge will review the case and redetermine its disposition. See Código Civil, Art. 707.

<sup>117</sup>See Código Civil, Art. 703.

<sup>118</sup>See, e.g., Ley de Catastro, Art. 35 (requiring judges to obtain cadastre data relating to the property at issue in a supplementary title proceeding from the IGN).

<sup>119</sup>See Ley de Catastro, Art. 48.

<sup>120</sup>See Código Civil, Art. 704.

<sup>121</sup>The standard procedures for inscription must be followed, including the payment of all relevant costs. The key difference is that the court order is used as conclusive proof of ownership in lieu of establishing a valid chain of title.

Even after a supplementary title is granted, however, the rights or interests of a third party are not extinguished.<sup>122</sup> Similarly, the rights of former owners cannot be extinguished. If a long-absent former registered owner appears to reclaim, the supplementary title holder will be displaced.<sup>123</sup> As the national land reform project continues, the number of cases where owners of record are absent, and new possessors have asserted de facto dominion over the land is growing. The current situation has created land tenure insecurity for rightful owners.

Only land classified as "unclaimed" may be acquired through the supplementary title process. Unclaimed land is that which has had no previous owner and is not part of a national reserve or otherwise designated by the state as ineligible. For land that has been previously owned, possessors may only acquire possession through a process known as extraordinary prescription, according to which a claim matures after 30 years.<sup>124</sup> Notwithstanding the limitations of supplementary title, possessors may acquire limited use rights to land through ordinary prescription. Prescriptive claims mature after 3 years.<sup>125</sup> Once registered, prescriptive rights cannot be stripped even if ownership of the property changes.

## **IX. DISPUTES**

### **A. Resolution Mechanisms**

According to El Salvador's Code of Civil Procedure,<sup>126</sup> two judicial procedures are available to disputants: the ordinary process and summary process. Most property disputes are resolved according to the ordinary process, which has three phases. The pretrial phase includes the filing of a valid complaint, the raising of "dilatory exceptions" by the defendant, request by either side for conciliation,<sup>127</sup> and answering the complaint.<sup>128</sup> To be valid, the complaint must state a valid

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<sup>122</sup>See Código Civil, Art. 704.

<sup>123</sup>Because many parcels have supplementary titles (sometimes in addition to a pre-existing title acquired through the doctrine of tradition), multiple titles to the same parcel exist. While everyone agrees that the problem must be resolved, the question of how best to eliminate "illegitimate lands" is one of the most politically charged in El Salvador. At the same time, the issue is legal and any solution will affect the Registry. Many in the Ministry of Justice express a need for legislation to resolve these situations.

<sup>124</sup>See Código Civil, Arts. 2249-2250. Such claims are relatively rare, but are available to allow abandoned property eventually to re-enter the active land market and become productive.

<sup>125</sup>See Código Civil, Art. 2247.

<sup>126</sup>The Code dates from 1882. See Código Procesal Civil (printed in Recopilación de Leyes en Materia Civil (3d ed. Editorial Lis, San Salvador, 1997)).

<sup>127</sup>See Código Procesal Civil, Art. 165. The conciliation process is analogous to an arbitration. Each side selects a conciliator (who is not a lawyer) who presents the case to the justice of the peace. See Código Procesal Civil, Art.

cause of action and, for actions involving more than 500 colones, must be written.<sup>129</sup> Dilatory exceptions are motions raised by the defendant that would delay the cause of action.<sup>130</sup> Note that final exceptions, motions that would bar the cause of action entirely, cannot be raised until after the court has reached a judgment on the merits of the case and appeals have been exhausted.<sup>131</sup>

The second phase of the trial is the proof stage.<sup>132</sup> Written and testimonial evidence may be introduced. With regard to witnesses, the judge does most of the questioning, although each side has the right to raise its own questions subject to the judge's approval.

The judgment is the third phase of the trial. Rulings may be final or interlocutory.<sup>133</sup> El Salvador has a fee shifting system in which the loser must pay court costs.<sup>134</sup>

Certain disputes relating to property follow a summary process. In particular, a creditor seeking to attach or garnish property may use an "executive trial" -- a summary proceeding in which the judge only determines whether the debt instrument being relied on by the creditor is valid.<sup>135</sup> If it is, the creditor may attach the property and inscribe this right in the RPRH.<sup>136</sup> The validity of the debt itself must then be established in an ordinary proceeding. Likewise, when various creditors have competing interests in the debtor's property, a summary proceeding is used to determine the priority of their claims.<sup>137</sup>

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166. The justice of the peace the decides the case according to principles of justice, not of law. See Código Procesal Civil, Arts. 172-176.

<sup>128</sup>See Código Procesal Civil, Arts. 140, 228, 230.

<sup>129</sup>See Código Procesal Civil, Art. 193. Invalid complaints may be dismissed by the judge sua sponte. See Código Procesal Civil, Art. 197.

<sup>130</sup>See Código Procesal Civil, Arts. 128-133.

<sup>131</sup>See Código Procesal Civil, Arts. 128-133.

<sup>132</sup>See Código Procesal Civil, Arts. 245-314.

<sup>133</sup>See Código Procesal Civil, Art. 417.

<sup>134</sup>See Código Procesal Civil, Art. 439. Likewise, plaintiffs who abandon their claims before the verdict is reached are liable for the costs to that point.

<sup>135</sup>See Código Procesal Civil, Arts. 586-600.

<sup>136</sup>See Código Procesal Civil, Art. 594.

<sup>137</sup>See Código Procesal Civil, Arts. 659-672.

## **B. Illustrations**

### *Quiet Title*

#### a. Ousting Invaders

Squatters have been a persistent problem in El Salvador because of the high national population density and the mass migrations caused by the long period of civil unrest. When squatters first enter private land, the owner may evict them without taking any legal action. The owner once notified will usually contact the local police, but Salvadoran law does allow the owner to use force in order to protect his property.

In some instances, squatters may live on land for several months without the owner becoming aware of their presence.<sup>138</sup> Once one year has passed, the owner must obtain a court order to remove the invaders. Rather than the ordinary civil process, the owner may use a summary proceeding.<sup>139</sup> This possessory trial requires the claimant to establish his or her ownership or, at a minimum, the superiority of his title over whatever claims the invaders may have.<sup>140</sup>

#### b. Boundary Disputes

In Sonsonate when discrepancies are discovered between what land owners believe their parcels and what geographical and former registered descriptions of the property indicate, the owners typically defer to the findings of Registry staff. Even where immediate agreement is lacking and private negotiation is fruitless, affected parties almost always agree to participate in a conciliation process, which in ninety nine percent (99%) of the cases is successful in resolving the dispute.<sup>141</sup> Indeed, one of the greatest strengths of El Salvador's Registry reform project is that it both enjoys public legitimacy and is supported by a well-functioning legal system.

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<sup>138</sup>The property owner may be a foreign citizen, the property may be large (as in the case of a private forest used for logging), or, despite being aware of the situation, the owner may fail to evict the squatters before a year has passed.

<sup>139</sup>See Código Procesal Civil, Arts. 778-789.

<sup>140</sup>Typically, a registered title to the property is taken as decisive proof of ownership. Where the owner lacks registered title, Salvadoran law recognizes the doctrine of relativity of title. According to this doctrine, when no one has a registered title to the property at issue, evidence of longer-term possession and de facto ownership can be presented to establish a stronger claim to the parcel. This is an application of the "Principio de Tracto Sucesivo."

<sup>141</sup>Information as reported by staff of CNR and Pilot Project in Sonsonate, 1998.

By far the most common dispute involves the location of boundaries. Much less frequent are disputes involving multiple titles to the same parcel of land.<sup>142</sup> Conciliation is used wherever possible to resolve disputes. In general, once a problem is discovered by the Registry staff, the interested parties are notified so that they might come to a resolution on their own. If not, a field team is sent to the site that attempts to provide additional information and mediation services to the parties. Cases that cannot be resolved in the field while the cadastra and registry records are being updated are referred to a civil court, which will render a binding decision. Usually, the judge will request that the Registry provide a report of whatever information it has that may be relevant to the case.<sup>143</sup> Such evidence is treated as "expert testimony" and is typically decisive in fact-based disputes.

#### *Administrative Errors*

##### a. Registrar wrongly rejects inscription application

When an inscription application is rejected, the applicant may appeal the decision of the registrar. Such decisions, whether taken by registrars at the RPRH or the RSI, are reviewed by a special administrative panel in the CNR.<sup>144</sup> If the applicant disagrees with this administrative ruling, appeal may be taken directly to the Supreme Court of Justice.

##### b. Mistaken registrations

In cases where a mistake is made in the inscription of a document, the error may be corrected by the registrar *sub officio* so long as the document has not yet left the Registry.

Once an inscribed title leaves the Registry, it may only be corrected for errors at the petition of an interested party. Where the rights of other parties would be affected by the change, their agreement is also required in a notarized affidavit. Absent this, the record can only be altered pursuant to a court order.

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<sup>142</sup>Often these turn out to be boundary disputes once a more thorough investigation is conducted.

<sup>143</sup>While it is possible for Registry staff to appear as witnesses, this almost never occurs.

<sup>144</sup>See Reglamento de la Ley de Creación de la Unidad del Registro Social de Inmuebles, Art. 35.

*Effects of the Modernization Project*

Many disputes prevalent in the traditional registry system simply cannot occur in the registry model developed in Sonsonate where legal and cadastral information are integrated, and the use of computers allows Registry staff and users to access records instantaneously. The "interim periods" during which secondary titles may be inscribed or transactions affecting land may be noted unbeknownst to a party that previously completed a title search simply do not exist. In the long-term, it is undoubtedly true that modernization efforts will greatly reduce the number of land-related disputes and increase land-tenure security.

In the short-term, however, modernization of the Registry can have the effect of increasing the number of disputes by highlighting discrepancies or gaps in Registry records. The number of boundary conflicts, for example, may increase as Registry records are checked against the geographic data.