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The Reform of Property Registration Systems in Honduras: A Status Report

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Abstract

Honduras 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 Honduran registry and the changes that have been instituted to date. The introduction sketches the history of property registration in Honduras. Sections A and B describe the authority, jurisdiction, and structure of the present Registry – the RPIM. Section C outlines the way in which the RPIM is currently financed. Section D sets forth the functions of the RPIM – principally inscription and certification. Sections E and F catalogue the respects in which the Registry is currently being reformed. Among the dimensions of change are: titling initiatives associated with the Rural Lands Administration Project, the National Agrarian Institute, and the National Agrarian Registry; automation and structural reform associated with the Real Property System Modernization Project; the improvement of the National Cadastre; efforts to protect and register the lands of Indigenous Peoples; and improvements in the judicial system associated with the Program for the Modernization of the Judiciary. Section G considers the relationship between registry reform and the Honduran system of “supplementary title.” Finally, Section H outlines the ways in which disputes that arise out of the registry process currently are being resolved.

Key words: Central America; Honduras; property; registry

JEL Codes: K11; O13; O54

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I. INTRODUCTION

Like its neighbors, Honduras has a primarily agricultural economy in which the distribution and use of land has long been a source of tension. The insecurity of property rights has contributed to the country's extreme poverty.¹

Of the countries in Central America, Honduras has had the most political and civil unrest. After joining the Central American Federal Republic, Honduras was invaded by an army led by Francisco Morazán who took power in 1829, but was unable to extricate the country from civil war, which continued unabated until 1842 when Morazán was assassinated. Indeed, between its founding in 1824 and 1900, Honduras had 98 different governments, only a handful of which were democratically elected. The latifundio-minifundio land tenure system that developed under the Spanish Crown persisted after independence. However, over time, the large individual landholders were replaced by foreign firms, including the United Fruit Company, which acquired vast tracts and became the strongest political and economic force in the country.

Issues of equality, economic development, land policy, and social unrest have been intimately related to Honduras's history. Although the first agrarian legislation was passed in 1829, aiming to increase production through better management and redistribution away from latifundios to smaller landholders, Honduras's lack of infrastructure and a shortage of labor prevented the agricultural sector from improving. Subsequent efforts in 1924 and then in 1951 to foster the creation of "ejidos" (a form of cooperative), to promote redistribution, and to raise production levels were slow to be implemented, and ultimately failed to meet their stated goals. Agricultural land remains

¹According to a World Bank report published in February, 1998, the GDP (PNB) per capita in Honduras is approximately \$650. "The debt crisis at the beginning of the 80's caused a drop in economic activity that lasted throughout the decade. An ineffective, large public sector with broad administrative controls that slowed private investment, a business regime unfavorable to exports, an ineffective credit and finance system, scarce investment in education, and insecure property rights were factors that seriously slowed savings and investment." See World Bank, "Paises: Honduras" (Feb. 1998).

underused even today -- a situation that has given rise to a number of problems, including an increase in illegal land occupations by landless peasants.

Foreign influence has also had significant effect in Honduras. The United States alternately supported Honduran regimes, which it viewed as supportive of American business interests (like the United Fruit Company), and pressured those regimes to adopt "liberal" reforms to placate the population and prevent a Cuban-style revolution. More recently, foreign pressure has been exerted by international donor agencies and credit governments holding Honduran loans. Some of that pressure has sought to achieve "regularization" of land titles.

Throughout the nation's history, the military had played a major role in Honduras. Often taking political control of the country, the various military political regimes instituted many important reforms aimed at creating a more just society and well-functioning government apparatus. The military coup in 1956, for example, was followed by the appointment of a new and well-respected Supreme Court, which was then allowed to act with little political interference. This tradition of liberal reform and judicial autonomy was continued under the governments of General Oswaldo López Arellano and, then, Colonel Paz García.² During the latter regime, the Judicial Career Law was passed.³

The most dramatic land initiative during this period was Decree 170, adopted late in the Lopez regime. The Decree ordered the most extensive land reform effort in Honduras's history. Limits on land ownership were imposed as well as production goals. Failure to meet these goals exposed the owner to the risk that his land would be expropriated. A new national agency, the National Agrarian Institute ("Instituto Nacional Agrario" or "INA") was established to implement the reforms. Opposition by private businesses, especially by the foreign companies who ran the Honduran banana and coffee plantations, prevented the project from taking hold. INA and the land-distribution initiative stagnated. In 1982, under the government of Roberto Suazo Córdoba, INA was restructured to focus on implementing the new Land Titling Program ("Proyecto de Titulación de Tierras" or "PTT"). As its name suggests, the focus of the PTT was on

²It should be noted that the transfer of power involved a coup led by General Melgar Castro, who for a brief period held power, before himself being replaced by Colonel Paz Garcia.

titling. At the time it was adopted, more than 60% of Honduran farmers were living on and cultivating land for which they possessed no title. Part of the program involved gathering the information necessary to prepare and register valid titles.⁴ Prior to the PTT, basic information about a parcel's boundaries, location, and value did not exist. Similarly, very little cadastral information about protected areas, zoning rules, the location of roads and other improvements existed.

In the last several years, additional efforts have been made to address the pressing needs of the nation's population, of which over 25% are unemployed and an even larger percentage are underemployed.⁵ In 1990, the Honduran government adopted a structural adjustment program with the financial backing of international donor organizations. The key elements of this program were fiscal reform, liberalization of trade, elimination of price controls, and discontinuation of the policy of protecting of the lempira's value. By 1993, economic growth reached 6 percent per year; in 1997, GDP grew by 4 percent.

Despite industrialization and development, however, problems concerning the ownership of land continue to afflict Honduran political and economic affairs.⁶ The current administration of Carlos Roberto Reina⁷ has committed itself to addressing the "land question" and modernizing the institutions and laws that facilitate land management, policy, and tenure security.⁸ Nonetheless, such efforts must proceed in the shadow of Honduran history and, in particular, the continued strength of the military complex and

³See *Ley de Carrera Judicial*, Decreto 953 (Junta Militar de Gobierno en Consejo de Ministros) (June 18, 1980). The accompanying regulations were issued seven years later. See *Reglamento de la Ley de Carrera Judicial* (October 26, 1987); *Reglamento Interno del Consejo de la Carrera Judicial* (August 4, 1988).

⁴In improving the base of information, the three relevant agencies included the National Cadastre, the Registry, and INA.

⁵An often-cited figure is that in 1995, three-quarters of agricultural workers were underemployed.

⁶To illustrate this point, among the poorest third of Honduras's population, 78% live in rural areas, and in 1993, 72% of all farms in Honduras were smaller than 5 hectares.

⁷The administration was elected in 1994 amid discontent with the former Conservative Party administration. Observers worried at that time about the 35% of Hondurans who abstained.

⁸Reform of the RPI figures prominently within the broader aims of (1) conflict resolution and reduction and (2) land regularization. A recent study suggests that reform of the RPI may directly stimulate the economy by eliminating a tremendous opportunity cost faced by participants in the land market, owing to the slow processing of documents by the RPI. The value of lost investment has been estimated at 752 million lempiras per year. The study suggests that this loss of investment decreases the total number of new jobs created each year. Thus, an efficient, reliable registry might be directly responsible for up to 34,000 new jobs per year. See Marco Antonio Aguero, "Registro de la Propiedad: Evaluación del Impacto del Registro en el Desarrollo de la Economía Nacional," II Encuentro del Sector Habitacional y Financiero, Tegucigalpa (Sept. 3-4, 1998).

foreign influence,⁹ as well as present-day natural disasters which can undo years of progress in a matter of hours.¹⁰ It is within these confines that reform of the registry system which is crucial to titling, resource management and protection, as well as economic development programs, must proceed.

II. AUTHORITY¹¹

The first modern property registry was established in Honduras in 1881.¹² Before that time, title to real property had been granted by the Honduran President, and titles were inscribed in the National Archive. Use of the new registry, known as the Conservatory ("Conservador"),¹³ was obligatory. The registry was very simple. When a title was presented, the registrar would inscribe a short abstract in the Conservador Book. No check was made to ensure that the document was legitimate; the stamp of a public notary was taken as full proof of validity. In addition, entries were made in the order of presentation. In organization, the Conservador resembled a Folio Personal, relying on an index of property holders and other interested parties to gain access to individual entries.¹⁴

In 1898 a new Civil Code took effect, and with it, the old Conservador was transformed into the Property Registry ("Registro de la Propiedad Inmueble"). The new system was organized as a Folio Real. Unlike its predecessor, presentations to the Registry were tracked in a Diario, and inscriptions were organized according to parcel. Thus, by

⁹Efforts to transfer power from the military to a civilian police force have been problematic, and attempts in 1995 to cut back the military budget led to a bombing of the Presidential Offices.

¹⁰In the first week of November, 1998, Hurricane Mitch struck Central America, affecting Honduras and Nicaragua most severely. Classified as a "category 5" storm, the hurricane stands as one of the deadliest ever to hit the region. Over 10,000 lives were lost. In the days and weeks following the storm, international media headlines further illuminated the devastating effects of the disaster. In Honduras alone, damages are estimated to be several billion dollars. Projections are that the country will need up to 30 years to recover fully.

¹¹An excellent history of the Honduran registry system is provided in a 1992 law thesis. See Edyth Yolanda Gutierrez de Bohojarque, "El Registro de la Propiedad Inmueble en Honduras y su Modernizacion: Tesis para la Investidura de Abogado," (Tegucigalpa, 1992).

¹²The structure of the registry and its manner of operation were described in an appendix to the Civil Code of 1880, which took effect in 1881. The Honduran Civil Code was strongly influenced by the 1861 Spanish Mortgage Law, which mandated the use of a Folio Real.

¹³The institution took its name from the main registry book where rights and interests were inscribed.

¹⁴Note that Honduras used a somewhat modified Folio Personal. Whereas normally, all transactions relating to a specific individual would be recorded together in the registry book itself, the Honduran system used a separate entry in the index for each transaction. While indices were supposed to be kept in order to identify

consulting one page in the registry, an interested party could ascertain all of the rights and interests that inhered in a particular property. To maintain the system, each parcel was assigned a unique number ("ficha"). All transactions that involved the parcel were required to refer to that number.

Although it represented an enormous advance over the old system, the Property Registry was inefficient because it still relied on manual operations. Moreover, only abstracts of titles were actually inscribed, thus increasing the likelihood that mistakes in transcription might not be caught, and once made would persist. Finally, as in the old system, no substantive check of inscription documents was completed; a notarized document was accepted according to the notarial-law principle of public faith.

The Property Registry changed again in 1906. The new Civil Code mandated a registral system based once again on the Folio Personal system -- with an index of property and interest holders. This index was discontinued in 1910 and began to be kept again only in the 1970's. Despite its disadvantages (most notably the difficulty of ascertaining all rights that might relate to a specific parcel¹⁵ and its slowness), the new system had some advantages. A new checking process ("calificación registral") for inscription applications, which involved a title search and provided mechanisms to correct any mistakes or errors that were discovered, offered greater security to registrants that their titles were in fact correct and valid. It was also the first registry system in Honduras to charge fees, giving rise to the notion that the registry could be a self-supporting government agency where the beneficiaries of its services defray the costs of its operations. The 1906 law also established the Real Estate Registry as a dependency of the Supreme Court.

For almost 70 years, the Property Registry remained unchanged.¹⁶ Then, in 1974, the Honduran legislature approved Decree 171, which created the registry system that presently exists.¹⁷ The name of the institution was modified to the Registry for Real

all transactions relating to an individual, in practice, these were often missing. Thus, the system may have been closer to a Folio Temporal than a Folio Personal.

¹⁵Not only were inscriptions recorded in order of presentation, but several registry books were maintained simultaneously. Preserving a "chain of title" ("Principio de Tracto Sucesivo") was thus impossible.

¹⁶Minor changes were made in 1932 and 1950 to coordinate registry activities with the new Mercantile (Business) Code.

¹⁷See Ley del Registro de la Propiedad, Decreto 171 (Dec. 30, 1974) (published in La Gaceta Oficial No. 21,492 (Jan. 20, 1975)).

Property, Mortgages, and Notations ("Registro de la Propiedad Inmueble, Hipotecas y Anotaciones Preventivas" or RPIM).¹⁸ The new law mandated the reimplementation of the Folio Real system, but granted authority to the Supreme Court to promulgate regulations to facilitate a smooth transition from the extant Folio Personal.¹⁹ The Court complied, issuing Temporary Regulations for Inscriptions in the Real Property Registry, which suspended implementation of the Folio Real, pending institutional preparation for the conversion of RPIM records.²⁰ Despite their name, these regulations remained in effect for many years. In 1987, the government passed a new Public Registry Law ("Ley del Registro Público") which required that the RPIM records must be maintained according to the Folio Real system. Despite these mandates, however, the Honduran RPIM continues to employ a "mixed" system that is primarily Folio Personal.

III. STRUCTURE AND ORGANIZATION

The property registry system in Honduras is administered by the Judiciary.²¹ The President of the Supreme Court also has the title of Director of the Property Registry. Under the direction of the Court is the Office of the National Director of Registries ("Director del Registro de la Propiedad" or "Inspectoría General"), which oversees the system as a whole. To run this office, the Court appoints an Inspector General and five Regional Inspectors, who together oversee the day-to-day operations of the 25 RPIM offices scattered throughout the country.²² The inspectors produce periodic reports on the registry system for the Supreme Court to review.

¹⁸This name was modified again to its present form after the incorporation of the real estate and mercantile registries.

¹⁹See Decreto 171, Art. 61 (Dec. 30, 1974).

²⁰See Reglamento Temporal del Sistema de Inscripción en el Registro de la Propiedad, Acuerdo 50, Corte Suprema de Justicia (March 16, 1975) (published in La Gaceta Oficial, March 24, 1975) (suspending Articles 12 through 21 and 33 through 36 of Decree 171, passed in December, 1974).

²¹See Decreto 171, Art. 1, 8 (Dec. 30, 1971). Other registries are managed by other government branches and agencies. Honduras does not have an integrated national registry system. However, a recently launched reform project seeks to create a national registry organization which would integrate the real property, mercantile, intellectual property, patent and trademark, vehicle, and other registries into one organizational framework overseen by a National Registry Center. See II Encuentro Del Sector Habitacional y Financiero, Proyecto de Modernización de los Sistemas de Registro de Propiedad Raíz y Mercantil en Honduras (Aug. 1998).

²²See Decreto 171, Art. 38, 39 (Dec. 30, 1974)

Each department in Honduras has a registry office, with the exceptions of the departments of Cortés, Atlántida, and Colón, each of which has more than one office.²³ Every registry office has a well defined, unique geographical jurisdiction.²⁴ The Supreme Court appoints a registrar to each office and, in theory, is responsible for appointing all of the registry staff.²⁵ Registrars must meet the same qualifications as those established for district judges ("Jueces de Letras").²⁶ Each registrar has responsibility for carrying out RPIM functions in his area.

RPIM offices function autonomously. Registry applications must be submitted and registry records can only be obtained at the appropriate office – i.e., the one with jurisdiction over the property in question.²⁷ If a person owns two properties in different areas, each must be registered in the corresponding registry office.²⁸ Each office also has its own distinct regulations, modes of operation, and security measures.

The Registrar who directs each office is ultimately responsible for all actions taken by the office and by its employees in their official capacity.²⁹ In particular, the Registrar is responsible for: the appointment of registry staff; maintenance of the Diario; the proper examination of documents; the approval or rejection of inscription applications; the correct preparation of certifications and official registry reports presented to the Supreme Court; the preservation and security of registry records; and alerting the appropriate authorities of any threats to the registry or attempted misuse of it. The Registry Regulations also specifically forbid any special payments to the Registrar or staff.³⁰

²³See Ley del Registro de Propiedad, Art. 57.

²⁴See Ley del Registro de Propiedad, Art. 57.

²⁵See Decreto 171, Art. 1 (Dec. 30, 1971). The Court may also remove registrars from office although this rarely occurs.

Prior to 1998, local judges would act as property registrars in the absence of a specially appointed individual. The use of judges as registrars owes largely to a lack of resources allocated for the appointment of independent registrars. In July of 1996, the Commission for the Modernization of the Property Registry was established by the Supreme Court. One of its principal objectives was to make all RPI offices autonomous. This goal was attained in 1998. All RPI offices now have an independent registrar appointed by the Supreme Court.

²⁶See Decreto 171, Art. 2 (Dec. 30, 1971).

²⁷See Código Civil, Art. 2309.

²⁸See Código Civil, Art. 2311.

²⁹See Reglamento Temporal del Sistema de Inscripción en el Registro de la Propiedad, Art. 22.

³⁰See Reglamento Temporal del Sistema de Inscripción en el Registro de la Propiedad, Art. 23. "Soft corruption," however, where money is paid to speed the processing of inscriptions, is reported to occur as a matter of common practice.

In Honduras, the Registrar, and not the state, has legal personality and is legally accountable to parties that may suffer injuries caused by the registry -- e.g., an incorrect inscription. In addition, the Registrar is subject to any criminal sanctions the State may impose.³¹ In theory, Registrars may also be sued when inscriptions take more than thirty days to process, but in practice, despite delays that often exceed the 30-day limit, such claims are rarely brought.³² While the law accords to Registrars significant legal responsibilities, in fact, most Registrars would be unable to pay anything more than a symbolic monetary judgment. The law thus functions more as a moral imperative than as a meaningful deterrent.

Registrars in each office have limited autonomy with respect to the day-to-day operations of the office. Each registrar serves at the pleasure of the Supreme Court,³³ and the Court may issue policies and regulations governing the operation of the offices.³⁴ When a registry office is not run in accordance with those mandates, the Appeals Court and Supreme Court may sanction the Registrar.³⁵

Each Registrar appoints staff for the office. Poor work conditions,³⁶ the slow progress of reform, and very heavy workloads have contributed to a general malaise among employees as well as a belief that large-scale improvements to the system are impossible. At the same time, these factors have generated a conviction among government officials that registry reform needs to be given greater priority.

Already some improvements have been made. Salaries have increased over the last 3 years. Also, a recent government decree should mitigate to some degree the problem of

³¹See Ley del Registro de la Propiedad, Art. 6. Where the injury arises because of deliberate error, malice, or inexcusable negligence on the part of a party other than the Registrar, both may be held liable to the injured party jointly and severally. The Registrar may in a separate action seek indemnification. See Ley del Registro de la Propiedad, Art. 7.

³²See Ley del Registro de la Propiedad, Art. 28. The costs involved in bringing a claim, the likelihood that the inscription will be completed before the case is heard, and the fact that Registrars may escape liability by offering reasons for the delay are some of the most likely reasons few claims are brought pursuant to this Article.

³³See Decree 171, Art. 1 (Dec. 30, 1974).

³⁴See Decree 171, Arts. 8-10, 44 et seq. (Dec. 30, 1974). Such regulations would typically be made by the Inspector General.

³⁵See Reglamento Temporal del Sistema de Inscripción en el Registro de la Propiedad, Art. 24.

³⁶In the Francisco Morazán RPIM office, for example, fumes and dust from outside the building enter and, due to poor ventilation, do not escape, causing employees to become sick. The building itself appears too small for the amount of users, staff, and records that it must accommodate.

excessive workloads. Registrars may now appoint adjuncts when the volume of work in the office so merits.³⁷

Registry records in Honduras are still primarily organized according to the Folio Personal system, despite the 1974 and 1987 laws calling for conversion to the Folio Real system. Those same laws permitted the Supreme Court to issue regulations to make possible a gradual transition to the new regime, and those regulations have created a provisional mixed system that incorporates elements of a Folio Real.

Each RPIM office maintains six different registry books:

- The Diario keeps a record of all public writings ("escrituras publicas") that enter the registry.³⁸
- The Property, Mortgage, and Annotations Book ("Libro de Registro de la Propiedad, Hipotecas, y Anotaciones Preventativas") is the principal registry in each RPIM office.³⁹ In it, all rights and interests pertaining to real property are inscribed. Each book has one hundred inscriptions, each of which is made on a separate page. The books are then assembled into larger volumes, and archived.
- The registry index is organized by the names of the individuals who have inscribed their interests, and therefore is known as the Index of Persons ("Indice de Personas").
- A separate probate registry ("Libro de Sentencias") is kept to record any judgements or events that affect the legal capacity of individuals.
- The "Libro de Acuerdos para la Administración de Personal" keeps a record of registry personnel.
- The "Libro de Inventario" inventories all goods that belong to the RPIM office itself.

The RPIM is public, and its records may be consulted by anyone who wishes to view them.⁴⁰ Unlike the systems in some other Central-American countries, there is no explicit

³⁷See Decreto 164-98 (Aug. 21, 1998).

³⁸Private documents ("escrituras privadas") deposited at the RPI are not recorded in the Diario.

³⁹This volume presents an example of the mixed system currently in use. A Folio Personal system would typically list mortgages in a separate registry as was done in Honduras previously. A Folio Real, however, incorporates all rights and interests, financial or otherwise, into one volume.

⁴⁰See Código Civil, Art. 2305.

authority granted to the RPIM to take measures necessary to ensure the security and protection of registry records.

IV. FINANCES

The RPIM is financed by the Supreme Court, which, in turn, receives its budget from the national government. In 1997, the property registry system had a budget of 6.9 million lempiras. In 1998, the budget increased to 8.3 million lempiras. The Office of the Inspector General had a budget of just over 313,000 lempiras, continuing a trend of budget increases over the last three years. Despite these budget increases, registry officials, members of the Supreme Court, and other observers indicate that modernization of the registry system will require even greater resources in the coming years.

Monies collected by registry offices pass to the national treasury. Overall the RPIM is a significant source of revenues for the national government. In 1997, for example, the RPIM generated a net revenue of 18.75 million lempiras.⁴¹

V. FUNCTIONS AND OPERATIONS

The RPIM records all rights and interests pertaining to real property. To this end, RPIM will inscribe titles or other instruments that create, transfer, modify, or cancel ownership or rights of possession.⁴² Similarly, documents relating inheritances, trusts, usufructs, servitudes, and leases, when such rights are intended to have effect against third parties must be inscribed at the RPIM.⁴³ In addition, all mortgage rights and interests must be inscribed to have legal effect.⁴⁴

Like other property registries in the Region, the RPIM is declarative and not constitutive of land rights. The rights exist whether or not they are registered; only their

⁴¹See "Ingresos, Egresos y Balance del Registro del la Propiedad Inmueble y Mercantil," Documentos de Presupuesto del Poder Judicial (1998).

⁴²See Código Civil, Art. 2312. Note that, unlike other Central American countries, the Honduran civil code does not provide that the list of real property rights enumerated in Article 610 is exhaustive. New rights or modified types of property rights, then, may be inscribed at the registry.

⁴³See *id.*

⁴⁴See Código Civil, Art. 2306, 2307.

effect against third parties depends on a formal title.⁴⁵ The only exception to this principle involves mortgage interests, which can have no legal force (not only as against third parties, but as against the debtor as well) unless inscribed in the registry.

A. Inscription

Despite the differences among the various registry offices, each follows a similar basic process, which is outlined below.

The process begins with the preparation of a packet of materials for presentation to the registrar. Typically, these include a title, which describes the right or interest to be inscribed, the relevant property, and the beneficiary of the right or interest. The materials must be reviewed and signed by a notary.⁴⁶ (For convenience, such a collection of materials will be described below as an “inscription application.” Strictly speaking, this is not accurate. In most instances, the person seeking an inscription is not making an “application” or “petition,” but rather presenting the RPIM with documents he wishes inscribed.)

The inscription application must then be submitted to the appropriate RPIM office by the interested party or its designated representative.⁴⁷ The RPIM itself cannot initiate an inscription.⁴⁸ The application materials include a description of the property,⁴⁹ information about the interested parties, and the nature of the right or interest the applicant seeks to inscribe. In addition, proof that the applicable taxes and fees have been paid must also be presented.⁵⁰

⁴⁵See Código Civil, Art. 2310; Ley del Registro de la Propiedad, Art. 37 (Dec. 30, 1974).

⁴⁶In Honduras, notaries must be licensed lawyers, older than 21, and have filed their signature with the Supreme Court. Registry users and notaries themselves complain of a lack of good practice standards and supervision over the profession. Notaries, for example, take only two special classes during law school. Review and discipline of notaries who have anomalies in their protocol books (special books, issued and collected by the Judiciary, in which notaries describe the transactions they prepare) is practically non-existent. Clients of notaries also complain about notary fees, which can be as high as 30% of the value of the property or transaction relating to the rights being inscribed.

⁴⁷See Código Civil, Art. 2308.

⁴⁸The RPIM only processes inscription applications when solicited by interested parties, or upon the receipt of a judicial order.

⁴⁹This description is often inexact and not geographically referenced. Some inscription applications, however, must be accompanied by a cadastral map. See Ley del Registro de la Propiedad, Art. 49 (1974) (where existing parcels are divided, grouped, or have their borders altered, a cadastral map is required for inscription).

⁵⁰See Ley del Impuesto sobre Tradición de Bienes Inmuebles, Art. 6 (forbidding any land transaction to be approved by a notary or Registrar without the payment of the appropriate land tax). Failure to require a

The inscription application must be presented to the RPIM in duplicate. (One copy is later archived by the office.) Upon submission, a brief abstract of the application is prepared which notes the name of the party, the type of application submitted, the name of the notary who authorized the application, and a document number. A copy is presented to the applicant and serves as a receipt. This receipt must be saved in order to reclaim the application later; photocopies of it are not accepted.⁵¹

Upon receipt, the application is entered in the *Diario*, a book with entries for each document that is submitted to the Registry.⁵² The *Diario* annotation contains: the document number (assigned to the application at the moment it is presented); the name of the applicant; the time and date of presentation; the nature of the application; the names of those granting the right or interest; the name of the notary that authorized the application; and the parcel numbers corresponding to those involved with the inscription. Space is left by the *Diario* entry to record the Registrar's signature, the location of the inscription, and the date and time when the document is later picked up by the applicant. In addition, a short form is attached to the application itself with spaces for the name of the party that presented the application, the time and date of presentation, the location of the inscription in the registry, the date of inscription, and the signature of the Registrar.

The *Diario* not only records submissions, but their order of presentation. This latter function is important because, with respect to priority, Honduras follows the rule "first in time, first in right."⁵³ To make possible the enforcement of this principle, the *Diario* abstract notes the date and time when each submission is presented.⁵⁴ In addition, the application is assigned a unique transaction number, which can also be used later to determine when the application was submitted relative to others.

receipt of payment before accepting an application at the registry can subject the Registrar to a fine of at least 100 lempiras. *See id.*, Art. 7.

⁵¹This control serves to prevent valid titles from being returned to parties other than the legitimate party. A party with a registry-stamped title of ownership, for example, might be able fraudulantly to convey the property.

⁵²Some registry offices use two *Diario* books, one for documents with even numbers and the other for odd-numbered applications. Because entries are completed manually, the use of two books speeds the submission process for registry users.

⁵³*See* Código Civil, Art. 2344.

⁵⁴*See* Ley del Registro de la Propiedad, Art. 25. In the infrequent case that two documents are presented at the same time, both are noted in the *Diario* with an explanation that the order of the documents must be determined. The documents are then returned to the parties who are responsible for resolving the issue within a set amount of time. *See* Ley del Registro de la Propiedad, Art. 30.

Once documents have been accepted, they pass to a sorting office.⁵⁵ Here, documents are distributed to examiners according to their difficulty and experience, respectively. Another book is used to keep track of which examiners receive which documents so that their progress can be monitored and their correct priority maintained.

Having received the application, the assigned examiner begins by checking that it complies with applicable legal formalities. If these are satisfied, the examiner will complete a title search to determine if the right or interest may legally be inscribed.⁵⁶ In either stage, the examiner may encounter errors or deficiencies in the application. If a deficiency can be corrected, the examiner makes a note describing what is required, and the document is returned to the submission area to be picked up by the applicant. When an error or fault cannot be fixed, the application is rejected, a note may or may not be attached, and the document is returned to the submission office.

One of the specific items that the examiner will check is the valuation of the underlying parcel or transaction for which a right or interest is being inscribed.⁵⁷ This valuation determines the appropriate registry service fee.⁵⁸ Where an inscription involves multiple properties or contracts, the total value is used to determine the fee.⁵⁹ The examiner will also check to see if the land at issue is subject to special regulation, and, if so, whether completing the inscription may be done consistent with these regulations. Until very recently, one example of a prohibited transaction was the acquisition of land within forty kilometers of a coast or national frontier by someone other than a Honduran citizen. However, in January of 1999, the legislature ratified an amendment to the constitution, making it legal for foreigners to buy land in those areas.⁶⁰

The application examination is important, both because the Registrar is responsible for any mistakes that are made, and because the judgment and action of the Registrar can

⁵⁵The Registrar may distribute the applications personally.

⁵⁶See Código Civil, Arts. 2318, 2321, 2365; Ley del Registro de la Propiedad, Art. 29 (1974).

⁵⁷See Ley del Registro de la Propiedad, Art. 54.

⁵⁸See Ley del Registro de la Propiedad, Art. 53. The basic rule is that the registry charges a fee equivalent to .0015% or 1.5 lempiras per 1,000 lempiras of value. The article also sets the fees for other registry services. In addition to this fee, however, the party must also pay applicable taxes, the notary fee, and other relevant closing costs. Parties also make additional payments to speed the inscription process. In all the closing and registry costs may reach as high as 25% of the underlying transaction's value, effectively a disincentive to use the RPI.

⁵⁹See Ley del Registro de la Propiedad, Art. 55.

⁶⁰See Constitución of Honduras, Art. 107.

be relied on by third parties.⁶¹ Actions taken in reliance on RPIM are themselves valid, even if subsequently, the relevant record is shown to contain an error.⁶²

Unfortunately, the current examination process does not necessarily ensure that the chain of title ("tracto sucesivo") is maintained -- a central objective of modern registry systems. Formally, the RPIM adheres to the principle that inscription applications must demonstrate that the chain of title is preserved.⁶³ Nonetheless, because the RPIM still has not converted to a Folio Real system, even conscientious title searches both by the notary who prepares the documents, and later by the examiner assigned the application,⁶⁴ may fail to discover breaks in the chain that can bring the legitimacy of a title into doubt. The net result is that the overall tenure security supposedly offered by the registry system is reduced.

Registry users also complain that the regulations governing what constitutes errors in applications, and the rules determining when applications must be returned for corrections, are not uniform. For example, in the Francisco Morazán office in Tegucigalpa, there is no published set of regulations that govern all registrars and examiners. Thus, an application that might be processed by one examiner is often rejected by another and returned to the user for amendment.

If no errors in an inscription application are found, or if errors, once found, have been corrected, the application passes to a document-review section where a registry employee verifies that the photocopy is identical to the original application.

If after a final check no problems are discovered, inscription of the right or interest described in the application may proceed. The inscription itself includes a legal description of: (1) the interested parties (names, professions, and addresses); (2) the affected parcel (its location, size, value, neighboring parcels, and any servitudes or other relevant interests); and (3) the nature of the right or interest being inscribed.⁶⁵ The original application and the duplicate are assigned an inscription number and sent to the registry

⁶¹See Ley del Registro de la Propiedad, Art. 29.

⁶²Thus, a good faith buyer of property that was fraudulantly acquired by the seller, but was somehow registered as legitimately belonging to the seller, cannot be stripped of the property or be held liable if the previous legitimate owner succeeds in proving the RPIM acted in error.

⁶³See Código Civil, Art. 2321.

⁶⁴See Ley del Registro de la Propiedad, Art. 29 (requiring that the registrar perform a title search).

⁶⁵See Código Civil, Art. 2313. See also Código Civil, Art. 2315 (requiring that noted servitudes indicate both the dominant and servient estates).

archive where both copies are stamped with the RPIM seal. The location of the inscription is also noted.

Finally, the Registrar signs the application and the newly-made inscription. The application is then sent to the accounting office where the fee paid for the service is registered, and then to the submission area to be picked up by the applicant.

If an error is discovered after the inscription has been completed, but before the title has been returned to the interested party, the Registrar may order rectification of the mistake. In such a case, an additional notation that supercedes the erroneous one is made.⁶⁶ Where the title has already been returned, the applicant must officially request that the correction be made.⁶⁷ In both situations, corrections are made at the Registrar's expense.⁶⁸

In theory, all inscription applications must be processed within 30 days.⁶⁹ In other words, either the inscription must be completed, or the application must be returned to the applicant with an explanation of why the inscription cannot proceed. In practice, however, processing typically takes between one and two months. Similar delays attend the processing of corrected applications. During peak periods, the processing, even of documents that need no corrections, may take up to four months. Lack of adequate personnel, automation, and high demand are among the reasons for these delays.⁷⁰

While overall the inscription process is functional, albeit quite slow, observers have highlighted a number of specific problems that modernization efforts should seek to address. One recent study citation has highlighted the following areas of concern:

- In the Francisco Morazán RPIM office, five verifiers review the work of fifteen examiners, diminishing the quality of the review.
- Deteriorating books and documents that are sometimes illegible may prevent an examiner from establishing a property's chain of title.

⁶⁶See Ley del Registro de la Propiedad, Art. 40. This action is a special exception to the general Principle of Petition ("Principio de Rogacion"), requiring that the interested party initiate any registral process or transaction.

⁶⁷See Ley del Registro de la Propiedad, Art. 41. Usually, this request is little more than a formality, but where errors benefit the interested party, getting them corrected may be more difficult.

⁶⁸See Ley del Registro de la Propiedad, Art. 43.

⁶⁹See Ley del Registro de la Propiedad, Art. 28.

⁷⁰Unconfirmed reports by registry users that special payments to RPIM employees and registrars can greatly speed the inscription process abound.

- Errors in the RPIM records, often a consequence of manual inscription, make subsequent examination of a property's chain of title much more difficult.
- Different documents sometimes receive the same registration number ("número de asiento").
- Vague measurements contained in applications are permitted and recorded, such as "more or less," "one lot," "a parcel," etc.
- Often, annotations relating to a property are misplaced in an incorrect record.
- Incorrect references are sometimes made when new titles are inscribed. Rather than referring to the correct legal antecedent, reference is made to an entry relating to a mortgage, for example.

B. Other Registry Services

In addition to inscribing rights and interests pertaining to real property, the RPIM also makes reports ("informes registrales") to the Supreme Court each month summarizing registry activity.⁷¹

Private parties who want an official document describing rights and interests that relate to a parcel may petition the RPIM for a certification ("certificación").⁷² For the corresponding fee, the RPIM will provide the applicant either a literal copy of the registry record or an abstract of the record. Interested parties are also welcome to consult registry records on their own, but only official certifications have probative value in legal transactions or courts of law.

C. Registry Usage⁷³

In Tegucigalpa, the RPIM receives approximately 1,000 service requests each day. Of these approximately 250 are inscription applications. The average number of requests per day for the Honduran system as a whole is 2,900. Of these, approximately 600 relate

⁷¹See RSTIRP, Art. 36. These reports are fairly detailed and meant not only to inform the Supreme Court, but also the general public of the RPHAP's workload and the content of transactions that it handles.

⁷²See RSTIRP, Art. 19.

⁷³All figures in this section come from the Oficina de Registro/Inspección General de Registro. See Reporte del Lunes 10 al Viernes 14 de Agosto de 1998, Oficina de Gaceta Judicial, Corte Suprema de Justicia (Aug. 1998).

to sales, modifications, transfers, and mortgages of property. The remaining requests are for other types of inscriptions and certifications.

VI. CURRENT REGISTRY PROJECTS AND GOALS FOR IMPROVEMENT

Currently, the RPIM often finds its resources insufficient to meet the demand for registry services. Moreover, a series of recurrent problems slow the system and hinder the ability of the RPIM to provide tenure security. Manual transcription of information, for example, is the single largest source of error in the inscription process. While these errors are usually small and caught before interested parties suffer injury, mistakes in transcription can have significant consequences.⁷⁴ Another frequent problem in Honduras is that land is inscribed in a private owner's name despite the fact that the land is "community property," a natural reserve, or Indigenous territory.

Another class of problems arises when registry rules are not properly followed. Examples include:

- (1) incomplete entries in registry books where a document number or date appears, but no other information;
- (2) cases in which annotations are not stamped and signed, leaving their validity in doubt;
- (3) missing references when records exceed the space available in their original page or new transactions occur that involve previously registered parcels;
- (4) using the Diario reference instead of the correct Folio reference; and
- (5) misplacing notations, putting them by inscriptions to which they do not correspond.

Finally, the registry system itself gives rise to problems. One example concerns the descriptions of parcels that are included within inscription applications. Many use terms such as "more or less," or indefinite terms (such as "two parcels") to describe the location and size of the property in question. These same descriptions are transcribed into the Folio. In case of a dispute later, the RPIM is often unable to provide clear information

that would be able to resolve the conflict and, perhaps, prevent a costly trial. More generally, prospective land buyers and creditors are often unable to discover exactly where and what the relevant property is. The maintenance of photocopy duplicates of inscription applications, as required by the current system, is also problematic insofar as these are often difficult to read and, like the paper registry books, deteriorate over time. Equally important, the use of photocopies requires that the registry obtain ever-increasing storage space to accommodate them.

The foregoing issues have provided the impetus for registry reform. In particular, Honduras is seeking to modernize its registry system, converting it from a Folio Personal regime to a Folio Real regime. Likewise, the RPIM is seeking ways to incorporate cadastral information in registry records in order to clarify the rights and interests that it records. Automation of registry processes to increase efficiency and minimize errors is another important goal. Finally, with regard to document management and preservation, efforts to convert paper documents to microfilm are underway.

A. Rural Lands Administration Project

One of the major land-related national initiatives in Honduras presently is the Rural Lands Administration Project ("Proyecto de Administración de Areas Rurales" or "PAAR"). PAAR began in 1995 and is an outgrowth of the work completed by the Interinstitutional Commission for the Modernization of the Real Property Registry ("Comisión Interinstitucional para la Modernización del Registro de la Propiedad Inmobiliaria"), which was set up by the Honduran Supreme Court in 1994. Originally, the focus of PAAR was to be land administration and natural resource management. During the first two years of the project, the agencies represented on the Interinstitutional Commission as well as the National Forest Agency ("Administración Forestal del Estado-Corporación Hondureña de Desarrollo Forestal" or "AFE-COHDEFOR") worked on converting this general objective into four program components.

The natural resource-component of PAAR had two major goals. First, it was put in charge of managing 11 forest areas, which included state lands as well as private and

⁷⁴Widows and other women often find that their property is inscribed in the name of their husbands (or former husbands), making it difficult for them to obtain credit or to sell the property later.

communal property. Second, the component was to support institutional development of AFE-COHEDFOR.

A second component of PAAR was the "Fondo para Productores de Laderas." Moneys in this fund were to be spent on: (a) training programs for professionals about natural resources and their management; (b) technology transfer programs designed to make environmentally-friendly technologies and processes for agriculture, livestock production, and forest use available more broadly; (c) the development of new technologies in these areas; and (d) the administration and support of 22 designated model zones ("microcuencas").

The bio-diversity component of PAAR was established to manage and protect natural reserves, conduct studies on land use and the value of bio-diversity, develop means by which natural reserves could become financially independent, and develop an improved knowledge base about bio-diversity in Honduras.

Finally, PAAR included a land administration component (Componente de Administración de Tierras" or "CAT"), specifically focused on questions of land tenancy, ownership, and resolution of conflicts. In particular, CAT developed a four-step process aimed at regularizing land tenure nationally. Work began on plans for a new national cadastre based on geographic data derived from a geodetic network of control points established according to international standards and using GPS-GIS technology. Once an accurate cadastre had been created for an area, titling and land adjudication processes could begin. Finally, CAT would help landowners inscribe their rights at the appropriate RPIM office, and assist the RPIM in implementing the Folio Real system.

In order to test the proposed system, implemented a pilot project in The Department of Comayagua. The site was selected because a relatively advanced cadastre map had already completed there. Work on the pilot project began in May 1998 with town-hall meetings to inform local residents about the pilot project, its goals, and how residents would benefit. Next, field teams used GPS technology to refine the cadastral map and gather current data about how land was being used, the borders of parcels, their exact area, and who possessed each. Areas where disputes existed between residents were also noted. Next, existing legal information contained in RPIM records was integrated in order to determine where discrepancies and conflicts existed.

As areas of conflict between residents and between existing legal records and field data are identified, a special commission -- the Comisión Territorial, made up of representatives from DEC, INA, COHDEFOR and the RPIM -- attempts to reconcile the information or resolve the dispute. This commission developed as work on the pilot project progressed. Because many of the disputes are both complex and long-standing, a separate consulting project has been started to classify the various types of disputes and to develop efficient resolution mechanisms for them.

A draft of the cadastral map for each local area is presented to the public for comments and revision once the CAT staff have reviewed it for accuracy. During this period, any interested party may lodge a complaint or ask that an area be revised. Relatively few in number (as the majority of conflicts have already been resolved), these issues are usually resolved administratively. Typically, the CAT staff checks information brought by the claimant and makes appropriate corrections to the cadastral map. Nonetheless, disgruntled parties may bring claims in local courts if they believe their rights have been abridged.

Once parcels and their owners have been clearly identified, INA and the municipal governments work together to grant titles to the properties. These titles are then inscribed in an automated computer registry system, which uses a special relational database application known as SIRPE (Software de Inscripción del Registro de la Propiedad).⁷⁵

The original goal set by CAT was to complete the gathering of information in Comayagua by May of 2000. Subsequent work in Olancho, Cortes, and Yoro was to be completed by 2002. The devastation wrought by Hurricane Mitch may force revision of these target dates.

Apart from overcoming the general challenges posed by recent natural events, a crucial element for the success of CAT is education -- not only of the public, but also of registry staff and other officials responsible for maintaining the new, automated registration system. Registry employees and users will need to understand fully the legal and practical consequences of implementation of a Folio Real registry organization structure. Time and resources must be allocated for this process.

⁷⁵SIRPE was developed in El Salvador, and is similar to the SIRyC model being used there.

PAAR is being funded by the World Bank and the Honduran Government. Currently, it has received a total of \$42 million. From this budget total, CAT has been allocated \$12.9 million, \$2.2 million of which is being used to carry out the pilot project. As currently planned, CAT will eventually implement a computerized, linked property registry-cadastra system for about four-tenths of Honduras. More funding will be required to complete similar work in the remaining 60% of the country.

B. Real Property Registry System Modernization Project

The Real Property System Modernization Project ("Proyecto de Modernización de los Sistemas de Registro de Propiedad Raíz y Mercantil en Honduras" or "PMSR") is a new initiative focusing on automation and structural reform of the Honduran property registry. Like PAAR, it is an outgrowth of the Interinstitutional Commission for Property Registry Reform set up by the Supreme Court in 1994. The ultimate goal of the project is to create a National Registry Institute ("Instituto Nacional de Registros" or "INRE") which would oversee not only the property registry, but also the other national registries – the intellectual property registries, the mercantile registry, etc.

Although the original timeframe called for the planning and coordination of the project to be completed by January 1999, the devastating effects of Hurricane Mitch in November 1998 will postpone progress.

VII. RELATED INITIATIVES

A. National Cadastre

The National Cadastre Office ("Dirección Ejecutivo de Catastro" or "DEC") supervises the development and maintenance of Honduras's cadastre.⁷⁶ The National Cadastre was first established in Honduras in 1906, then reformed in 1962 and 1974. The DEC, the current incarnation of the cadastre, was created in 1980.⁷⁷ The DEC falls within the Ministry of Government and Justice. It is supervised by an interinstitutional board of

⁷⁶The DEC was created by the Ley del Catastro, Decree 933 (1980).

⁷⁷See Código de Procedimientos (1906); Ley Agraria (1962); Ley de Reforma Agraria (1974); Ley de Catastro, Decree 933 (May 7, 1980).

directors, which includes representatives from the Department of Government and Justice, the Department of Finance, the Department of Agriculture and Livestock, the Supreme Court, SOPTRAVI, and INA.⁷⁸

The history of the modern cadastre program in Honduras really began in 1972 with the initiation of the Cadastre Demonstration Project ("Proyecto de Catastro Demostrativo").⁷⁹ The goal of the Project, which was funded by USAID, was to demonstrate the benefits of a multipurpose cadastre. The departments of Choluteca and Valle were selected to serve as models for a national cadastre program. The Project was later expanded to include an area of 22,500 square kilometers.⁸⁰ The cadastre was to provide a basis for land regularization, the granting of titles to unclaimed property, and an efficient property-tax assessment and collection program.

Despite its early successes, the National Cadastre Program suffered setbacks throughout the 1980's. Between 1980 and 1985, many skilled technical staff and DEC directors were removed and replaced. In addition, the operating budget of the DEC was reduced from about 3 million lempiras in 1982 to only 1.8 million in 1991.⁸¹ Finally, cadastral projects that were started were often not completed, and more generally, cadastral information was not properly maintained.⁸² The result was that much of the DEC's cadastral records and data have become outdated.

In the last five years, there has been a renewed focus on updating cadastral information. The foundation of cadastral maps is geographic data, including aerial photos and topographical maps. In collecting such information, the DEC works closely with the National Geography Institute ("Instituto Nacional de Geografía" or "IGN"), which provides the necessary aerial and satellite photos as well as other geographic data required by the DEC. Currently, geographic maps have been completed for fifteen of the Honduras's 18 departments. For urban centers, the maps are scaled orthophotos of

⁷⁸Observers have noted that this governance structure has tended to politicize the DEC and created instability as the composition of the board of directors changes. One symptom of such instability may be the DEC's current lack of any comprehensive national work plan, focussing instead on local projects and initiatives.

⁷⁹See Decree 327 (1972).

⁸⁰See Decree 186 (1975).

⁸¹See Clapp and Mayne, *Estudio de Reconocimiento Registro de la Propiedad y Mercantil del Departamento de Morazán (Proyecto Fortalecimiento de las Instituciones Democráticas de la AID, June, 1991)*, at 47.

⁸²The Cadastral Registry, for example, disappeared completely in 1991.

1:10,000 scale. These maps include administrative information, markers for utilities, roads, natural features such as rivers, and parcel identification numbers.

As areas are updated, the DEC creates a unique cadastre record for each parcel which, in addition to the relevant local section of the area map, includes a plat map, an abstract of the current legal status of the parcel, its legal jurisdiction, its approximate market value, its official tax basis, land use information, and notations of utilities and other servitudes.⁸³ Many municipalities are currently reforming their land zoning regulations. Ultimately, the cadastre files and area maps will incorporate zoning information so that, once integrated with registry records, users will be able to gain access to a parcel's complete legal and physical characteristics.⁸⁴ All of this information is to be referenced to corresponding RPIM records and tax records kept by the National Tax Service ("Dirrección Ejecutiva de Ingresos").⁸⁵ Although the DEC is responsible for providing the RPIM with national cadastral information,⁸⁶ this rarely occurs apart from specific land regularization and titling projects.⁸⁷

As the foregoing analysis suggests, coordinating cadastral information with legal information maintained by the RPIM has been another important recent focus of reform efforts in Honduras. The hope is that such integration will give the DEC more credibility, while clarifying ownership rights nationally. The PAAR is one initiative in which the DEC is very involved. A corollary initiative is to establish a cadastral department within each registry office as mandated by the 1974 Registry Law.⁸⁸ In addition, DEC is working to design a self-maintained multipurpose cadastra which would provide a variety of government, local, and private entities with valuable information.

As has been mentioned previously, 37% of Honduras's area will have been incorporated in the cadastre as part of PAAR. Within the next five years, another 25% of the country will be completed in conjunction with rural development projects such as the

⁸³Capitulo IV - Ley de Catastro

⁸⁴One current problem is that municipal governments often maintain independent cadastres, the information from which may not be shared with the DEC, leading to a deterioration of the quality of the national cadastre records. See Decreto-Legislativo 48-91 (May 7, 1991); Decreto 134-90 (Oct. 29, 1990) (requiring municipal governments to establish a local cadastre for fiscal use and establish city zoning regulations).

⁸⁵See Ley de Catastro, Arts. 39, 46.

⁸⁶See Ley de Catastro, Art. 40.

⁸⁷Others have observed that the source of this gap in information sharing may be traced to the institutional separation of the DEC from the RPI.

⁸⁸See Decreto 171, Art. 9 (Dec. 30, 1971). Currently, the DEC has offices in seven departments.

Land Titling Program administered by INA.⁸⁹ The departments of San Pedro Sula and Tegucigalpa are also in the process of revising and updating their cadastras.

The DEC currently receives an annual budget from the national government of 4.5 million lempiras.⁹⁰ Service contracts with other Honduran government agencies provide additional revenues of 1.3 million lempiras.

B. Land Titling

Originally created in 1962, the National Agrarian Institute ("INA") was charged with land redistribution projects.⁹¹ That focus continued through the 1980's, but was expanded under the Small Farmer Titling Program ("PTT") to include the granting of titles to owners who lacked formally registered documents.⁹² With the passage of the Agriculture Modernization and Development Law ("Ley para la Modernización y Desarrollo del Sector Agrícola")⁹³ in 1991, INA was restructured; titling became its central focus.

Presently, INA divides its efforts between farmers who produce export crops and those who produce basic grains, with the former group receiving more resources. Typically, land is ceded by INA to beneficiaries, who acquire the funds necessary to purchase and develop the land from private-sector banks or from a special public credit fund, FONAPROVI.⁹⁴ Although many beneficiaries have failed to keep up the payments

⁸⁹Current areas of focus for this initiative include Valle de Sico, Paulaya, and Guaylape. Other projects in which the DEC participates include Proyecto PROLANCHO and PAAR's project in Comayagua.

⁹⁰It is hoped that, in the future, increased property tax revenues, made possible by an up-to-date national cadastre, will be directed in part to support the DEC, replacing direct funding from the general budget.

⁹¹See also Ley 170 (1974) (outlining a framework for INA to administer expropriations, valuations, adjudications, and other agrarian reforms).

⁹²The Land Titling Program ("PTT") has seven independent offices, which function in parallel with RPI offices. Although the PTT is only supposed to provide titles and eventually incorporate these into the local registry office, the PTT has maintained a separate registry of the titles it issues.

⁹³The bulk of this law does not regulate INA, but rather alters the agrarian land framework created by previous legislation. Among other changes, the new law increased the maximum property size that an individual owner could possess, simplified the rules pertaining to community property (cooperatives and ejidal lands) to facilitate subdivision and leasing of such land, provided for greater gender equality in matters relating to ownership and land transactions, and increased the total amount of land eligible for private ownership.

⁹⁴The Fondo Nacional de la Producción de Vivienda (FONAPROVI) began operating in 1997. This institution was created to supplement private bank credit, often not available to low-income families, and replaced the previous inefficient state-administered agriculture credit system known as BANDESA. See Ley de Modernización de la Agricultura (1992).

on their loans, the removal of restrictions on the sale and rental of lands granted by INA has facilitated repayment and also has supported a more active land market.⁹⁵

With this change in focus, the National Agrarian Registry ("Registro Agrario Nacional" or "RAN") became more important. The RAN was established in 1974 to inscribe land ownership rights granted by INA.⁹⁶ The RAN's work consists of preparing the titles to be issued by INA, maintaining an index of titles that have been granted (both provisional and permanent), organized by geographic area, and archiving microfilmed copies of each.

The RAN has one central office located within the main INA office in Tegucigalpa. This office is staffed by seven individuals. In addition, the RAN has an employee in each RPIM office with jurisdiction over an agrarian area administered by INA. This employee is a registrar who handles only RAN inscriptions.⁹⁷

Once an application for title is presented to INA, and the application is found to comply with all necessary requirements, the RAN is notified. The document is received and examined.⁹⁸ Assuming no problems are discovered, a title is prepared and signed by the Executive Director and General Secretary. This document is then issued to the recipient by INA and returned to the RAN to be inscribed. Subsequently, the title is sent to the RPIM where it is also inscribed. This last step is necessary for the underlying rights to have legal effect against third parties. Whether inscriptions completed at the RAN itself have similar legal effect has been a matter of some doubt. Reviewing the institution's enabling legislation,⁹⁹ some analysts have concluded that the RAN is not merely an administrative agency, but is, in fact, a legal registry parallel to the RPIM.¹⁰⁰ Certainly, inscriptions at the RAN of titles acquired through INA prove that the named beneficiary is

⁹⁵See Ley de Modernización de la Agricultura (1992).

⁹⁶See Ley de Reforma Agraria, Art. 158 (Dec. 30, 1974).

⁹⁷The use of special registrars at RPI offices by the RAN began in response to worries about lengthy processing delays of INA-granted titles. Such delays prevented recipients from obtaining credit and discouraged long-term investment in improving the land, thereby undermining INA's mission to increase national productivity through land titling.

⁹⁸This process includes a full title search and any other necessary research to ensure that INA may grant good title to the property in question.

⁹⁹See Ley de Reforma Agraria, Art. 160 (Dec. 30, 1974).

¹⁰⁰See Guillermo Sandí, Proyecto RUTA III: Análisis y Diagnóstico del Registro de la Propiedad Inmueble en Honduras (Dec. 1995), at 10.

the legitimate recipient of the described parcel.¹⁰¹ It is also true that the RAN inscribes and microfilms a variety of other personal contracts, public documents, and supplementary titles, copies of which are also forwarded to the RPIM for registration there.

The RAN currently completes between 1,200 and 1,600 registrations each month and generates approximately 24,000 lempiras annually. Its annual operating costs of about 120,000 lempiras are financed through INA's general operating budget.¹⁰² INA receives money directly from the Honduran government and USAID. INA also obtains indirect funding from other international agencies and governments through its collaboration with other projects such as PAAR and PROLANCHO, funded by the World Bank and the Canadian International Development Agency (CIDA), respectively.

C. Securing Indigenous Lands

During the 1800's, some indigenous lands were secured and protected as part of concessions granted to the foreign fruit companies. Still, disputes over land claimed by Indigenous Peoples persist. Beginning in the late 1950's, after the national "Banana Strike," Indigenous Groups began to organize. The Confederation of Autochthonous Honduran Peoples ("Confederación de Pueblos Autóctonos de Honduras" or "CONPAH") is the largest such organization with the broadest representation.

Indigenous claims have met with some success. The Tawahka Asangi Biosphere was created by INA after the Federation of Tawahka Indians ("FITA") presented a petition based on the Wyke-Cruz Treaty between England and Honduras.¹⁰³ A new law in 1993 aimed at protecting Indigenous Lands. Honduras ratification of the International Labor

¹⁰¹Despite this rule, many parties bring private contracts and other land-related documents to be inscribed at RAN offices.

¹⁰²It is worth noting that the budget for the RAN has been reduced repeatedly in recent years, causing certain of its projects to be put on hold. Plans to microfilm all RPI records for agrarian lands, for example, could not be completed.

¹⁰³The treaty gave Honduras control of a disputed tract of land near present-day Belize, but required certain concessions and protections be granted to the non-European peoples living in the area, notably the Garifunas who descended from slaves, but preserved much of their adopted British culture, including the use of English.

Organization's "Indigenous and Tribal People's Convention"¹⁰⁴ in 1995 also holds out some hold of alleviating what continues to be a sometimes violent conflict.¹⁰⁵

D. Land Market Development

Legislation to develop the Honduran land market in order to attract greater foreign investment was first passed in 1982. A decade later, the government passed the Agriculture Modernization Law ("Ley de Modernización de la Agricultura"). The purpose of both laws were to regularize the land market by decreasing the amount of informal land tenure arrangements and to improve land-information systems so that summaries of rights and interests are accessible to market participants, and transactions are more secure. In particular, the 1992 law eliminated inefficient government-sponsored agricultural credit offered through BANADESA, transferring responsibility for financing agricultural projects to the private sector. The law also removed government controls over lands in forested areas, although the Department of Agriculture and Livestock maintained control over natural reserves and other designated protected areas.

For poor Hondurans, government backed credit was made in 1997 for the purchase of homes through the National Fund for the Production of Housing ("Fondo Nacional de la Producción de la Vivienda" or "FONAPROVI").

E. Judicial Reform

Another current project, supported by the Interamerican Development Bank and the International University of Florida, concerns reform of the judicial system. The Program for the Modernization of the Judiciary ("Programa de Modernización de la Justicia") is focusing directly on Registry reform, as well as more broadly on questions of improving the Honduran dispute resolution system. This latter goal is also important in relation to registry reform to the extent that a strong dispute resolution system will support the RPIM.

¹⁰⁴See International Labor Organization, Agreement 169 (1989).

¹⁰⁵Even in areas declared to be Indigenous Lands, invasions persist, often leading to violence. Murders of Indigenous leaders and illegal land invasions by Hondurans in the Asangi Biosphere gained national attention in 1997. See Bernd Kubisch, "Arsonists Threaten Tawahkas: Indians Ask World for Help," Deutsche Presse-Agentur (April 14, 1997); Thelma Mejia, "Honduras: Indigenous People Seek Political Asylum in Costa Rican Embassy," IPS (July 28, 1997); "Agitado Movimiento Indígena contra la Marginación," La Prensa (Aug. 17, 1997).

Moreover, law reform related to the project will allow the Judiciary to take advantage of registry reform and automation, thereby speeding the resolution of land disputes.

VIII. TITULACIÓN SUPLETORIA (ADVERSE POSSESSION)

Honduran law treats the doctrine of adverse possession in Title XVI of its Civil Code under the heading of "prescription." To acquire land by prescription, the claimant must be able to prove ten years of non-violent possession in good faith with color of title.¹⁰⁶ If a possessor of land lacks title to it or cannot demonstrate good faith, he or she may still acquire the land by prescription after twenty years.¹⁰⁷ In calculating the time required for a prescriptive claim to be perfected, the claimant may add to the duration of his own occupancy any time that accrued to former possessors from whom the land was acquired.¹⁰⁸

Once the requisite period of occupancy has been established, the claimant must file a petition before the local trial judge ("juzgado de letras"). The claim must describe the size and location of the property; indicate how the property was acquired, whether the parcel was ever titled, and if so, why the claimant could not obtain a deed to the land from the previous registered owner; present evidence that the claimant acquired and maintained the land in good faith; and establish that for ten years, the claimant possessed the land continuously, openly, and peacefully.¹⁰⁹ In addition, the claimant must present his or her name, occupation, and address.

Notice of the request must be published three times during three consecutive months. If no one presents himself to contest the claim within 15 days after the last published notice, the information presented by the claimant will be admitted as evidence. Three neighbors are also required to testify as to the validity of the claim. Following the presentation of evidence, the judge will render a decision. If title is granted, it may be registered immediately.

Even though the rate of land invasion is high, and the majority of land titles in Honduras are either not registered or not up-to-date in the registry system, very little land in Honduras has been acquired by adverse possession. Among land that is not registered,

¹⁰⁶See Código Civil, Art. 2286.

¹⁰⁷See Código Civil, Art. 2287.

¹⁰⁸See Código Civil, Art. 2288.

about two-thirds passes by trade or sale, and the remaining third is acquired by inheritance. Most land transfers proceed according to customary systems in which local leaders or respected members of the community witness transactions.¹¹⁰

IX. DISPUTES

A. Mechanisms

In Honduras, registry users who disagree with an examiner's decision or with some other action taken by the RPIM may ask the Registrar to review it. Alternatively, he may, within 30 days, file a "Queja" (Complaint) against the Registrar in the Court of Appeals. The legal basis for such claims comes from Article 2320 of the Civil Code, as neither the Registry Law, nor the registry regulations specifically grant registry users general standing to file complaints in court.¹¹¹ The decision of the Appeals Court is final; no appeal from it may be taken. However, if the registry user remains unsatisfied, he may challenge the Appeals Court's ruling using an "amparo," invoking Article 183 of the Constitution, in which case his plea will be heard by the Supreme Court of Justice.

Court challenges to registry decisions follow the ordinary process described in the Honduran Code of Civil Procedure. The first step is the filing of a complaint, which must state a valid cause of action, the evidence to be presented, and the names and addresses of those who must be served.¹¹² Defective complaints are dismissed by the court.¹¹³ Once served, the defendant (the Registrar) must file an answer.¹¹⁴ Claims to prevent the case from proceeding may be raised.¹¹⁵ If not dismissed, the case proceeds to the proof stage

¹⁰⁹See Código Civil, Art. 2331.

¹¹⁰In customary systems, "ownership" is established and preserved by actual possession and use, while transactions are substantiated by respected members of the community. A formal registry system is hence unnecessary.

¹¹¹Article 2320 allows parties whose inscription applications have been denied to appeal the denial. The courts, however, have allowed claims pertaining to other registry actions and decisions, using this Article to support the party's standing.

¹¹²See Código de Procedimientos, Arts. 261-262.

¹¹³See Código de Procedimientos, Art. 262.

¹¹⁴See Código de Procedimientos, Arts. 264-266. Failure to file an answer will result in immediate progression to the decision stage. See Código de Procedimientos, Art. 292.

¹¹⁵See Código de Procedimientos, Art. 286.

where evidence is presented.¹¹⁶ Afterward, the parties present to the judge alternative proposed findings of fact and requested rulings.¹¹⁷ The judge then renders a decision.¹¹⁸

In a dispute involving a creditor's rights where the debt security is at risk, a summary procedure is available to prevent its destruction or loss. Establishing a receivership, attaching property in bankruptcy cases, and obtaining temporary injunctions are examples of actions for which the expedited procedure is available.¹¹⁹

In relatively common disputes involving the RPIM's assessment of taxes and fees due for the completion of an inscription, the registry regulations expressly give disgruntled users the right to contest the RPIM office's determination.¹²⁰ The party has three days from the date he/she is notified of the determination to file a complaint with the RPIM office.

With regard to land-titling programs, INA itself hears disputes brought by parties affected by its actions. This administrative dispute-resolution mechanism, in which a government agency acts as a "court" of first instance is unique in Central America, where dispute resolution has generally been the sole province of the Judiciary. INA leadership and staff have expressed concern about the agency's bifurcated role, wondering how the agency which takes a decision can possibly be impartial in a review of it.¹²¹

B. Illustrations

1. Exemptions from the Land Transfer Tax

The BCIE wishes to build a new office building in Tegucigalpa. After purchasing the parcel on which it plans to build, the BCIE files its inscription application. The RPIM office, however, refuses to process the application without a receipt of payment for land transfer taxes. The BCIE insists that it is exempt from the payment of such taxes.¹²²

¹¹⁶See generally Código de Procedimientos, Arts. 301-327 (providing relevant rules).

¹¹⁷See Código de Procedimientos, Arts. 418-419.

¹¹⁸See Código de Procedimientos, Arts. 419, 427.

¹¹⁹See generally Código de Procedimientos, Arts. 447-654.

¹²⁰See RTI, Art. 56.

¹²¹It is worth noting that "administrative law" is well-developed in other countries where agencies are often required to review their decisions when complaints are brought by interested parties. Arguments in favor of such a system include: it saves private parties time and money; it enables the agency to correct its own errors, thus avoiding negative publicity; and it may increase the "public legitimacy" of the agency.

¹²²A number of other agencies, including CONADI and BANADESA, make similar arguments and find themselves in similar disputes.

According to Honduran tax law, the BCIE is not exempt from the payment of the tax. Only the state and its agencies, departments, and municipalities are exempt from payment when the transaction in question is for "public benefit."¹²³ These international organizations, however, which are exempted from a number of other taxes by international accords and national law insist the Land Transfer Tax cannot be legally applied to them. It remains unclear how such a dispute is to be resolved.

2. Intra-Agency Coordination and Cooperation

Lack of coordination appears to be the principal problem facing the Honduran registry system. The DEC, municipal cadastres, and registries are not integrated and very little information sharing occurs between them. Likewise, INA, the agency in charge of implementing titling initiatives, maintains its own registry of property. The net result is inefficiency, duplication of information, difficulty in obtaining information, and greatly reduced tenure security.

¹²³See Ley sobre Impuesto sobre Tradición de Bienes Inmuebles, Art. 8. The law also recognizes one additional exception to the Land Transfer Tax: a sale of a minor's property, approved by a judge, necessary to meet the minor's "real and immediate needs."