

**PHILIPPINES AUSTRALIA LAND
ADMINISTRATION
AND MANAGEMENT PROJECT**

**PARCEL-BASED SYSTEMATIC LAND
RIGHTS REGISTRATION: OPTIONS
WITH REFERENCE TO COMPARATIVE
EXAMPLES FROM OTHER
JURISDICTIONS**

DECEMBER 2002

REPORT C12



Philippines-Australia Land Administration & Management Project

**Administrative, Parcel-based Systematic Land Rights Registration: Options for
The Republic of The Philippines With Reference to Comparative Examples from
Other Jurisdictions**

Table of Contents

1	Abbreviations and Terminology	3
2	Executive Summary	4
3	Introduction, Methodology and Acknowledgements	10
4	Administrative Systematic Land Titling: Options for the Republic of the Philippines with reference to examples from other jurisdictions	15
4.1	Introduction to the Issues.....	15
4.2	Issues, Comparisons and Options	15
4.2.1	Institutional Issues, characteristics and options	16
4.2.2	Fundamental Legal Issues, characteristics and options	18
4.2.3	Administrative issues, characteristics and options.....	25
4.2.4	Fundamental Project Management Issues.....	28
4.2.5	The Process towards first registration (general): issues, characteristics and options.....	30
4.2.6	The Process towards first registration (specific): issues, characteristics and options.....	33
4.2.7	First (original) registration: issues, characteristics and options	53
5	Brief Summary	58
6	References.....	59
7	Annexures	59

1 Abbreviations and Terminology

The author has attempted to limit the use of abbreviations in the Report because they can act as a form of exclusionary language. They are used, however, where the abbreviation is commonly understood or where it is defined on the same page.

Common abbreviations are listed below.

CRS	Community/Customer Relations Service
CA	Commonwealth Act (of the Philippines)
CIM	Cadastral Index Map
DENR	Department of Environment and Natural Resources
EO	Executive Order
HRD	Human Resource Development
LRA	Land Registration Authority
PA LAMP	Philippines-Australia Land Administration & Management Project
PENRO	Provincial Environment & Natural Resources Office
PD	Presidential Decree
ROD	Registry of Deeds
RA	Republic Act (of the Philippines)
SAT	Systematic Adjudication Team
TA	Technical Assistance Team
TA Report	A Report prepared by the Technical Assistance Team of the LAMP
TOR	Terms of Reference
World Bank	The International Bank for Reconstruction and Development

2 Executive Summary

Overview

This Report considers options for potential consideration in respect of Phase II of the Philippines-Australia Land Administration & Management Project (PA LAMP). In particular, it considers options for the carrying out of a process of the systematic parcel-based administrative registration of land rights in the Philippines. These options are proposed against a backdrop of experiences in other countries; not for the purposes of supplanting a foreign legal framework on the Philippines but merely for the purposes of looking at the lessons drawn from those experiences.¹

Such a comparative review, however, requires reference points for the options provided. Therefore, this Report provides its options on the basis that a systematic parcel-based administrative land rights registration process has certain specific characteristics. Although open to debate, those characteristics are, for the purposes of this Report:

- security of tenure
- clarity and simplicity
- fairness
- timeliness
- accessibility for all
- affordability; and
- sustainability

On this basis, a number of Options are proposed in respect of specified issues related to land rights registration, generally, and systematic parcel-based land rights registration more specifically. It should be noted, however, that this Report considers the process up to first (or original) registration. It does not consider the issues associated with dealing in subsequent transactions (because they are considered in another report). Furthermore, it does not cover the special issues associated with the rights of indigenous peoples.

Generally speaking, the countries for comparison include:

- The Republic of the Philippines
- Thailand
- The Republic of Indonesia
- The Lao People's Democratic Republic (Lao PDR)
- Cambodia
- Australia
- Malaysia

The reasons for choosing these countries for comparison relate to their regional proximity, their practical experiences and even their legal systems. For example, Thailand, Indonesia and Lao PDR have each recently experienced (or are experiencing) systematic land rights registration projects. Cambodia is in the process of operating a pilot project for systematic registration. Yet each operates on the basis of a 'negative'

¹ Refer to Terms of Reference (TOR) at Annexure 1.

registration system (but with positive elements in some cases)². Malaysia and Australia, on the other hand, both operate under a land rights registration system known commonly as the Torrens System, a 'positive' system, similar to that operating in the Philippines. These regional, practical and legal relationships mean that the countries studied can provide a more meaningful and relevant guide for the Philippines in considering the options proposed.

The Issues to which the actual Options relate were arrived at after general consideration of the legal and administrative matters to be considered in developing a systematic administrative land rights registration process with the characteristics mentioned above. They were the result of consultation and development within the Technical Assistance Team and from both personal and workshop discussions with stakeholders. Those issues are divided into 3 main categories:

- Fundamental Issues (covering institutional, legal, management and administrative matters of relevance)
- The process towards first (original) registration of land rights (from the general to the specific) and
- First (original) registration issues

The Options that relate to the land rights issues discussed in this Report are arrived at on the basis of international comparison and analysis. In turn, those options are characterized and analyzed on the basis of their advantages and disadvantages. At the end of the day, however, the options are merely options for consideration. They are not intended to be recommendations as such, rather, they are designed to promote discussion with the view to implementing a systematic parcel-based administrative land rights registration process with the characteristics identified above.

Issues and Options

The Options respond to specific Issues that are considered to be important in the establishment of systematic parcel-based land rights registration process. They are arrived at on the basis of international experiences in systematic administrative land rights registration are as set out below. A Table of Country Comparisons (comparing individual country responses to the listed Issues) appears as **Annexure 3**. A Table of the Options, along with their corresponding advantages and disadvantages appears as **Annexure 4**.

Following is an overview of the Options provided in this Report.

Fundamental Issues (institutional)

Fundamental institutional Issues are dealt with relatively briefly because they have been considered in another Report.

- Establish one primary agency responsible for land registry issues

² A 'negative' system is one where the registration of a land rights is not necessarily protected against unregistered rights. In that sense there is no incentive to register rights. A 'positive' system, however, is one (usually subject to certain exceptions) in which registered rights are protected against unregistered interests – even where those unregistered interests were created first.

- Establish institutional structures within that single agency that promote a culture of anti-corruption
- Create administrative processes within that single agency that discourage corrupt practices

Fundamental Issues (legal)

- Repeal patchwork of legislation relating to land rights registration and re-write/rationalize/consolidate into fewer, more coherent laws
- Create one process of land rights registration
- Establish a division responsible for coordinating legislative development with appropriate extra-agency institutions
- *The definition of Land could include all fixtures although retaining the flexibility to acknowledge separate ownership where those circumstances are clear*
- All surveyed land that is the subject of registrable rights should fall within the one land rights registration system
- Disconnect ancillary government/agency policy goals from pre-requisites to land titling processes or title issuance (eg compliance with taxing provisions or land ownership area limitations in agrarian reform programs etc should not be a pre-requisite for first rights registration)

Fundamental Issues (management)

- The process must aim at providing land titles at a cost that falls within manageable levels
- An assessment must be made of the potential cost for training and education of staff in the process
- The initial process of first (original) registration by the government could be subsidized

Fundamental Issues (administrative)

- Retain a parcel based system
- Paper-based system with the flexibility to upgrade to a digital system in the future
- Maintain records in paper form for the immediate future although providing flexibility for the process to incorporate digital technology in the future
- Rationalize documents required to be collected and 'registered'

- Decentralize land titling process but limit only to areas that have appropriate regional infrastructure and expertise
- Restrict government services to survey, adjudication and registration of land rights (i.e. do not extend it to conveyancing services – although advice in respect of procedural issued should be given)
- Remove mandatory requirement that senior positions be filled by lawyers

Towards First (Original) Registration of Rights (General)

Who Conducts Systematic Adjudication of Rights and How?

- *Formally recognize (in regulation) the existence of Systematic Adjudication Teams*
- *Limit the number of SAT officials to realistic levels*
- *Where possible SATs could be located with local communities that are the subject of the systematic adjudication process*
- *Collection of physical data and land rights data could happen simultaneously*
- *The SAT's Role Could be Stated in Regulation*
- *The general duties of SATs could be clearly articulated*
- *SATs should not be liable for mistakes in the systematic adjudication process*

What is the Process for Systematic Adjudication?

- *Provide for a formalized General Notice of the intention to undertake systematic registration of land rights (ie the process could be enshrined in law)*
- *Provide for a formalized Specific Notice (at a regional level) of the intention to undertake systematic registration of land rights*
- *Formalize (in regulation) a community consultation process to inform the community about the systematic registration process*
- *Ultimately permit natural and juridical persons to apply for rights recognition (although this is not currently possible for free patent)*
- *Provide a flexible framework for the recognition of land rights*
- *The ability for persons to object to the systematic adjudication process could be formalized in law but giving SATs limited powers*
- *Reports of SATs could be verified at a local (Barangay) level before formalization at regional land office*

- *Nature of applicant's rights could be determined (after recommendation of SAT) at a regional PENRO office level*
- *Objection period be permitted in respect of decision as to nature of rights and recommendation by rights formalizer (eg regional PENRO Office)*
- *Land Titles could be produced at a regional level (eg the regional land office)*
- *Titles could issue from Regional Land Offices*
- *Issue title in duplicate and provide copy to person entitled to hold it*

What is the result of systematic parcel-based rights registration?

- *Limit the number of 'ownership' rights available for registration*
- *Permit a Form of Provisional Title Associated to Issue in Certain Circumstances*
- *Permit the grant of leasehold interests from the State*
- *Third party rights in existence at the time of systematic registration process should (with few limitations) be registered on the first Title*
- *Some short-term third party rights could be protected without the need for registration*
- *Restrictions of dealing in land after the first registration could removed*

What type of registration system can apply and what are its characteristics?

- *Security afforded by the 'positive' Torrens System of rights registration could continue*
- *Retain a parcel based system*
- *Registration of rights could continue as the formal way to recognize rights*
- *Ensure that the process of registration is the defining moment for the conferral or land rights*
- *Establish a Land Parcel Register Index*
- *Maintain records in paper form for the immediate future although providing flexibility for the process to incorporate digital technology in the future*
- *Duplicate form of title document should not be re-written but either produced in duplicate or photocopied for recording purposes*

- *Information on the title could be limited to the critical information*
- *Include instructions on title instruments on basic requirements for the trade in land rights*
- *There could be no technical description of the land included on the Title instrument*
- *Retain ability for co-ownership of land rights*
- *Permit discretion of Land Office to correct mistakes on the Title instrument or register administratively*
- *No liability for land office staff acting honestly and in good faith*

The broad thrust of these options is not only to confirm the rights of land holders and bring them within a land rights registration system but to lay the ground work for keeping them within the system. A more detailed analysis of this last aspect, however, is contained in another report³.

The next step of the process now is for these options to be considered and their applicability from a social, legal and political perspective to be evaluated. This process of evaluation will occur early in 2003. At that time, a clearer picture of the direction of the process is likely to evolve.

It should finally be noted that this Report is unusually brief considering the scope of the subject matter. Nevertheless, the author was instructed to limit its length. Therefore, much of the background research in relation to the comparative studies is included in Annexure 3.

³ Mr. David McDowell, Land Registration Adviser, is currently preparing a report on this aspect of the process.

3 Introduction, Methodology and Acknowledgements

Introduction

The purpose of this Report is to investigate potential options for Phase II of the Philippines-Australia Land Administration & Management Project (**PA LAMP**). In particular those options relate to ‘administrative’ systematic rights registration mechanisms (as distinct from ‘judicial’ rights registration mechanisms).

‘Administrative’ systematic parcel-based land rights registration comprises four primary ideas. First, the primary object for consideration is the land parcel. Secondly, rights in land are conferred by registration, usually on or in an official register of similar rights. Thirdly, the conferral or recognition of those rights, in a formal (legal) sense, happens at an administrative level; that is, the rights are formalized by the administrative action of a government employee. Finally, the recognition and registration of the rights occurs in a planned and systematic process with the aim being to incorporate as many rights holders as possible at one time over a given area.

‘Judicial’ land rights registration, on the other hand, can incorporate ideas one, two and four mentioned above in respect of ‘Administrative’ systematic parcel-based land rights registration. Critically, however, the rights are conferred by an Order of a Court of competent jurisdiction following an application for the conferral of such a land right and *not* simply by administrative action. There are few jurisdictions that the author is aware of that employ a Judicial System. And one of those is The Republic of the Philippines (which itself adopted the system of the State of Massachusetts in the United States of America in 1902⁴).

Administrative systematic land rights registration has and continues to occur in many jurisdictions, particularly in the Developing World. It aims quickly to confer rights often to the poor in the belief that, following neo-liberal economic models, the conferral of clear and secure land rights, among other things, will assist in the alleviation of poverty.

Although there are many similarities in approach between jurisdictions there are often as many variations between approaches; usually reflecting the unique circumstances of each jurisdiction.

The Philippines employs a complex set of land laws and land rights recognition/grant systems. And the complexity has resulted in uncertainty in land rights for the poor despite the fact that the systems, generally speaking, are positive systems (in some cases referred to as a Torrens System) that purport to provide clear and secure title. By looking at jurisdictions outside of the Philippines that have and continue to employ systematic land rights registration systems, some insight may be obtained for the purposes of providing ideas or options for the Philippines Government in its strategy of poverty alleviation.

⁴ The Philippines law is known as *The Land Registration Act* (Act No. 496, November 6, 1902); largely taken from the Massachusetts *Land Registration Act* of 1898 (Refer to Cortez, *FM Manual on Cadastral Hearing Procedures*, LAMP 2001.)

This Report fits within an overall Project Plan and structure. That administrative structure is detailed in Annexure 2. For the purpose of progressing Project goals, the Report falls within Output 2.2.

The Contractor shall, in coordination with the responsible agency and government and non-government stakeholders, identify and evaluate all methods that have potential for the effective conduct of land titling in the Philippines and recommend improved methods that are appropriate, more effective, more efficient, affordable and sustainable. The methods include direct customer and wider community involvement in the procedures...⁵

More particularly, this Report is a component of what is known as “Deliverable 21”. This deliverable is described as the “identification of all survey control, mapping and land titling options...”⁶

It will investigate some of the methodologies not supported by the current law (including the use of photomaps, the introduction of a simplified administrative titling method and the use of provisional titles). It should result in the development of a set of control, [Cadastral Index Map] CIM production and mapping and the land titling procedures for the implementation during the next phase of the project. *It will also draw on the experience from other international projects and jurisdictions to identify options that would enhance an expanded land titling programme in Phase II.*⁷

This Report is focused on the italicized words in the outline of Deliverable 21 noted above; namely, “draw on the experience from other international projects and jurisdictions to identify options that would enhance an expanded land titling programme in Phase II”. In particular, the Terms of Reference (**TOR**) in respect of the aspect of Deliverable 21 to which this report relates is focused on the “...documentation of the titling options and the comparative advantages and disadvantages...” (Refer to **Annexure 1**)

Methodology

The methodology of this Report is based in “Options” as distinct from “Recommendations”. It is recognized that, ultimately, it is a matter for the peoples of the Philippines to determine appropriate recommendations that are suited to their own political, cultural and economic circumstances.

assumptions about systematic land rights registration processes

This Report also relies on certain assumptions in relation to systematic land rights registration and how it may work in respect of country development through poverty alleviation. Although perhaps over simplified, those assumptions are that the system should:

- offer security of rights
- provide clarity and simplicity
- be fair

⁵ PA LAMP Technical Assistance Annual Plan 2001-2002, December 2001.

⁶ Design of TA Activities in Output 2.2, November 2002 at 6.

⁷ Design of TA Activities in Output 2.2, November 2002 at 6.

- be timely
- be accessible to all
- be affordable; and
- be sustainable⁸

Hence most of the options provided look to these points as a reference. Where the options provided do *not* do this, it is generally for the purpose of providing contrast.

comparative country choice

The nature of a comparison of country approaches requires, of course, countries to compare with. Although there is no real need to restrict a study to any specified group of countries, the comparisons have been generally (but not always) limited to such a group. Therefore, for general purposes, the main countries for comparison (as side from The Republic of the Philippines, which is included as a point of reference) include:

- Thailand
- The Republic of Indonesia
- The Lao People's Democratic Republic (Lao PDR)
- Cambodia
- Australia
- Malaysia

The reasons for choosing these countries relate to their regional proximity, their history, their social/practical experiences and even their legal systems. For example, Thailand, Indonesia and Lao PDR have each recently experienced (or are experiencing) systematic land rights registration projects. Cambodia is in the process of considering the same thing. Yet each operates on the basis of a 'negative' registration system (but with positive elements in some cases)⁹. Each has also had a colonial past and now faces of population increases have resulted in government land policies that often place limitations either on ownership or dealing in land rights that are based in ideas of 'land reform'.¹⁰

Malaysia and Australia, on the other hand, both operate under a land rights registration system known commonly as the Torrens System, a 'positive' system, similar to that operating in the Philippines. These regional, practical and legal relationships mean that the countries studied can provide a more meaningful and relevant guide for the Philippines in considering the options proposed. It must be said, too, that country choice for comparison has also been limited on the basis of availability of *useful* materials that are capable of being used for reference purpose.

practical issues of report structure

The Report is broken down into a series of 'Issues' derived from broader Land rights registration concepts. The background of each Issue is discussed and then considered

⁸ These notional criteria appear in a draft paper being prepared by Mr. Tony Burns for a World Bank study reviewing and comparing land registries.

⁹ A 'negative' system is one where the registration of a land rights is not necessarily protected against unregistered rights. In that sense there is no incentive to register rights. A 'positive' system, however, is one (usually subject to certain exceptions) in which registered rights are protected against unregistered interests – even where those unregistered interests were created first.

¹⁰ Refer to Brits et al. *Comparative Study of Land Administration Systems* Paper presented at World Bank Regional Workshop of Land Issues, Cambodia, 4-6 June 2002 at 2.

in the context of international experience (where known). Occasionally, new ideas are considered too. The potential characteristics associated with each option are then detailed. Finally, the option's advantages and disadvantages are provided. The purpose of this is not necessarily to recommend an approach although this may be the necessary implication given unappealing alternatives.

The Options analysis begins with a consideration of some larger, conceptual issues. First are institutional issues relating to Land rights registration. This is not intended to be the main thrust of this Report so these issues will be dealt with briefly. This is followed by options arising from some fundamental legal issues relating to land rights registration and some project management issues. Finally for this section, broader issues relating to administrative systems are considered.

General issues related to first or 'original' registration of rights in respect of individual parcels of land start the next section. These are followed by specific issues related to first registration of rights. These sections provide more detail in respect of the actual processes associated with systematic land rights registration. Hence, they provide more detailed, technical options for consideration. These points are paraphrased in **Annexure 4**.

Issues arising out of the actual first registration of rights are considered in the last substantive section.

Finally, some of the main issues are summarized in the last section.

It should be noted that this Report focuses primarily on processes leading to first or 'original' registration of rights; that is, the process of systematic registration of land rights. It does not (except where there is necessary overlap) consider processes relating to land rights registration issues after original registration. For example, this Report does not go into detail concerning the registration of subsequent interests in land. That, and related issues, are to be covered in separate Reports by others. Neither does it cover technical survey-related issues or issues directly affecting indigenous rights.

It was asked of the author during one Workshop: *"what systematic registration model will you be recommending for the Philippines? Will it be Thailand's? Or, perhaps, Laos?"* Again, it should be noted that the purpose of this Report is not to provide recommendations and certainly not to force the author's view of "appropriate" foreign models to be applied in the Philippines. As noted, the task is to provide *options*. Furthermore, the author could not recommend the wholesale transplantation of a foreign systematic land rights registration process to the Philippines. Such a response would be bound to fail. And this is the point that leads us to one further presumption made in this Report. Often one finds solutions to problems one faces within the system itself; relying on the particular strengths within that system and perhaps discarding or modifying the weaknesses. The experience of other jurisdictions can be enlightening in some cases but rarely the solution in full.

Acknowledgements

This Report was prepared in an unusually short timeframe and, therefore, in particularly taxing circumstances. The fact that this Report actually made it to print at all is due in no small measure to my colleagues in the Technical Assistance Team; in particular, Mr. Felino Cortez and Mr. Roel Atienza. The members of the Technical Assistance Team

generally also provided invaluable help in the formulation of many of the ideas contained here. And to those who attended workshops and provided their honest and frank opinions about a number of these options, I am eternally grateful.

4 Administrative Systematic Land Titling: Options for the Republic of the Philippines with reference to examples from other jurisdictions

4.1 Introduction to the Issues

The issues considered in this section of the Report relate to Land rights registration procedures. The issues are ordered in the following manner:

- Fundamental Issues (covering institutional, legal and administrative matters of relevance)
- The process towards first (original) registration of land rights (from the general to the specific) and
- First (original) registration issues

The issues appearing under each category are considered to be the most relevant ones pertaining to land rights (in a general sense) and their systematic registration (in a specific sense).

The “Fundamental” issues may be considered an overly broad response to the specific issue of systematic registration of rights. Issues relating, say, to institutional change or law reform are over-arching issues that should and are considered elsewhere.¹¹ Nevertheless, their potential impact on the processes of the parcel-based systematic registration of rights cannot be totally ignored in the current context. Furthermore, in some cases, options are considered that may not have been raised in other reports. But the consideration of these issues is limited because of the existence of those other reports.

4.2 Issues, Comparisons and Options

The issues set out in this section have been arrived at by discussion both from within and without the Technical Assistance Team and they have varied over the course of time (particularly as a result of workshop or personal discussions). The issues finally appearing here, however, are not necessarily exhaustive but they do graduate down to a level of detail at a practical level that is more than adequate to provide meaningful options without appearing overly to dictate further discussion.

Aside from the body of this text, the issues appear in an abbreviated form within two annexures to this Report. The first is a Table of Country Comparisons (**Annexure 3**) that sets out in brief each Issue and compares the responses of a set of Countries to that issue.¹² Generally speaking, that set of countries is fixed and includes:

- The Republic of the Philippines
- Thailand
- Indonesia
- Cambodia
- Lao People’s Democratic Republic (Lao PDR)

¹¹ For example, PA LAMP *Land Laws and Regulations Policy Study Final Report*, July 2002 and the PA LAMP *Policy Studies Integration Report*, August 2002.

¹² The bulk of the research associated with this Report is contained within this Table. All comparisons are not provided for under each issue in this substantive part of the Report. Comparisons are used selectively for the purposes of brevity.

- Australia and
- Malaysia

The second Table contained within **Annexure 4** relates the issues to the options set out below. It also characterizes the options and provides a brief analysis of the advantages and disadvantages (or difficulties) likely to be associated with option. ‘Advantages’ in respect of an option are those reasons that are likely to support the systematic land rights registration assumptions mentioned above.¹³ ‘Disadvantages’ are the opposite; although, some may consider particular advantages to be disadvantages and *vice versa*. For example, the concept of government decentralization of administrative powers may be seen as advantageous because it can reduce bottle-necks in administrative procedures. Yet others may consider it to be a disadvantage insofar as it may lead to loss of control of agreed government policies or even corruption.¹⁴

4.2.1 Institutional Issues, characteristics and options

Issue: *Institutions involved in process of land administration*

Institutional issues associated with land titling have been the subject of discussion in the earlier *Land Laws and Regulations Policy Study Final Report* (Volume 1, July 2002) (*Land Law Policy Study Report*). In relation to the specific issue of agency responsibility, the author concurs with the findings of that earlier report as to the proposal of a rationalized single agency responsible to undertake initial systematic adjudication of rights¹⁵. This position is supported through international experience; particularly in Indonesia, Thailand and Laos¹⁶ where primary responsibility for first (original) registration is conducted by one agency.

It can be anticipated, however, that any rationalization of government responsibilities into one agency is likely to be met with strong resistance from the agencies affected. Workshops held with members of government stakeholder groups during the period when this Report was prepared showed clear lines of resistance between differing views on the interpretation of responsibilities and the law. Even if a single agency is achieved it may be the case that perceptions of functions and responsibilities may be longer to change. The reasons for these entrenched positions probably relate to issues of self interest more than moral conviction. Similar entrenched positions also arise in relation to the perceived importance of retaining a ‘judicial’ process of rights confirmation within many members of the legal profession¹⁷.

Options: *Establish one primary agency responsible for land registry issues*

Character: The character of such a proposal requires the streamlining of a number of existing administrative structures and the end to needless duplication as set out in the *Land Law Policy Study Report*.

¹³ That is, they are likely to support the principles of security, clarity and simplicity, fairness, timeliness, accessibility, affordability and sustainability.

¹⁴ Although it should be noted that a centralized systems hardly guarantees non-corrupt practices.

¹⁵ *Land Laws and Regulations Policy Study Final Report* (Volume 1, July 2002), recommendation 1.1.8 at 4.

¹⁶ It should be noted in respect of Lao PDR, however, that Land Titles are currently required to be signed by the Head of the Land Office *and* the regional Director of Finance (although both within the Ministry of Finance) sometimes leading to substantial bottle neck.

¹⁷ This is discussed in more detail below.

Advantages: The advantages with this approach are as set out in the *Land Law Policy Study Report* and it is not proposed to re-address those issues here other than to say that needless duplication will be avoided. Following from this, the process of land rights registration is likely to be more transparent, more timely and more cost effective. Transparency, ultimately, makes the government more accountable for its decisions.

Disadvantages: The difficulties associated with this approach are that the government stakeholders are likely to be resistant to change. And even where formal change occurs at a legal level, changes in institutional culture are unlikely to happen quickly.

Issue: Anti-corruption ethic

One of the most significant issues affecting government in general in the Philippines is the perception of systemic government corruption. It is alleged that such corruption is significant with the current land administration process and anecdotal evidence abounds about this. But such problems are common across the developing world; most of the blame being laid at the feet of low civil service salaries and simple lack of appropriate moralities with those involved. If this is the case, then it seems unlikely that there is much likelihood of solving this problem with structural change at an institutional level. Similar problems are faced throughout the region with Indonesia recently being singled out as one of *the* most corrupt countries in the world¹⁸.

Yet recent studies are suggesting that connection between corruption and low civil service salaries (for example) are only *weak*¹⁹ at least in the Indonesian context. Furthermore, there are connections between lower corruption and the existence and enforcement of organizational rules of conduct²⁰. If such results can translate into the Philippines context, it means that issues like corruption may be dealt with at an institutional level rather than merely being consigned to systemic problems with no solution except at a whole-of-government level. Therefore, if appropriate, consideration could be given to establishing an institutional structure and institutional ethic with enforceable rules of conduct that support an institutional culture of anti-corruption.

Options: *Establish institutional structures within that single agency that promote a culture of anti-corruption through written rules and enforcement along with meritocracy in opportunity*

Character: The institutional character would need to be considered very carefully and is not within the scope of this Report. If appropriate to the Philippines context, the government could consider a structure with the development of an institutional ethic of anti-corruption.

Advantages: The advantages of eliminating corruption are obvious. The true cost of transactions is less, the process becomes more transparent. This leads to trust

¹⁸ Transparency International's *Corruption Perception Index 2002*, ranks Indonesia as equal 96th of 102 countries in terms of perceptions of corruption. That ranking means that Indonesia is perceived to be one of the most corrupt countries in the world. In the same Report, The Philippines was ranked equal 77th along with Pakistan, Romania and Zambia (at 5).

¹⁹ Partnership for Governance Reform in Indonesia *A diagnostic Study of Corruption in Indonesia* (Final Report February 2002) at 36.

²⁰ Partnership for Governance Reform in Indonesia *A diagnostic Study of Corruption in Indonesia* (Final Report February 2002) at 39-40.

within the system, itself leading to greater use of the system by those the system is in place to serve.

Disadvantages: Disadvantages include requirements for the outlay of funds to establish appropriate institutional structure, the likelihood of resistance to change from 'institutionalized' practices and the need for a particularly strong commitment to overhaul of current practices.

Option: *Create administrative processes within that single agency that discourage corrupt practices*

Character: Appropriate ways of dealing with corruption at an institutional level need to be considered carefully. They may include the need to establish, for example, an oversight division to draft and enforce rules of conduct. In addition, a formal complaints process could be initiated so that members of the public would have somewhere to turn to where criminal conduct is displayed by lands office staff. Similar public Notices informing the public that staff are committing a crime if they ask for payment may also be an appropriate option to deal with this issue.

Within a land registry it may require the publication of fees and fee structures within Land Offices so that members of the Public may see what the appropriate fees to pay are. Some members of the Registry of Deeds indicated at a workshop that such fees were not made available for the public to view because they considered that notice of the fees or how they are calculated would only lead to confusion.

Advantages: The advantages of this approach would be essentially the same as those mentioned above. But simple administrative processes as publishing fees within offices (and making that mandatory) are relatively cheap and simple.

Disadvantages: The difficulties associated with these options are that they are heavily reliant on the development and enforcement of appropriate procedures. Without this government commitment, the process is likely to fail.

4.2.2 Fundamental Legal Issues, characteristics and options

Issue: *Existing Legislative Framework (clear and consistent)*

The current legislative framework in relation to land administration is far from clear. It is complex. An earlier Report has already detailed the fact that there are 16 pieces of legislation or administrative orders relating to the disposition of public land.²¹ Although it is not unusual for fundamental legislation (like Torrens System legislation) to be quite old²², in the case of the Philippines some of that legislation is now anachronistic serving purposes that no longer seem relevant to current needs²³. Once again, the author agrees with the observations made in an earlier report to the effect that a new process

²¹ PA LAMP *Land Laws and Regulations Policy Study* (Final Report Volume 1) Annexure 4 at 56.

²² For example, the Torrens System legislation in New South Wales, Australia, (*Real Property Act*) dates back to 1900. In South Australia, the Torrens System legislation (*Real Property Act*) is dated 1886.

²³ Refer to later comments in respect of the free patent and judicial titling processes outlined in *The Public Land Act* 1936 (CA 141).

could be developed that more accurately reflects the reality of land rights in the Philippines.²⁴

In particular, this seems to be the case with some parts Commonwealth Act 141 (*The Public Land Act*, 1936) which establishes four classes of disposition:

- Homestead settlement
- Sale
- Lease
- Confirmation of imperfect or incomplete titles (by judicial legalization or free patent).²⁵

The operation of this law has been extended over the years with the last extension being formalized by the President on 13 November 2002.²⁶ In doing so, however, little consideration seems to have been had for the relevance of the systems either for the inherent rights of peoples on the land or the original policy context of the law and its application today. This must be considered carefully in the context of proposed trialling of administrative (free patent) titling procedures in 2003. For example, so-called 'recognition' of rights under *The Public Land Act* is ambiguous. A 'free patent' is, from one perspective, in the nature of a *grant* from the government. From this view, a person applying for the Free Patent is essentially being asked to acknowledge that he or she had previously no formal entitlement to the use of the land and that it was, in fact, previously Public Land. From another perspective, however, Section 11(3) of the *Public Land Act* speaks of Free Patent (and 'judicial legalization') as the '*confirmation of imperfect or incomplete title...*' [emphasis added].

A confusing array of possibilities unfolds in seeking to obtain 'title' to land. Under a Free Patent (*The Public Land Act* (CA 141)) the underlying land is considered to have been "public" land or "lands of the public domain" which "control for survey, classification, lease, sale or any other form of concession or disposition and management of lands of the public domain" rests with the executive arm of government²⁷. It seems implicit, then, that once an application is made under this process, it is difficult for an applicant subsequently to make a claim that the land is 'private' under the *Land Registration Act* (No. 496) (if he or she fails to obtain a Free Patent under the provisions of the *Public Land Act*). Similarly, if a respondent to a Petition from the Government made under the Cadastral Act (No. 2259)²⁸ fails to make out his or her case, "the property is declared public land and this judgement is conclusive and *res judicata*."²⁹

One may argue that this is merely a technical point given that the applicant is still being granted the same land back. But this is not quite accurate. First, there are significant risks to an applicant/respondent if that *legitimate* claimant, for whatever reason, cannot make out his or her case to a prescribed standard of proof. Even assuming that a Free Patent *is* issued, however, there are significant differences in immediate rights. The

²⁴ PA LAMP *Land Laws and Regulations Policy Study* (Final Report Volume 1) at 2.

²⁵ *The Public Land Act*, 1936 (CA 141), section 11. For unregistered land, disposition can also occur by deed registration in accordance with section 194 of the *Administrative Code* (reference should also be considered with other ancillary legislation). These provisions are covered in more detail in the "Systematic Registration Adviser's Final Report" dated December 2002.

²⁶ The extension has not yet been gazetted.

²⁷ Section 4 *Public Lands Act* (CA 141) as amended.

²⁸ 11 February 1913. This is the process currently being trialled by LAMP (the free patent process not yet having been trialled).

²⁹ Pena and Pena *Registration of Lands Titles and Deeds* at 495.

Free Patent, in particular, has limitations attached to it such as a restriction in dealing with the land for a period of 5 years³⁰. A judicially approved title, however, brings with it immediate and full rights of alienation. The reasons for this difference seem to be historical. They seem to be based in the land reform policies of the 1930 where *grants* of land were made for the land's *use* (although it may be the case that these *grants* in fact reflected existing occupation). The nature of the free patent was thought to encourage the use of land while discouraging speculation. This policy was further underscored by the creation of a "re-purchase right" in favour of the applicant for a Free Patent or Homestead Patent who subsequently conveyed the property to another – effectively amounting to an unregistered encumbrance in the nature of a 'call option' in favour of the seller of the original grant.³¹ The Free Patent's restriction on land grant size, alienation, along with the grantee's re-purchase right, strike at one of the Project goals of fostering efficient land markets. Even if the process continues, there are potential risks to the rights of *legitimate* claimants if they fail to provide the necessary proof to justify their claims.

For these reasons, trialling of administrative titling by use of the Free Patent provisions should be considered carefully before implementation to ensure that all persons are thoroughly notified of their rights, including the potential limitations of the process. These are persuasive reasons against free patent titling and seeking a process that is clearer and more consistent in relation to land rights.

It should be noted, however, that this does not mean that judicial titling through the process outlined under the *Cadastral Act* (No. 2259) should be preferred. Indeed, in the context of the current proto-type project, the process of judicial titling has even more problems; potentially leading to the loss of rights to land rather than their formalization in law. This is brought about by the fact that the Judicial Titling process under the *Cadastral Act*, rather than being an application by a claimant for the recognition of land rights is, in fact, in the nature of a *challenge* to claimants to establish their claims or lose them.³² This potentially dangerous position seems to have grown from either a lack of *real* accord with LAMP goals by partnering agencies (such as those within the Department of Justice), lack of thorough consultation with some of those agencies, lack of institutional co-ordination, or a combination of the preceding.³³

³⁰ Section 118 *Public Land Act* (CA 141) as amended.

³¹ Section 119 *Public Land Act* (CA 141) as amended. Exactly how this provision was to achieve its aim, however, is unclear. In the end, it appears that subsequent purchasers sought to avoid repurchase by specifying a purchase price well in excess of the actual purchase price to discourage exercise of the re-purchase option. It is also noteworthy that section 119 speaks of the repurchase right applying to "every conveyance of land acquired by free patent or homestead provisions..." [emphasis added]. If read literally, this may be interpreted as saying that every time there is a re-conveyance of the land (ie not just the *first* conveyance from the original grantee of the Free Patent) the re-purchase right in favour of that original grantee (or his or her legal heirs) is revived. Such an interpretation, however, would produce the anomalous result of the ghost of the original grantee arising in the form of an unregistered 'call option' upon every conveyance of the land for a period of 5 years or upon further re-conveyance (whichever is first). This would also be contrary to the nature of 'quieting' the title with a positive, "Torrens" system. There appears to be no jurisprudence on this point but, it is suggested that the only sensible interpretation of this section is that, like section 118, it was designed to apply to the *first* conveyance only.

³² Pena and Pena *op cit.* at 494.

³³ For example, in meetings in December of 2002 and January 2003 (in Manila and Palo, respectively), a solicitor within the Solicitor General's Office in the Department of Justice allegedly indicated to representatives of the Technical Assistance team of the current Project that the Solicitor General may Appeal *all* determinations in favour of applicants for titles under the Cadastral Proceedings law (judicial titling) currently being undertaken with the assistance of the Project. But these were petitions brought by the Government itself for the purpose of furthering the Project's goals! If this is indeed the case, one may be forgiven for thinking that the whole aim of the Project was being undermined by one of the Project partners. What is more, if the appeals process is undertaken, it will effectively stop the registration of land rights under the judicial titling aspect of the Project, perhaps require all applicants to be respondents to the appeals *at their own expense* and, not having the resources to defend the appeal, effectively cause those claimants to lose their rights to the

Option: *Repeal patchwork of legislation relating to land rights registration and re-write/rationalize/consolidate into fewer, more coherent laws relevant to the existing context*

Character: The character of such a process relies on a simplified legal process that is modernized to take into account the reality of land rights in the Philippines and that focuses on the *recognition* of rights as distinct from their *grant*.

Advantages: The advantages of this process are numerous. The laws become simplified and more relevant to the population. By doing this they are more understandable and more likely to be relied on by the population.

Disadvantages: The main difficulty associated with a change to the legal systems is implementing the change itself. Unless there is almost universal support for change (which is difficult to foresee given that any perceptions of a loss of power within the legal profession or the courts – which the adoption of an administrative system of rights recognition would foreshadow) the process is likely to be slow.

Option: *Create one process of land rights registration*

Character: The character of a ‘one process’ land rights registration system is considered in more detail below. Nevertheless, one critical feature that seems to have broad appeal if an administrative system is to apply is one that formally recognises rights and that that formalization/legalization has the legal character of the current result of the judicial titling process. In other words, the title must be clear, secure and essentially beyond challenge.

Advantages: The advantages of providing only one process of rights recognition is that it potentially simplifies the process; thereby making it more transparent. It lowers the cost of the process while abolishing the notion that one type of rights recognition is better than another (ie a ‘judicial’ title is better than a free patent despite the fact that both are equally protected by the Torrens System)³⁴.

Disadvantages: The disadvantages of these changes are the same as those mentioned immediately above; namely, the nature of formal change itself and resistance to it.

land they already possess and have done so for decades or longer, for lack of formal proof. This extraordinary position could give the impression that the Government was acting in bad faith in undertaking the judicial titling process in the first place while also negatively impacting on any other processes (eg administrative titling) that the Government may attempt to implement in the future. A number of studies have already underlined the negative impact and community suspicion associated with earlier failed titling initiatives. If an unreasonable appeals process is undertaken, Cadastral Officers, fearing claims of neglect from the government could stop processing claims while the community could simply lose faith and not participate. It has been suggested to the author that the Solicitor General’s Office was not included in consultations in respect of the LAMP. It is now suggested that a meeting be convened immediately with the Secretary of Justice to resolve this issue. Ultimately, however, law reform is required to avert unnecessary risk to legitimate claimants to land rights.

³⁴ A free patent obtains the same protections by virtue of section 103 of Presidential Decree 1529 (*The Land Registration Decree*) and the same proposition is supported by case law (Refer to Pena, Pena & Pena *Registration of Land Titles and Deeds* (Quezon City, 1994) at 461.

Issue: *Consistency of Process of legal development*

It is one of the basic elements of the development of legal infrastructure that there be a coordinated approach especially where various governmental institutions are likely to have varying interests that touch. Land rights and other forms of land administration are often the subject of varying government policy and, at worst, those policies can clash or work in an uncoordinated approach that results in the doubling of resources and other inefficiencies.

Although this is a whole-of-government issue that is beyond the scope of this Report, it is a point that is worth stating because it has been the experience of other jurisdictions that the failure of proper coordination of government policies has led to difficulties in administering land policies. The most notable example is probably Lao PDR where uncoordinated government policies in relation to land administration and even the responsibilities for those policies has led to confusion and inaction.

Option: *Establish a division responsible for coordinating legislative development with appropriate extra-agency institutions*

Character: The character of this option is beyond the scope of this Report but be simplified by the rationalizing of agencies responsible for the various aspects of land administration mentioned above. Where external agencies have responsibilities, the appropriate 'committee' could be established to coordinate functions across government.

Advantages: The obvious advantages of this approach are that government agencies talk to each other about their policies and coordinate the implementation of those policies. This leads to a reduced risk in the number of contradictory laws.

Disadvantages: The main disadvantage is that establishment of coordination institutions is likely to slow the progress of policy implementation unless the review process is carefully directed.

Issue: *What is Land?*

One of the more difficult issues that various jurisdictions have had to deal with is the nature of the identity of land itself. Does it include every thing on the land (that is, all permanent fixtures) like in Australia, the United States of America and Malaysia, or is there a 'horizontal' division between the land and the improvements as there can be in Indonesia³⁵. The issue has also arisen in Lao PDR where the current policy is for building/fixtures that are owned by persons other than the owner of the land use right to have that 'interest' in land noted on the title.

The Philippines also has a history of permanent fixtures being considered as part of the land³⁶ that was derived from its American legal history. But the Philippines legal system also recognises the fact that some fixtures are the property of others. It accounts for this by permitting the establishment a lien (under the Civil Code) under original proceedings

³⁵ Hence the existence of the *Hak Guna Bangunan* (or building right – that is also a rights to construct) under the *Basic Agrarian Law* (1960).

³⁶ Pena et al, *op cit* at 99 and 172-173.

for registration of rights to confirm land ownership.³⁷ A purchaser of land with notice of these circumstances may also be precluded from denying the right and, therefore, being required to pay compensation, notwithstanding that the certificate of title was silent in respect of the right.³⁸

Option: *The definition of Land could include all fixtures although retaining the flexibility to acknowledge separate ownership where those circumstances are clear*

Character: The character of this approach is to permit, at first registration, the interest of a fixture owner to be registered as a right in respect of the land. Currently, this is permissible in the form of a lien although it could be permitted that, upon merger of the lien interest holder with the underlying rights holder (eg the owner of the land buys the building on the land), the lien is extinguished. Subsequent interests to use the building could then be created only by lease.

Advantages: The nature of the real rights in respect of land could be respected by permitting this flexibility within the system. It also avoids the potential of complex parallel rights registration procedures in respect of both land and buildings by permitting the registration of an interest on the Land Title.

Disadvantages: Establishing the true rights associated with first registration is, in some circumstances, likely to be difficult. Unless adjudication teams are properly trained and diligent, there is a possibility that all rights may not be included on the title document.

Issue: *What Land is Included?*

The earlier-mentioned *Land Laws and Regulation Policy Study* supports the view (that this author respectfully endorses) that all land that is the subject of registrable rights should form part of the one process. This is certainly the approach in more developed jurisdictions and it appears that this approach is slowly developing in other less developed jurisdictions. All primary land rights could, therefore, have the same form of document of title³⁹. And all land could potentially fall within this approach (including even the land of indigenous peoples⁴⁰).

Option: *All surveyed land that is the subject of registrable rights should fall within the one parcel-based land rights registration system*

Character: The character of this option is that the same administrative process could apply to all land that is surveyed for the purpose of recording interests in a consistent way on uniform documents.

Advantages: There are a number of advantages with this approach from both a government and private rights perspective. The process becomes more affordable for

³⁷ *Ibid* at 99.

³⁸ *Ibid* at 173.

³⁹ PA LAMP *Land Laws and Regulation Policy Study Final Report* (Volume 1) at 4.

⁴⁰ Although the specific rules associated with indigenous rights may mean that there are different rules applying.

government and rights beneficiaries. The process is rationalized and, therefore, more timely and more easily understood. The costs of resources (eg production of land titles) are reduced because all title documents are in essentially the same form) and there are likely to be less mistakes in process. It also means that the same rules apply across government making every fundamental process for rights recognition the same.

Disadvantages: The difficulty associated with this approach is that it requires careful coordination across government.

Issue: *Use of Land Titling to Enforce Ancillary Policies*

It is a common misconception that more can be achieved by having numerous processes accomplished at one time. In terms of the first registration of land rights it is common, for example, for the government agency responsible for undertaking systematic registration processes also to enforce ancillary government policies. One of the most commonly applied policies is the so-called “land reform” policies that almost invariably do not relate to the re-allocation of land, rather, the limitation of land holdings.

Without in any way commenting on the policy basis for land reform policies, one thing is reasonably clear from experience in other jurisdictions. That is that restricting ownership on the basis of area entitlement is almost impossible to administer. Critically for a systematic registration process, by requiring the registration team to attempt to enforce these ancillary policies, the integrity of the process is potentially damaged; thus thwarting the very goal that the process is trying to encourage - participation. This is because, by trying to place limitations on ownership at the time that rights are in fact trying to be established, the registration process can be seen not as being the recogniser or champion of rights, rather, their confiscator. If this damages the integrity of the registration process, it may never recover. Furthermore, such restrictions are often easy to get around because members of the same family may claim ownership of different areas of the original parcel. This approach then defeats the whole point of the ‘reform’ process because the *effective* ownership of the whole parcel never changes.

The idea of trying to change boundaries at the time of adjudication caused problems in Lao PDR where, in consort with another government department, the adjudicators redefined the boundaries of land to reduce the size of a land parcel in order to account for a proposed road widening. The result was a *de facto* compulsory acquisition of land without compensation. Anecdotal evidence indicates that Philippine government departments have attempted to avoid the payment of compensation for compulsory acquisition of land rights.⁴¹

The approach of failing to bring the land within the system for failure to comply with area limitation rules⁴² (or even the failure to pay back taxes) does nothing but defeat the

⁴¹ In one case, a person claimed that a government department built an irrigation channel through her elderly mother’s land. No compensation was offered. Later, a government department built through the same land a service road for the irrigation channel. No notice of the ‘acquisition’ was given and no compensation paid. When the mother sought to transfer the land to her daughters she was required to pay all survey costs (including those related to the ‘acquisitions’ by the government department. In addition to this she was required to pay the entire amount of the capital gains tax relating to the transfers.

⁴² Free Patent grants are limited to an area of 24 hectares in accordance with section 44 of *The Public Land Act* (although the Department of the Environment and Natural Resources, in accordance with paragraph 4 of its Memorandum Circular No. 9 (dated 5 May 1993), limits the grant to 12 hectares). The Registry of Deeds, on the other hand, has indicated that the Land Registration Agency itself limits registration of Free Patents to parcels of 5 hectares.

ultimate government policy of bringing all land within the government's administrative view. It is counterproductive.

The more common approach of other jurisdictions to limit the size of land holdings is through the taxation system. Likewise, the collection of back taxes and the like should be the responsibility of the departments seeking to recover debts and should not be a condition of formal rights recognition at first instance⁴³. Of course, the land administrators could provide all appropriate help to achieve those ends such as providing information about those who have holding that may not be in conformity with land reform policies. But the land administrators should not be using these issues as a bar to the registration process. It is noted that one of the reasons for the success of the systematic registration process in Thailand was that the project was 'solely concerned with land titling.'⁴⁴

Option: *Disconnect ancillary government/ agency policy goals from pre-requisites to land titling processes or title issuance (eg compliance with taxing provisions or land ownership area limitations in agrarian reform programs etc should not be a pre-requisite for first rights registration)*

Character: The character of such an approach is relatively simple. The process of parcel-based, land rights registration is narrowed to its core business of registering rights not enforcing land reform or tax policy.

Advantages: The primary advantage is that the land administrators can concentrate on their primary task of bringing land within the government system and recognising the rights land rights holders. There are cost and time savings because the land administration is not responsible for the policing of the policy of other government agencies and, critically, there is less chance of confrontation in respect of land rights during the investigation process and the process, itself, retains a level of integrity. The process is transparent and simple and reduces the risk of corrupt practices creeping into the system.

Disadvantages: From the perspective of the policies of other agencies, they will have to undertake their own investigations and spend their own resources to achieve their policy goals.

4.2.3 Administrative issues, characteristics and options

Issue: *De-centralization of Process*

One of the main reasons that land titling processes have provided limited numbers of rights in the past is the fact that many systems were centrally controlled with processes that hindered decision making and encouraged corruption. The issuance of rights often

⁴³ Anecdotal evidence is that some Deeds Registries are making payment of back taxes a precondition to the issuance of a Land Title. This approach may be based on the erroneous belief that Section 1 of Republic Act 456 of 8 June 1950 (amending the *Public Land Act*, CA 141) requires it. In fact Section 1 of RA 456 applies only to *voluntary documents* "by which real property or an interest therein [is] sold, transferred, assigned, mortgaged or leased..." It does not apply to the creation of, for example, a Land Title or a Free Patent.

⁴⁴ Brits A et al *Comparative Study of Land Administration Systems* Paper presented at World Bank Regional Workshop of Land Issues, Cambodia, 4-6 June 2002 at 12.

slowed to a trickle and, instead of becoming a way in which the general public could have their rights formally acknowledged, it became a process that served only those who could afford it.

A common approach adopted to speed up the process of rights registration is to decentralize many of the processes that were formerly controlled exclusively at a central level. De-centralization of processes has and is employed in Indonesia, Thailand and Laos. In the Philippines some processes occur at a regional level but things like title issuance happen at a central level – greatly lengthening the process.

But de-centralization has never been the answer in itself. There are numerous examples of where de-centralization of process has actually resulted in the collapse of a system to the extent that nothing happened. This was the situation in the rather unique circumstances of East Timor during the United Nations Transitional Administration. Although land administration policy was de-centralized to a provincial level, some provinces never managed to achieve literally anything through this approach.

Ultimately, it is a matter of balance. The success or failure of a de-centralized approach can depend on numerous issues such as:

- Necessary education levels of staff
- Adequate training of staff
- Resources being available
- The level of decentralization (what aspects of the process are actually decentralized)
- The current and projected size/expansion of the project
- Government commitment to the system
- Levels of corruption
- The success of quality evaluation processes

Nevertheless, within reasonable bounds, de-centralization of at least some critical procedures that potentially delay the process of title issue can definitely benefit the outcomes.

It was commonly said to the author during the period of this study that the risk of de-centralizing the process is that it will open the way for corruption. Yet almost everyone acknowledged that there is corruption in the *current* system. Once again, it seems that the better approach is to encourage de-centralization subject to the limitations mentioned above and to the processes mentioned in more detail, below.

Option: *Decentralize land titling process but limit only to areas that have appropriate regional infrastructure, expertise and processes*

Character: The character of decentralization will depend on the particular processes considered later in this report.

Advantages: In short, decentralization permits a more timely response to local needs and the opportunity for more land rights to be recognised more quickly.

Disadvantages: The success of decentralization is limited by a number of factors. Ultimately, it means that there is less direct control of the policy implementation process that, at worst, may lead to discrediting of the entire process where there are systemic problems at a regional level.

Issue: Government Services

The extent of government services may contribute greatly to the process of registration of rights. In Thailand, for example, the registry staff can assist in process of conveyancing which works to speed up the process. Yet this raises questions about conflict of interest and liability for mistakes. One may consider such an approach a little riskier, however, in a country where the culture is geared highly towards litigious responses to problems.

Option: *Restrict government services to survey, adjudication and registration of land rights (ie do not extend it to conveyancing services – although advice in respect of procedural issued should be given)*

Character: This option is really to maintain a traditional approach to government services that does not venture on to ground that may expose the government to claims of conflict of interest or mistake - where the spectre of corruption is often considered by some to be behind government action.

Advantages: This approach limits the scope of potential government liability in respect of the transaction aspect of rights registration.⁴⁵ There is also a reduced risk of corruption and the land agency retains its role as independent recorder of the market.

Disadvantages: The disadvantage is that the government may lose some transactions in the market after first registration.

Option: *An alternative option is to permit the land agency to assist in subsequent dealings in land*

Character: This option involves the government providing services that facilitate subsequent formal transactions in land that can be captured within the land administration system.

Advantages: This approach encourages persons to use the system because it simplifies the process and reduces potential costs for users. It can speed up the transactional process making the benefits of the process clearer to those using it. Clear fee-for-service charges means that the government can recover some of the costs it has incurred in establishing the system.

Disadvantages: The potential risk to government for errors made by staff are raised. The process will also raise the initial costs of establishing the system along with an increased risk of conflict of interest and opportunity for unauthorized payments to be made.

⁴⁵ This aspect will be discussed in more detail in another report dealing with post-first registration issues.

Issue: Qualifications of Senior Staff

Few jurisdictions specifically prescribe the nature of the qualifications that the administrators of a land administration system should have. One jurisdiction that does, however, is the Philippines where senior government land administration positions must be filled by lawyers with a certain level of experience.⁴⁶ Yet from the author's brief exposure to at least some lawyers in the land administration process in the Philippines, it seems that they are amongst the least likely to embrace change in the system. At the moment, the legal profession have a large stake in the process of land rights registration. It may be argued, however, that the head of the land administration and the senior administrators need not be lawyers at all but simply people with the appropriate administrative qualifications; an expert in administrative processes. This does not mean that lawyers are unimportant in the process. But it does mean that it is unnecessary for lawyers to hold all the senior positions.

Option: *Remove mandatory requirement that senior positions be filled by lawyers*

Character: The character of this option is simply to remove the mandatory requirement for senior administrators to be lawyers.

Advantages: This approach opens the institution to different perspectives on achieving institutional goals as distinct for purely legalistic ones that may reflect a level of self interest.

Disadvantages: It may be seen as a disadvantage that a lack of experience as a lawyer may trade off some understanding of processes (although could be supported by other legal expertise within the office). Any change to the current system in this regards is also likely to meet with resistance from lawyers within the current administration.

4.2.4 Fundamental Project Management Issues

Issue: Unit Cost

The cost of title production relates to the general productivity and cost effectiveness of the system. And the higher the true cost of title production the higher the effective government subsidy of the process to make the process viable. Systems that appear to be operating reasonably well in the region have a unit cost in the area of US\$20-35 per title.⁴⁷

Option: *The process must aim at providing land titles at a cost that falls within manageable levels*

Character: A realistic goal for unit costs should be aimed at (comparable jurisdictions maintain a unit cost in the order of US\$20-35 per title).

⁴⁶ Philippines *Presidential Decree 1529 (Property Registration Decree)* sections 5 (Commissioner) and 9 (Registers and Deputy Registers of Deeds).

⁴⁷ Refer to Annexure 3.

Advantages: Units cost are kept within reasonable levels of affordability and this helps drive the process towards efficiency.

Disadvantages: Too unrealistic a unit cost may make project unviable/unaffordable.

Issue: *Levels of Training and Education Required*

The standard of educational levels in a given country along with the training requirements (and the associated expense) can be an issue that breaks a project. Arguably one of the most successful land titling projects was conducted in Thailand where the general educational levels of staff were reasonably high. By contrast, in Lao PDR the levels are low and there has been a need to establish educational courses essentially to support the need for more expertise in the field of survey and land law. These experiences show the need for this part of the evaluation of a project to be carefully considered for viability.

Option: *An assessment must be made of the potential cost for training and education of staff in the process*

Character: The cost of providing training and education should be factored into the goals for unit cost.

Advantages: Realistic cost of process can be arrived at.

Disadvantages: High cost of educating staff can dramatically affect project outcomes.

Issue: *Subsidization of Titling Process*

Because of the initial start up costs associated with systematic rights registration it is not practical to attempt to recoup all of those costs. And international experience through a number of projects has noted that costs recovery must be set at a low level to encourage persons to use the process. The gap between cost and recovery is effectively a government subsidy of the process. It is unlikely, however, that a project that is designed to help the poor can be sustainable without such a subsidy.

Option: *The initial process of first (original) registration by the government could be subsidized*

Character: The process of systematic rights registration could be subsidized by the government or others but with an element that balances cost recovery against the risk of public non-participation.

Advantages: The advantage of subsidizing of the process is that it makes the process of parcel-based rights registration viable. By charging a small fee to the applicant, however, there can be partial cost recovery. Notwithstanding the cost to the government in providing the subsidy, there are greater benefits seen for the future than the costs at present.

Disadvantages: Government or other finance provider must bear the cost of the short-fall between actual unit cost and nominal rights holder payment.

4.2.5 The Process towards first registration (general): issues, characteristics and options

Issue: *Type of Rights Recognition Process*

As discussed above and in the earlier *Land Laws and Regulations Policy Study* there are compelling reasons for neither the judicial approach to titling (even when done systematically with the assistance of the Cadastral Act) nor the free patent approach to titling to continue to apply in the Philippines. Both have serious implications for the nature of rights (in the case of so-called public land, the applicant must renounce his or her ownership rights in order to obtain a State *grant*). Yet there is general agreement that both systems have their advantages and disadvantages (and they are discussed in more detail in the report of Steve McFadzean).

Theoretically, then, there seems to be some support for the idea that there is merit in an administrative system of rights recognition/grant that provides formalized rights in the character of those perceived to be attaching to a title confirmed by judicial order; namely, rights *in rem*⁴⁸ that are fully transferable and are, generally, without restriction and cannot be defeated.

Option: *Rationalize existing land rights recognition processes (judicial and Free Patent) into one administrative system with secure rights*

Character: Such a system has the following characteristics:

- Rights are approved rights administratively
- It applies to both private and State land
- There is no judicial participation in the process
- It grants secure rights “in rem” for registered rights holders (subject, perhaps, to periods of provisional holding before rights fully ‘mature’ in some cases)
- It uses simple administrative systems including a clear and transparent fee structure
- It provides for limited pre-requisites to registration of rights
- It provides public access to information on the register

Advantages: The advantages of this approach go to the heart of most effectively run land administration systems. It is more cost effective, more sustainable, and faster. These things inspire confidence in the system that results in more people using the process. It follows that this is likely to bring more land within the scope of government control and lead to greater potential for government income.

Disadvantages: The greatest potential difficulty with this approach is to ensure that the quality of the process is maintained. Currently, there is a perception among many (particularly lawyers) that the process involving them and judges is the only process with true integrity.⁴⁹

⁴⁸ Rights that can be enforced against ‘all the world’.

⁴⁹ And this is in the face of ample anecdotal evidence of corrupt processes in both camps.

Issue: Existence of legislation controlling systematic adjudication

Those jurisdictions that have implemented systematic registration systems have almost without exception introduced legislative measures to prescribe the process. This is the case particularly with Thailand, Indonesia and Laos. The most detailed is that contained within the Indonesian legal framework that provides an intricate level of detail in the process.⁵⁰

While detail setting out the institutional structure and the general rights and obligations that apply to those institutions is critical it is arguable that a degree of flexibility must be permitted to apply, for example, to survey practices and in relation to the proof of rights, so that the system can work. Prescription of rights and obligations is critical to decentralized processes so that those processes clearly set out the issues for all to see. Yet there must be a balance between formalization of rights and their flexible application given the variable circumstances in which systematic adjudication teams are invariably found. If not, we may find at one end a process so cumbersome that it becomes unusable or, at the other end, a process that is so fluid that the rights it purports to recognize are worthless.

Option: *Develop a legislative framework that prescribes the process of systematic adjudication incorporating a balance between the need for clear rules against the need for flexibility in the field*

Character: The legislation could have the following characteristics that are set out in more detail below:

- Appropriate regional and Barangay notice periods relating to the start of systematic adjudication activities
- Community consultation processes
- The establishment of Systematic Adjudication Teams with prescribed functions including disputes re-conciliation process and community verification
- Opportunities for persons to object to ownership and boundary issues as well as the ability to challenge final decisions of administrative authorities
- Decentralized decision-making processes including the creating and issuance of land titles to be made at a regional level

Advantages: Land rights recognition is faster and the process becomes more affordable. As a result, more rights are registered because the community affected understands the process its merits.

Disadvantages: As mentioned above, with a decentralized system that relies on policy implementation at regional level there is an increased potential for mistakes to be made in systematic adjudication unless thorough quality evaluation is maintained.

⁵⁰ Indonesian Government Regulation 24 of 1997 on Land Registration and Indonesian Regulation of the Minister of State for Agrarian Affairs (PMA) 3 of 1997 About the Provisions for the Implementation of Government Regulation No. 24 of 1997 About Land Registration.

Issue: Inter-agency Dependency

The issue of inter-agency dependency is also often associated with the issue of pre-requisites to title issuance mentioned above. It means that the process of land rights registration can be held hostage to other, ancillary, policy issues of other government departments that have the effect of negating the policy goals of registration. There often seems to be a belief that failure to 'capture' an infringement of, say, comprehensive land reform programmes, at the time immediately before formalization of a land rights means that enforcement escapes forever. Certainly, it may be a *convenient* time for other government departments to seek compliance but it is no more than this. And, in fact, the *greater* goal of registration is likely to be disadvantaged by the process that, eventually, leads to losses all round.

Most successful land administration systems limit inter-agency interference in the overall goal of first rights registration. By doing this, the chances of the registration process being delayed, essentially by unrelated policies or simply for other reasons that cannot be controlled with the administering agency, are increased. A notable example of inter-agency difficulties has occurred in Lao PDR where a step in the process of Title issuance (ie signing the first title created in relation to an land parcel) required the signature of a high ranking regional officer outside the implementing agency (although within the same Ministry). For whatever reason this person failed to sign many Certificates resulting in extraordinary delays in the process of title issuance. If that step were eliminated, at least the administering agency would have had direct influence over the behaviour of the person with the responsibility to sign titles.

Option: *Reduce the need for first-time registration of land rights to require approvals from outside administering agencies*

Character: The process towards first rights registration could eliminate or reduce the need to require approvals from outside administering agencies.

Advantages: The process of recognition of rights is controlled wholly within the administering agency meaning that difficulties or problems with personnel or procedures can be dealt with more flexibly and without the need to refer to the requirements of outside agencies. The result is a simpler and more transparent process that reduces the time and cost of the registration process as well as reducing the potential for unauthorised fees being charged.

Disadvantages: Lack of inter-agency policy coordination (ie in relation to land related policies) may result in confusion/disagreement about the rights registration process. There may still be a need for inter-agency communication (for example, communication with agencies having responsibility for agrarian reform) so that other government policies are not made ineffective. But those agencies should not have the ability, effectively to veto the registration process.

Issue: Land Right Adjudication Process

What sort of land rights adjudication could be used? There are two approaches. The first is a systematic approach that seeks to survey and title land rights in an organized fashion and on a large scale. The alternative is a sporadic approach that, effectively responds to individual demand for titling. The overwhelming experience in the

developing world context⁵¹, however, that that titling take place in a systematic and large scale fashion to make the process viable.

Option: *Adopt a system that focuses on systematic first-time registration of rights but permits sporadic where necessary*

Character: The system of first time registration could employ a methodology that relies on a large-scale, systematic regional approach. Although there may be grounds to adjudicate land on a sporadic basis it could be limited to special cases, perhaps involving government land in times of urgent need.

Advantages: This approach is the only cost effective methodology for land titling on a large-scale. As a result it is more time efficient, more transparent and provides opportunity for mass consultation with the community about the process and about land rights registration.

Disadvantages: Requires very organized policies and procedures along with organized staff (sometimes lacking at a regional level). The process can also be susceptible to errors on the ground because of numbers of land parcels being reviewed unless proper monitoring is in place.

Option: [Alternative] *Adopt a system of sporadic registration of rights*

Character: This approach would require registration on demand rather than in an orderly fashion.

Advantages: There are few advantages of this approach other than it provides to the public a “service on demand” from the government.

Disadvantages: On the contrary, the disadvantages are significant; namely:

- Extremely cost inefficient and difficult to sustain
- Time consuming
- Susceptible to unauthorized practices

4.2.6 The Process towards first registration (specific): issues, characteristics and options

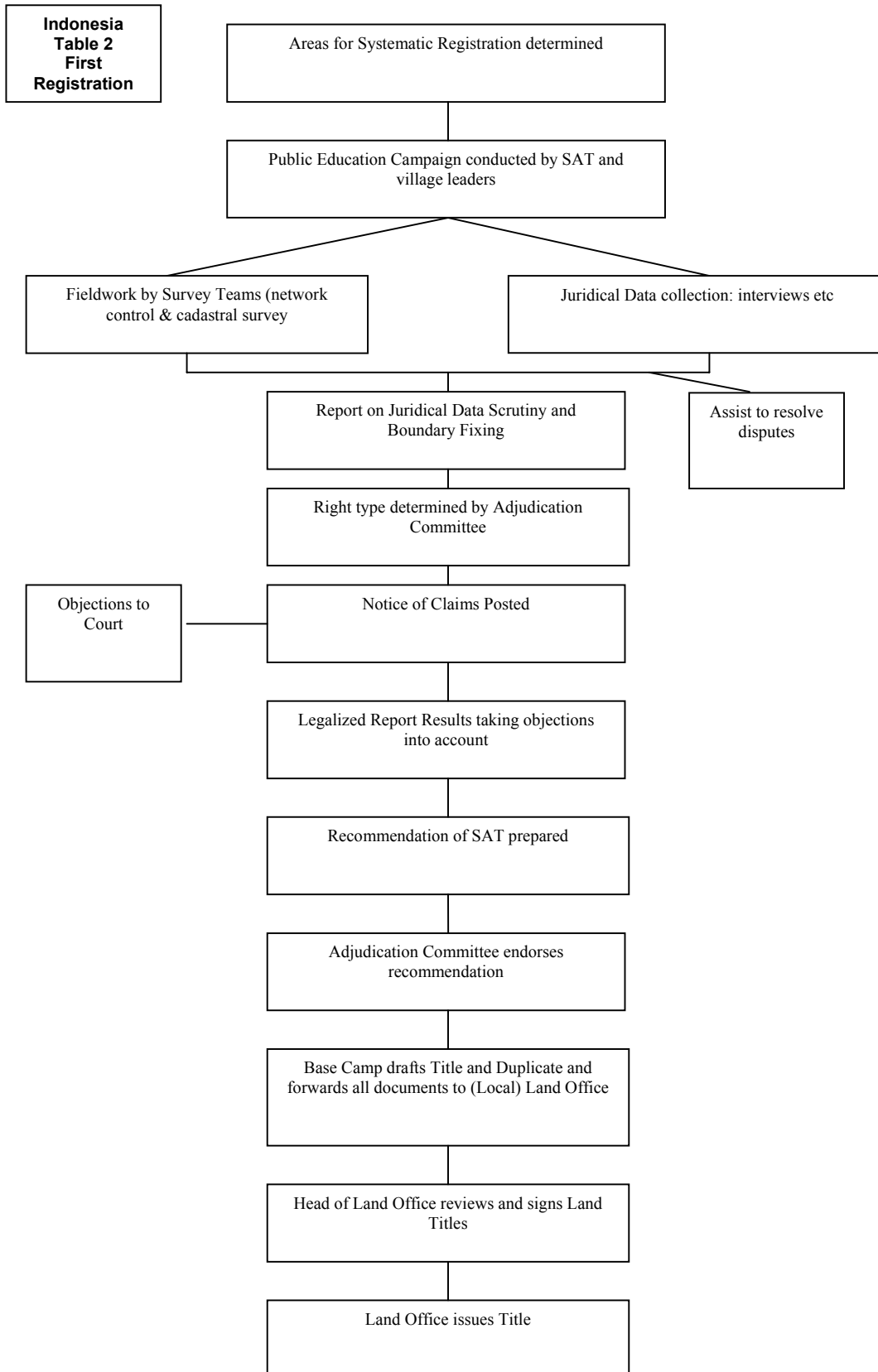
The actual processes of systematic adjudication for the purposes of formalizing the systematic, parcel-based registration of land rights are varied. In fact they vary with almost the number of examples of countries that have undergone systematic registration. Except for the Philippines, the examples used in this Report are all based on administrative systems of registration. For the purposes of diagrammatic comparison, the process applied in Indonesia (Table 2) and Lao PDR (Table 3) and Thailand (Table 4) are given here against the backdrop of the judicial and administrative approaches either used or proposed for the Philippines (Table 1).

⁵¹ For example, systematic titling is used in Indonesia, Thailand and Lao PDR. It was also a process that was formerly applied in the Philippines under the *Cadastral Act* and is now being trialed again as part of PA LAMP Proto-type 1.

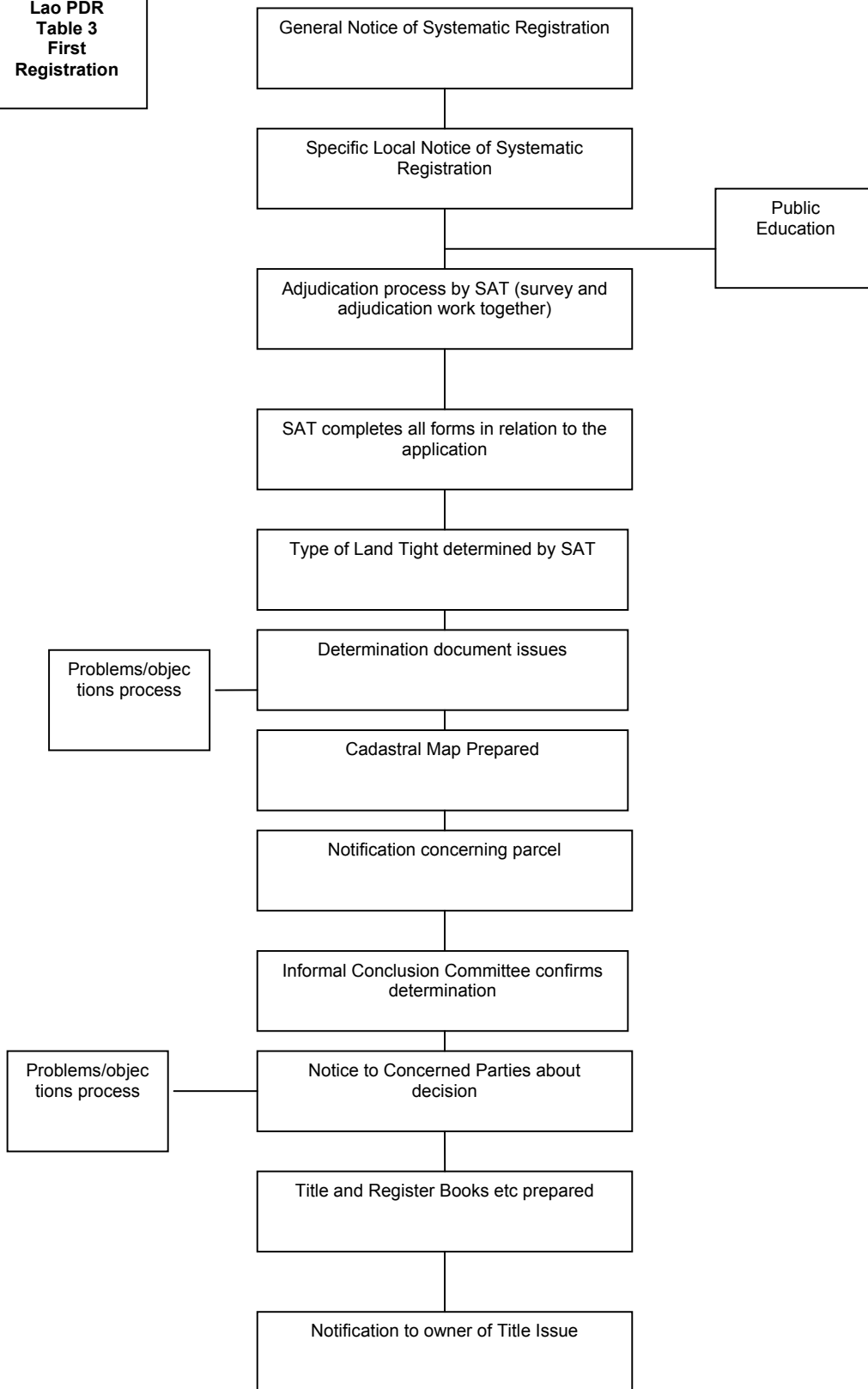
The critical features of relevance for the purposes of comparison, however, can generally be categorized as follows:

- Notice procedures
- Community information processes
- Investigation (survey data and rights data collection)
- Rights confirmation/rejection processes (including notification)
- Objection/disputes processes
- Preparation and issuance of Title document processes.

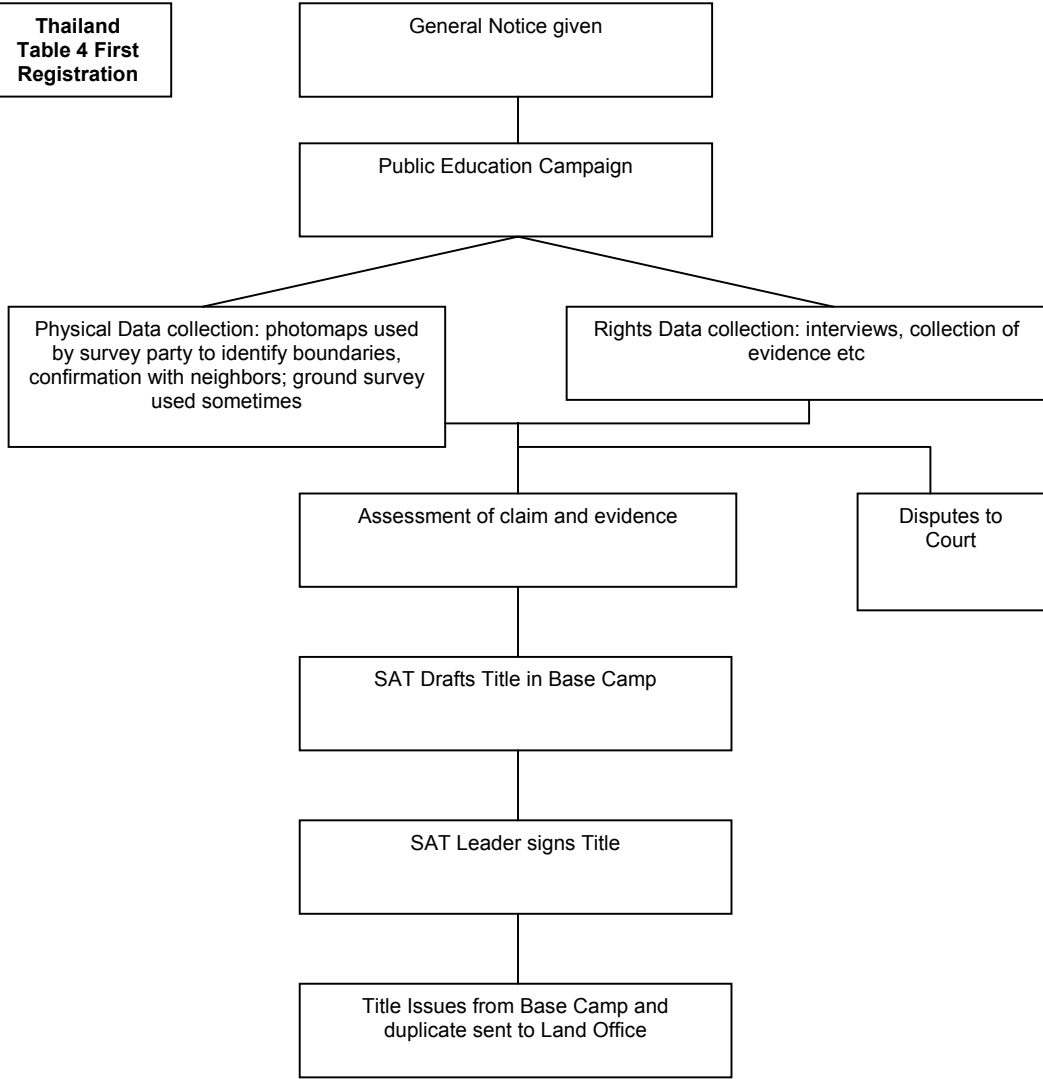
And the over-arching measure of the process is often considered in terms of the *time* the process takes to complete. These processes are considered in more detail below.



**Lao PDR
Table 3
First
Registration**



**Thailand
Table 4 First
Registration**



Who Conducts Systematic Adjudication of Rights and How?

Issue: *Formal Existence of Systematic Adjudication Teams (SATs)*

The collective international experience in relation to the collection of physical data and rights data in relation to land parcels for systematic registration purposes is to have that data collected by specialist teams. Often these Teams are known as systematic adjudication teams or a similar title. They will often comprise two groups; one dedicated to the demarcation and survey of boundaries and the other with investigation of rights issues associated with individual land parcels. Because of the unique position of these “SATs” in respect of identifying issues in relation to the land rights of individuals, most jurisdictions have formalized their position in legislation to ensure that the duties and obligations of the SATs are clear and transparent. Some jurisdictions have provided more detail than others – Indonesia perhaps providing the most comprehensive regulatory framework.⁵² As mentioned earlier, however, regulatory detail does not necessarily mean that the process is facilitated. Overly prescribing the obligations of SAT without providing a *reasonable* degree of flexibility in the process can potentially lead to difficulties in moving the process forward.

Option: *Formally recognize (in regulation) the existence of Systematic Adjudication Teams*

Character: A regulatory framework could be established that provides details for the creation, rights and duties of SATs.

Advantages: The advantage of this approach is that it gives SATs formalized legal status under which they can carry out their duties. It provides a clear transparent framework that can be reviewed.

Disadvantages: The only real disadvantage with establishing SATs is if there is over prescription and inflexibility built into the regulation that may hinder rather than facilitate the registration process.

Issue: *Official SAT Positions*

The number of official decision-making positions on SATs have, at times, hindered the progress of the duties of SATs and also had an impact on the costs of the process. Therefore, this is an administrative/productivity issue that could be considered when SATs are being established.

Option: *Limit the number of SAT officials to realistic levels*

Character: The policy in relation to SATs could be that formal requirements for SAT officials within SAT teams be limited to the smallest number reasonably required to undertake systematic adjudication process.

Advantages: This approach means that there is a more sustainable way to build up the private sector capacity. It is also more cost effective to use private sector during implementation of the project. As a result the process is more productive and efficient.

⁵² Indonesian Regulation of the Minister of State for Agrarian Affairs (PMA) 3 of 1997 *About the Provisions for the Implementation of Government Regulation No. 24 of 1997 About Land Registration.*

Disadvantages: There are no real disadvantages with this approach except that there may be a perception that the more heads available, the less chance there is of making the wrong decisions.

Issue: Location of SATs

Gathering international experience in the use of SATs supports the notions that SATs perform well if they are locally based. For example, the Philippines is currently trialling local base camps and using local staff for the process. Where there is the strong need for community support for the success of a project, communities can often view 'outside' SATs with suspicion. It is, therefore, important for the integrity of the process to be supported by the development of good relations with the community and the close proximity of SATs means that the community is also in a position to have free and open access to SATs so that their questions may be answered. An important limitation on this idea, however, is capacity within the given location to undertake the SAT duties. Therefore, consideration could be given to including in the local SAT at least some members from outside the community or those otherwise with external experience until the resident SAT members have developed appropriate levels of expertise.

Option: *Where possible SATs could be located with local communities that are the subject of the systematic adjudication process*

Character: SATs could establish base camps within the communities that are the subject of systematic adjudication permitting easy access for SATs to the community and *vice versa*.

Advantages: SATs are closer to communities and the Communities are better placed to discuss issues with SATs. This can lead to the development of confidence in the process that may encourage persons to participate in the process. It follows that this can lead to productivity increases and other efficiencies.

Disadvantages: The risk of this approach, however, is that there is a potential loss of control of the process unless there are strong evaluation procedures in place. Furthermore, a SAT that is not performing well within an area may have a counter-productive effect on the process.

Issue: Collection of Data

The process of data collection for the purposes of the systematic adjudication process can roughly be divided into two broad categories of physical data collection and rights⁵³ data collection. Where attempts have been made to separate these processes (for example, a survey team attends on one day and the rights data collector attend the same parcel some days later) there is a risk of problems arising. This being the case, teams now tend to work together in respect of visiting a land parcel for surveying and other data collection.

Option: *Collection of physical data and land rights data could happen simultaneously*

⁵³ Sometimes referred to a 'juridical' data.

Character: The policy process could ensure that both parts of the systematic adjudication team attend the same property at the same time so that they may be better coordinated and avoid potential misunderstandings.

Advantages: The process is ultimately more timely because it avoids attending the property twice and potentially permits issues that may touch both survey and rights data collection to be resolved at one time. It reduces risk of errors brought about by fails properly to reconcile different information, disturbs the land owners less and avoids wastage where surveys are completed but never a title issuing because the adjudication is not funded.

Disadvantages: The coordination process for both arms of the SAT may be difficult because of differing work responsibilities.

Issue: *Role of SATs*

Along with the establishment of SATs by regulation, there is clear experience that prescribing their role is also beneficial both for SATs and the general community.

Option: *The SAT's Role Could be Stated in Regulation*

Character: The character of the role of SATs could include the collection of physical and rights data in respect of land, the need for consultation with neighbours and others in the community concerning individual rights claimed, the investigation of third party rights, the prohibition on fee collection or payment, the recommendation (or not) of rights claimed through the preparation of formal reports in respect of land parcels.

Advantages: The advantages are that SATs have legally defined duties and that these duties are recorded, open and transparent.

Disadvantages: Once again, over-prescription of SAT roles may actually hinder the rights recognition process.

Issue: *Duties of SAT Clearly Articulated*

For the reasons already mentioned, the duties of SATs could be clearly articulated by regulation in accordance with international experience.

Option: *The general duties of SATs could be clearly articulated*

Character: The character of the regulation should balance the need for clear duties against the flexibility required to maintain a fair degree of consistency of approach.

Advantages: The advantages are the same as those mentioned immediately above.

Disadvantages: The disadvantages are the same as those mentioned immediately above.

Issue: Liabilities of SATs

The issue of liability for mistakes is an important issue that has been recognised. Yet there is a mixed response in other jurisdictions. The difficulty for SATs is two-fold. First, lack of experience or training may lead to mistakes. Secondly, SATs are reliant (particularly in relation to the collection of rights data) on what they are told and in the absence of formal documentation. Discussions with government staff in the Philippines evidenced a level of fear of the potential repercussions of mistakes and who would be liable for them.

The experience in Lao PDR, however, is instructive. In that jurisdiction, for SATs working in good faith, no personal liability will attach for mistakes made in the field.⁵⁴

Option: *SATs should not be liable for mistakes in the systematic adjudication process*

Character: Regulation could set out that, while acting honestly and in good faith, SATs should be able to carry out their tasks without fear of repercussions for mistakes.

Advantages: This approach encourages SATs to continue the systematic adjudication process without the threat of litigation or fear of making decisions. As a result, the process is likely to become timely and more cost effective.

Disadvantages: Quality evaluation systems must be strictly enforced to ensure that mistakes are limited.

What is the Process for Systematic Adjudication?

Comparative procedures in this section are detailed diagrammatically in Tables 1-4 above.

Issue: Notice of Systematic Registration process

Notice of systematic adjudication is a critical element in the systematic registration process. First, it prepares persons and communities for the process in a general sense. Secondly, it provides time for individuals to gather information in respect of their land.

International experience shows that this process often happens at two levels. At a general level, notice is given either nationally or at a regional level. Whether or not national Notice is required is debatable and should be considered carefully. In some respects national notice is important because it provides an opportunity for there, effectively, to be “notice to the world”. But it is often expensive and impractical. In the Philippines, currently, the Courts require notice not of individual land parcels rather the delimitation of Barangay boundaries⁵⁵ to be listed in the Government Gazette along with the Petition filed with the Court⁵⁶. While this process has been working reasonably well, that seems to be because special importance is being given the project. Therefore, current Notice provisions have had the opportunity to ‘jump the queue’ for ordinary notices in other areas of government administration. Given the limited parameters of

⁵⁴ Lao PDR *Minister of Finance Direction 997/MoF On Systematic Adjudication of Land Use Right* (24 June 1998), Article 35.

⁵⁵ Including a technical description of the Barangay land.

⁵⁶ At the same time, the Land Registry Agency issues individual notices to the individual applicants.

the current project, it must be questioned whether such notice, in the current form, would be practical, possible or timely if there is an expansion of the project.

So why not dispense the idea of national notice completely? This is an option. Yet systematic trialling has shown that a reasonable percentage of the owners of land parcels do not live locally.⁵⁷ If these figures translate nationally, then it would seem that some wider notice is required. Therefore, it may be simpler to have gazettal or some other form of notice at a national level that is region-specific rather than Barangay-specific. The number of Notices is reduced along with associated time and cost issues. Specific notices relating to Barangays could then be issued locally, after the period of General Notice.

Option: *Provide for a formalized General Notice of the intention to undertake systematic registration of land rights (ie the process could be enshrined in law)*

Character: General Notice could be made in the Government Gazette and for a period of 1 month. This informs the world-at-large of the intention to undertake systematic adjudication in specified *regions*. This will restrict the number of Notices required as long as waiting periods for publication.

Advantages: Enshrining the process in law means that there is little scope to avoid the Notice requirements, thus, permitting maximum coverage to those affected. It also provides the widest possible notice to persons of the intention to have rights recognized along with providing the opportunity to persons not living at a regional level to take appropriate action to protect their rights.

Disadvantages: It may be argued that such a general notice is not specific enough.

Option: *Provide for a formalized Specific Notice (at a regional level) of the intention to undertake systematic registration of land rights*

Character: Specific Notice could be made by Regional Governors to Barangays for a period of, say, 2 months informing the people of the intention to undertake surveying and the systematic adjudication of rights. This notice could follow a General Notice of the proposed process at a regional level. Notice could be at land office, regional media (eg newspaper/radio) level and Barangay head levels (balancing issues of notice, cost and timeliness).

Advantages: Enshrining the process in law means that there is little scope to avoid the Notice requirements, thus, permitting maximum coverage to those affected. Specific notice is given to persons within a region to take appropriate action to protect their rights or to inform that persons that do not live in the area (but who have land rights) that systematic registration of rights is soon to begin.

Disadvantages: There are few disadvantages with this approach so long as appropriate general notice has first been given.

⁵⁷ Anecdotal evidence suggests that the figure may be as high as 40% in some cases.

Issue: Community Consultation

Another critical element in the systematic registration process is community consultation in relation to the process. Unless this process is effective, the likelihood of the project achieving its objectives is extremely limited.

Much international experience has shown the need for the formalization of community consultation procedures. Perhaps one of the clearest examples of this approach is Indonesia.⁵⁸

Option: *Formalize (in regulation) a community consultation process to inform the community about the systematic registration process*

Character: The responsible Government Agency could be required by law to consult the community in which systematic registration is to take place.

Advantages: Community consultation ensures that those who may have missed the Public Notices are informed personally of the process. It also enables the community to ask questions about the process and clarifies their own rights as well as those of surveyors and adjudication teams. It also provides SATs or Community Relations Staff to give details about the process that may relate to rights and obligations.

Disadvantages: There are no disadvantages with this approach so long as appropriate staff have had the appropriate training and that they have the ability to answer correctly, the questions of the community.

Issue: Who Can Apply for Confirmation of Rights?

The experience of countries with efficient land markets is that ownership rights are generally open to the widest number of applicants; that is, to natural and legal persons. At a first registration level, however, it is important that the process reflect the true nature of land rights. To do otherwise, could raise issues of dispossession and, hence, compensation. Under current provisions relating free patent titling, however, grants cannot be made to juridical persons.

Option: *Ultimately, permit natural and juridical persons to apply for rights recognition although this is not currently possible for free patents*

Character: This approach could permit all *actual* land rights holders to apply for their rights rather than simply one class (ie natural persons).

Advantages: The advantages are that the actual rights holders have land rights confirmed and thereby avoiding potential compensation issues arising from claims that rights have been unfairly terminated.

Disadvantages: This approach may cause difficulties for inexperienced SATs because they must be aware of the potential for applications from legal (juridical) persons (and potential difficulties in SATs understanding what constitutes a juridical person).

⁵⁸ Indonesian Regulation of the Minister of State for Agrarian Affairs (PMA) 3 of 1997 *About the Provisions for the Implementation of Government Regulation No. 24 of 1997 About Land Registration*, Article 56.

Issue: *Proof of Rights*

How an applicant proves his or her rights to land needs to be dealt with carefully and with a degree of flexibility. In the Philippines the process is complicated by the fact that applicants must, theoretically, be able to prove ownership (directly or through another) for a specified period before ownership is strictly established. In respect of Cadastral Proceedings, possession is required from 12 June 1945. In many cases the availability of formal documentation may be lacking. In these circumstances international experience has relied on testimonial evidence for the purposes of establishing rights. In the case of Lao PDR, rights can be established on the basis of *any* written documents (& plans), verbal and written testimony, expert evidence, physical evidence (such as structures etc), and *any other sources deemed appropriate* by the land agency.⁵⁹ There are merits in a system with this degree of flexibility.

Option: *Provide a flexible framework for the recognition of land rights*

Character: Land rights can be recognized not merely by formal title documentation but also written documents of an informal nature (eg tax records etc), verbal testimony, and *any* other form of evidence deemed appropriate by the land administration agency.

Advantages: This approach provides the greatest scope for actual rights to be recognized (focusing on acknowledging rights rather than denying them). It provides flexibility in the recognition process especially where documents are lost or where the rights have always been known to exist at a local level. It also provides the flexibility that allows for verification of rights through other sources.

Disadvantages: Where formal Title documents are not relied upon, there may be some risk that the applicant is not the true owner.

Issue: *Objections and disputes from systematic adjudication*

Experience has shown that there must be a process that enables either another claimant or the original applicant to object to aspects of systematic adjudication. This is a matter of natural justice and reflects the need for SATs to listen the community in which they are working.

Most jurisdictions have dispute/objections procedures enshrined in regulation or law that permits there to be a challenge to certain aspects of the adjudication process. For example, there may be a dispute in relation the boundary of a land parcel or in relation to ownership of a land parcel itself.

The powers of SATs to deal with disputes varies from jurisdiction to jurisdiction. For example, in Thailand, certain disputes can be decided locally (but not finally) by a Land Office Official.⁶⁰ In Lao PDR, however, the SAT can participate in 'arbitration' proceedings although it seems that the process is more akin to mediation for the

⁵⁹ Lao PDR *Ministerial Direction 997/MoF (24 June 1998) On Systematic Adjudication of Land Use Right*, Article 14. The Land Use Right can be confirmed in the following ways: ownership documents, incomplete document plus 10 years of peaceful occupation, customary practices, by prescription (Article 19).

⁶⁰ Thailand *Land Code*, section 60. The decision is appealable to the Court.

purposes of resolving disputes. Currently in the Philippines, disputes are simply reported.⁶¹ Generally, however, SATs rarely have the ability to make final decisions in relation to disputes concerning boundaries although participation in a conciliation process is reasonably common. Training in conciliation methodology is an important factor for SATs because, it is not uncommon for the very process of systematic registration to *cause or inflame* disputes (in some cases, disputes that may have been simmering for many years). Therefore, mediation/conciliation training should form an integral part of SAT training.

Option: *The ability for persons to object to the systematic adjudication process could be formalised in law but giving SATs limited powers*

Character: Persons should be able to dispute aspects of the systematic adjudication process. Furthermore, SATs could be given the power to conciliate disputes (eg boundary disputes) but not have the ability to make a final determination on the dispute.

Advantages: The advantages of this process are that the process of rights recognition is protected by active debate. It may also identify errors in the rights recognition process and perhaps lead to the settlement of some disputes.

Disadvantages: Providing for an informal 'on the spot' conciliation process will slow down the process. Furthermore, if the dispute cannot be resolved it means that the dispute may need to be determined by Court.

Option: *[Alternative] The ability for persons to object to the systematic adjudication process could be formalized in law but giving SATs strong decision-making powers*

Character: Under this alternative SATs could have the power to determine disputes on the spot but providing appeal to an administrative level (eg Head of Land Office).

Advantages: Such a process *may* facilitate the more registrations

Disadvantages: The disadvantages with this approach are significant and include the possibility that this type of decision-making power may inflame disputes. Furthermore, the absence of a strong anti-corruption ethic may encourage corrupt practices by SATs which, in turn, may lead to criticism of SAT process.

Issue: *Finalization of Adjudication (SAT Reports)*

Once SATs have completed the collection of both physical and rights data it is compiled for the purpose of preparing a report in relation to each land parcel. This is now common practice in systematic adjudication processes. What does differ, however, is how data is verified or confirmed and how the reports are 'finalized' for the purposes of formally identifying rights. In Indonesia, the report is 'legalized' at the end of a period of notice⁶², while in Lao PDR, the village head certifies the SAT Report.⁶³ This last

⁶¹ It then becomes a matter for the Court to decide where the boundary resides. *The Cadastral Act*, section 28.

⁶² Indonesian Regulation of the Minister of State for Agrarian Affairs (PMA) 3 of 1997 *About the Provisions for the Implementation of Government Regulation No. 24 of 1997 About Land Registration*, Articles 62, 63 and 64.

⁶³ Lao PDR Ministerial Direction 997/MoF (24 June 1998) *On Systematic Adjudication of Land Use Right*, Article 17.

approach is useful for the purposes of SATs being able to verify the situation so long as proper procedures are adhered to.

Option: *Reports of SATs could be verified at a local (Barangay) level before formalization at regional land office*

Character: SATs, after boundary fixing and interviews with applicants, could finalize their written reports in relation to each land parcel by a certification from the Barangay head before formalization of their report at the regional Land Office.

Advantages: The advantages are that the process is speeded up because it is localized and the rights are recognised and formalized at a local level.

Disadvantages: Once again, the disadvantages of this approach lies in the potential weaknesses in evaluation mechanisms. The absence of thorough evaluation processes may lead to mistakes.

Issue: *Determination of nature of rights etc*

The current process for the determination of the nature of rights in the Philippines lie with a Judge (in respect of judicially approved title). But in other jurisdictions, the process is administrative and it can occur at a more local level. In Thailand the 'competent office' decides⁶⁴ while in Indonesia the Head of the Land Office decides⁶⁵. In Lao PDR, however, the SAT determines the right to be granted⁶⁶. There is no 'correct' approach to this issue except that the process agreed could balance the need for community confidence in the process, oversight/evaluation processes and efficiency.

Option: *Nature of applicant's rights could be determined (after recommendation of SAT) at a regional land office level*

Character: On approval of a SAT report, the regional Land Office Head (or delegate) formalizes/endorse the SAT report and determines the nature of the land right in accordance with the SAT's recommendation.

Advantages: The advantage of this approach is that the process is localized to a certain degree. The regional Land Office Head (or delegate) may then formalize/endorse the SAT report and determines the nature of the land right in accordance with the SAT's recommendation unless there are obvious reasons for not doing so.

Disadvantages: The absence of thorough evaluation processes may lead to mistakes by SATs in the field.

Issue: *Objections to recognition of rights*

Almost all jurisdictions provide a process that permits a person to dispute the rights recognition findings. In Indonesia, the objection process refers the complainant to a

⁶⁴ Thailand *Land Code*, section 58(2).

⁶⁵ Indonesian Regulation of the Minister of State for Agrarian Affairs (PMA) 3 of 1997 *About the Provisions for the Implementation of Government Regulation No. 24 of 1997 About Land Registration*, Article 66.

⁶⁶ Lao PDR *Ministerial Direction 997/MoF (24 June 1998) On Systematic Adjudication of Land Use Right*, Article 20.

Court.⁶⁷ Reconsideration of SAT decisions is permitted under Lao Law⁶⁸ but they are to be considered by the Director of the Division of Finance (a person outside the land administration agency but within the same Ministry). A period of 30 days is provided in which to make a complaint. The Finance Director can be seen to be a person independent from the land agency and, therefore, objections of the basis of a conflict of interest may be deflected. The issue then becomes one of whether review of a SATs decision is to take on the character of a formal legal review of the merits of the dispute or a supervising review to the effect that all processes have been undertaken by the SAT. Failing that, a dispute could be referred to Court.

Option: *Objection period be permitted in respect of decision as to nature of rights and recommendation by rights formalizer (eg regional Land Office)*

Character: Persons should be able to dispute the determination of the formalizer of land rights (eg Head of Land Office or delegate) within a certain notice period (eg 1 month) of the determination. Objections within that period could be reconciled or, failing that, the matter could be forwarded to Court.

Advantages: The process of rights recognition is protected by active debate. This process may also identify errors in the rights recognition process.

Disadvantages: A disputes process that is initially resolved within the Land administration agency may be perceived as not independent. The process itself may also slow down recognition process.

Issue: *The process of the preparation of the Land Title and issuance*

The process of who actually prepares the Land Title varies with jurisdiction although there is a clear movement for such processes to be de-centralized (as is the case with Thailand, Laos and Indonesia). The issue for these jurisdictions is to what level the process is de-centralized. Issues of cost, efficiency and the risk of unauthorized practices must be weighed carefully in adopting an appropriate response. Currently in the Philippines, the process is highly centralized with titles prepared by the Land Registry Agency and issued out of Manila.

The actual process of Title issuance in all jurisdictions surveyed includes the issue of a 'duplicate' Title document and the retaining of a version within the regional land office. The copy provided to the persons entitled to hold the Title (often the rights holder) is then capable of being used as the basis for security and to be presented upon the registration of any dealing in respect of the land parcel.

Option: *Land Titles could be produced at a regional level (eg the regional land office)*

Character: Land Titles are prepared for issuance from regional offices.

⁶⁷ Indonesian Regulation of the Minister of State for Agrarian Affairs (PMA) 3 of 1997 *About the Provisions for the Implementation of Government Regulation No. 24 of 1997 About Land Registration*, Article 64(2).

⁶⁸ *Minister of Finance Direction 997/MoF On Systematic Adjudication of Land Use Right* (24 June 1998), Article 28. Final resort is granted to the Court system under Article 29.

Advantages: Speeds up the system of registration and saves resources, time and costs.

Disadvantages: The process is open to the risk of mistake or abuse if evaluation mechanisms are not in place.

Option: *Titles could issue from Regional Land Offices*

Character: Issuance of Titles from localized areas is increasing with most of the jurisdictions considered in this report issuing titles at a regional level. The most decentralized process is in Thailand where the SAT issues the Title. In the other jurisdictions, Titles issue from regional land offices.

Character: Formalized Title instruments could issue from the regional land office after being signed by the Land Office Head or a delegate.

Advantages: The advantages are the same as those mentioned immediately above.

Disadvantages: The disadvantages of this process are the same as those mentioned immediately above.

Option: *Issue title in duplicate and provide copy to the person entitled to hold it*

Character: When title instruments are prepared, a duplicate is issued to the entitled person (often the rights holder).

Advantages: Rights holders have tangible recognition of their rights. Also, the duplicate acts as a form of security in itself, helping to discourage fraudulent transactions.

Disadvantages: The process is slightly more costly because of duplication. Also, the process of recording the information on a duplicate can be time consuming and prone to error.

What is the result of systematic parcel-based rights registration?

Issue: *Types of primary rights recognized*

The nature of types of rights that are to be permitted and recognized within a system are critical to the effective operation of land administration as well as being at the heart of the rights of individuals. In Indonesia the number of registrable rights is long. And with each right a certificate is issued. As a result, the system is complicated, confusing and open to corruption. In most jurisdictions, the number of registrable rights is small. In most cases those rights are essentially limited to 'ownership' (or quasi ownership) rights.⁶⁹ Having said this, there are examples of grants in the nature of 'leases' which are of a long term.

⁶⁹ In Lao PDR, for example, all land is 'owned' by the State. Individuals, however, are permitted to hold and trade a right known as a 'land use right'. It is more than a mere licence and it is of unlimited duration. And most Lao think of it in terms of a right of ownership.

In the Philippines there seems to be much debate about the nature of rights granted and the process by which they are granted: the process dictates the right and not the reverse. The complexity of the processes in obtaining or confirming those rights has already been noted as difficult because of form proof requirements. Yet in many cases there would be little doubt that the rights of particular individuals do in fact exist. So it could be said that there is a gap between formal requirements and what many know 'on the ground' to be the reality. Such circumstances are well known in systematic registration jurisdictions. And in most cases, jurisdictions accept the necessity for land parcels to be brought within the system of registration despite the fact that technical issues either associated with:

- Boundary delineation
- Ownership
- 'Immature' or imperfect prescriptive rights

are not fully resolved. Most jurisdictions deal with these issues with the notion of 'provisional' or limited title. In Australia⁷⁰, Malaysia⁷¹ and Laos⁷² among others, provisional titles exist in a system of a limited number of rights. The provisional titles remaining until either: time limits have expired or certain things have taken place (for example, a survey or transfer of land), or both.

This issue has been discussed in detail in the earlier *Land Laws and Regulations Policy Study* (Final Report). And it is not proposed to go into greater detail on the issue except to say that the author agrees with the recommendations in that study.

Option: *Limit the number of 'ownership' rights available for registration*

Character: The concept is one that recognizes the fundamental right known as 'ownership' from which most other rights are subordinate.

Advantages: Ownership rights are clear and not subject to question about their nature.

Disadvantages: None from the perspective of individuals seeking rights.

Option: *Permit a Form of Provisional Title Associated to Issue in Certain Circumstances*

Character: Provisional title could be used in first registration cases where there is some question as to boundaries, ownership (and whether prescriptive rights have crystallized).

Advantages: Provisional Title permits land to be brought within the scope of the system despite the fact that there may be some technical issues not fully resolved. It can 'mature' after a specified period of time or after, say, survey is properly completed. It acknowledges the reality of the land tenure situation and attempts to accommodate that reality.

⁷⁰ For example, *Real Property Act (1900)(NSW)* sections 28J(1A) and 28J(1B).

⁷¹ Malaysia *National Land Code* (Act No 56 of 1965) section 176 to 194. The purposes of qualified title in this jurisdiction is similar to that in New South Wales.

⁷² Lao PDR *Ministerial Direction 996/MoF (24 June 1998) On Land Parcel Registration System*, Articles 6 and 19.

Disadvantages: The 'provisionality' of a title may affect its value until it matures.

Option: *Permit the grant of leasehold interests from the State*

Character: The nature of a right may be a long-term lease from the State instead of an ownership right.

Advantages: Quickly brings land within the scope of the registration system.

Disadvantages: While this approach may be appropriate for the grant of *new* rights it is likely to be unsatisfactory for addressing long-standing rights that may otherwise attract 'ownership' rights. By trying to acknowledge rights that may already have (if not always been) ownership, the 'granting' of anything less is likely to be a diminution of rights that may require compensation.

Issue: *Recognition of Third Party Rights*

All jurisdictions surveyed recognize the existence of rights other than the primary rights and that, in appropriate circumstances, should be acknowledged on the Title document at first registration. This currently applies in the Philippines⁷³ and it is a principle that is well known.

Option: *Third party rights in existence at the time of systematic registration process should (with few limitations) be registered on the first Title*

Character: Where there is an existing lease (greater than 3 years in length), mortgage or easement in writing or there is evidence that a person other than the land owner is the owner of improvements on the land, those interests could be registered on the title

Advantages: Ensures that most rights in respect of land receive the protection of the torrens system process.

Disadvantages: This approach requires clear rules to be established as to what rights should be registered (eg short-term leases) otherwise the system may be bogged down in large numbers of minor rights – thereby impacting resources and sustainability. The nature of rights investigation means that SATs must undertake their activities carefully or this is an increased risk of mistakes being made and rights not being recorded.

Option: *Some short-term third party rights could be protected without the need for registration*

Character: For some short-term arrangements (like residential leases under, say, 12 months or similar cultivation agreements) protection could be provided against removal by a new registered proprietor (as if the tenant were registered).

⁷³ Refer to the comments made earlier in relation to the ownership of structures on land.

Advantages: The advantages of this approach are that short-term tenants receive some protection without the need to register short-term rights, while the Land Office will not be over-burdened with a multitude of short-term leases for registration.

Disadvantages: A purchaser of land may not be aware of the unregistered rights in respect of the land.

Issue: *Ability to deal with right (restrictions)*

One of the primary driving forces of a land market is the ability to trade freely with land rights. And this is a common characteristic of most land systems surveyed (although there are some notional limitations in respect of Lao PDR). In the Philippines, however, there are restrictions in dealing with Homestead Patents and Free Patents that have their roots in early twentieth century land reform policy. Subsequent sale is restricted for a period of time primarily for the historical reason that the nature of the grant was that the land was to be use and not simply sold or otherwise disposed of. But these ideas have little relevance today where rights are sought to be confirmed in their own right as distinct from being part of agrarian reform. This is one of the reasons mentioned early why there should be reservations about trialling a rights 'recognition' process under the umbrella of 'free patent' without participants being fully aware of the rights they are 'acquiring'. In any event, those persons who are likely to have their applications approved under an administrative titling process (for example, under a Free Patent under the existing system) are likely already to have possessed the land longer than 5 years (the non-alienation period)⁷⁴. In these circumstances, the reasons for having such a restriction seem to be redundant.

Option: *Restrictions of dealing in land after the first registration could removed*

Character: This approach could remove all restrictions dealings with land titles (even for provisional titles). If title instruments are marked to be provisional for a certain period, a transfer of title will not obtain full protection under a Torrens system until that period expires.

Advantages: Permits the free trade in rights and encourages persons to continue to use the system of registration of rights rather than deal with their rights informally.

Disadvantages: As mentioned above, there may be an affect on the value of provisional titles until those rights fully mature.

⁷⁴ Section 118 of the Public Land Act (CA 141 as amended by CA 456) (but improvements to the land may, themselves, be mortgaged). In relation to Homestead Patents, the same section limits alienation from 5 years to 25 years from the issuance of title without the approval of the "Secretary of Agriculture and Commerce". Despite this, the approval of the Secretary has been considered judicially as being "merely directory which can be complied with at any time in the future..." (*Evangelista vs. Montano et. al*, GR No. L-5567 as cited in Nobeljas and Nobeljas *Registration of Land Titles and Deeds* 1992 (Revised Ed.) Rex Book Store, Manila, at 439). In other words, alienation can happen before the expiration of the 25 year period and the approval of the Secretary can be subsequently sought. The Secretary cannot withhold approval "except on constitutional and legal grounds" (section 118, CA 141).

4.2.7 First (original) registration: issues, characteristics and options

What type of registration system can apply and what are its characteristics?

Issue: Security of Tenure

Australia and Malaysia (of the countries specifically surveyed) security of tenure comes with the application of the Torrens system. This is the case with the Philippines although not with Indonesia, Thailand and Laos. Those countries employ negative systems (although there may be some positive elements). Given the length of time that a Torrens system has been applying in the Philippines (or parts of it) and the body of jurisprudence that has built up around it, there would seem little reason to change from this approach.

Option: *Security afforded by the 'positive' Torrens System of rights registration could continue*

Character: As with the existing system, the registered proprietor of rights is protected against unregistered or later registered interested rights.

Advantages: The Torrens system 'quiets' the title & stabilizes land rights issue by rewarding those who use the registration system.

Disadvantages: Unregistered rights can lose to subsequently registered ones without recourse to the assurance fund.

Issue: Parcel-based System

Almost all modern systems of land administration are now parcel-based. It is the process by which land is clearly identified as the primary object with the notification of land rights attached to it.

Option: *Retain a parcel based system*

Character: The character of this approach is as noted above.

Advantages: The advantages are that the land parcel becomes the primary object for identification. This simplifies and not only the identification of land but also the identification of the nature of rights associated with it. It simplifies record keeping and the processes connected with records maintenance.

Disadvantages: None.

Issue: Parcel Description

In practice a mix of the 3 pure methods are used, such as in the Lao PDR cadastral regulation that sets a hierarchy of evidence⁷⁵. These issues are discussed in more detail in other report but the advantages and disadvantages of the various approaches are set out in **Annexure 3**.

⁷⁵ Article 20.

Issue: *Acknowledgment of Formalized Rights*

Land rights are recognised either formally or informally. Formal recognition in modern land administration systems is usually through registration. The Torrens system of registration in Australia confers legal title upon registration. Yet it is a little unclear in Philippine jurisprudence as to whether the Torrens system confers legal title upon registration or whether title itself is registered.

In any event, the process of registration is used as an incentive or reward for those using the system because registration of rights generally protects the rights holders from all unregistered rights and those registered later in time. Yet in Indonesia, for example, the courts have found that unregistered rights still have the force of law; thus thwarting registration attempts. The cases of Thailand and Laos also are negative systems. Failure to encourage the registration of rights therefore leads not only to uncertainty of rights but also an ailing land administration system that is less likely to achieve its goals.

Option: *Registration of rights could continue as the formal way to recognise rights*

Character: Registration of rights is the only sure way that rights in respect of land are protected against the world.

Advantages: The advantages of this approach are clear: it encourages rights holders to register interests to obtain protection, provides Government with a better idea of numbers of rights users while giving it the opportunity to recover taxes etc.

Disadvantages: Unregistered rights holders are disadvantaged (but that is the whole point of encouraging registration).

Issue: *Restrictions on Ownership (eg Area Restrictions)*

Restrictions of ownership have been discussed earlier in relation to the use of systematic registration for the purposes of enforcing other government policy. All that remains to be said of this issue is that area entitlements (through land reform policies) in most jurisdictions are exceedingly difficult to administer. Therefore, they could be dislocated from the systematic registration process.

Issue: *Preconditions to First Registration*

The same point made in relation to restrictions on ownership immediately above, apply in relation to pre-conditions for first registration. In short, pre-conditions should be limited as much as possible so that the systematic registration process can be allowed to work unfettered.

Issue: *Effect of Registration*

The effect of all Torrens systems is essentially to protect all registered rights against most unregistered interests. As noted above, there seems little reason to reconsider that approach (especially since comparable systematic registration systems are discussed in this report comprise negative systems). As mentioned above, however, there is some uncertainty as to what the effect of registration actually is.

Option: *Ensure that the process of registration is the defining moment for the conferral of land rights*

Character: The law should clearly state that the process of registration *establishes* title rather than registration *noting* title.

Advantages: Encourages persons to register their instruments conveying title because they will have no legal interest until registration. But non-registration will not affect personal rights between the parties to the transaction.

Disadvantages: The same as those mentioned above in relation to unregistered interests.

What is Recorded and How?

Issue: *Land Office Records*

The type and system of land office recording is reasonably consistent across systematic registration models. But perhaps one of the clearest expositions of the type and purpose of registry records is contained under the law of Lao PDR.⁷⁶ Under that approach, the following records are maintained: Land Register Book (containing information about each land parcel), Land Parcel Register Index (and index of summary information concerning land parcels), Cadastral Map (a scale map of land parcels within a given area with identifying information), Land Title, Provisional Certificate, Individual Land Parcel Survey Plan and a Land File (relating to each land parcel).

Of all these records, perhaps the most important for the purposes of ensuring that more than one title is *not* issued for the one property, is the Land Parcel Register Index. Even in Lao PDR where this Indexing method was in place, failure to maintain it properly meant that there were difficulties in ensuring that duplication does not occur.

Option: *Establish a Land Parcel Register Index*

Character: The Index could contain essential information for all land parcels such as: Land Register Book and sheet number in each locality, Cadastral Map number, land parcel number and details of land parcels.

Advantages: The Land Parcel Index (along with other Office Records) assists in the management and effective use of land records.

Disadvantages: Maintenance of the Index is critical and, of course, monitoring and evaluation of this process is necessary.

Option: *Maintain records in paper form for the immediate future although providing flexibility for the process to incorporate digital technology in the future*

⁷⁶ Lao PDR Ministerial Direction 996/MoF *On Land Parcel Registration*, sections 2-4.

Character: Simply permits paper recording to be updated to digital recording at an appropriate time in the future.

Advantages: The advantages of this approach have been mentioned earlier. Requires no immediate action than providing the Register of Deeds to have the flexibility to change recording methodology at an appropriate time in the future.

Disadvantages: Paper resources eventually lead to storage problems even where they are properly managed.

Option: *Duplicate form of title document should not be re-written but either produced in duplicate or photocopied for recording purposes*

Character: The process of producing the land title includes the re-production of the original instrument rather than hand-written copying.

Advantages: The approach reduces duplication errors and speeds up the process.

Disadvantages: Technically, the original document is not held at the land office (only a copy of it).

Issue: *The Contents of the Land Title*

Some title instruments are notorious for the large amount of information contained thereon. Perhaps the most notable are those in Indonesia where the various rights documents and survey certificates have multiple serial numbers and other information. But there is a trend towards only essential land information forming part of the land title. In a number of jurisdiction (eg Laos) the land title includes information contained within the Register Book; namely, the land parcel's location (and unique parcel identifier), the name and address of the rights holders (including the right). It does not include the technical description of the land. This also occurs in Australian jurisdictions; an example of which appears in **Annexure 5**.

Option: *Information on the title could be limited to the critical information*

Character: The title could include information such as parcel identification, the rights held in respect of that parcel and the name and address of the rights holders.

Advantages: The information provided is only the critical information. This also reduces risk of errors in title production.

Disadvantages: Not include all information in respect of the land is included. Therefore, searching associated information may take more time.

Option: *Include instructions on title instruments on basic requirements for the trade in land rights*

Character: Title instruments could include as part of its standard form a notice instructing buyer and sellers of the land to visit their local land office or seek legal advice before entering into a transaction.

Advantages: The title document then provides information that tells people what to do if they want to deal with land rights. Therefore, it encourages persons to use registration system.

Disadvantages: There are no disadvantages

Issue: *Technical Description of the Land*

Technical descriptions of the land have often been the source error in transcription and misunderstanding by rights holder. The information generally is filled with long and complex technical language that has little meaning for the average person. Now, most modern land systems are moving towards removing the technical description of the land and replacing it with a lot number in a plan. This is simpler, clearer and reduces the risk of error in transcription.

Option: *There could be no technical description of the land included on the Title instrument*

Character: The Title instrument could issue with a reference to a lot in a plan number rather than the full technical description.

Advantages: The process avoids mistakes in the transcription of details from register to title instrument, simplifies the title instrument; retaining only critical information.

Disadvantages: Those interested in the precise location of the land must consult a separate cadastral map.

Issue: *Co-ownership*

Most jurisdiction have the ability for rights in land to held by more than one person. One particular exception was, until recently, the Homestead Patent issued in the Philippines where only the head of the family was entitled to hold the right. Despite recent changes to the law permitting women to be granted a Homestead Patent⁷⁷, there is a strong risk that the change will have little impact on established cultural biases against women.

Option: *Retain ability for co-ownership of land rights*

Character: Permits all persons with interests in land formally to share in rights.

Advantages: No person is disadvantaged because all rights are registered.

Disadvantages: Quality evaluation systems must be strictly enforced to ensure that mistakes are avoided.

Issue: *Correction of Mistakes*

While most jurisdictions permit correction of errors or permit changes of certain information with approval, the correction processes in the Philippines requires Court

⁷⁷ This was changed by Administrative Order 2002-13 dated 24 June 2002. Refer to the Report of the Systematic Registration Adviser (December 2002) at 58.

intervention. This applies even where, for example, the land office may have lost a document. It is still up to the right holder to petition the Court for changes. This is an antiquated system that unnecessarily congests land office processes and means that individuals must go to unnecessary expense to make simple changes to documents over which there is no doubt or dispute.

Option: *Permit discretion of Land Office to correct mistakes on the Title instrument or register administratively*

Character: Where the Head of the Land Office considers that there is an obvious error on a register or where there is consent of the relevant rights holders, the register can be amended administratively. All amendments to the register could be noted in a separate book.

Advantages: Simplifies the process of correcting mistakes resulting in time and cost savings for government and individuals.

Disadvantages: There may be a small risk of fraudulent change but only if that fraud comes from within the Lands Office.

Issue: *Liability of Registry Staff*

Liability of staff was earlier considered in relation to SATs. In the same fashion, approaches vary. In Lao PDR, however, a sensible approach prevails that there is no personal liability where the staff member is acting honestly⁷⁸.

Option: *No liability for land office staff acting honestly and in good faith*

Character: While acting honestly and in good faith, Land Office staff should be able to carry out their tasks without fear of repercussions for mistakes.

Advantages: Encourages staff to act in a timely fashion and deal with problems. Ultimately it can lead to time and cost gains.

Disadvantages: Quality evaluation systems must be strictly enforced to ensure that mistakes are avoided.

5 Brief Summary

The options provided in this Report are made on the basis that they support the principles set out above; namely, security of tenure, clarity and simplicity, fairness, timeliness, accessibility for all, affordability and sustainability. For the purposes of the more specific areas of discussion (fundamental institutional, legal and administrative issues, the process towards first (original) registration of land rights and first (original) registration issues), the following thematic elements appear.

From an institutional perspective, administrative structures could be rationalized and the critical issue of corruption addressed through institutional structures and the development of an anti-corruption ethic within those structures. This is no small feat and can only really be considered a longer-term goal. Likewise, the fundamental legal

⁷⁸ Lao PDR Ministerial Direction on Land Parcel Registration System 996/MoF (24 June 1998) Article 70.

framework of the land rights registration system could be rationalized and redesigned to establish *one* process for rights registration. That re-designed system would take the best elements of both the judicial and the free patent processes, and discard those processes that do not support the broad principles set out above. As put to the author by a number of Filipino experts, that *one* process could be a systematic administrative rights recognition process but with the authoritative character of the judicial process.

From the perspective of project management issues, costs per title must be maintained at a realistic level. Despite this, an effective government subsidy of the process is the main way that the process has viability. Allied to these points is the level of education and training required at a local level to permit the process to work with a reasonable degree of efficiency. This is a critical point that may lead to project failure if not properly assessed.

It is the author's view that a longer-term approach involving titling under the current 'Free Patent' process has its risks. And these risks should also be carefully weighed in the process of the pilot project. They stem primarily from the fact that the process of free patent titling has its roots in anachronistic land reform policy of the early twentieth century. It limits the amount of land that can be 'owned' despite the reality of the situation on the ground. Finally, the nature of the Free Patent is ambiguous. It can be interpreted from the perspective of an original grant or as a perfection of imperfect title. Nevertheless its presumption is that the land in question is land in the public domain rather than "private" land. This may have negative implications for a legitimate claimant that fails to make out his or her claim initially and later seeks to have judicial confirmation of it under either *The Land Registration Act*. Under one system, it is said that the rights have always been with the government while the latter asserts the rights have resided with or through the rights holder from time immemorial. How can the character of the rights change in respect of the same parcel of land depending on what process is taken to formalize those rights?

A systematic administrative rights registration process could apply to *all* lands and be solely focused on parcel-based rights registration as distinct from a dual character that involves interagency approvals and *de facto* extra-agency policy implementation or policing (for example, agrarian reform programmes).

From a fundamental administrative perspective, the process could retain the simplicity of a parcel-based system with the sustainability of paper records. De-centralization of administrative structures and processes could be encouraged to the extent that proper policy implementation, monitoring and evaluation permit.

In respect of first (original) registration issues, the primary themes are the implementation of an *administrative* parcel-based rights recognition system that simplifies and rationalizes the rights recognition process. It could carry out its policy objectives in a *systematic* way. It could also enshrine that system in regulation and formally define the role and responsibilities of Systematic Adjudication Teams (SATs).

At a more detailed, technical level, the process could seek to provide adequate notice of the intention to undertake systematic rights registration in a given area. And such notice could be at a national level (to 'all the world') on the basis of region notification and, in respect of specific Barangay systematic registration, notice at a regional and local level. Community consultation could be an integral part of the process that is enshrined in

legislation, and applications for rights recognition could be open to all of legal age. The proof of rights associated with the land could be flexible and not reliant only on written official documentation. Testimonial evidence could be permitted. The duties of SATs in the process could be clearly articulated and the need for the SATs to explain the rights of individuals in the process mandated. And the process of collecting both survey data and land rights data could be undertaken at the same time. The liability of SATs for errors could be excluded where they are acting in good faith. Objections to either the adjudication process or the administrative determination in respect of rights recognition (or not) could be allowed for. But the powers of administrators to arbitrate disputes between parties should be avoided. The administrative powers for the determination of the nature of the recognized rights could be delegated to a regional level (bearing in mind the need to balance the potential for unauthorized practices to creep into the process).

Where possible, the nature of the rights in respect of land could be considered as a *recognition of existing rights* rather than a “grant” of rights. The types of rights recognized could be limited in number but provide flexibility in the nature of ‘provisional’ title where some technical aspects of an application cannot be completed (for example, boundary definition, chain of ownership, non-expiration of prescriptive periods for occupation to be formally recognized). Registrable third party rights could be recognized at first registration although short-term rights (for example, residential and other leases less than 12 months with the tenant in occupation) could be protected without registration.

Once rights are recognized they could be fully tradable and subject to few limitations, even in the cases of ‘provisional’ titles (where the market can determine the level of risk – and, hence, the value – of a particular parcel).

Land Titles themselves could be prepared at a local level and issued at a regional level to cater for expanding needs at a local level and limited ability to handle a project expansion at a central level (bearing in mind the need to balance the potential for unauthorized practices to creep into the process).

In terms of first (original) registration issues, a positive system of land rights recognition could be retained although the need for instruments to be registered *before* they create “legal” rights could be emphasized⁷⁹. Technical descriptions of the land could be dispensed with in favour of a lot and plan number. Cadastral Index Maps (CIM) could be used to lower the risk of more than one title issuing for the same piece of land. To protect individuals against fraudulent conduct, the assurance fund could be changed to ensure that those who lose their rights are compensated.

The *bona fide* acts of registry staff could be protected where mistakes are made, and errors in the register could be corrected administratively in appropriate circumstances. To facilitate registration or rights (that is, bringing land within the scope of the registration process) preconditions to registration such as a perception of a requirement for the payment of back-taxes could be removed. But, from the perspective of affordability of the process, rights holders could be charged a small fee to off-set some of the costs of survey and titling (the gap between that amount and the *true* cost of the process effectively being a government subsidy of the process).

⁷⁹ In other words, the system is one of title *by* registration as distinct from one of registration *of* title.

To facilitate the continued use of the registry system after registration, the Land Title documents themselves could contain a "Notice" to sellers and buyers of land that they could seek guidance from their local land office (or independent legal advice) if they seek to deal in the land.

The broad thrust of these elements is not only to confirm the rights of land holders and bring them within a land rights registration system but, critically, to keep them within the system. A more detailed analysis of this last aspect, however, is contained in another report⁸⁰.

The next step of the process now is for these options to be considered and their applicability from a social, legal and political perspective to be evaluated. This process of evaluation will occur early in 2003. At that time, a clearer picture of the direction of the process is likely to evolve.

⁸⁰ Mr. David McDowell, Land Registration Adviser, is currently preparing a report on this aspect of the process.

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Indonesia
The Republic of the Philippines
Thailand
The Republic of Indonesia
Lao PDR
Karnataka (India)

6 Annexures

Annexure 1

TERMS OF REFERENCE

05/11/02

INTERNATIONAL ADMINISTRATIVE TITLING ADVISER

The PA-LAMP foreshadows a potential 15-20 year program to improve land administration in the Philippines. It is a strategic GOP initiative which aims to support an efficient land market and alleviate the present low level of confidence in the system of formal land registration and the lack of tenure security.

The **Goal** of AusAID assistance, through support of the TA program, is *to assist the GOP to improve the effectiveness, transparency and efficiency of land administration to achieve the resultant flow of economic and social benefits in the Philippines.*

The **Purpose** of the TA program is *to assist the GOP to establish structures and operating procedures for a long term program to reform the land administration system in the Philippines.*

The Administrative Titling adviser to the LAMP Project will be based in PIO1 (Leyte). He will report technically to the systematic registration adviser who will coordinate the work and report administratively to the TA team leader.

Due to the late start of this assignment, there will be a break at Xmas / New Year. Also, the existing systematic registration adviser has already started on support to free patent titling as well as starting the compiling of reports and laws on overseas experience. The administrative titling adviser will focus in the first part of the assignment on the documentation of the titling options and the comparative advantages and disadvantages (deliverable 21). Then in the second TOR (2003) the adviser will evaluate the options as they could apply in the Philippines under an amended legal framework, and highlight improvements over the existing approach of free patent titling.

The Administrative Titling adviser will work closely with Project counterparts and coordinate his work with the systematic land adjudication adviser.

The approach at all times will provide the Project with best practice, a safe working situation and be Gender sensitive. The adviser will cooperate with the members of the Quality Assurance Panel whose job it is to verify that TA outputs are of a suitable standard and completeness. To this end, the adviser shall maintain an up to date work plan and have regular review meetings with counterparts on progress, issues and changes to the plan. A monthly report will be submitted to the team leader.

The purpose of the output is to assist the PIO1 to investigate better approaches to accelerated land titling, to document the advantages and key characteristics, to develop key procedures and to consult with stakeholders on the efficacy and acceptability of the possible methods and make recommendations (output 2.2 of the work plan refers).

An additional requirement of the output that was introduced at contract amendment one, is to develop procedures for the free patent titling and develop and implement suitable training of staff for the first testing of free patent titling in the prototype area. Evaluation and lessons learned workshops are to be held and the results documented to guide the design of LAMP 2.

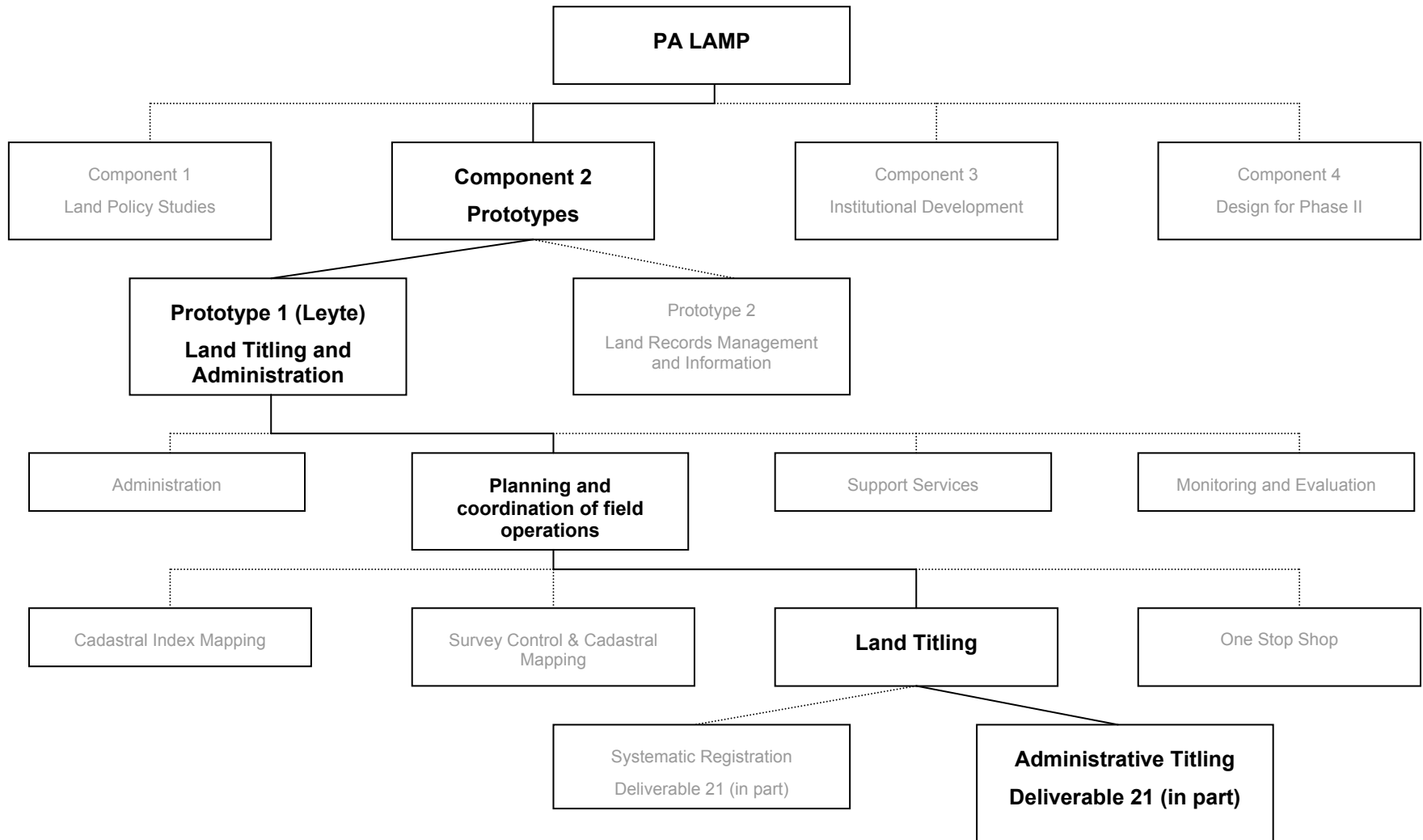
The International Administrative Titling adviser will be responsible for completing the following work no later than 14 December 2002 (reference is the PDD and the work to be completed is described as Deliverable 21 in the AusAid – AMC contract):

1. Describe the main land titling options for accelerating land titling and their characteristics, advantages and disadvantages. A literature search and study of the accelerated land titling in a number of overseas jurisdictions will be completed and documented.
2. Present the results at a training workshop for PIO1 staff.
3. Make a report on all findings.
4. Assist PIO1 on training for the administrative titling by free patent implementation.

End

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Annexure 2



Annexure 3

Land Administration Issues: Country Comparison Table

Issue	Australia	Malaysia	Thailand	Laos	Indonesia	Cambodia	Philippines
1.1 Institutional Issues							
<i>1.1.1 Institutions involved in process of land administration</i>	One primary Institution in most jurisdictions ¹	One primary Institution ²	One primary Institution ³	Primarily one Department although there is interagency approval required ⁴	One primary Institution responsible ⁵	One primary Institution responsible ⁶	Numerous agencies are involved in the judicial process of rights confirmation ⁷
<i>1.1.2 Anti-corruption ethic instilled within Institution</i>	Government Corruption is regarded as not endemic and there are mechanisms in place to address it (with high public confidence in those mechanisms) ⁸	No specific anti-corruption measures in an institutional sense but penalties apply ⁹	No specific anti-corruption measures in an institutional sense ¹⁰ but penalties apply	No specific anti-corruption measures in an institutional sense ¹¹ but penalties apply	No specific institutional anti-corruption measures in land but there is in other Institutional organizations ¹²	No specific anti-corruption measures in an institutional sense but penalties apply ¹³	No specific anti-corruption measures in an institutional sense ¹⁴
1.2 Fundamental Legal Issues							
<i>1.2.1 Existing Legislative Framework (clear and consistent)</i>	Land rights registration controlled by one primary law (with related and consistent ancillary laws) ¹⁵	Land rights registration controlled by one primary law (with related and consistent ancillary laws) ¹⁶	Land rights registration was initially controlled by one primary law (with related and consistent ancillary laws) ¹⁷ although subsequent legislation has complicated issues ¹⁸	Land rights registration controlled by one primary law (but with a complex of related and overlapping and inconsistent laws) ¹⁹	Land rights registration controlled by one primary law (but it is outdated and sometimes inconsistent with newer and subordinate legislation) ²⁰	Land rights registration controlled by one primary law ²¹	Three main legal frames govern land administration: <ul style="list-style-type: none"> • Judicial Titling²² • Administrative Titling (free patent, sales patent and homestead) • Indigenous rights law

Land Administration Issues: Country Comparison Table

Issue	Australia	Malaysia	Thailand	Laos	Indonesia	Cambodia	Philippines
<i>1.2.2 Consistency of the Process of legal development</i>	Co-ordinated and consistent approach to legal development	Co-ordinated and consistent approach to legal development	Land Code ensures consistent law as all matters affecting land registration and titling are included. All regulation development is in the one department.	Co-ordination of legal development is beginning although many current laws were developed in a piecemeal fashion ²³	Fundamental legal development in the area of land law is limited and often at odds with practice ²⁴	New land laws indicating more co-ordinated approach to land administration	The process of legal development is complex with question marks over applicability of some laws ²⁵
<i>1.2.3 What is land?</i>	Land includes fixtures to the land	Land includes fixtures to the land ²⁶	Land does not necessarily include fixtures to the land ²⁷	Land does not necessarily include buildings	Land does not necessarily include buildings ²⁸	Fixtures like buildings included in the definition of 'immoveable property' ²⁹	Land and Buildings considered as part of the Land ³⁰
<i>1.2.4 What land is included?</i>	All land (state and private) and land use types falls within the registration of interest requirements	All land is included in process	The Land Code covers only non-forest land ³¹ .	State land and private land use rights covered by land titling ³²	The <i>Basic Agrarian Law</i> does not include forest lands	NK	All lands under judicial titling Agricultural land (in the public domain for free patent)
<i>1.2.5 Use of Land Titling to enforce ancillary policies</i>	No Area limitations ³³ No prerequisites to pay outstanding taxes ³⁴	NK	Area apply ³⁵ limitations	Area apply ³⁶ limitations	Area apply ³⁷ limitations	Area limitations apply in certain circumstances ³⁸	Area limitations apply ³⁹ for agrarian reform purposes Some offices require the payment of land taxes before Land Titles will be delivered (although not required by law)
1.3 Administrative							

Land Administration Issues: Country Comparison Table

Issue	Australia	Malaysia	Thailand	Laos	Indonesia	Cambodia	Philippines
Systems							
<i>1.3.1 Decentralization of process</i>	Centralised registration system	Decentralised land registration system ⁴⁰	Decentralised land registration system	Decentralised land registration system ⁴¹	Decentralised land registration system	Decentralised land registration system	Decentralised land registration system ⁴²
1.3.2 Government services	LTO provides a registration service only. Lawyers/conveyancers conduct most conveyancing procedures	Only registration services provided	DOL provides a conveyancing service as well as a registration system; this speeds registration times	DOL provides a registration service only	NLA provides only registration services	Government provides only registration services	ROD provides a registration service only
1.3.3 Qualifications of senior staff	No specific qualification criteria established in law	No specific qualification criteria established in law	No specific qualification criteria established in law ⁴³	No specific qualification criteria established in law	No specific qualification criteria established in law	No specific qualification criteria established in law	Requirements for some senior positions to be filled only by lawyers ⁴⁴
1.4 Fundamental Management Issues							
1.4.1 Unit Cost	NA	NA	US\$32.80 ⁴⁵	US\$20 ⁴⁶	US\$24.40 ⁴⁷	NA	NK
1.4.2 Levels of Training and education required	NA	NA	Generally high levels of education ⁴⁸	Education levels are low. High levels of training required to make system operational ⁴⁹	Generally high educational levels although still inadequate in some areas ⁵⁰	NA	Moderate levels of education ⁵¹
2.1 Process Towards First Registration (General)							

Land Administration Issues: Country Comparison Table

Issue	Australia	Malaysia	Thailand	Laos	Indonesia	Cambodia	Philippines
2.1.1 Type of rights recognition process	Administrative process: no judicial involvement in process	Administrative process: no judicial involvement in process	Administrative process: no judicial involvement in process	Administrative process: no judicial involvement in process	Administrative process: no judicial involvement in process	Administrative process: no judicial involvement in process	Judicial approval required in non-Free Patent confirmation ⁵²
2.1.2 Existence of legislation control-ling systematic adjudication	None	None	Detailed laws guiding Systematic registration ⁵³	Detailed laws guiding Systematic registration ⁵⁴	Detailed laws guiding Systematic registration ⁵⁵	None ⁵⁶	Limited laws relating to systematic registration of land rights ⁵⁷
2.1.3 Inter-agency involvement in rights recognition	Limited interagency involvement in process	Limited interagency involvement in process	Limited interagency involvement in process ⁵⁸	Some interagency involvement in process ⁵⁹	Limited interagency involvement in process	Limited interagency involvement in process	Significant Inter-agency involvement in judicial process ⁶⁰ Single agency involvement in administrative (free patent) process
2.1.4 Land Rights Adjudication process	Sporadic survey by private surveyors	Sporadic survey by public and private surveyors ⁶¹	Systematic and sporadic adjudication ⁶²	Provision for Systematic Adjudication ⁶³ and sporadic adjudication ⁶⁴	Systematic and sporadic adjudication ⁶⁵	Systematic adjudication ⁶⁶	Systematic and Sporadic adjudication of land rights
2.2 Process Towards First Registration (Specific)							
2.2.1 Formal Existence of Systematic Adjudication Teams	None	NA	Systematic Adjudication Teams established ⁶⁷	Systematic Adjudication Teams established ⁶⁸	Systematic Adjudication Teams established along with subordinate	NK	Systematic Adjudication Teams established

Land Administration Issues: Country Comparison Table

Issue	Australia	Malaysia	Thailand	Laos	Indonesia	Cambodia	Philippines
(SATs)					"Task Forces" ⁶⁹		
2.2.2 Official SAT positions	NA	NA	All surveyors and adjudicators management and staff are officials. ⁷⁰	All SAT leaders and deputy leaders for adjudication are officials. All adjudicators are officials. Some surveyors are officials. ⁷¹	Management and adjudication positions were officials. ⁷²	NA	3 (one each for physical, rights data and administration)
2.2.3 Location of SATs	NA	NA	Local SATs	Local SATs	Local SATs	NA	Currently trialling local SATs
2.2.4 Collection of data	NA	NA	NK	Physical and rights data at same time	Physical and rights data at same time	NA	Physical and rights data at same time
2.2.5 Role of SATs	NA	NA	Investigates physical data (survey) Investigates use of land ⁷³	Consider the status of Land Determine physical data (survey) determine rights data ⁷⁴ report in writing on adjudication ⁷⁵	Collect physical data Make various survey related documents including cadastral maps ⁷⁶ Collect rights data ⁷⁷ Make announcements etc Assist in setting disputes ⁷⁸	NK	Collect physical data Collect rights data In preparation for Petition for registration (under judicial registration)
2.2.6 Duties of SAT clearly articulated	NA	NA	Yes ⁷⁹	Yes ⁸⁰	Yes ⁸¹	NA	Policy only

Land Administration Issues: Country Comparison Table

Issue	Australia	Malaysia	Thailand	Laos	Indonesia	Cambodia	Philippines
2.2.7 Liability of SAT	NA	NA	Staff are liable	No liability where SAT sincerely carries out its functions ⁸²	No liability for SATs where relying on information provided ⁸³	NA	Claimant is responsible under judicial process
What is the process for systematic adjudication?							
2.2.8 Notice of Systematic Registration process	NA	NA	Formal Notice required ⁸⁴	Formal Notice required	Formal Notice required	NA	Formal Notice for judicial process in Government Gazette (90 days)
2.2.9 Community notification & consultation	NA	NK	Community consultation a formal part of systematic adjudication process ⁸⁵	Community consultation a formal part of systematic adjudication process ⁸⁶	Community consultation a formal part of systematic adjudication process ⁸⁷ Formal Notice provided after survey and preparation of cadastral maps ⁸⁸	No Known formal requirements	Formal Notice required in respect of lands to be surveyed ⁸⁹ Specific Notice from the land administration agency ⁹⁰
2.2.10 Who can apply for confirmation of rights	Natural and juridical persons	Natural and juridical persons	A person has Title documents Natural persons in continuous possession and use from before the start of the Land Code ⁹¹	Persons and 'organizations' ⁹²	Natural persons but <i>not</i> juridical persons in some instances ⁹³	Natural persons and juridical persons	Judicial Titling: Natural and legal persons (including government entities) Free Patent limited to:

Land Administration Issues: Country Comparison Table

Issue	Australia	Malaysia	Thailand	Laos	Indonesia	Cambodia	Philippines
							natural citizens 'Agricultural public land' 12 Hectares ⁹⁴
2.2.11 Proof of rights (supporting docs/flexibility)	Limited Proof required for first/new registration: <ul style="list-style-type: none"> Name on Land Rights Register Signature or relevant document Proof of right (obtainable by independent search in most cases) Certification of dealing (ie the 'honour system') 	NK	Evidence of possession of land (relevant certificates of use etc) other evidence of possession ⁹⁵	Any written documents (& plans) Verbal and written testimony Expert evidence Physical evidence (such as structures etc) Any other sources deemed appropriate by the land agency ⁹⁶	Written evidence of rights plus witness information; alternatively, 20 years consecutive physical possession, in good faith and without objection ⁹⁷	Peaceful & uncontested possession of land for greater than 5 years ⁹⁸	Free Patent: Natural born citizen Not owner of more than 12 hectares Has continuously occupied directly or through predecessors Has paid the real estate tax ⁹⁹
2.2.11 Objections and disputes arising from systematic Adjudication	Boundary disputes often settled in Court	NK	Where there are rival claimants competent Official may settle the matter ¹⁰⁰	On the spot arbitration permitted by Adjudication Unit ¹⁰¹	Attempts made to settle disputes ¹⁰²	Conciliation of Disputes ¹⁰³	Disputes to be "reported" rather than resolved ¹⁰⁴
2.2.12 Finalization of Adjudication (SAT Reports)	NA	NK	Head of Adjudication Center has power to finalize adjudication and also sign title	Village Head certifies SAT report ¹⁰⁵	Report prepared by Task Force and "legalized" at end of notice period ¹⁰⁶	NA	Under judicial system data collection is assisted by staff

Land Administration Issues: Country Comparison Table

Issue	Australia	Malaysia	Thailand	Laos	Indonesia	Cambodia	Philippines
			deeds				
2.2.13 Determination of nature of rights etc	NA	NA	“Competent Office” under the Land Code issues the right ¹⁰⁷	SAT determines right to be granted ¹⁰⁸	Head of Land Office decides on right to issue ¹⁰⁹	NK	Judicial Judge decides (ownership) Free Patent CENRO evaluates and approves
2.2.14 Objections to recognition of rights	NA	NA	Objection process refers to decision by Land Official ¹¹⁰	Re-consideration of decisions of the SAT permitted ¹¹¹	Objection process refers to Court process ¹¹²	A reconciliation approach to disputes applies at adjudication but not at the time of rights recognition ¹¹³	Objections must be addressed with the Courts
2.2.15 The process of the preparation of the Land Title and issuance	Preparation at Land Office	Land Office	SAT prepares Title	Land Office ¹¹⁴	SAT drafts Title	NK	LRA Draft Titles in Manila
	Issuance at Land Office	Land Office	Title issues from SAT base camp	Land Office ¹¹⁵	Head of regional Land Office issues Title	NK	ROD Issues Title
	Certificate of Title created in duplicate ¹¹⁶ : <ul style="list-style-type: none"> • Duplicate to land-owner • Original retained by the land office 	Title documents may be issued in duplicate with original retained by Land Office ¹¹⁷	Title Deed and Certificate of Utilization created in duplicate ¹¹⁸ : <ul style="list-style-type: none"> • the original to the landowner the duplicate retained by the Land office	Land Title created in duplicate ¹¹⁹ : <ul style="list-style-type: none"> • Duplicate to land-owner original retained by the land office	copy of Land Right (eg Hak Milik) on paper Similar issue of certificates in relation to other rights to land client copy on paper	Titles to Possession issued (not Land Titles) ¹²⁰ Land Concessions are also available ¹²¹	Land Title created in Duplicate ¹²² Free Patent created in duplicate ¹²³

Land Administration Issues: Country Comparison Table

Issue	Australia	Malaysia	Thailand	Laos	Indonesia	Cambodia	Philippines
What is the result of systematic rights registration?							
2.2.16 Types of primary rights recognized	Ownership (Fee simple) Qualified Title ¹²⁴ Limited Title ¹²⁵ Long-term Lease ¹²⁶	Land Office Title (Mukim Grant, Mukim Lease) Qualified Title ¹²⁷ Temporary Occupation Licence	Certificate of Utilization Pre-emptive Certificate Claim Certificate Existing rights prior to <i>Land Code</i> No provisional title per se ¹²⁸	Land Use Right Land Certificate Provisional Land Use Certificate ¹²⁹	Numerous rights capable of registration: Hak Milik Hak Guna Usaha Hak Guna Bangunan Hak Pakai Hak Pengenolaan	Certificates of Title Certificates of Possession ¹³⁰	Free Patent 'Judicial' Title Homestead Patent Sales Patent ¹³¹
2.2.17 Recognition of Third Party rights	Most leases (commercial), mortgages and easements registered on the Title	Most leases (commercial), mortgages and easements registered on the Title	Third party rights are recognized ¹³² but they are not registered in systematic registration. Third parties must ensure that those rights are registered ¹³³	Third party rights are recognised	Third party rights are recognised	Mortgages, Long-term leases and easements ¹³⁴	Third party rights are recognised
2.2.18 Ability to deal with right (restrictions)	Rights tradeable ¹³⁵ Fully No restrictions on sale for provisional titles	Rights tradeable	Restrictions applied to some State Grants and other rights ¹³⁶	Land Titles (Land Use Rights) are tradeable. Land Allocation Certificates may mature into Land Titles	Rights tradeable	Rights tradeable ¹³⁷	Judicial: fully tradeable upon filing of petition Free Patent Restricted dealings for 5 years on the basis of historical

Land Administration Issues: Country Comparison Table

Issue	Australia	Malaysia	Thailand	Laos	Indonesia	Cambodia	Philippines
				Provisional			factors
3 First (original) Registration Issues							
What type of registration system can apply and what are its characteristics?							
3.1 Security of Tenure	Title very secure ¹³⁸	Title very secure	Title considered to be secure (but subject to defeat by unregistered interests) ¹³⁹	Title subject to defeat by unregistered interests	Tenure very insecure and subject to forfeiture to the State ¹⁴⁰	Title subject to defeat by unregistered interests	Title secure after registration and expiration of limitation period
3.2 Parcel based system	Title system is parcel-based rather than owner-based	Title system is parcel-based rather than owner-based	The title system is parcel-based	The title system is parcel-based	Surveyed land: The title system is parcel-based	The title system is parcel-based ¹⁴¹	Surveyed land: The title system is parcel-based
	Unique parcel identifier for every land parcel	Unique parcel identifier for every land parcel	Unique parcel identifier for every land parcel ¹⁴²	Unique parcel identifier for every surveyed land parcel ¹⁴³	Unique parcel identifier for every surveyed land parcel ¹⁴⁴	Unique parcel identifier for every land parcel that has issued a Title ¹⁴⁵	Unique parcel identifier for every surveyed land parcel ¹⁴⁶
3.3 Parcel Description	Survey plan showing marks found and placed, any occupations and adjacent land parcels together with survey	NK	Plan of each parcel showing adjacent parcels, occupations, marks placed and measured lengths of boundaries, as well	Plan of each parcel showing adjacent parcels, occupations, marks placed and measured lengths of boundaries, as well	Plan of each parcel showing adjacent parcels, occupations, marks placed and measured lengths of boundaries, as well	NK	

Land Administration Issues: Country Comparison Table

Issue	Australia	Malaysia	Thailand	Laos	Indonesia	Cambodia	Philippines
	measurements.		as signed agreement of neighbours.	as signed agreement of neighbours.	as signed agreement of neighbours.		
3.4 How formalized rights are acknowledged	Registration	Registration	Registration	Registration	Registered and unregistered rights are acknowledged	Registration not possible but rights recognized by prescription or possession in some circumstances ¹⁴⁷	Registration obtains protection of Torrens system ¹⁴⁸
3.5 Restrictions on ownership (eg area restrictions)	None	Area restrictions apply	No area restrictions apply ¹⁴⁹	Area restrictions apply	Area restrictions apply	NK	Area restrictions apply for Free Patent and under Comprehensive Agrarian Reform Program (CARP)
3.6 Preconditions to registration	Payment of registration fees/stamp duty	None known	None known ¹⁵⁰	Payment of registration fees/stamp duty		NK	None in theory by some Registries unofficially require payment of back taxes
3.7 Effect of registration	Positive System Registration grants title conclusively (except for fraud etc) ¹⁵¹	Positive System Registration grants title ¹⁵²	Negative system (with positive elements) Registration conveys title (but not conclusively)	Negative system (with positive elements) Registration conveys title (but not conclusively)	Negative system (with positive elements) Title passes with or without registration	Negative system (with positive elements) Issue of Title of Possession is not conclusive ¹⁵³ Ownership transferred upon registration ¹⁵⁴	Positive System Registration conveys title

Land Administration Issues: Country Comparison Table

Issue	Australia	Malaysia	Thailand	Laos	Indonesia	Cambodia	Philippines
	Title is indefeasible (unconditional) with few exceptions. Therefore, it is not necessary to inspect chain of title ¹⁵⁵	Title is indefeasible (unconditional) with few exceptions. Therefore, it is not necessary to inspect earlier dealings ¹⁵⁶	Title is conditional. Therefore, it is necessary to inspect earlier dealings	Although registered, a Land Title may be subject to an earlier interest in land that is not registered	Title is conditional. Therefore, it is necessary to inspect earlier dealings	Possession Title is conditional Land Title is protected by registration	Title is indefeasible (unconditional) with few exceptions. Therefore, it is not necessary to inspect chain of title
	Registration of land transactions necessary to obtain indefeasibility of title ¹⁵⁷	Registration of land transactions necessary to obtain indefeasibility of title	Registration of land transactions compulsory		Registration of land transactions not compulsory	Registration effects rights against third parties ¹⁵⁸	Registration of "Torrens" land necessary to enforce rights. ¹⁵⁹
What is recorded and how?							
3.8 Land Office Records	Land Register Book (including cadastral maps, Register book, land file)	Register of Grants Register of State Leases Register of Multi-leaf Grants Register of Multi-leaf State leases Mukim Register Register of Qualified Title Presentation Book	Land Book (copy of land title bound into it) Land Parcel File (with documents such as land adjudication form, payment form, the cancelled land use title) File of cadastral survey documents include the survey plan land parcel indexes owners name index;	Land Parcel Survey Plan Cadastral Map Land Register Book Land File Land Parcel Register Index ¹⁶⁰	Gambar Ukur (survey drawings) Land parcel maps Land register Cadastral maps Surat Ukur (survey documents) Warkah	NK	Registered Owners Index ¹⁶¹ Registration Book ¹⁶² Primary Entry Book ¹⁶³ Provisional Register of Documents issued under PD-27 ¹⁶⁴

Land Administration Issues: Country Comparison Table

Issue	Australia	Malaysia	Thailand	Laos	Indonesia	Cambodia	Philippines
			cadastral index map preliminary cadastral index map.				
	Certificate of Title in digital form	Provision for digital records ¹⁶⁵	Paper system applies No provision to update to digital formats in the future	Paper system applies No provision to update to digital formats in the future	Paper system applies No provision to update to digital formats in the future	Paper system applies No provision to update to digital formats in the future	Paper system applies No provision to update to digital formats in the future
	Only documents conferring rights are retained (micro-filmed)	NK	Only documents conferring rights are retained (micro-filmed)	Only documents conferring rights are retained (micro-filmed)	Most documents relating to the transaction are retained in the warkah creating storage problems	NK	Most documents relating to transactions are retained and 'registered', which is likely to lead to storage problems
	Digital form of document means that there are no duplication errors	Digital form of document means that there are no duplication errors	Original Certificate is photocopied and kept in land office	Original Certificate provided to rights holder and its contents are copied by hand to the land book	NK	NA	Original Certificate held in Land Office
3.9 The contents of the Land Title	Only critical information	Only critical information	Only critical information ¹⁶⁶	Only critical information	Buku Tanah includes critical information but also ancillary information	NK	Technical description of land still included
	No notice on Title in relation to dealing rights	No notice on Title in relation to dealing rights	No notice on Title in relation to dealing rights	No notice on Title in relation to dealing rights	No notice on Title in relation to dealing rights	No notice on Title in relation to dealing rights	No notice on Title in relation to dealing rights
3.10 Technical Description of the	Certificate does not contain full technical	Certificate does not contain full technical	NK	Certificate does not contain full technical	Certificate does not contain full technical	NA	Land Titles contain full technical

Land Administration Issues: Country Comparison Table

Issue	Australia	Malaysia	Thailand	Laos	Indonesia	Cambodia	Philippines
land	description of the land (refers to lot in a plan)	description of the land (refers to lot in a plan)		description of the land (refers to lot in a plan)	description of the land (refers to lot in a plan)		description of the land
3.11 Co-ownership	Co-ownership is permitted ¹⁶⁷	Co-ownership is permitted ¹⁶⁸	Co-ownership is permitted ¹⁶⁹	Co-ownership is permitted	Co-ownership is permitted	Co-ownership is permitted ¹⁷⁰	Co-ownership is permitted ¹⁷¹
3.12 Correction of mistakes	Mistakes in the register and changes to some details can generally be corrected administratively ¹⁷²	Mistakes in the register can generally be corrected administratively ¹⁷³	Mistakes in the register can generally be corrected administratively ¹⁷⁴	Mistakes in the Land Register Book can generally be corrected administratively ¹⁷⁵	Technical errors in adjudication process can be corrected by Head of Land Office ¹⁷⁶	No known regulations	Any error in the register requires correction by judicial Order ¹⁷⁷
3.13 Liability of Registry Staff	No personal liability of staff acting in good faith; compensation is paid from the Assurance Fund ¹⁷⁸	No personal liability of staff acting in good faith ¹⁷⁹	Personal liability of staff for errors in registration, regardless of bona fides	No personal liability of staff acting honestly ¹⁸⁰	Staff personally liable	Staff may be liable in some circumstances ¹⁸¹	Staff not liable

¹ Usually a Lands Titles Office within a “Department of Lands” or broader Department encompassing the same. Dealings such as subdivisions, in most jurisdictions development approval may often require interagency approval.

² Created under the Office of the Director General of Lands and Mines (Malaysian *National Land Code*, Part Two, Chapter 1).

³ Thailand *Land Code*, section 8.

⁴ The Department of Lands has prime responsibility in respect of accelerated land titling but Certificates of Title are required to be co-signed by the regional Director of Finance Division (the Department of Lands is a Department within the Ministry of Finance) in accordance with Article 30 of *Minister of Finance Direction 997/MoF On Systematic Adjudication of Land Use Right*. This interagency requirement has caused long delays for the issuance of Land Titles particularly in Vientiane Prefecture. Furthermore, the former Director of the Department of Land made an additional requirement (that does not form part of legislation) that property rights be confirmed by a “Conclusion Committee” established at a local level before a Land Title is issued. This may potentially add

months to the process and represents a substantial bottleneck in the rights registration process (personal correspondence with Mr. David McDowell, Land Registration Adviser, Technical Assistance Team, Lao PDR Land Titling Project, 24 November 2002).

⁵ The National Land Agency by virtue of Government Regulation 24 of 1997, Article 5 (see Wright W, *Final Report on the Review of the Basic Agrarian Law 1960*, Indonesian Land Administration Project, December 1999.at 92). But the jurisdiction does not extend to forests (Ibid at 88).

⁶ Ministry of Land Management, Urban Planning and Construction (refer to the Cambodian *Land Law 2001*).

⁷ The Judicial process requires the intervention of the Courts (to confirm title or not) as well as Survey approval from the Department of the Environment and Natural Resources (DENR), the issuance of a Decree from the Land Registration Agency and the creation of a Certificate of Title by the Registry of Deeds. Refer to the process set out in the *Land Laws and Regulation Policy Study Final Report* Volume 1 (July 2002) at 18. The total process may average 18 months, excluding survey time (ibid).

⁸ For example, refer to the latest Report of *Transparency International Corruption Perceptions Index 2002*, Australia ranked 11 from 102 countries (1 being the least perception of corruption and 102 being perceived as the most corrupt). The other countries used in this comparison ranked as follows: Malaysia 33, Thailand 64, Lao PDR (not ranked), Indonesia 96 and The Philippines 77.

⁹ Malaysian *National Land Code* (Act 56 of 1965) section 429 deals with contraventions of various aspects of the Act including penalties.

¹⁰ Although the Thailand *Land Code* does specify penalties for improper conduct of staff along with the establishment of an "Investigation Committee" where a document has issued erroneously or illegally (section 61).

¹¹ Although Article 36 of the *Minister of Finance Direction 997/MoF On Systematic Adjudication of Land Use Right* subjects staff to "disciplinary sanctions" for miss-use of official functions or, in cases of "severe violation" proceedings initiated in Court.

¹² Partnership for Governance Reform in Indonesia *A diagnostic Study of Corruption in Indonesia* (Final Report February 2002)

¹³ Cambodian *Land Law 2001* sections 44, 46, 250, 261, 262, 263, 264, 265 and 266 deal with various offences of government officials and government organizations.

¹⁴ It is a common claim that informal fees are charged at an Institutional level to facilitate registration of appropriate documents.

¹⁵ For example, the *Real Property Act 1886* (South Australia) although other jurisdictions may have ancillary laws (eg New South Wales has a *Conveyancing Act 1919 (No. 6)*)

¹⁶ Malaysian *National Land Code (No. 56 of 1965)*

¹⁷ The Thailand *Act Promulgating the Land Code B.E. 2497*, effective from 1 December B.E. 2497.

¹⁸ For example in the areas of forest boundaries and land reform (refer to Brits A et al *Comparative Study of Land Administration Systems* Paper presented at World Bank Regional Workshop of Land Issues, Cambodia, 4-6 June 2002 at 7. There is no valuation legislation currently in place.

¹⁹ The Lao PDR *Law on Land No. 01/97/NA* 12 April 1997.

²⁰ The Indonesian *Basic Agrarian Law 1960* (24 September 1960, State Gazette 1960-01-04). Refer to Wright W *Final Report on the Review of the Basic Agrarian Law 1960*, Indonesian Land Administration Project, December 1999.at 1. For example inconsistencies occur in relation to Article 26(1) of the Basic Agrarian Law's suggestion that *adat* (customary rights) are to be the subject of government regulation while Government Regulation No 24 of 1997 requires that for transactions to be registered they must be witnessed by a PPAT. In the context of customary transactions, this means that many indigenous persons will be precluded from the registration of their rights. (Refer to Wright W *Report of the Review of Government Regulation No 24 of 1997*, 9 September 1999 at 8.)

²¹ Cambodian *Land Law (2001)*.

²² The Philippines *Commonwealth Act No. 141* of 1936 (otherwise known as *Public Land Act C.A No. 141*). Section 11 of this Act describes the way in which Public Lands may be alienated. The process of 'judicial titling' is contained with the *Cadastral Act* (No. 2259) dated 11 February 1923 as amended. Confirmation of "private" land can be undertaken under the Land Registration Act (No. 496) dated 6 November 1902, as amended.

²³ There is uncertainty concerning the strict interpretation of the various land laws in Lao PDR. This is primarily because there are numerous Laws, Decrees, and Ministerial Directions touching land issues. The *Land Law* itself, covers the workings of 6 Ministries (Article 8) and the Office of the Prime Minister (Prime Ministerial Decree No 237/PM of 11 December 2001 *On the Organizational Activities of the National Department of Land Use Planning and Development*).

²⁴ This is partly because of reluctance by law makers to review the *Basic Agrarian Law* (1960), the fundamental law relating to land, because of a perception that the Law is "immutable". The later Government Regulation 24 of 1997, however, deals with systematic and sporadic adjudication of land rights (Wright W at 91) and has a number of inconsistencies with the Basic Agrarian Law 1960. See Wright W *Final Report on the Review of the Basic Agrarian Law 1960*, Indonesian Land Administration Project, December 1999 for a generally commentary on this point.

²⁵ For example, laws relating directly to the disposition of Public Land include 7 Acts, 3 Presidential Decrees, 3 Executive Orders, 2 Administrative Orders. Refer to *Land Laws and Regulation Policy Study Final Report* Volume 1 (July 2002), Annex 4.

²⁶ Malaysian *National Land Code (No 56 of 1965)* section 5.

²⁷ Thailand *Land Code*, section 1.

²⁸ A right known as *Hak Guna Bangunan* (right to use (and construct) buildings) is created by the *Basic Agrarian Law 1960*. This permits a person to have a right in respect of buildings over another's land. (Refer to Wright W *Final Report on the Review of the Basic Agrarian Law 1960*, Indonesian Land Administration Project, December 1999 at 7.)

²⁹ Cambodia *Land Law 2001*, section 2.

³⁰ Refer to Pena, Pena, Jr & Pena, *Registration of Land Titles and Deeds*, Revised 1994 ed. (2002 print) Rex Printing Company, Quezon City at 99 and 172-173.

³¹ There are minor programs to recognise rights in respect of forest land (eg 5 year usufruct licences to agricultural producers in declared forests). Personal correspondence with Tony Burns 23 December 2002.

³² Although Forest Land (as defined by Article 19 of the *Land Law 1997*), managed by the Ministry of Agriculture and Forestry, is not issued with a Land Title (*Ministerial Direction on Cadastral Surveying and Cadastral Mapping No 748/MoF* (17 May 2000), section 18).

³³ Although large land holdings are discouraged by the operation of land tax mechanisms attaching to land ownership. Such systems were originally introduced in early colonial times to break up large land holdings of wealthy farmers. Such large land holdings are no longer an issue but the taxes remain for revenue purposes.

³⁴ Outstanding land tax payments are not a bar to registration although they may remain constitute a charge over the land. For these reasons, it is a commercial requirement by the purchaser of land that outstanding land taxes (and similar charges over the land) be fully discharged at the settlement of the transfer of ownership. Registration fees and stamp duty to effect registration of documents, however, are payable before registration can be completed.

³⁵ Thailand *Land Code* Chapter 3, in particular, sections 34 to 40.

³⁶ Articles 17, 21 and 27 of the Land Law tie effect use of the land to maximum area limitations. For example, Article 27 states: "The State authorises individuals and families the right for peaceful, long-term and effective use of construction land in conformity with the objective for a maximum area of eight hundred square metres per person in the family. Any person who wishes to use a larger area of construction land, has the right to apply for leasing the land from the State..."

³⁷ Indonesian *Basic Agrarian Law*, Article 7 generally and Article 17 relating to non-agricultural land for which there is yet to be Government regulation (Draft legislation had been prepared in 1999 but its status is uncertain). Area limitations do apply in respect of agricultural land; e.g. Government Regulation 56 of 1960, Law no 1 of 1961 and Government Regulation No 12 of 1961 (See Wright W *Final Report on the Review of the Basic Agrarian Law 1960*, Indonesian Land Administration Project, December 1999 at 20.)

³⁸ Land Concessions are, generally, limited to 10,000 hectares (Cambodian *Land Law*, section 59).

³⁹ The Comprehensive Agrarian Reform Law. Also Republic Act No 783 *An Act to grant free patents to occupants of Public agricultural lands since or prior to July 4, 1945* (21 June 1952), section 1, limits the free patent to 24 hectares.

⁴⁰ Malaysian *National Land Code (No. 56 of 1965)* section 159 implies that there is more than one Land Administrator and that "In respect of each mukim within his district, every Land Administrator shall open for the purposes of this Act, and maintain at the Land Office, two series of books, to be known collectively as the Mukim Register" (Section 159(1)).

⁴¹ Lao PDR *Ministerial Direction on Land Parcel Registration System 996/MoF* (24 June 1998) Article 4.

⁴² *Presidential Decree 1529 (The Property Registration Decree)* section 7 requires at least one Register of Deeds in each Province and one for each city.

⁴³ The practice of the Department of Lands, however, is to employ staff with legal qualifications. As a result, there is about 2,400 legally qualified staff able to support a registration system that does not require a private conveyancing industry (Personal correspondence with Tony Burns, 23 December 2002).

⁴⁴ Philippines *Presidential Decree 1529 (Property Registration Decree)* sections 5 (Commissioner) and 9 (Registers and Deputy Registers of Deeds).

⁴⁵ Brits A et al *Comparative Study of Land Administration Systems* Paper presented at World Bank Regional Workshop of Land Issues, Cambodia, 4-6 June 2002 at 11.

⁴⁶ Land Equity International Pty Ltd *Lao PDR Contextual Information* (draft) at 20. This figure varies annually the number provided relates to 2000/2001.

⁴⁷ Brits A et al *Comparative Study of Land Administration Systems* Paper presented at World Bank Regional Workshop of Land Issues, Cambodia, 4-6 June 2002 at 11.

⁴⁸ Land Equity International Pty Ltd *Thailand Contextual Information* (draft) at 9.

⁴⁹ Land Equity International Pty Ltd *Lao PDR Contextual Information* (draft) at 10. In Vientiane, for example, a special university course was established to provide education in relation to land law and surveying issues.

⁵⁰ Land Equity International Pty Ltd *Indonesia Contextual Information* (draft) at 13.

⁵¹ Land Equity International Pty Ltd *Philippines Contextual Information* (draft) at 17.

⁵² Commonwealth Act 141, section 11 permits the grant of titles over public land through judicial and administrative (Free Patent) methods in addition to Homestead Patents and others. An extension of the application of the law relating to Free Patents was signed by the President in November 2002.

⁵³ For example, Thailand *Land Code*.

⁵⁴ Lao PDR *Minister of Finance Direction 997/MoF On Systematic Adjudication of Land Use Right* (24 June 1998).

⁵⁵ Indonesian *Government Regulation 24 of 1997 on Land Registration* and Indonesian Regulation of the Minister of State for Agrarian Affairs (PMA) 3 of 1997 *About the Provisions for the Implementation of Government Regulation No. 24 of 1997 About Land Registration*.

⁵⁶ Although systematic registration of land rights is envisaged by the Cambodian *Land Law 2001* (for example, section 229), there are no regulations yet setting out the principles to be applied.

⁵⁷ Philippines *Cadastral Act* (No. 2259) dated 11 February 1913 (as amended).

⁵⁸ The Thailand Royal Forest Department is required to certify forest boundaries. Also the Highways Departments and Royal Irrigation Department are required to certify boundaries of highways and canals respectively (Personal correspondence with Tony Burns 23 December 2002).

⁵⁹ Although interagency involvement in the form of dealings with regional directors of the Finance Division of the Ministry of Finance has caused substantial delays in some circumstances.

⁶⁰ Heavy interagency involvement with the issuance of the first title places a significant burden on the timeliness of the judicial process (involving 3 agencies in a timeframe that averages 18 months per title). Refer to PA LAMP *Land Laws and Regulations Policy Study Final Report* Volume 1 at 18.

⁶¹ Malaysian *National Land Code* (Act 56 of 1965) Part 29.

⁶² Thailand *Land Code*.

⁶³ *Minister of Finance Direction 997/MoF On Systematic Adjudication of Land Use Right* (24 June 1998).

⁶⁴ *Minister of Finance Direction 998/MoF On Sporadic Adjudication of Land Use Right* (24 June 1998). Although the primary Regulation used in that in relation to systematic adjudication.

⁶⁵ Indonesian *Government Regulation No 24 of 1997 on Land Registration* (commonly know as PP24), Article 13(1).

⁶⁶ Cambodian *Land Law 2001*; in particular, section 229.

⁶⁷ Thailand *Land Code*, section 58.

⁶⁸ Lao PDR *Ministerial Direction 997/MoF (24 June 1998) On Systematic Adjudication of Land Use Right*, Article 2.

⁶⁹ Indonesian Regulation of the Minister of State for Agrarian Affairs (PMA) 3 of 1997 *About the Provisions for the Implementation of Government Regulation No. 24 of 1997 About Land Registration*, Article 48. Survey and Mapping, Juridical Data Collection and Administrative Task Forces are established under Article 51.

⁷⁰ Personal email correspondence with Ian Lloyd, 12 December 2002.

⁷¹ Ibid.

⁷² Ibid.

⁷³ Thailand *Land Code*, section 58(2).

⁷⁴ Lao PDR *Ministerial Direction 997/MoF (24 June 1998) On Systematic Adjudication of Land Use Right*, Article 12.

⁷⁵ Lao PDR *Ministerial Direction 997/MoF (24 June 1998) On Systematic Adjudication of Land Use Right*, Article 17.

⁷⁶ Indonesian Regulation of the Minister of State for Agrarian Affairs (PMA) 3 of 1997 *About the Provisions for the Implementation of Government Regulation No. 24 of 1997 About Land Registration*, Article 54(1) being a task of the Survey and Mapping Task Force.

(1) The tasks of a Survey and Mapping Task Force are as follows:

- a. to fix the boundaries of land parcels in the case where the members of the survey and mapping task force are BPN employees;
- b. to carry out land-boundary survey activities;

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- c. to make *gambar ukurs* (survey drawings);
 - d. to make land parcel maps;
 - e. to make land registers;
 - f. to make cadastral maps;
 - g. to make *surat ukurs* (survey documents).

⁷⁷ Indonesian Regulation of the Minister of State for Agrarian Affairs (PMA) 3 of 1997 *About the Provisions for the Implementation of Government Regulation No. 24 of 1997 About Land Registration*, Article 54(2); being a task of the Juridical Data Collection Task Force.

(2) The tasks of a Juridical Data Collection Task Force are as follows:

- a. to examine land parcels and to fix their boundaries;
- b. to make sketches (rough drawings) of land parcels in the case of land parcels for which land parcel maps are not available;
- c. to investigate the history of land parcels, to collect original documentary evidences of ownership or possession from the holders, and to issue receipts of such evidences;
- d. to make registers of land parcels that have been adjudicated;
- e. to make weekly reports on the implementation of activities;
- f. to prepare announcements concerning juridical data;
- g. to inventory objections and to settle them;
- h. to prepare data for the completion of d.i. 201, d.i. 204, d.i. 205, and d.i. 207 and for the examination of certificates.

⁷⁸ Indonesian Regulation of the Minister of State for Agrarian Affairs (PMA) 3 of 1997 *About the Provisions for the Implementation of Government Regulation No. 24 of 1997 About Land Registration*, Article 52. In detail, the requirements are as follows:

The duties and powers of an Adjudication Committee are as follows:

- a. to prepare a detailed adjudication work plan;
- b. to collect physical data and original documents of juridical data on all the land parcels which are found in the territory in question and to provide receipts of documents to the relevant land-right holders or their proxies;
- c. to investigate the history of land parcels and to assess the truth of the evidences of land ownership or possession;
- d. to announce the physical data and juridical data which have been collected;
- e. to assist in settling disagreements or disputes among relevant parties concerning the data being announced;
- f. to legalize the results of the announcement as meant in point d, which shall be used as the basis for land registration or for the making of a proposal on right granting;

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- g. to receive payments and to collect and maintain all receipts of payments made and of payments received from interested parties in line with the applicable provisions;
 - h. to deliver reports on a periodical basis and to submit the results of adjudication activities to the Head of the Land Office; and
 - i. to carry out other duties specially assigned to them in connection with the implementation of systematic registration in the area in question.

⁷⁹ The procedures are well documented in Department of Lands Regulations and manuals. (Personal correspondence with Tony Burns 23 December 2002.)

⁸⁰ Lao PDR *Minister of Finance Direction 997/MoF On Systematic Adjudication of Land Use Right* (24 June 1998). Chapter 4.

⁸¹ Indonesian Regulation of the Minister of State for Agrarian Affairs (PMA) 3 of 1997 *About the Provisions for the Implementation of Government Regulation No. 24 of 1997 About Land Registration*, Articles 52-54.

⁸² Lao PDR *Minister of Finance Direction 997/MoF On Systematic Adjudication of Land Use Right* (24 June 1998), Article 35.

⁸³ Indonesian Regulation of the Minister of State for Agrarian Affairs (PMA) 3 of 1997 *About the Provisions for the Implementation of Government Regulation No. 24 of 1997 About Land Registration*, Article 60(6).

⁸⁴ A minimum of 30 days notice required for systematic registration in accordance with Article 58 of the Thailand *Land Code*.

⁸⁵ Thailand *Land Code*, section 25, and section 58, paragraph 1, in respect of general notice of cadastral survey of Changwats in the Government Gazette, and section 58, paragraph 2 in respect of specific notice of localities and starting dates within a Changwat at "the Land Office, Amphur Land Office, Sub-Amphur Land Office, the local Kamnan's or Phu Yai Ban's residence not less than thirty days before the date of commencement of the survey."

⁸⁶ Lao PDR *Ministerial Direction 997/MoF (24 June 1998) On Systematic Adjudication of Land Use Right*, Article 7 in respect of general Notice and Article 9 in respect of Specific Notice. When a decision is made by the Adjudication Unit, that decision is then notified to "all concerned parties" (Article 25).

⁸⁷ Indonesian Regulation of the Minister of State for Agrarian Affairs (PMA) 3 of 1997 *About the Provisions for the Implementation of Government Regulation No. 24 of 1997 About Land Registration*, Article 56.

⁸⁸ Indonesian Government Regulation 24 of 1997 (PP24), Article 26(1):

- (1) The *daftar isian* (register) as meant in Article 25(2) together with the map of the land parcel or land parcels in question as a result of the surveying as meant in Article 20(1), shall be announced for thirty (30) days in the case of systematic land registration or sixty (60) days in the case of sporadic land registration to give interested parties time to raise objections.

⁸⁹ Philippines *The Cadastral Act 1913* section 1.

⁹⁰ Philippines *The Cadastral Act 1913* section 2.

⁹¹ Thailand *Land Code*, section 27(3) in relation to those without title documents. There are also restrictions on subsequent sale for particular time periods.

⁹² Lao PDR *Ministerial Direction On Systematic Adjudication of Use Right MoF/997* (24 June 1998), section 3 when read with the types of ownership of a land use right (Article 19).

⁹³ Indonesian *Basic Agrarian Law 1960*, Articles 20 and 21, although the Government "may determine which corporate bodies can have a *hak milik* and what requirements they shall fulfil to make them eligible for holding a *hak milik*". (Refer to Wright W, *Final Report on the Review of the Basic Agrarian Law 1960*, Indonesian Land Administration Project, December 1999 at 6, and in more detail at 77-78.)

⁹⁴ Philippines Republic Act 6940 *An Act granting a period ending on December 31, 2000 for filing applications for free patent and judicial confirmation of imperfect title to alienable and disposable lands of the public domain under chapters VII and VIII of the Public Land Act (Commonwealth Act 141, as amended)*, section 44.

⁹⁵ Thailand *Land Code* section 27(3) and 58(2).

⁹⁶ Lao PDR *Ministerial Direction 997/MoF (24 June 1998) On Systematic Adjudication of Land Use Right*, Article 14. The Land Use Right can be confirmed in the following ways: ownership documents, incomplete document plus 10 years of peaceful occupation, customary practices, by prescription (Article 19).

⁹⁷ Indonesian Government Regulation 24 of 1997 (PP24), Article 24:

- (1) The existence of a land right resulting from the conversion of an old right shall be proven with evidence in the form of written documents, witnesses' information, and/or statements made by the party in question which are evaluated by the Adjudication Committee in the case of systematic registration or the Head of the Land Office in the case of sporadic registration as having an adequate content of truth for purposes related to the registration of the right in question, of the right holder, and of other parties' rights which encumber it.
- (2) In the case where there is not any evidence or there is no longer any evidence as meant in paragraph (1), the recording of the right in question can be carried out on the basis of the fact that the land parcel in question has been physically possessed for twenty (20) consecutive years or more by the person applying for the registration of the right in question and his/her predecessors, under the following conditions:
 - a. that the possession of the land parcel in question has been made in good faith and in a transparent way by the person in question as the party which is entitled to it;
 - b. that the possession of the land parcel in question was not questioned by the relevant adat law community or the relevant village/kelurahan community or other parties either before or during the period of announcement as meant in Article 26.

⁹⁸ Cambodian *Land Law 2001*, section 30.

⁹⁹ Philippine Republic Act 6940 (extending Period for Free Patents)

¹⁰⁰ Thailand *Land Code*, section 60. The decision is appealable to the Court. The process can be more complicated than this (refer to Land Equity International Pt Ltd *Thailand Contextual Information* at 7.

¹⁰¹ *Minister of Finance Direction 997/MoF On Systematic Adjudication of Land Use Right (24 June 1998)*, Article 20.

¹⁰² Indonesian Government Regulation No 24 of 1997, Article 27. Disputes during adjudication are also covered by subordinate legislation contained within PMNA3/1997, Article 20 with some degree of inconsistency when compared with PP24. (refer to Wright W *Report of the Review of Government Regulation No 24 of 1997*, 9 September 1999 at 65-66.)

¹⁰³ Cambodian *Land Law 2001*; in particular, section 237.

¹⁰⁴ It then becomes a matter for the Court to decide where the boundary resides. *The Cadastral Act*, section 28.

¹⁰⁵ Lao PDR *Ministerial Direction 997/MoF (24 June 1998) On Systematic Adjudication of Land Use Right*, Article 17.

¹⁰⁶ Indonesian Regulation of the Minister of State for Agrarian Affairs (PMA) 3 of 1997 *About the Provisions for the Implementation of Government Regulation No. 24 of 1997 About Land Registration*, Articles 62, 63 and 64.

¹⁰⁷ Thailand *Land Code*, section 58(2).

¹⁰⁸ Lao PDR *Ministerial Direction 997/MoF (24 June 1998) On Systematic Adjudication of Land Use Right*, Article 20.

¹⁰⁹ Indonesian Regulation of the Minister of State for Agrarian Affairs (PMA) 3 of 1997 *About the Provisions for the Implementation of Government Regulation No. 24 of 1997 About Land Registration*, Article 66.

¹¹⁰ Thailand *Land Code*, section 60.

¹¹¹ *Minister of Finance Direction 997/MoF On Systematic Adjudication of Land Use Right* (24 June 1998), Article 28. Final resort is granted to the Court system under Article 29.

¹¹² Indonesian Regulation of the Minister of State for Agrarian Affairs (PMA) 3 of 1997 *About the Provisions for the Implementation of Government Regulation No. 24 of 1997 About Land Registration*, Article 64(2).

¹¹³ Cambodia *Land Law 2001*, section 237. There are no known regulations under this law at present.

¹¹⁴ Lao PDR *Ministerial Direction 997/MoF (24 June 1998) On Systematic Adjudication of Land Use Right*, Article 30.

¹¹⁵ Lao PDR *Ministerial Direction 997/MoF (24 June 1998) On Systematic Adjudication of Land Use Right*, Article 30.

¹¹⁶ For example: *Real Property Act 1900* (New South Wales) sections 33 and 33A, generally, for details as to the issuance and delivery of a Certificate of Title.

¹¹⁷ Malaysian *National Land Code (No. 56 of 1965)* section 175.

¹¹⁸ The Thailand *Land Code*, section 57.

¹¹⁹ Lao PDR *Ministerial Direction on Land Parcel Registration System 996/MoF* (24 June 1998).

¹²⁰ Cambodian *Land Law (2001)* section 40.

¹²¹ Cambodian *Land Law (2001)* Chapter 5. But a Land Concession cannot be used to establish ownership rights (*Land Law (2001)* section 52). It is not a recognition of a pre-existing right (which should be the subject of a Title of Possession (see above)). It is, rather, a State grant for use for a specific time (maximum 99 years (section 61)) on specified terms. In other words, it is akin to a type of lease for a permitted use. But it cannot be transferred (section 57).

¹²² Refer generally to Republic of the Philippines, Presidential Decree 1529 (*The Property Registration Decree*) but, in particular, section 41.

¹²³ The Philippines, Presidential Decree 1529 (*The Property Registration Decree*) section 103. This section also means that once a Free Patent is Registered, the registered proprietor obtains the benefits of the Torrens system (namely, protection of interest and the Assurance Fund).

¹²⁴ *Real Property Act (1900)(NSW)* sections 28J(1A) and 28J(1B).

¹²⁵ The State of New South Wales makes allowance for both 'provisional' and 'qualified' titles. The purpose of 'qualified' titles was to speed up the bringing of old system (non-Torrens) land under the Torrens system while reducing the cost of doing so. Basically, qualified title is issued when there is some uncertainty in respect of the standard of proof for Torrens title. That title can then 'mature' over time (or after certain acts) into a Torrens Title. The title is qualified to be subject to rights in existence at the time of application for conversion. It can mature 6 years from the date of the registration of a transfer and there has been an additional transfer for value. The qualification will also be removed 12 years after the registration of a transfer for value. (Refer to the *Real Property Act 1900* (NSW) section 28J(1A) and to Hallmann *Land Titles* Paras [9.58]-[9.62]. There are also other bases for qualified titles. "Limited Titles apply to old system (non-Torrens) land where the land is not satisfactorily defined by survey. (Refer to the *Real Property Act 1900* (NSW) section 28J(1B) and Hallmann *ibid* at paras [9.63]-[9.67].

¹²⁶ For example in the Australian Capital Territory.

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- ¹²⁷ Malaysia *National Land Code* (Act No 56 of 1965) section 176 to 194. The purposes of qualified title in this jurisdiction is similar to that in New South Wales.
- ¹²⁸ Land Equity International Pty Ltd *Thailand Contextual Information* (draft) at 8.
- ¹²⁹ Lao PDR *Ministerial Direction 996/MoF (24 June 1998) On Land Parcel Registration System*, Articles 6 and 19.
- ¹³⁰ Cambodian *Land Law 2001*, Article 40.
- ¹³¹ Philippines *Commonwealth Act 141*, Section 11.
- ¹³² Thailand *Land Code*, section 59(4).
- ¹³³ Personal correspondence with Tony Burns 23 December 2002.
- ¹³⁴ Cambodian *Land Law 2001*, Article 229.
- ¹³⁵ Subject, for example, to foreign investment requirements.
- ¹³⁶ For example, transfers of title are limited for 10 years and transfer of certificates of utilization are restricted before 5 years. Refer to Land Equity International Pty Ltd *Comparative Study of Land Administration Systems – Thailand Case Study* (draft) at 9. There are also restrictions on dealing for titles that have been adjudicated without documentary evidence (personal correspondence with Tony Burns 23 December 2002).
- ¹³⁷ Cambodian *Land Law 2001*, section 63.
- ¹³⁸ Property rights rules in respect of Commonwealth acquisitions are established under the Australian Constitution.
- ¹³⁹ Under the Civil Code and the Commercial Code, registered rights holders have the right of ownership (personal correspondence with Tony Burns 23 December 2002).
- ¹⁴⁰ Land tenure under the Indonesian land administration system can be subject to forfeiture to the State for many reasons that rest squarely with the ambit of State discretion either to “extend, renew or terminate the tenures...” (Refer to Wright W *Final Report on the Review of the Basic Agrarian Law 1960*, Indonesian Land Administration Project, December 1999 at 26.)
- ¹⁴¹ Although the Cadastral system is currently being reconstituted (refer to the Cambodian *Land Law (2001)* section 40). Also refer to Title VI – Cadastre.
- ¹⁴² There are a range of parcel identifiers in Thailand that require the maintenance of a number of cross-indices (personal correspondence with Tony Burns 23 December 2002).
- ¹⁴³ Lao PDR *Ministerial Direction on Cadastral Surveying and Cadastral Mapping No 748/MoF (17 May 2000)*, section 36, 37.
- ¹⁴⁴ Indonesian Regulation of the Minister of State for Agrarian Affairs (PMA) 3 of 1997 *About the Provisions for the Implementation of Government Regulation No. 24 of 1997 About Land Registration*, Article 23(1).
- ¹⁴⁵ Cambodian *Land Law (2001)*, Title VI – Cadastre. In particular, section 238.
- ¹⁴⁶ The Republic of the Philippines, *Presidential Decree 1529 (Property Registration Decree)* section 36.
- ¹⁴⁷ Cambodia *Land Law 2001*, articles 29, 30 and 31
- ¹⁴⁸ Philippines *Presidential Decree 1529 (Property Registration Decree)*.

¹⁴⁹ The Land Code does indicate that area limitations apply but these were cancelled in BE 2502 (1959) four years after the promulgation of the Land Code (1954) (Personal correspondence with Tony Burns 23 December 2002).

¹⁵⁰ Ian Lloyd, former consultant to the Thailand land titling project, indicated in personal correspondence (12 December 2002) that “In most cases the land owners already held a formal document issued by the Dept of Lands evidencing their land ownership. In most cases these were land use rights, some with restrictions on transfer. The issuance of the land title evidencing absolute ownership was based on the earlier documents. Payment of land tax was not an issue at all.”

¹⁵¹ Australian High Court Case *Beskvar v. Wall* (1971) 126 CLR 376. Title is conferred by registration of the appropriate instrument not by the execution of a deed and exchange of valuable consideration.

¹⁵² Malaysian *National Land Code (No. 56 of 1965)* section 215(2).

¹⁵³ Cambodian *Land Law (2001)* section 40.

¹⁵⁴ Cambodian *Land Law (2001)* section 65. The execution of a contract is not enough. There is a prescribed form for registration. The contract must also be registered (section 69).

¹⁵⁵ This is the case under Torrens legislation throughout Australia (for example: *Real Property Act 1886* (South Australia) section 69).

¹⁵⁶ Malaysian *National Land Code (No. 56 of 1965)* section 340.

¹⁵⁷ For example: *Real Property Act 1886* (South Australia) section 69.

¹⁵⁸ The Cambodian *Land Law*, section 65.

¹⁵⁹ The Republic of the Philippines, *Presidential Decree 1529 (Property Registration Decree)* section 51.

¹⁶⁰ Lao PDR *Ministerial Direction on Land Parcel Registration System 996/MoF* (24 June 1998) Article 4.

¹⁶¹ Philippines *Presidential Decree 1529 (Property Registration Decree)* section 12.

¹⁶² Philippines *Presidential Decree 1529 (Property Registration Decree)* section 42.

¹⁶³ Philippines *Presidential Decree 1529 (Property Registration Decree)* section 56.

¹⁶⁴ Philippines *Presidential Decree 1529 (Property Registration Decree)* section 104. These relate to Department of Agrarian Reform.

¹⁶⁵ Malaysian *National Land Code (No. 56 of 1965)* section 5A.

¹⁶⁶ According to personal correspondence from Ian Lloyd, former consultant to the Thailand land project, on 12 December 2002, the Land Title includes: “On the land title front page is the title number (district number) and book and page number and UPI (map and parcel numbers) and land area. Also, shown is the name of the first owner/s and their address. The parcel is described by a diagram showing the number of the adjacent parcels, and the corner marks placed (but not showing the metes and bounds).”

¹⁶⁷ In what is known as “joint tenancy” and “tenancy in common”. This is permitted under Torrens legislation throughout Australia (for example: *Real Property Act 1900* (New South Wales) section 100).

¹⁶⁸ Malaysian *National Land Code (No. 56 of 1965)* sections 342, 343. The Malaysian form of co-ownership equates to “tenancy in common” under the Anglo-Australian system (refer to section 343(1)). In the case of Trusts, however, a principle akin to “joint tenancy” applies (Refer to section 345).

¹⁶⁹ Thailand Land Code section 40. The Thai form of co-ownership has similarities to the Anglo-Australian “tenancy in common”.

¹⁷⁰ Cambodian *Land Law (2001)* section 10. The *Land Law* identifies ‘collective’ or ‘undivided’ ownership (Chapter 9, akin to ‘joint tenancy’ in Anglo-Australian law) and ‘co-ownership’ (Chapter 10). Co-ownership, however, does not appear to be a form of ‘tenancy in common’ under Anglo-Australian law. Rather, it seems to mean that co-owners may be able to own certain parts of property as an individual owner (but not common property). Refer to section 177 in particular. This approach to ownership in respect of land is similar to what is known as “strata titles” in most Australian jurisdictions. Although no body corporate is established for the purposes of ownership of common property. Under the Cambodian Land Law (2001), the common property is owned jointly (in the Chapter 11 sense) by the co-owners.

¹⁷¹ Philippines *Presidential Decree 1529 (Property Registration Decree)*, section 14.

¹⁷² This applies to all Torrens jurisdictions (for example, *Real Property Act 1900* (New South Wales) section 136 in respect of corrections).

¹⁷³ Malaysian *National Land Code (No. 56 of 1965)* section 380 and subject to certain exceptions.

¹⁷⁴ The Thailand *Land Code*, section 61: “...In the case of clerical errors appear and interested persons have given written consent to rectification, the Land Official shall have the power to rectify such errors...”

¹⁷⁵ Lao PDR *Ministerial Direction on Land Parcel Registration System 996/MoF* (24 June 1998) Article 42.

¹⁷⁶ For example, Indonesian Regulation of the Minister of State for Agrarian Affairs (PMA) 3 of 1997 *About the Provisions for the Implementation of Government Regulation No. 24 of 1997 About Land Registration*, Article 41(3).

¹⁷⁷ The Republic of the Philippines, *Presidential Decree 1529 (Property Registration Decree)* section 108. This is supported in other areas such as section 48: “A certificate of title shall not be subject to collateral attack. It cannot be altered, modified, or cancelled except in a direct proceeding in accordance with law.” This is supported by section 100. Similarly a lost Certificate of Title requires a Petition to be made to the Court for replacement whether the duplicate is lost (section 109) or the original is lost by the Registrar of Deeds (section 110).

¹⁷⁸ For example: *Real Property Act 1900* (New South Wales) section 134.

¹⁷⁹ Malaysian *National Land Code (No. 56 of 1965)* section 22.

¹⁸⁰ Lao PDR *Ministerial Direction on Land Parcel Registration System 996/MoF* (24 June 1998) Article 70.

¹⁸¹ The Cambodian *Land Law (2001)* section 44 states:

“A title of possession to immovable property, which is the public property of the state or public legal entities, issued by the competent authorities to a private person is null and void.

Any official who issues such title shall be liable under civil and criminal codes. Any authority that is aware of such illegality and fails to take an action shall be considered an accomplice and is liable to the same penalties as the person who commits the offence.”

It is unclear whether this means that liability attaches in respect of honest mistakes. The same question arises in respect of section 46 which states:

“The issuance of a title of possession to immovable property by the competent authorities to any person other than the real possessor occupying the land, constitutes an offence and shall be subject to the penalties specified in Article 261 of this law.”

Annexure 4

Issues Options: First Time/New Title Overview				
Issue	Options	Characteristics	Advantages	Disadvantages/Difficulties
1.1 Fundamental Institutional Issues				
<i>1.1.1 Institutions involved in process of land administration</i>	Establish one primary agency responsible for land registry issues	<ul style="list-style-type: none"> Rationalized institutional structure Rationalized administrative procedures 	<ul style="list-style-type: none"> Simplifies the process of land rights registration Makes process more transparent More accountability for department 	<ul style="list-style-type: none"> Initial costs of rationalization likely to be large Loss of employment in rationalized structure
<i>1.1.2 Anti-corruption ethic</i>	Establish institutional structures within that single agency that promote a culture of anti-corruption	<ul style="list-style-type: none"> A department/division to foster the development of culture of anti-corruption An oversight division capable of hearing complaints, reviewing procedures and making recommendations for change, reviewing conduct and having the power to discipline employees and/or refer matters to Court that must publicly report its findings annually 	<ul style="list-style-type: none"> Justice not only being done but <i>being seen</i> to be done Beneficiaries of the system begin to trust the process More persons will use the system 	<ul style="list-style-type: none"> Requires outlay of funds to establish appropriate institutional structure May meet resistance with entrenched practices Requires strong commitment to overhaul of current practices
	Create administrative processes within that single agency that discourage corrupt practices	<ul style="list-style-type: none"> Employees to sign Codes of Conduct that affirm anti-corruption stance of process Fee structures to be published and posted in Registry Offices Make 'unauthorized fees' illegal Open complaints process available for those affected 	<ul style="list-style-type: none"> Makes fees transparent Threatens investigation and punishment for offenders Makes government accountable to beneficiaries in the process 	<ul style="list-style-type: none"> Requires outlay of funds to establish appropriate institutional structure Requires overturning of entrenched corrupt practices

Issues Options: First Time/New Title Overview				
Issue	Options	Characteristics	Advantages	Disadvantages/Difficulties
1.2 Fundamental Legal Issues				
1.2.1 Existing Legislative Framework (clear and consistent)	Repeal patchwork of legislation relating to land rights registration and re-write/rationalize/consolidate into fewer, more coherent laws	<ul style="list-style-type: none"> Laws simplified Need only to consult limited number of laws Laws are modernized to take into account lessons from the past 	<ul style="list-style-type: none"> Law becomes more understandable to more people Laws become more relevant to current circumstances Provides an opportunity to consult community and professional practitioners on mechanisms 	<ul style="list-style-type: none"> Will require changes to laws and practices that will require a process of education at an institutional, professional and societal level taking considerable time and resources There may be reluctance to change current practices for reasons of self interest
	Create one process of land rights registration	<ul style="list-style-type: none"> There is only one way to obtain formal recognition of land rights that has the character of judicial titling although using administrative methodology. There are no longer alternative methods 	<ul style="list-style-type: none"> Simplifies the process of rights registration Makes process more transparent Reduces risk of corrupt practices affecting the process Lowers the potential cost of the process to government and to the rights beneficiary Abolishes the notion that one type of rights recognition is better than another (eg that judicial is better than free patent) 	<ul style="list-style-type: none"> Will require changes to laws and practices that will require a process of education at an institutional, professional and societal level taking considerable time and resources There may be reluctance to change current practices for reasons of self interest
1.2.2 Consistency of the Process of legal development	Establish a division responsible for co-ordinating legislative development with appropriate extra-agency institutions	<ul style="list-style-type: none"> Part of the single Institution is responsible for co-ordinating the implementation of policy with extra-agency institutions and the legislative 	<ul style="list-style-type: none"> Achieves co-ordination with other government agencies Reduced numbers of contradictory laws 	<ul style="list-style-type: none"> More time will be taken in developing appropriate legal responses to policy changes

Issues Options: First Time/New Title Overview				
Issue	Options	Characteristics	Advantages	Disadvantages/Difficulties
		drafters	<ul style="list-style-type: none"> Whole-of-government awareness of policy development 	
1.2.3 <i>What is land?</i>	The definition of Land could include all fixtures in accordance with current practices	Land within each land parcel includes all fixtures. Where a valuable improvement is made by someone other than the owner of the land then that improvement can be protected by a registered lien (in accordance with current practices)	<ul style="list-style-type: none"> Avoids the potential of complex parallel rights registration procedures in respect of both land and buildings by permitting the registration of an interest on the Land Title 	<ul style="list-style-type: none"> Risk that SATs will not thoroughly investigate the ownership of structures and potentially preclude the recognition of rights
1.2.4 <i>What land is included?</i>	All surveyed land that is the subject of registrable rights should fall within the one land rights registration system	Same administrative processes generally apply to all land that is surveyed for the purpose of recording interests in a consistent way on uniform documents	<ul style="list-style-type: none"> the process becomes more affordable for government and rights beneficiaries the process becomes rationalized and more timely the process is more easily understood, and, therefore, more transparent Costs of resources (eg production of land titles) are reduced because all title documents are in essentially the same form) Less mistakes in process Rights become more easily understood 	<ul style="list-style-type: none"> Requires careful coordination of various government agencies and coordination of their roles
1.2.5 <i>Use of Land Titling to enforce ancillary policies</i>	Disconnect ancillary government/ agency policy goals from pre-requisites to land titling processes or title issuance (eg compliance with taxing provisions or land ownership area limitations in	<ul style="list-style-type: none"> Land administration system should focus solely on identifying, recording and recognizing land rights 	<ul style="list-style-type: none"> Land titling can continuous without recourse to other policies for which the agency has no expertise Land rights administrator are not responsible for policing the policies 	<ul style="list-style-type: none"> Other government agencies may be required to police their own policies resulting in increased costs to their administrations

Issues Options: First Time/New Title Overview				
Issue	Options	Characteristics	Advantages	Disadvantages/Difficulties
	agrarian reform programs etc should not be a pre-requisite for first rights registration)		<p>of other agencies</p> <ul style="list-style-type: none"> • Reduced administrative costs • Reduces risk of disputes and confrontation in respect of land • Reduced risk of land rights agency being responsible for compensation claims • More credibility for land agency • Provides incentive for cooperation and registration of rights • More likely to ensure that owners are paid compensation when <i>formalized</i> rights are acquired¹ • Process is more transparent and sustainable • More land rights can be registered • Costs of producing land titles is reduced • The time in producing land titles in reduced 	
1.3 Fundamental Administrative Systems				
<i>1.3.1 Decentralization of process</i>	Decentralize land titling process but limit only to areas that have appropriate regional infrastructure and expertise	<ul style="list-style-type: none"> • Administration of land titling process takes place at a regional level but it is co-ordinated through a common policy 	<ul style="list-style-type: none"> • Decentralization permits a more timely response to local needs and the opportunity for more land rights to be recognised more quickly 	<ul style="list-style-type: none"> • Less control of policy implementation process • May lead to discrediting of the entire process where

Issues Options: First Time/New Title Overview				
Issue	Options	Characteristics	Advantages	Disadvantages/Difficulties
				there are problems at a regional level
1.3.2 Government services	Restrict government services to survey, adjudication and registration of land rights (ie do not extend it to conveyancing services – although advice in respect of procedural issued should be given)	<ul style="list-style-type: none"> Land administration is restricted to its 'core business' as independent recorder of rights 	<ul style="list-style-type: none"> Less risk of damages claims against the agency should there be a problem with conveyancing Less risk of conflict of interest charges Reduced risk of corruption Agency retains its role as an independent recorder of the market Cost effective for the government 	<ul style="list-style-type: none"> Some re-registrations may be lost to the system (although this may be countered by the agency providing appropriate guidance on process)
	Broaden government services to include conveyancing	<ul style="list-style-type: none"> Land Administrators provide a conveyancing service that assists users in facilitating land transactions 	<ul style="list-style-type: none"> Encourages persons to use the system because it simplifies the process and reduces potential costs for users Potentially speeds the registration process, further encouraging system use because the benefits become more demonstrable Clear Fee-for-service charges may make the government expenses in establishing and maintaining the service affordable 	<ul style="list-style-type: none"> Potential risk to government is there are errors made by staff Increased costs to government in providing infrastructure for assisting individuals Increased risk of conflict of interest and opportunity for unauthorised payments to be made
1.3.3 Qualifications of senior staff	Remove mandatory requirement that senior positions be filled by lawyers	<ul style="list-style-type: none"> A flexible meritocracy is established that recognises that non-lawyers can have important and valuable input into implementation and administration of 	<ul style="list-style-type: none"> Opens institution to different perspectives on achieving institutional goals 	<ul style="list-style-type: none"> May Trade off some legal experience and understanding of processes (although could be supported by other legal

Issues Options: First Time/New Title Overview				
Issue	Options	Characteristics	Advantages	Disadvantages/Difficulties
		government policy		<p>expertise within the office)</p> <ul style="list-style-type: none"> Likely to meet with resistance from lawyers within the current administration
1.4 Fundamental Project Management Issues				
1.4.1 Productivity	By work flow analysis and selection of suitable processes and technology, to minimise the number of staff required to be mobilised in the accelerated titling.	<ul style="list-style-type: none"> Sub teams are given a minimum productivity level to be reached and are given incentives to exceed that level. 	<ul style="list-style-type: none"> a focus on productivity is important otherwise there will be a requirement to recruit and train and manage too many staff. 	<ul style="list-style-type: none"> Quality must not be compromised and participation by the people is a must.
1.4.2 Unit Cost	The process must aim at providing land titles at a cost that falls within manageable levels since there is a subsidy for first time titling.	<ul style="list-style-type: none"> A goal must be for unit costs in the order of 20 - 40\$ per title on average. Unit costs in high value and low value lands may be different 	<ul style="list-style-type: none"> Units cost are kept within reasonable levels of affordability to the Government Drives the process towards efficiency 	<ul style="list-style-type: none"> Too high a unit cost may make project unviable/unaffordable
1.4.3 Levels of Training and education required	<p>Depending on the processes and technology adopted the levels of education and training of staff will differ.</p> <p>An assessment must be made of the potential cost for training and education of staff in the process</p>	<ul style="list-style-type: none"> The cost of providing training and education should be factored into the goals for unit cost 	<ul style="list-style-type: none"> Realistic qualifications are to be set for positions so that the work will be accomplished competently and the required number of staff is available. Realistic cost of process can be arrived at 	
1.4.4 Subsidization of Titling Proces	The initial process of first (original) registration by the government could be subsidized	<ul style="list-style-type: none"> The process of systematic rights registration could be subsidized by the government or others but with an element that balances cost recovery 	<ul style="list-style-type: none"> Makes the process of parcel-based rights registration viable Permits partial recovery of costs of 	<ul style="list-style-type: none"> Government or other finance provider must bear the cost of the short-fall between actual unit cost and nominal

Issues Options: First Time/New Title Overview				
Issue	Options	Characteristics	Advantages	Disadvantages/Difficulties
		against the risk of public non-participation	process	rights holder payment
2.1 Process Towards First Registration (General)				
2.1.1 Type of rights recognition process	Rationalize existing land rights recognition processes (judicial and Free Patent) into one administrative system with secure rights	<p>A system that approves rights administratively and including:</p> <ul style="list-style-type: none"> • Its application to all (private and State land) • The abolition of the need for judicial participation • The granting of secure rights “in rem” for registered rights holders (subject, perhaps, to periods of provisional holding before rights fully ‘mature’) • Simple administrative systems • Clear and transparent fee structure • Limited pre-requisites to registration of rights • Public access to information on the register 	<ul style="list-style-type: none"> • More cost effective • More sustainable • Faster process • Inspires confidence in the system • More people likely to use the process • More land brought within the scope of government control • Greater potential for government income • Provides the same rights as would be acquired under the judicial process 	<ul style="list-style-type: none"> • Less work for lawyers! • Quality issues must be carefully maintained to enure integrity of the system
2.1.2 Existence of legislation controlling systematic adjudication	Develop a legislative framework that prescribes the process of systematic adjudication that incorporates a balance between the need for clear rules against the need for flexibility in the field	<p>The legislation could have the following characteristics:</p> <ul style="list-style-type: none"> • Appropriate regional and Barangay notice periods relating to the start of systematic adjudication activities 	<ul style="list-style-type: none"> • Land rights recognition is faster • The process is more affordable • More rights are registered • The community affected understands the process its merits 	<ul style="list-style-type: none"> • Potential for mistakes to be made in systematic adjudication unless thorough quality evaluation is maintained

Issues Options: First Time/New Title Overview				
Issue	Options	Characteristics	Advantages	Disadvantages/Difficulties
		<ul style="list-style-type: none"> • Community consultation processes • The establishment of Systematic Adjudication Teams with prescribed functions including disputes reconciliation process and community verification • Opportunities for persons to object to ownership and boundary issues as well as the ability to challenge final decisions of administrative authorities • Permits the decision-making processes including the creating and issuance of land titles to be made at a regional level 		
2.1.3 Inter-agency dependency	Reduce the need for first-time registration of land rights to require approvals from outside administering agencies	<ul style="list-style-type: none"> • The process of recognition of rights is controlled wholly within the administering agency 	<ul style="list-style-type: none"> • Makes process simpler and more transparent • Reduces time for the process • Reduces costs of the process • Reduces risk of unauthorised fees being charged 	<ul style="list-style-type: none"> • Lack of inter-agency policy coordination may result in confusion/disagreement about rights registration
2.1.4 Land Right adjudication process	Adopt a system that focuses on systematic first-time registration of rights but permits sporadic where necessary	<ul style="list-style-type: none"> • First time registration of rights is carried out in an organized and large-scale fashion 	<ul style="list-style-type: none"> • Reasonably cost effective • More time efficient than sporadic adjudication • More transparent process • Provides opportunity for mass consultation with the community about the process and about land 	<ul style="list-style-type: none"> • Requires very organized policies and procedures along with organized staff (sometimes lacking at a regional level) • May be susceptible to errors on the ground because of numbers of land parcels

Issues Options: First Time/New Title Overview				
Issue	Options	Characteristics	Advantages	Disadvantages/Difficulties
			rights registration <ul style="list-style-type: none"> Less opportunity for unauthorised practices to take place 	being reviewed
	Adopt a system of sporadic registration of rights	<ul style="list-style-type: none"> First time registration is carried out sporadically 	<ul style="list-style-type: none"> Provides an additional service to the public 	<ul style="list-style-type: none"> Extremely cost inefficient and difficult to sustain Time consuming Susceptible to unauthorized practices
2.2 Process Towards First Registration (Specific)				
Who conducts systematic adjudication of rights and how?				
2.2.1 Formal Existence of Systematic Adjudication Teams (SATs)	Formally recognize (in law) the existence of Systematic Adjudication Teams	<ul style="list-style-type: none"> Subordinate laws could establish SATs and their role in relation to systematic adjudication of land rights 	<ul style="list-style-type: none"> Gives SATs formalized legal status under which they can carry out their duties 	None
Official SAT positions	Limit the number of SAT officials to realistic levels	<ul style="list-style-type: none"> Formal requirements for SAT officials within SAT teams is limited to the smallest number reasonably required to undertake systematic adjudication of rights 	<ul style="list-style-type: none"> more sustainable to build up the private sector capacity more cost effective to use private sector during implementation of the project more time efficient 	None
Location of SATs	Where possible SATs could be located with local communities that are the subject of systematic	<ul style="list-style-type: none"> SATs could establish base camps within the communities that are the subject of systematic adjudication permitting easy access for SATs to the 	<ul style="list-style-type: none"> SATs are closer to communities Communities are better placed to 	Potential for loss of control of processes with careful monitoring and evaluation

Issues Options: First Time/New Title Overview

Issue	Options	Characteristics	Advantages	Disadvantages/Difficulties
	adjudication of rights	community and <i>vice versa</i>	discuss issues with SATs	
Collection of data	Collection of physical data and land rights data should happen simultaneously	<ul style="list-style-type: none"> The process of physical data collection (establishing boundaries and survey) and rights data collection (establishing who has rights in respect of the land) could be undertaken at the same time 	<ul style="list-style-type: none"> Time and cost efficient process Reduced risk of errors brought about by failuer properly to reconcile different information Disturbs the land owners less Avoids wastage where surveys are completed but never a title issuing because the adjudication is not funded. 	<ul style="list-style-type: none"> Requires all staff to be present at the same time (which may be problematical in some circumstances)
2.2.5 Role of SATs	The SAT's role could be stated in regulation	<ul style="list-style-type: none"> The subordinate legislation could include the following roles for SATs: the collection of physical and juridical data in respect of land, the need for consultation with neighbours and others in the community concerning individual rights claimed, the prohibition on fee collection or payment, the recommendation (or not) of rights claimed through the preparation of formal reports in respect of land parcels 	<ul style="list-style-type: none"> SATs have legally defined duties The duties are recorded, open and transparent 	<ul style="list-style-type: none"> Over-prescription of SAT roles may actually hinder the rights recognition process
2.2.6 Duties of SAT clearly articulated	The general duties of SATs could be clearly articulated	<ul style="list-style-type: none"> Subordinate laws could clearly articulate the role of SATs in relation to systematic adjudication of land rights 	<ul style="list-style-type: none"> Both applicants and SATs would be aware of their rights and responsibilities The duties are recorded, open and transparent 	<ul style="list-style-type: none"> Over-prescription of SAT roles may actually hinder the rights recognition process

Issues Options: First Time/New Title Overview				
Issue	Options	Characteristics	Advantages	Disadvantages/Difficulties
2.2.7 Liability of SATs	SATs should not be liable for mistakes in the systematic adjudication process	<ul style="list-style-type: none"> While acting honestly and in good faith, SATs should be able to carryout their tasks without fear of repercussions for mistakes 	<ul style="list-style-type: none"> Encourages SATs to continue the systematic adjudication process The work of SATs is not influenced by the threat of litigation or fear of making decisions Process becomes more timely and more cost effective 	<ul style="list-style-type: none"> Quality evaluation systems must be strictly enforced to ensure that mistakes are avoided
What is the process for systematic adjudication?				
2.2.8 Notice of Systematic Registration process	Provide for a formalized General Notice of the intention to undertake systematic registration of land rights (ie the process could be enshrined in law)	<ul style="list-style-type: none"> General Notice could be in the Government Gazette and for a period of 1 month. This informs the world-at-large of the intention to undertake systematic adjudication in specified regions 	<ul style="list-style-type: none"> Enshrining the process in law means that there is little scope to avoid the Notice requirements, thus, permitting maximum coverage to those affected Provides the widest possible notice to persons of the intention to have rights recognised Provides opportunity to persons not living at a regional level to take appropriate action to protect their rights 	None
	Provide for a formalized Specific Notice (at a regional level) of the intention to undertake systematic registration of land rights	<ul style="list-style-type: none"> Specific Notice could be made by Regional Governors to Barangays for a period of, say, 2 months informing the people of the intention to undertake surveying and the systematic adjudication of rights Notice could be at land office, regional 	<ul style="list-style-type: none"> Enshrining the process in law means that there is little scope to avoid the Notice requirements, thus, permitting maximum coverage to those affected Provides specific notice to persons within a region to take appropriate 	None

Issues Options: First Time/New Title Overview				
Issue	Options	Characteristics	Advantages	Disadvantages/Difficulties
		media (eg newspaper/radio) level and Barangay head levels	action to protect their rights or to inform that persons that do not live in the area (but who have land rights) that systematic registration of rights is soon to begin	
2.2.9 Community consultation	Formalize (in law) a community consultation process to inform the community about the systematic registration process	<ul style="list-style-type: none"> The responsible Government Agency could be required by law to consult the community in which systematic registration is to take place 	<ul style="list-style-type: none"> Ensures that those who may have missed the Public Notices are informed personally of the process Enables the community to ask questions about the process and clarifies their own rights as well as those of surveyors and adjudication teams 	None
2.2.10 Who can apply for confirmation of rights	Ultimately, permit natural and juridical persons to apply for rights recognition although this is not currently possible for free patents	<ul style="list-style-type: none"> This permits all <i>actual</i> land rights holders to apply for their rights rather than simply one class (ie natural persons) 	<ul style="list-style-type: none"> Actual rights holders have land rights confirmed Avoids potential compensation issues arising from claims that rights have been unfairly terminated 	<ul style="list-style-type: none"> May complicate issues for SATs because they must be aware of the potential for applications from juridical persons (and potential difficulties in SATs understand what constitutes a juridical person)
2.2.11 Proof of rights (supporting docs/flexibility)	Provide a flexible framework for the recognition of land rights	<ul style="list-style-type: none"> Land rights can be recognized not merely by formal title documentation but also Written documents of an informal nature (eg tax records etc), Verbal testimony, and a Combination of the above 	<ul style="list-style-type: none"> Provides the greatest scope for actual rights to be recognized (focusing on acknowledging rights rather than denying them) Provides flexibility in the recognition process especially where documents are lost or where the rights have always been known to exist at a local level 	<ul style="list-style-type: none"> Formal Title documents are not relied upon, therefore, there may be some risk that the applicant is not the true owner

Issues Options: First Time/New Title Overview				
Issue	Options	Characteristics	Advantages	Disadvantages/Difficulties
			<ul style="list-style-type: none"> Allows for verification of rights through other sources 	
2.2.12 Objections and disputes arising from systematic Adjudication	The ability for persons to object to the systematic adjudication process could be formalised in law but giving SATs <i>limited</i> powers	<ul style="list-style-type: none"> Persons should be able to dispute aspects of the systematic adjudication process SATs could have the power to conciliate disputes (eg boundary disputes) but not have the ability to make a final determination on the dispute 	<ul style="list-style-type: none"> the process of rights recognition is protected by active debate may identify errors in the rights recognition process may lead to settlement of disputes 	<ul style="list-style-type: none"> Slows down recognition process (because parties may have to have the dispute determined by Court)
	The ability for persons to object to the systematic adjudication process could be formalised in law but giving SATs <i>strong</i> decision-making powers	<ul style="list-style-type: none"> SATs could have the power to determine disputes on the spot but providing appeal to an administrative level (eg Head of Land Office) 	<ul style="list-style-type: none"> May facilitate the registration of more rights 	<ul style="list-style-type: none"> May inflame disputes In the absence of a strong anti-corruption ethic, may encourage corrupt practices by SATs May lead to criticism of SAT process
2.2.13 Finalization of Adjudication (SAT Reports)	Reports of SATs could be verified at a local (Barangay) level before formalization at regional land office	SATs, after boundary fixing & interviews with applicants, could finalize their written reports in relation to each land parcel by a certification from the Barangay head before formalization of their report at the regional Land Office	<ul style="list-style-type: none"> The process is speeded up because it is localized Rights are recognised and formalized at a local level 	<ul style="list-style-type: none"> Absence of thorough evaluation processes may lead to mistakes
2.2.14 Determination of nature of rights etc	Nature of applicant's rights could be determined (after recommendation of SAT) at a regional land office level	On approval of a SAT report, the regional Land Office Head (or delegate) formalizes/endorses the SAT report and determines the nature of the land right in accordance with the SAT's recommendation	<ul style="list-style-type: none"> The process is speeded up because it is localized Rights are recognised and formalized at a local level 	<ul style="list-style-type: none"> Absence of thorough evaluation processes may lead to mistakes

Issues Options: First Time/New Title Overview				
Issue	Options	Characteristics	Advantages	Disadvantages/Difficulties
2.2.15 Objections to recognition of rights	Objection period be permitted in respect of decision as to nature of rights and recommendation by rights formalizer (eg regional Land Office)	<ul style="list-style-type: none"> Persons should be able to dispute the determination of the formalizer of land rights (eg Head of Land Office or delegate) within a certain notice period (eg 1 month) of the determination Objections could be reconciled or either a determination made or the matter forwarded to Court 	<ul style="list-style-type: none"> the process of rights recognition is protected by active debate may identify errors in the rights recognition process may lead to settlement of disputes 	<ul style="list-style-type: none"> Slows down recognition process (because parties may have to have the dispute determined by Court)
2.2.16 The process of the preparation of the Land Title and issuance	Land Titles could be produced at a regional level (eg the regional land office)	<ul style="list-style-type: none"> Land Titles are prepared for issuance from regional offices 	<ul style="list-style-type: none"> Speeds up the system of registration Saves in resources 	<ul style="list-style-type: none"> Open to risk of mistake or abuse if evaluation mechanisms are not in place
	Titles could issue from Regional Land Offices	<ul style="list-style-type: none"> Formalized Title instruments could issue from the regional land office after being signed by the Land Office Head or a delegate 	<ul style="list-style-type: none"> Speeds up the system of registration Saves in resources 	<ul style="list-style-type: none"> Open to risk of mistake or abuse if evaluation mechanisms are not in place
	Issue title in duplicate and provide copy to person entitled to hold it	<ul style="list-style-type: none"> When title instruments are prepared, a duplicate is issued to the entitled person (often the rights holder) 	<ul style="list-style-type: none"> Rights holders have tangible recognition of their rights The duplicate acts as a form of security in itself, helping to discourage fraudulent transactions 	<ul style="list-style-type: none"> More costly because of duplication
What is the result of systematic parcel-based rights registration?				
2.2.17 Types of primary rights recognized	Limit the number of 'ownership' rights available for registration	<ul style="list-style-type: none"> The number of rights available could be limited to one form of ownership right 	<ul style="list-style-type: none"> Ownership rights are clear and not subject to question about their nature 	<ul style="list-style-type: none"> Few in relation to ownership rights

Issues Options: First Time/New Title Overview				
Issue	Options	Characteristics	Advantages	Disadvantages/Difficulties
	Permit a form of provisional title associated with use to issue	<ul style="list-style-type: none"> A recognition of a rights brought about by long use (although prescriptive rights may not have crystallized) 	<ul style="list-style-type: none"> Brings land within the scope of the system Makes title absolute only after a specified period of time or after survey is properly completed Acknowledges the practical rights reality 'on the ground' 	<ul style="list-style-type: none"> May affect land values until provisional period expires
	Leasehold interests from the State	<ul style="list-style-type: none"> The nature of a right may be a long-term lease from the State instead of ownership right 	<ul style="list-style-type: none"> Brings land within the scope of the system 	<ul style="list-style-type: none"> Creates an added administrative burden on the State (who must administer leases) Granting a lease (instead of acknowledging ownership rights may constitute a diminution of land rights without fair compensation A lesser grant may lead to conflict
2.2.18 Recognition of Third Party rights	Third party rights in existence at the time of systematic registration process should (with few limitations) be registered on the first Title	<ul style="list-style-type: none"> Where there is an existing lease (greater than 3 years in length), mortgage or easement in writing or there is evidence that a person other than the land owner is the owner of improvements on the land, those interests could be registered on the title 	<ul style="list-style-type: none"> Ensures that all rights in respect of land have the opportunity to be registered of the title instrument 	<ul style="list-style-type: none"> Clear rules must be established as to what rights should be registered (eg short-term leases) otherwise the system may be bogged down in large numbers of minor rights – thereby impacting resources and sustainability Requires additional research on the part of SATs

Issues Options: First Time/New Title Overview				
Issue	Options	Characteristics	Advantages	Disadvantages/Difficulties
	Some short-term third party rights could be protected without the need for registration	<ul style="list-style-type: none"> For some short-term arrangements (like residential leases under, say, 12 months) protection could be provided against removal by a new registered proprietor (as if the tenant were registered) 	<ul style="list-style-type: none"> Short-term tenants receive some protection without the need to register short-term rights Land Office will not be overburdened with a multitude of short-term leases for registration 	<ul style="list-style-type: none"> A purchaser of land may not be aware of the unregistered rights in respect of the land.
2.2.19 Ability to deal with right (restrictions)	Restrictions of dealing in land after the first registration could be limited	<ul style="list-style-type: none"> Do not limit trade in title even for provisional titles. If title instruments are marked to be provisional for a certain period a transfer of title will not obtain full protection under a Torrens system until that period expires 	<ul style="list-style-type: none"> Permits the free trade in rights and encourages persons to continue to use the system of registration of rights 	<ul style="list-style-type: none"> May impact on values until the provisional status expires
3. First (Original) Registration Issues				
What type of registration system can apply and what are its characteristics?				
3.1 Security of Tenure	Security afforded by the 'positive' Torrens System of rights registration could continue	<ul style="list-style-type: none"> Registered proprietor of rights is protected against unregistered or later registered interested rights 	<ul style="list-style-type: none"> 'quiets' the title & stabilizes land rights issue rewards those who use the registration system 	<ul style="list-style-type: none"> Unregistered rights lose to registered rights (with no recourse to the assurance fund)
3.2 Parcel based system	Retain a parcel based system	<ul style="list-style-type: none"> Identifies land that is the subject of enquiry 	<ul style="list-style-type: none"> Less opportunity for mistakes to be made in describing the land parcel Unnecessary (and usually misunderstood) information is removed from the Title 	<ul style="list-style-type: none"> Those searching the Title for land description must look to a separate plan

Issues Options: First Time/New Title Overview				
Issue	Options	Characteristics	Advantages	Disadvantages/Difficulties
3.3 Parcel Description (In practice a mix of the 3 pure methods are used, such as in the lao cadastral regulation that sets a hierarchy of evidence; article 20 refers)	General	<ul style="list-style-type: none"> Boundaries are described graphically by reference to a map or natural feature or stable man-made feature, not by measurement. 	<ul style="list-style-type: none"> Low cost and low technology approach. 	<ul style="list-style-type: none"> Not suitable in all situations such as little natural features and insufficient mapping.
	Fixed	<ul style="list-style-type: none"> Boundaries are fixed with respect to monuments established specifically for the purpose of boundary definition, usually placed by surveyors, and accompanied by measurements to the boundaries from the monuments. 	<ul style="list-style-type: none"> Promotes confidence (whether real or not) Sound survey records are available for multi purposes. Can be applied to all lands. 	<ul style="list-style-type: none"> Even small changes in boundary locations can require change to survey records, and in some jurisdictions change to the title, and sometimes the decision of a Court of Law. This leads to excessive cost and time delays. Can create problems where there is no dispute between owners.
	By agreement	<ul style="list-style-type: none"> Boundaries are defined by agreement of adjoining owners and only in the case of dispute are official records used to define the boundaries. 	<ul style="list-style-type: none"> Minimum involvement by officials Most similar to the customary approach. Promotes the concept of responsibility of the land owner to look after their land boundaries and maintain understanding with the adjoining owners. Low cost. 	<ul style="list-style-type: none"> Absent land owners may return to dispute encroachment. Tenants may act on behalf of the land owners to confuse the boundary location. No official records for other purposes.
3.4 Acknowledgment of formalized rights	Registration of rights could continue as the formal way to recognise rights	<ul style="list-style-type: none"> Registration of rights is the only way that rights in respect of land are protected against all the world 	<ul style="list-style-type: none"> Encourages rights holders to register interests to obtain protection Government has better idea of 	<ul style="list-style-type: none"> Disadvantages unregistered rights

Issues Options: First Time/New Title Overview				
Issue	Options	Characteristics	Advantages	Disadvantages/Difficulties
			<p>numbers of rights users</p> <ul style="list-style-type: none"> Provides government with opportunity to recover taxes etc 	
3.5 Restrictions on ownership (eg area restrictions)	Divorce area holding restrictions from the land rights recognition process	<ul style="list-style-type: none"> SATs and Land Offices concern themselves only with the surveying of land and the registration of right regardless of limitations on area entitlements 	<ul style="list-style-type: none"> SATs and Land Offices are not involved in enforcing policies of other government agencies Land area limitation policies are almost impossible to maintain and, therefore, unsustainable Land Offices focus on core business issues (rights registration) Cost effective because land office does not need to outlay resources for policing area policies More land rights and land are brought within the system (and this is a better result than keeping them out) Titling costs reduce The integrity of the systematic rights registration process is maintained because it is seen as providing rights rather than taking them away 	<ul style="list-style-type: none"> Spending by other government departments may increase because they must take responsibility for their own policy implementation
3.6 Preconditions to first registration	Limit preconditions to registration of rights or presentation of Title documents	<ul style="list-style-type: none"> only to any fees associated with systematic registration process 	<ul style="list-style-type: none"> 'No strings' rights registration will build the integrity of the process More rights holders will be brought into the process 	<ul style="list-style-type: none"> Means that some revenues may not be obtained

Issues Options: First Time/New Title Overview				
Issue	Options	Characteristics	Advantages	Disadvantages/Difficulties
			<ul style="list-style-type: none"> Better chance of government tacking outstanding taxes etc if rights are registered 	
3.7 Effect of registration	Retain positive system of rights registration (with necessary limitations for provisional issuance)	<ul style="list-style-type: none"> The positive system protects the rights of registered interests upon registration 	<ul style="list-style-type: none"> Encourages registration of rights Makes the system more cost efficient Makes title more secure 	<ul style="list-style-type: none"> Works against unregistered interests and those who are not aware of the legal repercussions of registration
	Ensure that the process of registration is the defining moment for the conferral of land rights	<ul style="list-style-type: none"> The law should clearly state that the process of registration establishes title rather than registration noting title 	<ul style="list-style-type: none"> Encourages persons to register their instruments conveying title because they will have no title until registration Non-registration does not affect personal rights between the parties to the transaction 	<ul style="list-style-type: none"> No more than in relation to unregistered rights mentioned above.
What is recorded and how?				
3.8 Land Office Records	Rationalize registry records to exclude ownership register	<ul style="list-style-type: none"> Establish a Land Parcel Register Index 	<ul style="list-style-type: none"> Permits proper management of land records 	<ul style="list-style-type: none"> Requires continual updating to be a useful resource
	Maintain records in paper form for the immediate future although providing flexibility for the process to incorporate digital technology in the future	<ul style="list-style-type: none"> Simply permits paper recording to be updated to digital recording at an appropriate time in the future 	<ul style="list-style-type: none"> Requires no immediate action than providing the Register of Deeds to have the flexibility to change recording methodology at an appropriate time in the future 	<ul style="list-style-type: none"> Requires paper resources
	Rationalize documents required to be collected and 'registered'	<ul style="list-style-type: none"> System is interested only in documents that have a direct impact on land rights and not ancillary issues 	<ul style="list-style-type: none"> Makes process cheaper for users (no additional & unnecessary registration fees) 	<ul style="list-style-type: none"> None

Issues Options: First Time/New Title Overview				
Issue	Options	Characteristics	Advantages	Disadvantages/Difficulties
			<ul style="list-style-type: none"> Assists in reducing potential storage problems in the future 	
	Duplicate form of title document should not be re-written but either produced in duplicate or photocopied for recording purposes	<ul style="list-style-type: none"> The process of producing the land title includes the re-production of the original instrument rather than hand-written copying 	<ul style="list-style-type: none"> reduces duplication errors reduces time of process 	<ul style="list-style-type: none"> technically, the 'original' title document is not held at the land office
3.9 The contents of the Land Title	Information on the title could be limited to the critical information	<ul style="list-style-type: none"> The land title could include only limited information such as: names and addresses of rights holders, identification of rights, encumbrances on the title, identification of the land by reference to a lot in a plan (no technical description of the land) 	<ul style="list-style-type: none"> Limits the information to the critical information Reduces risk of errors in title production 	<ul style="list-style-type: none"> Does not include all information in respect of the land
	Include instructions on title instruments on basic requirements for the trade in land rights	<ul style="list-style-type: none"> Title instruments could include as part of its standard form a notice instructing buyer and sellers of the land to visit their local land office or seek legal advice before entering into a transaction 	<ul style="list-style-type: none"> Tells people what to do if they want to deal with land rights Encourages persons to use registration system 	None
3.10 Technical Description of the land	There could be no technical description of the land included on the Title instrument	<ul style="list-style-type: none"> The Title instrument could issue with a reference to a lot in a plan number rather than the full technical description 	<ul style="list-style-type: none"> Avoids mistakes in the transcription of details from register to title instrument Simplifies the title instrument Retains on title instruments understandable information 	<ul style="list-style-type: none"> Those interested in the precise location of the land must consult a separate cadastral map
3.11 Co-ownership	Retain ability for co-ownership of	<ul style="list-style-type: none"> Permits all persons with interests in 	<ul style="list-style-type: none"> No persons is disadvantaged because their rights are not 	<ul style="list-style-type: none"> Quality evaluation systems must be strictly enforced to

Issues Options: First Time/New Title Overview				
Issue	Options	Characteristics	Advantages	Disadvantages/Difficulties
	land rights	land formally to share in rights	registered	ensure that mistakes are avoided
3.12 Correction of mistakes	Permit discretion of Land Office to correct mistakes on the Title instrument or register administratively	<ul style="list-style-type: none"> Where the Head of the Land Office considers that there is an obvious error on a register or where there is consent of the relevant rights holders, the register can be amended administratively 	<ul style="list-style-type: none"> Simplifies the process of correcting mistakes Costs effective Timely 	<ul style="list-style-type: none"> May run risk of fraudulent change but only if that fraud comes from within the Lands Office
3.13 Liability of Registry Staff	No liability for land office staff acting honestly and in good faith	<ul style="list-style-type: none"> While acting honestly and in good faith, Land Office staff should be able to carryout their tasks without fear of repercussions for mistakes 	<ul style="list-style-type: none"> Encourages staff to act in a timely fashion and deal with problems Ultimately results in time and cost gains 	<ul style="list-style-type: none"> Quality evaluation systems must be strictly enforced to ensure that mistakes are avoided

¹ In Lao PDR recently, a land parcel's boundaries were redefined at the time of survey to take into account the Government's anticipated road widening plans. By doing this, it was easier for the government to avoid paying compensation to the owner of the land use right because that right had not previously been formalized.

Annexure 5



**Land and
Property
Information**

No. B500

Search certified to:

7/11/2002 10:10 AM

TITLE SEARCH

Computer Folio Certificate issued under
Section 96D of the Real Property Act 1900

COMPUTER FOLIO REFERENCE	
3/19421	
EDITION No. & DATE OF CURRENT CERTIFICATE OF TITLE	
5	20/3/2002

Page 1

LAND

LOT 3 IN DEPOSITED PLAN 19421

LOCAL GOVERNMENT AREA: SUTHERLAND

PARISH OF WATTAMOLLA COUNTY OF CUMBERLAND

TITLE DIAGRAM: DP19421

FIRST SCHEDULE

GORGIEVSKI PTY LIMITED

(T 8443558)

SECOND SCHEDULE (4 NOTIFICATIONS)

-
1. RESERVATIONS AND CONDITIONS IN THE CROWN GRANT(S)
 2. 7410762 LEASE TO MARCIA HARDY OF LOCK- UP BUTCHER SHOP AND
STOREROOM, 46 BRIGHTON ST, BUNDEENA. EXPIRES: 18/4/2003.
OPTION OF RENEWAL: 3 YEARS.
 3. 7410763 LEASE TO NICOLE BROCKDORFF & JOHN JOSEPH ATTUELL OF
LOCK UP SHOP AND STOREROOM, 48 BRIGHTON ST, BUNDEENA.
EXPIRES: 16/7/2003. OPTION OF RENEWAL: 3 YEARS.
 4. 8443559 MORTGAGE TO ST. GEORGE BANK LIMITED

NOTATIONS

UNREGISTERED DEALINGS: NIL

*** END OF SEARCH ***

d0ccop7

PRINTED ON 7/11/2002 B500

The Registrar General certifies that at the date and time specified above the person(s) described in the First Schedule was the registered proprietor of an estate in fee simple (or other such estate or interest set out in the Schedule) in the land described, subject to any exceptions, encumbrances, interests, and entries which appear in the Second Schedule.

*ANY ENTRIES PRECEDED BY AN ASTERISK DO NOT APPEAR ON THE CURRENT EDITION OF THE CERTIFICATE OF TITLE.
WARNING: THE INFORMATION APPEARING UNDER NOTATIONS HAS NOT BEEN FORMALLY RECORDED IN THE REGISTER.



Registrar General