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Formalizing Informality: The Praedial Registration System in Peru

Susana Lastarria-Cornhiel and Grenville Barnes



Land Tenure Center

AN INSTITUTE
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ON SOCIAL STRUCTURE,
RURAL INSTITUTIONS,
RESOURCE USE,
AND DEVELOPMENT

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by

**Susana Lastarria-Cornhiel
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FORMALIZING INFORMALITY: THE PRAEDIAL REGISTRATION SYSTEM IN PERU

by

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and Grenville Barnes¹**

I. INTRODUCTION

The Praedial² Property Registration system (known in Peru as the Registro Predial) has been presented as an alternative system to traditional registries for the formalization of immovable property. Much of the earlier design and pilot work for the Praedial Property Registration system was done by the Peruvian private organization, Instituto Libertad y Democracia (ILD). They claim that in Peru they “have formalized over 150,000 properties much more quickly, and at dramatically less costs, than traditional titling and registration programs” in three-and-a-half years during the early 1990s (Path to Property, n.d., p. 9). This property formalization system has been trademarked as PROFORM. It is being offered to other countries as a quick and inexpensive way to convert informal property in the hands of a large proportion of the population into legally recognized private property, and as a source of capital (through the mortgaging of this property) for the grassroots development of these countries.

This study³ assesses the functioning of this system in Peru and its replicability in other countries. There is no easily accessible documentation on how this property formalization program has actually functioned in Peru, and it is therefore difficult for development agencies to determine its applicability elsewhere. This assessment of the Registro Predial⁴ in Peru is an attempt to document the functioning of an important component of this formalization program.

The study examines different aspects of property formalization and related institutions and processes. The scope of this assessment, therefore, includes not only the Registro Predial registration system, but also the titling process (prior to registration) and the credit worthiness and credit opportunities for titled and registered property in both urban and rural areas in

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² Praedial comes from the Latin word *praedium* meaning farm, estate, or manor.

³ Funding for this research was provided to Land Tenure Center by Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ).

⁴The Registro Predial de Lima was established under the guidance of the ILD in 1990.

Lima⁵ that fall under the jurisdiction of the Registro Predial. The study also examines the concepts and legal framework of titling, registration, ownership rights, and possession rights within the Peruvian context.

The assessment methodology followed by the two-person team⁶ consisted of the documentation of the above aspects through interviews with responsible persons in government and nongovernment institutions that participate in the registration process as well as in pre- and post-registration activities. This included field visits in both urban and rural areas to interview institution personnel, community leaders, and property owners. Prior to traveling to Peru, the team also collected and studied available background material, including reports and publications by the ILD. Unfortunately, only one member of the ILD staff was available to meet with the team for a limited time to discuss the PROFORM system and the activities of property formalization. Our findings are summarized in the following paragraphs.

A. SUMMARY ASSESSMENT OF THE REGISTRO PREDIAL

There is no doubt that the Registro Predial is a more efficient system than the traditional registration system. It processes more registration transactions within a week (once all the documents are in order), and, since the basic data are computerized, it makes record retrieval easier. In addition, the registration process itself is less onerous for the users in that fewer bureaucratic procedures are required and simple, standardized forms have replaced the wordy notarized deed. While the fees charged to users are significantly less than those charged by the traditional registry, the real cost of maintaining the system has not been determined since the state subsidizes the Registro Predial, allowing it to charge relatively low fees.

On the positive side, therefore, the Registro Predial has radically reformed registration procedures and recording. It cannot be concluded, however, that the Registro Predial is a revolutionary new registration system: a legal title document is still necessary to register a property and property transactions; title searches must still be undertaken; there is no supporting cadastre; and the registration of transactions is not obligatory, providing a loophole for future registration of property transactions.

The principal objectives of a registration program are to provide property owners with greater tenure security and to allow them access to credit based on property collateral. As this assessment suggests, a legally registered and titled property does not in and by itself give the property owner access to credit. In Peru, low-income urban families and small farmers still have great difficulty acquiring credit. This is not because of the registration system, since even a fully functioning and efficient registration system does not necessarily change other market factors or increase the supply of credit for low-income families.

⁵The Registro Predial in Peru functions only in the region of Lima, one of 13 administrative regions in the country. The political structure in Peru consists of 24 departments, which are subdivided into provinces, which in turn are subdivided into districts. The departments were clustered into 13 regions in 1985. The Lima region consists of 9 provinces. Lima is the name of the capital city of Peru; it is also the name of a region, department, province, and district.

⁶The team consisted of a surveying engineer experienced in cadastral mapping as well as titling and registration systems and a sociologist knowledgeable in titling and registration systems and their socioeconomic impacts.

The Registro Predial is currently supported by a set of cadastral plans that have not yet been integrated into a comprehensive spatial record of land rights or cadastre. The Registro Predial database is not directly linked to the cadastral records that have been computerized, but includes a summarized written description of the property. While personnel in the Registro Predial support the concept of a cadastre and are moving in that direction, there is apparently no conceptual or strategic plan for creating one. There is also a question about the quality of the existing paper plans which are being computerized. Cadastral plans do not have to be extremely precise, but they should not be so approximate that they create uncertainties and insecurity among the registered landholders.

Given the inability of the Registro Predial to expand beyond the Department of Lima and the dependence on outside funding, there are still questions about the sustainability of the system. Clearly, larger economic and political factors play into the performance of a new system such as the Registro Predial. The inability to expand the system should not, therefore, be viewed purely as a design problem; rather, it should be evaluated against the broader economic and political context.

A significant contribution to come out of the efforts to reform the property registration system in Peru is highlighting the need to formalize property rights and to pressure government agencies to facilitate and promote the titling of property.

Perhaps the most notable outcome of the Registro Predial initiative is the way in which credit, registration, and building institutions in urban areas have combined to deliver their respective services. This provides a direct tie between registration and the benefits associated with registration (credit, building resources). This benefit, however, appears to come at a high price because of inflated construction product prices and high interest rates.

B. REPLICABILITY IN OTHER COUNTRIES

While the experience of the Registro Predial offers many positive lessons for other countries attempting to formalize property rights, the Peruvian experience offers a number of unique conditions that may make replication problematic.

The success of the Registro Predial in Peru is that it has focused on population groups and land areas that are relatively facile to formalize. The great majority of urban properties that fall under the jurisdiction of the Registro Predial are invasive, and state policy for the last several decades has been to recognize these settlements as legitimate communities and to give families title to the land they are occupying. The Registro Predial takes this formalization up one more level and registers these property titles. This cooperation and *modus operandi* between communities and the state greatly facilitate the legalization of these informal property rights.

In the rural sector, the cooperative land-parcellation process of the 1980s produced a large group of smallholders who were occupying land and whose legal rights to that land were universally recognized. The formal titling of these properties was begun in the mid-1980s and greatly accelerated during the late 1980s and early 1990s. Once again, it is the cooperation between agricultural cooperatives, their members, and the Ministry of Agriculture that facilitates the issuing of title documents and makes the subsequent registration of these properties possible.

Another peculiarity of the Peruvian case is the initial low cost to owners of the properties being titled and registered. In contrast to many other countries, the land being transformed into urban settlements is being transferred to property owners free of charge. While there are some costs associated with the process (for example, survey plans) which are assumed by the families of the community, the cost of acquiring this property is extremely low.

In the rural sector, when the cooperative land is distributed among cooperative members, the cost of the land is not based on its market value, but rather on a formula drawn up by each cooperative based on shares held and social benefits accumulated by each member. In other words, the cost of the land for the individual owner is relatively low.

This set of unique conditions—(1) state agencies willing to recognize property rights of fairly large sectors of “informal” property owners, and (2) the low cost of the land for property owners—encourages owners to formalize their property rights by obtaining title documents. The subsidized fees offered by the Registro Predial, furthermore, encourage the registration of these title documents. These conditions may not exist in other countries.

II. BRIEF HISTORY OF ILD’S FORMALIZATION PROGRAM IN PERU

A brief history of ILD’s activities is outlined below in order to provide a broader understanding of the context within which the Registro Predial was created.

A. ILD PHILOSOPHY

The praedial property registration system in Peru grew out of a general philosophy toward land formalization proposed and promoted by the ILD. The ILD philosophy is based on the belief that the key to resolving many of the economic, social, and political problems facing developing countries is to formalize property rights. This belief stems from some groundbreaking research on informality in the housing, trade, and transportation sectors in Peru. The results of this work were published in a book, *The Other Path*, authored by the president of ILD, Hernando de Soto. This book suggests that the most effective path away from poverty in developing countries is to reform the legal system and the procedures for formalizing property so that the informal sector’s rights are recognized, thereby giving them a sense of place in the country’s economy.

The current status of property informality in developing countries has been described by the ILD as follows (Path to Property, n.d., pp. 2–3):

Property rights in land represent a large portion of the wealth of people throughout the world.... [I]n developing countries at least 80% of family assets consist of land. Yet ... more than 90% of rural and 50% of urban property rights ... are not protected by formalized titles, that is, they are “informal.”... [A]nd therefore exchange is restricted to closed circles of trading partners which keep the assets of most people in developing countries outside the expanded market.

The majority of landholders do not have the tenure security provided by the formal legal system with the result that land cannot be used as collateral for mortgage credit. Furthermore, tenure insecurity acts as a disincentive to improving the land and increasing agricultural productivity.

The ILD also sees formalization of land rights as a key to solving a host of other difficulties, including the drug problem in Latin America, human rights abuses, and terrorism.

When poor people have confidence that land is formally theirs, their respect for other people's land increases. The Viet Cong yesterday in Vietnam and the Shining Path today in Peru made gains among informal peasants by settling boundary disputes and protecting them from abusive expropriation. Formal title gives the poor of the Amazon basin legal alternatives to selling coca leaves to drug traffickers (Path to Property, n.d., p. 3).

The ILD also asserts that formalization of land rights can lead to (1) improved environmental protection through better land-use practices, (2) more effective environmental regulation, (3) substitution of legal crops in place of coca, and (4) macroeconomic stabilization (Path to Property, n.d., pp. 3–4). In other words, they see the property formalization process as a central mechanism for countering the many problems that are being experienced in Latin America and elsewhere in the developing world.

B. PROFORM SOLUTION

The development of PROFORM to date has been a tremendous success story. It has been tested in a series of pilot projects in Peru and elsewhere.... The Peruvian pilot projects have formalized properties at a significantly faster rate and at much lower cost than traditional title and registry programs (McLaughlin and de Soto 1994, p. 314).

PROFORM has been developed, trademarked, and marketed as a radically new approach toward formalizing land rights, offering substantial savings in both cost and time when compared with conventional approaches. This system has been tested through USAID- and World Bank-funded pilot projects in Peru as well as in El Salvador. Very few independent assessments of the success of this work have been done, however, and published information tends to deal with the general ILD philosophy as summarized in the previous section.

The PROFORM system has been described as a broad “portfolio of strategies and procedures” that encompasses the following components:

1. Assessment of the role of senior government officials and positioning formalization as a strategy for resolving the kinds of institutional problems faced by these officials.
2. Institutional and organizational reform related to the legal framework and the land administration structure, including the examination and rationalization of formal property laws and procedures. By building bridges to senior government officials as well as local community leaders, the process attempts to gain both top-down and grassroots support.
3. Informal sector mobilization program aimed at maximizing local community support and involvement in the process (recognizing that local knowledge is a crucial element of the whole program).
4. Comprehensive communication and education programs that promote the benefits of the formalization process and counter the fears of those with vested interests in the old system.
5. Titling and registration in a pro-active manner, including large field campaigns, systematic adjudication of land rights, a community mapping approach, and registration.

6. Administrative and technical support for managing, coordinating, and monitoring the formalization process.
7. Putting in place the “property infrastructure (for example, valuation, credit and risk assessment, information integration services) necessary to support a vibrant and dynamic marketplace” (McLaughlin and de Soto 1994, p. 314).

While this system does approach the problem of formalization in a more comprehensive manner with greater focus on local involvement, it does not in our view represent a radical departure from approaches that have been used in land titling, regularization, and registration projects elsewhere. Perhaps more than anything, it recognizes the political nature of land and accommodates this, whereas other approaches have rather naively tried to introduce reforms by using an apolitical, technocentric approach.

Many of the elements of the PROFORM system were tried in Peru at one time or another during the development of the Registro Predial system. Most of this occurred during the pilot project phase and has since ceased. The focus of this report is therefore on the system which came out of the process and, to a lesser extent, on the perspectives of those who were involved (registry personnel, community leaders, etc.) in the pilot projects. However, it should also be realized that not all of the PROFORM components have been adequately tested by the Peru experience.

III. FUNDAMENTAL CONCEPTS RELATED TO PROPERTY FORMALIZATION

This section will deal with several fundamental concepts related to property rights, titling of property, and the registration of property rights. An understanding of these concepts is necessary in order to grasp the nuances and complexities of the discussion around property formalization and to evaluate the significance of new systems, new procedures, and new processes. References are also made to how these concepts apply in Peru. This section in addition contains a discussion of several issues related to property registration.

A. LEVELS OF FORMALIZATION OF PROPERTY RIGHTS

When determining who has what rights to which property, different means and methods are used. Normally, the formalization of property rights refers to the legal recognition of a person’s rights to a property. Legal recognition can be based on either informal (customary) or formal law. Thus, different levels of formalization of property rights can be envisioned ranging from a simple oral understanding between two persons up to formal and legal registration of property rights. In other words, registration of property rights is simply the highest level of formalization; other levels of formalization of property rights can also be, and are, considered valid and legal.

In societies based on customary legal systems, formalization of property rights may entail the presentation of a token gift to the community authority who, by accepting the gift, recognizes that person’s rights to a piece of community land. In some communities, an oral agreement and a handshake secures formal recognition of transfer of land rights.

Within statutory legal systems, a written contract, signed by the two parties, is usually accepted by the courts as formal recognition of property rights, particularly if the contract is notarized. These contracts include titles to property ownership, a higher level of property formalization. Titles issued by state agencies for state-owned land are also formal recognition of the transfer of property rights to an individual. Finally, the last level of property formalization within statutory law is the registration of property rights: recording of property rights in a property registry represents confirmation by the state of a person's property rights and protects that person from third-person claims. A brief discussion of different property registration systems is presented in the next section.

In Peru, all of these different levels of formalization of property rights exist. A legalized deed or title document is generally the highest level of statutory formalization that property owners hold to establish the transfer of property rights from one person (or entity, such as the state) to another. Registration of that title document in a Property Registry strengthens property formalization by protecting the present property owners against claims by a third party. In Peru, the registration of property rights is not obligatory. Thus, while financial institutions usually require that property used as collateral be registered, registration is not necessary to formalize property rights.

B. IMMOVABLE PROPERTY REGISTRATION SYSTEMS

In Peru and other Latin American countries, a title is issued when land is granted or transferred from the state to a private party or community. This is essentially a contract between the government and the new landowner. However, this title does not protect the landowner against third-party claims unless the title is registered in a public registry. In addition, most banks will require that a land parcel be registered as a pre-condition to using it as collateral. When the titleholder subsequently transfers the property, this is typically done through a notarized sales contract which becomes a deed (*escritura pública*) and which serves as a title document. While titling occurs only once (the initial transfer from state to private owner), a deed can be drawn up and registered every time the property is transferred.

Titling and registration are generally two distinct processes. Titling is usually undertaken by a government agency which has the legal jurisdiction to dispose of state land. Since the 1960s, land reform and/or colonization agencies have typically played this role in Latin America. In Peru, the provincial-level municipalities hold this responsibility in urban areas and the Ministry of Agriculture deals with the allocation of rural state lands. In several countries the President's Office is also involved since the president is required to sign each individual title. The fact that many titles highlight the president's name indicates the extent to which titling has been used a political vehicle for garnering the support of the poor.

Registration, on the other hand, is a process which gives publicity and security to land transactions. In many ways, registration or recordation is much more passive than titling since it acts as a collection house for documents affecting rights to land. The registration process may involve some form of notarization before a document is accepted in the registry. Documents, such as titles and deeds, entering the registry may be checked as to their completeness, validity, and consistency with previously registered documents. Registration may also involve the abstraction of details from the document to a central register. If no register exists, the process of registration may more accurately be referred to as recordation.

Beyond this step, registration (or recordation) is essentially a matter of organizing, indexing, managing, and archiving paper documents or computerized files.

The Registro Predial and the Registro de Propiedad Inmueble are the two offices responsible for registration in Peru, and it should be noted that they do not deal with titling or any of the adjudication (*saneamiento*) processes which may precede titling.

In the past, property registration systems have typically been categorized as either **registration of deeds** systems or **registration of titles** systems. The former systems focus on the deed as the primary evidence of property rights, whereas the titles systems rely on a register for this purpose. This categorization of registration systems into two “boxes” tends to oversimplify the understanding of these classifications. It is more useful to view registration systems along a continuum with a basic deeds system at one end and a registration of titles system, such as the Torrens system, at the other end. This perspective promotes the appreciation of difference and similarities in systems and avoids problems of over-generalization.

A rudimentary **registration of deeds** system is one in which documents of conveyance (typically deeds) are deposited in a public office, such as a registry office or courthouse. No effort is made to check the quality of these documents or whether they are consistent with other documents deposited previously in the registry office. Commonly, the land parcel involved in such a conveyance is defined in general terms by referring to the names of adjoining owners. A basic index to the documents is usually maintained using the name of the grantor (seller) or grantee (buyer) as the reference key. This type of system is common throughout Latin America.

Improvements may be made to a rudimentary system to improve the delivery of information and the security of the land rights. Such improvements may include:

- quality-control checks on documents entering the system in order to raise the integrity of the registry information,
- indexing documents on a parcel basis by introducing a unique parcel identifier for each registered parcel,
- making it compulsory to register documents affecting legal rights to land,
- integrating survey data defining the spatial dimensions of the parcel with legal data defining the nature and basis of the land rights,
- limiting retrospective searches to prove title so that it is not necessary to trace back through the full “chain” of deeds to prove title,
- requiring a more standardized approach toward defining (surveying) the spatial dimensions of land parcels, and
- introducing a register which contains details abstracted from the deed or document of conveyance.

While the central document of proof remains the deed in these “improved” registration of deeds systems, they begin to move the system along the continuum so that it starts to incorporate certain characteristics of the registration of titles systems.

Registration of titles systems were introduced to focus the system on answering the primary question asked from these systems, that is, who has title to a particular piece of land. This information is typically contained in a register, which identifies the titleholder (name,

identification number, address, marital status, etc.), defines the subject parcel of land, and reflects any secondary rights or encumbrances on the parcel (e.g., liens, mortgages, easements). Typically, each parcel of land is associated with a specific page (or two) in the register. This essentially focuses the system on the parcel as a means of organizing the title information, as opposed to the person's name as used in the deeds system.

The Torrens system is one of the most well-known registration of title systems. Initially started in 1868 in South Australia, it has spread across Australasia and to many countries across the globe. One of the central principles of the Torrens system is that the title status of a parcel of land should be reflected directly in the register and it should not be necessary to carry out a retrospective search through previously registered documents to prove title. This system also provided for a state guarantee of the information in the registry. If a valid claim was brought against someone on the register, this guarantee would protect the rights of the person in the register and the state would compensate the claimant for his/her loss. The Torrens and most other registration of title systems make it compulsory to register land transactions.

Various versions of the Torrens system have been adopted in many different countries, and the original system has evolved over the past century. This means that the term Torrens is actually applied to registration systems which may differ significantly from what was proposed and implemented in 1868 in Australia. Once again, this underlines the need to view registration systems on a continuum and to focus on the specific components and procedures inherent to each system.

The traditional Registro de Propiedad Inmueble system in Peru organizes some of the registration information on a parcel basis (*folio real*). However, there is no unique parcel identifier system for individual parcels or *fichas*. This *folio real* is an improvement over the more rudimentary registration of deeds system which is based on personal indices (that is, the information is keyed to the grantee and/or grantor). The Registro de Propiedad Inmueble for what is now the Region of Lima introduced this improvement in 1970.⁷

Surprisingly, the new Registro Predial in Peru is also still based primarily on the principles of the registration of deeds system even though the general trend internationally has been toward title systems, or at least to the attributes associated with this system. The Registro Predial requires that a search of the computerized database be made to prove title. The cumbersome nature of the title search becomes less of an issue when some of the information on archived documents is computerized, but it does slow down the computerization process since historical information has to be included in the database.

C. REGISTRATION ISSUES

There are several issues related to property registration that need to be considered in property formalization designs. One of them is the issue of maintaining the currency of the information in the registration system. Another is the issue of gender and property rights, more

⁷We could not confirm if all the Registros de Propiedad Inmueble in the rest of Peru have also introduced the parcel-based system. With regard to computerized procedures, we were told that Registro de Propiedad Inmueble offices in some other departments have begun to computerize their information, but this was not true for the two Registro de Propiedad Inmueble offices we visited in the cities of Lima and Cañete.

specifically, the protection of women's rights to property within the registration system and process.

1. Sustainability of registration system

A registration system is really effective only if it reflects the current land tenure status and provides a complete record of all formalized parcels of land. In most Latin American countries, large proportions of the population have chosen not to register their rights through the formal process described by law. It is important to understand why they have not pursued this option so that these factors can be considered in the redesign of registration systems.

There are generally several factors associated with traditional land registration systems which act as disincentives to register land. Historically, land titling and registration processes in Latin America have been lengthy and overly bureaucratic. It is not uncommon for title applications to take ten years to process. In many instances the process is much more complex than those found in the more wealthy, developed countries. The cost of titling and registration is often prohibitively high, especially for the poorer, small-farmer sector and informal urban sector. In addition, registration offices may be located only in the country's capital city or in the departmental capitals. Access to the system is therefore difficult, especially for those poorer people who do not live in principal cities. As a result of these and other disincentives, the demand for registration by small farmers is low.

The factors that tend to counter the disincentives mentioned above are consequently regarded as incentives. The primary incentive or benefit from registration is commonly regarded as improving access to credit. Even in cases where credit can be obtained without using land as collateral, property with a registered title will facilitate better loan conditions (for example, lower interest rates, longer terms). Since registration provides greater tenure security, it is assumed that landholders will choose to register their property rights to acquire such security. Where land rights are being challenged by neighbors or by the central government, this will generally be true. However, where no such challenges exist, there may not be any need to improve tenure security through registration, especially when the disincentives are perceived to outweigh the benefits, and particularly if registration of property transfers is not obligatory.

In Peru, the Registro Predial has removed much of the bureaucratic baggage that was typically attached to the registration process. Registration in most cases is simple and quick. In theory, the Registro Predial is designed to be a decentralized system which would be accessible to the public through local offices. In reality, however, it has not achieved this decentralization even within the Region of Lima (see Section IX, E). The Registro Predial has also addressed the cost disincentive, and registration is now available at a significantly lower price; however, this low price is dependent on budget subsidies (see Section VIII, B). On the incentive side of the registration equation, the Registro Predial has provided greater security to registered landholders, particularly in urban areas. However, this security has not yet been converted into the widespread use and availability of credit (see Section VII).

It is imperative that registered landholders perceive that registration delivers more benefits than the costs associated with going through the process. If they perceive that the cost/benefit ratio is not in their favor, they may choose once more not to maintain current registration records. This emphasizes the need for real benefits to be associated with registration, even to the extent of including credit access as part of the design of the

registration system. In Peru, the Registro Predial certainly pursued this approach early on with the popular mortgage concept and credit insurance proposal, but there is still no convincing evidence that all the registration activity has delivered the benefits associated with registration.

2. Impact of titling and registration on women's property rights

There has been much justified criticism of titling and/or registration programs because of the overwhelming tendency to title and register family property in the name of one person, usually the male head of household. Apparently, there are several reasons for this. First of all, it is simply technically easier to deal with one person and one name when determining ownership rights, filling out titling documents, and recording property owners. What really needs to be explored is how to incorporate other family members in the titling and the registration processes.

Secondly, in many projects it is assumed that within a household all members are treated equally and that the household head is concerned with everyone's welfare. Three pervasive problems with this assumption make it untenable. All persons in a household do not have equal status or rights; in fact, wives and children, particularly daughters, often find themselves working for the other members of the family without much control over how resources or income are allocated. Another problem concerns the myth that all household members work and produce together for the greater benefit of all. In many societies, husbands and wives have different production spaces, junior males work separately from their parents, and women are expected to serve the family.

It is not unusual for household heads to act without the household's welfare in mind; rather they often allocate resources, family labor, and income to maximize their own production and status. If the household head holds all legal rights to property, the family runs the risk of suffering from the household head's irresponsible acts. The situation of separated and divorced women can be particularly acute since they often have no legal recourse to claim the land they have been working with their husbands.

Legislation on property rights, inheritance, marriage and divorce, and marital property often fails to explicitly recognize women's rights to family property. Where traditional values and practices dictate that men own property and women are dependent on men, very few women are able to exercise their basic right to own property in their own name and use it as they wish.

Registration programs do not generally concern themselves with protecting women's rights to land—they are often relegated to simply recording in the property registry what is on the property title. However, registration systems, based on inheritance and marital property laws, can initiate procedures that protect some women's rights. The challenge is to devise procedures that are vigilant with regard to wives' rights to property acquired during marriage (either customary or legal marriage) and that protect daughters' rights to their birth families' property at the time of recording property transfers resulting from inheritance and sales.

In Peru, fortunately, community property legislation does recognize wives' and daughters' rights to family property. Thus, all children, both sons and daughters, have equal rights to their parents' property. In general, these rights are respected by family members. Marital property legislation also recognizes a wife's right to half of the property and income

acquired during marriage. The law also recognizes common-law marriage. In the registration of property, the procedure observed in the Registro Predial (and in the Registro de Propiedad Inmueble) is that married persons, when registering property, are obliged to identify and include their spouses. While certainly not all women are protected, this procedure does reduce the probability that one spouse can dispose of property rightfully belonging to both.

IV. INSTITUTIONAL FRAMEWORK

This section will give a brief description of those institutions that, together with the Registro Predial, are involved in the formalization of the property rights that fall under the legal jurisdiction of the Registro Predial. Figure 1 shows how the Registro Predial relates to these different institutions.

A. TITLING AGENCIES

The properties that fall under the legal jurisdiction of the Registro Predial are usually titled by a provincial municipality agency or by an office of the Ministry of Agriculture.

1. Municipalities

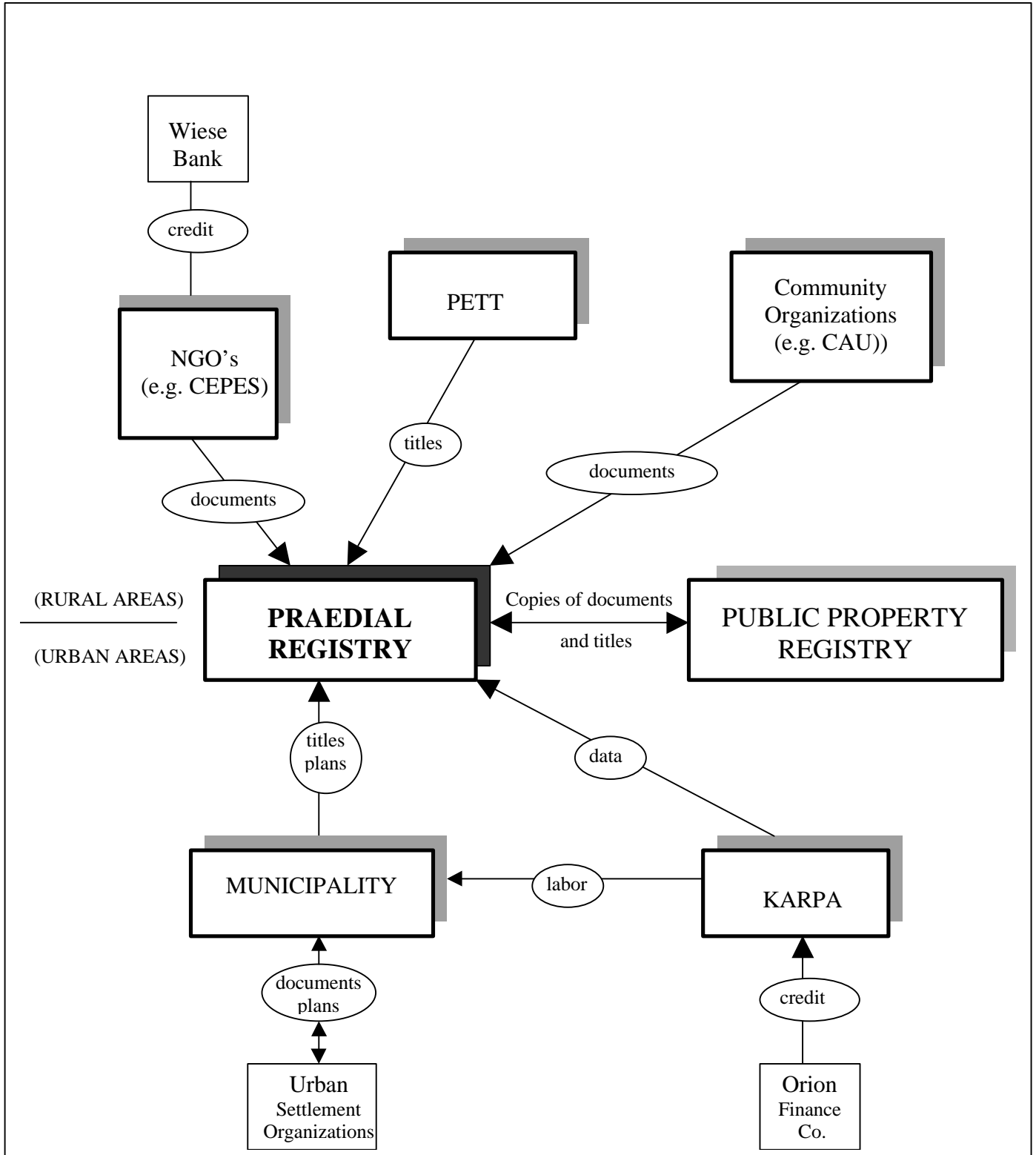
Titling of housing lots in informal urban settlements (called *pueblos jóvenes*) is the responsibility of provincial-level municipalities. The department concerned with titling falls under the State Office of Human Settlements (Dirección General de Asentamientos Humanos). In the Province of Lima, this agency is composed of three divisions, namely (1) Legal Division, (2) Technical Division, and (3) Census and Titling (Empadronamiento y Titulación) Division. The Legal Division reviews and decides on the legal status of the land on which *pueblos jóvenes* are located. The Technical Division is concerned mainly with the review and approval of perimeter and subdivision plans for urban settlements. The Division of Census and Titling is divided into two departments, one for titling and the other for census-taking.

The whole Human Settlements Office is staffed by 74 people, but the Titling Department contains only 4 employees. An additional two individuals have been contracted to assist the existing personnel in the Titling Division. Interestingly, these contracts are paid by KARPA, a private construction company (see Section VII, A) associated with a credit institution.

2. Special land titling project (Proyecto especial de titulación de tierras, PETT)

PETT (located within the Ministry of Agriculture) is the organization responsible for regularizing the titling situation of agrarian reform land. It was created in 1991 through the combination of three departments in the Agrarian Reform Agency: the National Cadastral

Figure 1: Institutional framework of Registro Predial



Program (Programa Nacional de Catastro, PRONAC), the Office of Land Tenure and Structures (Dirección de Tenencia de Tierras y Estructuras), and the Community Cooperative Development Project (Proyecto de Desarrollo Cooperativo Comunal, PRODACC). PETT is composed of two major departments concerned with titling and registration. The Titling and Rural Property Cadastre Department is staffed by 15 people, mainly engineers and technicians. The Department of Inscription Processing and Registry (Procesamiento para la Inscripción y el Registro) is composed of 5 lawyers and technicians.

The regulations⁸ that describe the organization and functions of PETT provide for a department known as the Titling and Cadastre of Rural Properties. This department is responsible for “programming, executing, supervising and evaluating plans and activities related to titling and the cadastre” (Article 12). It is also charged with “effecting the application for registration of rural properties.” According to these regulations, PETT has the following specific functions (Art. 7):

- regularize the titling of rural properties acquired, expropriated, and adjudicated through the state;
- propose to the Executive Board the complementary standards for adjudication and titling of rural properties;
- furnish the documentation necessary for registration of rural properties;
- complete the registration of property transfers (*traslación de dominio*) of rural properties expropriated through the procedures set up by the now-abolished Agrarian Reform Law (D.L. 17716);
- coordinate the standardization and simplification of the registration of rural properties with the registry agencies;
- furnish available cadastral information on rural properties so that PETT and/or property owners can complete their titles and register them in the registry agency; and
- update the rural cadastre.

Initially, PETT was set up for a period of four years, but the opinion within the agency is that this will be extended another four years once funding from the Inter-American Development Bank is received. The regulations do not make any distinction between the Registro Predial and the Registro de Propiedad Inmueble. Although the regulations do not specifically state that PETT is responsible for maintaining the cadastre, the fact that they are charged with updating it implies that this will fall under their charge.

B. SUPERINTENDENCY OF REGISTRIES

In October 1994, Law No. 26366 was passed creating an umbrella organization for all the registries known as the National Superintendency of Public Registries (Superintendencia Nacional de los Registros Públicos). The aim of this organization is to coordinate, standardize, and modernize all of the public registries (people, immovable property, minerals, etc.) in Peru and to establish policy for these offices.

⁸ “Reglamento de Organización y Funciones del Proyecto Especial de Titulación de Tierras y Procedimientos sobre Titulación, Catastro y Registro,” prepared by the Ministry of Agriculture, PETT program.

The Directorate of the Superintendency consists of a superintendent (head) and representatives from the Council of Ministers and Ministry of Finance. The organization is based in the City of Lima but may establish decentralized offices elsewhere in the country. An advisory council is also part of the Superintendency, with representation from the following: Ministry of Transport, Communication, Housing and Construction; Ministry of Energy and Mines; Ministry of Agriculture; board of deans of the legal profession; and the professional society (*colegio*) of engineers. The Superintendency is autonomous, and the registries (both old and new) no longer fall under the Ministry of Justice or any other ministry, as they have in the past.

C. PRAEDIAL REGISTRY (REGISTRO PREDIAL)

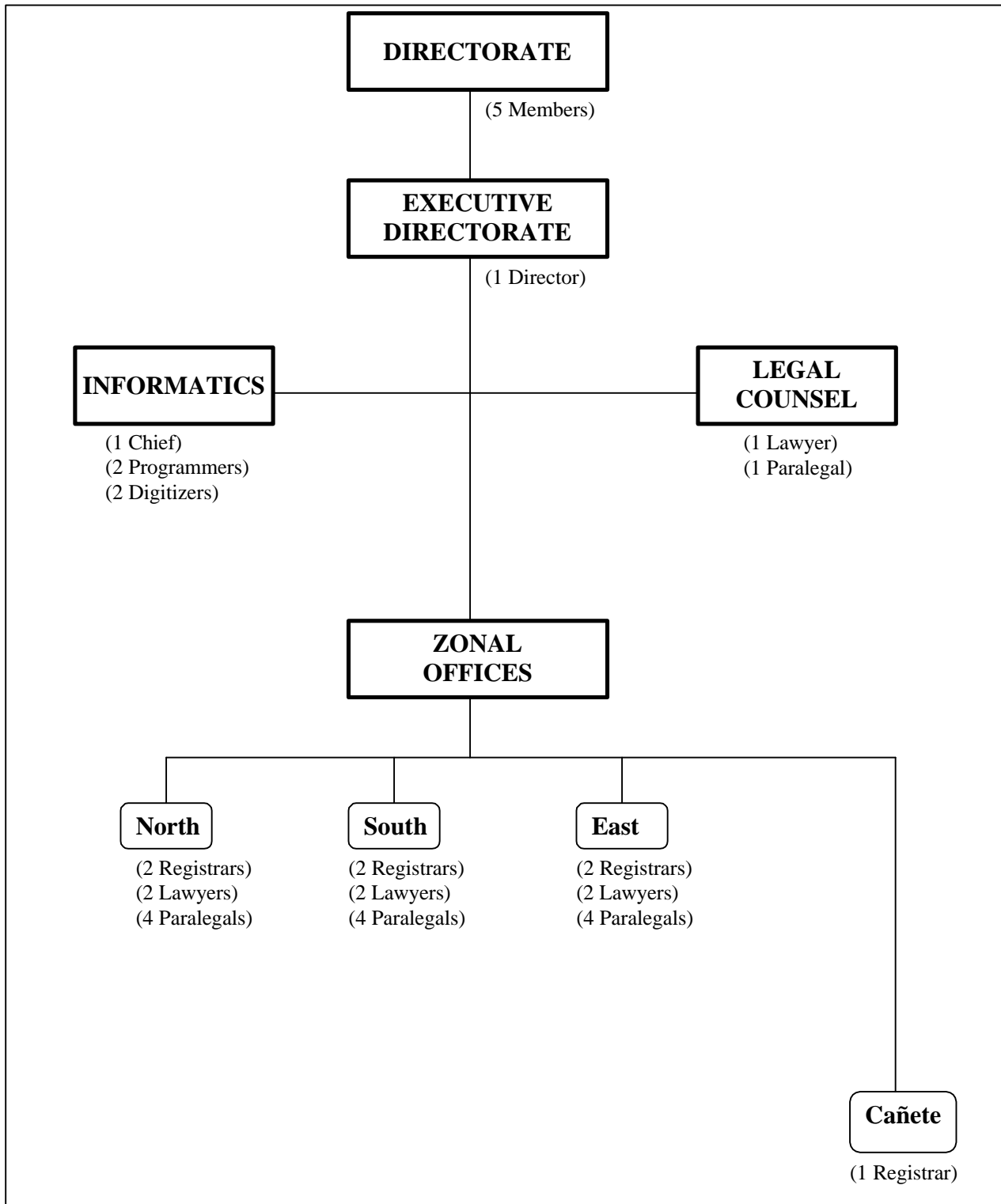
The specific strategy for reforming land registration institutions in Peru was to create a new institution (Registro Predial) which would work in parallel with the existing property registration institutions (Registros de Propiedad Inmueble). In a sense, the Registro Predial has been set up as a pilot institution which would in time replace, or at least modify, the existing registries.

The Registro Predial is designed to be an independent, decentralized office which operates under the charge of the Directorate (Directorio). The organizational structure of the Registro Predial is illustrated in Figure 2. The highest authority in the Registro Predial structure is the president of the Directorate. The Directorate is made up of representatives from the Urban Housing Settlements (Pueblos Jóvenes y Urbanizaciones Populares), the Assembly of Mayors, the Ministry of Housing and Construction, and the Ministry of Justice (Art. 8, Decreto Legislativo 496). The day-to-day affairs of the office are managed by the Executive Director.

The institutional structure of the Registro Predial is defined in Law 496 (Decreto Legislativo 496). The functions of the Registro Predial are listed in Article 6 of the law and repeated below in order to appreciate the scope of the activities in this registry. They are as follows (author's translation):

- a) plan, organize, direct, regulate and rationalize the registration of immovable goods;
- b) control the functioning of the various zonal registries in the region;
- c) register rights, acts, contracts, judicial and administrative resolutions;
- d) protect the rights of registrants against the state and third parties;
- e) promote the training of qualified personnel required by the Registro Predial;
- f) elaborate and maintain up-to-date registration statistics on informal and formal urban settlements;
- g) collaborate with municipalities and other relevant institutions on the regularization (*saneamiento físico legal*) of informal urban settlements (*pueblos jóvenes*);
- h) regulate, orient, and publish registration details about informal and formal urban settlements; and
- i) carry out other functions that are commissioned.

Figure 2: Organizational structure of the Registro Predial



The drawing up, approval, and control of the Registro Predial budget are regulated by the General Budget Law of the Region (Ley General del Presupuesto de la Región, Art. 9). The resources of the Registro Predial emanate from three sources, namely: user fees paid directly to the Registro Predial, allowances (*asignaciones*) from the regional government budget, and donations and contributions from other sources (for example, technical cooperation with international organizations, Art. 10). While the ILD has obtained financing in the past for Registro Predial activities, at present the budget is completely financed from the transaction fees it charges and from the Public Treasury.

According to legislation setting up the new registry system (see Section V, A and B), an autonomous Registro Predial is to be established in each of the 13 regions of the country. These regional offices will in turn create zonal or district offices as required. To date, one fully operational office has been established in the City of Lima with jurisdiction over the Region of Lima. In practice, this office handles a large number of urban settlements around the City of Lima and many rural (mainly ex-cooperative) properties within the Lima region. A smaller branch office in Cañete, a town approximately 140 kilometers south of Lima, offers some registry services and sends other transactions to the Lima office. This branch office is not fully operational, but it does provide certain direct services and also acts as a collection point for transactions that are processed in the Lima office. Currently, it is staffed by a single person who travels between Lima and Cañete on a daily basis.

Within the Region of Lima office, the registrars and their legal aides are divided according to three geographic zones: north, south, and east/central. Generally, the registration personnel for each zone is composed of two registrars, two lawyers, and four paralegals (see Figure 2). The registrars are normally lawyers.

The Lima office also has an informatics section which is responsible for administering, maintaining, and developing the computer system (hardware and software) that supports the registration process. This section consists of a systems administrator (chief) and four computer operators and programmers. Like most institutions in Latin America, the Registro Predial also contains a legal counsel section (two lawyers) and an administrative support section.

At the time of this assessment a total of 35 persons were employed in the Lima Registro Predial. Some of these personnel are employed on a contractual (1–3 months) basis by the Registro Predial. The number of personnel has varied since the inception of the Registro Predial, mainly due to shifting workloads and varying financial resources.

While the office appears to function very efficiently, several of the Registro Predial personnel did express concern that additional staff are needed, especially if registry activity increases. All of the personnel interviewed seemed motivated, competent, and interested in promoting the system. Like many registries in developing countries, however, the Registro Predial has a problem retaining trained personnel because of the low government salary levels (relative to the private sector).

D. PUBLIC PROPERTY REGISTRY (REGISTRO DE PROPIEDAD INMUEBLE)

The Registro de Propiedad Inmueble currently operates under the administrative umbrella of the Superintendency of Public Registries, which is independent of any ministry. During the period 1981 to 1992, the Registro de Propiedad Inmueble operated independently. In 1993, it was transferred to the Ministry of Justice where it stayed until the Superintendency became operational in 1995. Under the present arrangement, the Registro de Propiedad Inmueble is completely self-financed, even though the Superintendency approves the Registro de Propiedad Inmueble budget. Of the income generated by the Registro de Propiedad Inmueble, 97 percent remains in the Registry, 2 percent is transmitted to the Superintendency, and the remaining 1 percent is distributed to Registro de Propiedad Inmueble offices in low-income regions.

The Registro de Propiedad Inmueble is decentralized by region, and in some regions there are branch offices at the province level. The registry system within each region is autonomous. In 1990, there were 42 Registro de Propiedad Inmueble offices throughout the country. Currently, the Region of Lima has 5 offices (Lima, Huacho, Cañete, Callao, Huaral) which employ some 256 persons.

The legal basis for the Registro de Propiedad Inmueble is the Civil Code which was recently (1984) amended. Arts. 2008–2017 deal with general arrangements in the public registries and Arts. 2018–2023 with registerable transactions in the Registro de Propiedad Inmueble. The Registro de Propiedad Inmueble is a registration of deeds system in which documents affecting title to land are recorded. However, the system has been improved by organizing this information on a parcel-by-parcel basis (*folio real*). Unfortunately, the parcels are not adequately defined nor are they integrated into a cadastre. Registration of immovable property is not compulsory and the majority of land parcels in Peru are not registered.

The Registro de Propiedad Inmueble continues to play an important role even though the parallel Registro Predial is now operational. This is partly because the Registro Predial system has not been extended outside the Region of Lima and so registration in all other regions is done through the Registro de Propiedad Inmueble. In addition, while all rural property falls under the legal jurisdiction of the Registro Predial, only a proportion of urban properties (those in *asentamientos humanos*) do. Much of the property now falling under the jurisdiction of the Registro Predial has title or other documents previously registered in the Registro de Propiedad Inmueble. The registration process within the Registro Predial, therefore, involves a transmittal (*traslado*) of these documents from the Registro de Propiedad Inmueble to the Registro Predial (see Section VI, C, 5, d for the levels of these transmittals).

E. COMMUNITY ORGANIZATIONS

The most important nongovernment institutions involved in the formalization of property in Peru are urban and rural community organizations. It is no exaggeration to say that without the concerted participation of these organizations, property formalization would occur at a minuscule pace. The property formalization process that eventually terminates in property

registration in the Registro Predial is limited to two types of property,⁹ urban human settlements and rural properties. The great majority of property owners in these two categories are low-income families.

1. Urban community organizations

Housing developments for low-income families (usually located around the outskirts of cities) either have originated through the invasion of unused lands or have been built as low-income housing projects. In the former case, the resultant housing plots are informal properties in the sense that the occupants did not hold legal title to their plot of land at the time of the invasion. In the latter case, a housing organization (such as a housing cooperative) purchases an area of land, subdivides it into house lots, and sells it to individual families. In this case, there is generally legal title to the land prior to occupation.

In Peru, neighborhoods created by invasions (called *pueblos jóvenes*) are more numerous than official subdivisions, and the Registro Predial was first created to regularize/formalize the property rights of families in the *pueblos jóvenes*. *pueblos jóvenes* consist of families organized around the need to obtain affordable housing. A group of families identifies a piece of unused (usually public) land close to the city, maps it out, and divides it into house lots and communal areas (schools, markets, parks, etc.), deciding which families will occupy which lots. The group then invades the land (usually at night), traces out the streets, distributes the lots, and quickly constructs houses made of straw and bamboo sheets. By the next morning, a neighborhood has been created and the occupants begin to consolidate their rights.

These community organizations are very active in obtaining services for their neighborhoods. Water, electricity, sewage, and other services are put in mostly through the families' own labor and savings, though sometimes with government or NGO assistance. This process takes many years. In addition, families slowly replace their bamboo huts with brick and concrete houses. At the same time, the community starts the long process of obtaining recognition as a community and of legalizing the property status of the individual families (see Section VI, A). This recognition and titling process through the provincial municipality is undertaken and financed by the communities themselves. In *pueblos jóvenes*, the initial title document from the municipality is free (*título gratuito*); there are, however, many expenses involved in creating and collecting the documentation necessary to obtain that title. There have been efforts in the last decade, particularly by the ILD, to accelerate this process and to include the registration of the title documents into the process.

2. Rural community organizations

The Registro Predial has also assumed within its jurisdiction the registration of property rights of rural properties.¹⁰ As a result of the agrarian reform process in Peru (1969–1991), large numbers of small farms were created in the Peruvian countryside. During the 1980s, as the production cooperatives created by the agrarian reform parcelized their land into individual family farms, farmers became concerned with legalizing their ownership rights to the land. The production cooperatives became service cooperatives and, in theory, were to issue

⁹ This legal jurisdiction is explained in the discussion on Laws 495, 496, and 667 in the legal framework section of this report (Section V).

¹⁰ Decreto Legislativo 667 (September 1991) created the Registro de Predios Rurales as part of the Registro Predial.

property title documents to their own farm families. While many cooperatives did regularize their ownership of cooperative land and issued titles to their members, many did not. Some farmers, and sometimes the cooperatives themselves, would register these titles in the Registro de Propiedad Inmueble.

Since the passing of Law 653 in 1991, which ended the implementation of the 1969 Agrarian Reform and lifted restrictions on market transactions for most agricultural land, there has been a surge in efforts to regularize agrarian reform land that is not titled and registered. Once again, it is the farmers and cooperatives themselves that have taken the initiative and assumed the costs of titling their lands. For a period of time, the cooperatives received on-site assistance from Registro Predial staff for regularizing and subsequently registering these title deeds.¹¹ The Registro Predial has now assumed geographical jurisdiction in most agricultural valleys in the Lima region.

F. NON-GOVERNMENTAL ORGANIZATIONS (NGOS)

The ILD has been the major NGO involved in the formalization of property in Peru. Through its campaigns to publicize and educate property owners on the benefits of titling and registration of property, the ILD has raised the general public's consciousness with regard to this issue. In addition, the ILD has designed a registration system that significantly streamlines and simplifies the registration process for the majority of property owners once they have a title to the property. ILD titling and registration campaigns in urban and rural areas in the Region of Lima have increased the number of property owners with registered titles.

NGOs (for example, CEPES, Solidaridad, and CIPCA) are also active in rural areas, assisting small farmers in the process of acquiring legal title deeds and in applying for production credit, which sometimes involves the use of registered property titles. NGOs play a major role as facilitators and overseers in the granting and supervision of these loans. Box 1 describes one NGO that has been working in the rural sector for decades and that is playing this role of intermediary/facilitator between small producers and credit institutions.

G. FINANCIAL INSTITUTIONS

Private companies are also playing an important role in forging the tie between credit and registered titles. As mentioned in the previous section, since 1991¹² bank credit has been practically nonexistent in agriculture. In the last few years, as inflation has been reduced and stabilized and credit levels have increased, several commercial banks (for example, Banco Wiese and Banco de Crédito) have made very limited and controlled loans available to small farmers. These banks are approving loans to farmers organized into solidarity groups, whether or not they have registered title deeds. They do, however, encourage the registration of

¹¹ The Japanese government in 1993 financed a pilot project for registering these rural properties. The funds were administered by the World Bank and funneled through the ILD.

¹² During the 1970s and 1980s, the source of most agricultural credit was the governmental Banco Agrario. During the late 1980s and into 1990 and 1991, the Banco Agrario greatly reduced its credit lines. With its demise in early 1992, farmers, particularly small farmers, lost their major source of production credit. Credit sources since then have been largely limited to loans from agribusinesses (e.g., cotton gins), wholesalers, and other intermediaries.

property titles as a way to decrease loan conditions and interest rates. Section VII on Credit Accessibility looks at this process in more detail.

Box 1 Credit for small farmers in Huaral

CEPES (an NGO) is working in a credit program for small farmers in Huaral. Approximately 80% of these small farmers are *parceleros*;¹³ others are *ex-yanaconas*¹⁴ who bought their land from *hacendados* under the 1964 Agrarian Reform Law. CEPES works as an intermediary between the solidarity groups and the bank, facilitating and processing the loans. In 1990, when the Banco Agrario was dismantled, a group of *parceleros* in Huaral asked CEPES to help them obtain credit. CEPES went to a number of commercial banks asking them to extend credit to these farmers. In 1991, the Banco de Comercio extended credit to a small number of solidarity groups at a 24% interest rate. The next year, CEPES established an agreement with the Banco Wiese and 36 farmers organized into four groups received credit. During the next two agricultural cycles, the number of farmers receiving credit has increased. This year, 300 farmers organized into 38 groups have received credit from Banco Wiese at 17% interest.

The maximum that Banco Wiese will lend to a farmer is US\$5,000 per crop. Banco Wiese prefers that the land be titled and registered, though it is not mortgaged; the group guarantees the loan of each person. The credit period depends on the crop: 6 months for corn, 9 months for cotton, 11 months for fruit trees. The farmers pay a 3% fee to CEPES to work as an intermediary.

Some of the more successful farmers are now requesting capitalization loans from Banco Wiese on an individual basis. In this case the bank requires collateral based on registered property.

In the *pueblos jóvenes* around the City of Lima, an innovative and interesting relationship has developed between a private company, the municipality for the Province of Lima, and the Registro Predial to facilitate property titling and registration. A construction supply company, KARPA, S.A.,¹⁵ sells basic housing-construction supplies on credit to families in the *pueblos jóvenes*. KARPA is providing assistance in the way of salaries, material, and computer time to both the Registro Predial and the municipality to accelerate both the titling and the registration processes. Its assistance to the Registro Predial appears to be limited to computerizing the registration information of those properties transmitted from the Registro de Propiedad Inmueble to the Registro Predial. In 1.5 months, a team of 5 computer staff and 2 lawyers has apparently transmitted 20,000 lots in 38 *pueblos jóvenes* from the Registro de Propiedad Inmueble to the Registro Predial. A lengthier discussion of KARPA's activities is included in the section on credit accessibility (Section VII, A).

¹³ *Parceleros* are members of the agricultural production cooperatives who received parcels of land when the cooperative land was parcelized.

¹⁴ *Yanacunas* were a type of tenant farmer working on the haciendas along the coast until the 1960s.

¹⁵ The parent company of KARPA and ORION (a financial institution) is the CARSA corporation. These companies are best known for the distribution and financing of consumer products. In the last year and a half, KARPA has set up four building supply stores (north, east, and south of Lima) in the *pueblos jóvenes* surrounding Lima.

V. LEGAL FRAMEWORK

One of the significant achievements of the ILD was the rationalization and simplification of the laws and regulations pertaining to formalization of property rights. The legislative framework for the operation of the Registro Predial in urban areas can be found in DL 495 and DL 496 (passed in 1988) and the associated regulations (passed in 1990). Its rural counterpart is contained in DL 667, which was passed in 1991.

During the same period, the Fujimori government sought to eliminate legal and tenure constraints to the functioning of an agricultural land market. In 1991, the Peruvian Congress passed the Agrarian Investment Law (DL 653), which terminated the agrarian reform process started in 1969 under the military government of General Velasco [see Lastarria (1989) for additional details on agrarian reform in Peru]. DL 653 legalized agricultural land transactions (leasing, selling, and mortgaging of land affected by the agrarian reform) and liberalized significantly the limits (both maximum and minimum) on size of landownership imposed by the agrarian reform legislation.

The major components of the above-mentioned laws are outlined below.

A. REGISTRO PREDIAL, URBAN PROPERTY, POPULAR MORTGAGE, AND CREDIT INSURANCE LAW (DL 495)

Legislative Decree 495 (1988) achieved four objectives long pursued by the ILD: put into property law the concept of possession rights (as opposed to ownership rights), established new procedures for the registration of both ownership and possession rights in the Registro Predial, legalized the concept of a mortgage based on possession rights (*hipoteca popular*), and authorized insurance companies to grant credit insurance. DL 495 provides the Registro Predial with legal jurisdiction to register property rights in informal (*pueblos jóvenes*) and formal (*urbanizaciones populares*) urban, low-income settlements. In general, informal settlements are regarded as those which require regularization (*saneamiento físico legal*) and they may be located on municipal, state, or private land (Art. 2).

The following rights may be registered in the Registro Predial (DL 495, Art. 8):

- a. possession rights to the land and property rights to the buildings;
- b. possession rights to vacant land;
- c. ownership rights to the land and attached buildings;
- d. ownership rights to landholders who have a title registered in the old registry;
- e. contracts granting mandatory powers to a bank, the state, a notary, the mayor, or an individual person (Art. 33);
- f. acts or contracts affecting registered property rights; and
- g. judicial or administrative resolutions relative to registered property rights.

For the purposes of registration in the Registro Predial, title documents include the registry form used to apply for registration together with all the supporting information (Art. 4). This information includes details on the applicant(s), the relevant land parcel, and any conditions, acts, or contracts that are registered. The actual registration system is parcel-based (*folio real*) and automated with access through a personal or parcel index (Art. 6). The

Registro Predial does not re-issue a physical title, but registry certificates describing the tenure status and a limited history may be obtained by interested parties.

B. INSTITUTIONAL STRUCTURE OF REGISTRO PREDIAL LAW (DL 496)

Legislative Decree 496 (1988) defines the institutional structure, functions, and financial arrangements for the Registro Predial. These aspects of the Registro Predial are dealt with under the previous section on institutional framework (Section IV, C).

C. AGRICULTURAL INVESTMENT PROMOTION LAW (DL 653)

Legislative Decree 653 (1991) ended the agrarian reform period and changed the legal basis and tenure rules of agricultural landownership. This law removes the constraints on property rights that were established during the agrarian reform years. In particular, it permits the free transfer of land, sales (with certain limits on maximum parcel size¹⁶), subdivisions (with certain limits on minimum parcel size¹⁷), inheritance, mortgages, and land rentals.

Agrarian reform in Peru began in the mid-1960s under President Fernando Belaúnde and was radically modified and enforced in 1969 by the Velasco military government (under Law 17716). Most of the land expropriation and adjudication was finished by 1979, affecting 38 percent of the agricultural land and benefiting 21 percent of agricultural families.¹⁸ In contrast to most other agrarian reforms in Latin America, the land was kept in large holdings (for example, production cooperatives) and turned over to groups of farmers (usually the former workers of the *haciendas*).

In the early 1980s, these cooperative enterprises began to parcelize the large holdings into individual parcels and distribute them to enterprise members. By the late 1980s, only a small number of cooperative enterprises still existed, most of them concentrated in a couple of geographical areas.¹⁹ When the land was parcelized and distributed, land certificates were issued by the cooperatives to the *parceleros* who received the land. It would be years before titles were issued to these individual farmers.

Several reasons explain the slowness or lack of interest in issuing property titles. First of all, many cooperatives themselves did not have title documents to the cooperative land; thus the cooperative in turn could not issue title deeds to their members. This occurred because, for example, the legal process for the transfer of the property from the expropriated owner to the cooperative had not been completed or the expropriated owners had a pending lawsuit. Secondly, the 1969 Agrarian Reform Law prohibited the sale of land acquired through the agrarian reform. While this prohibition did not actually prevent land sales, few farmers were interested in selling their newly acquired land, even informally. Third, many farmers felt the

¹⁶ In July 1995, Law 26505 was passed; one of its most significant clauses removes all limits on landholding size.

¹⁷ No prior permission is necessary for subdividing a parcel of agricultural land, but if the parcel size is under the permitted minimum area, the Registry will not register the transaction.

¹⁸ A detailed description and analysis of the 1964 and 1969 agrarian reform laws can be found in Lastarria-Cornhiel (1989).

¹⁹ Such as the sugarcane cooperatives on the coast north of Lima (Trujillo-Chiclayo area) and the cotton-producing cooperatives in the far north (Piura).

need for some protection of the ownership of their land. Not being able legally to sell their land was seen as a way to protect them against losing it. Thus, there was little interest among farmers in acquiring title documents to their land. Even those farmers who had title documents were often reluctant to use them to secure credit.

Law 653, by declaring that the agrarian reform process was over and that all agricultural land (including land acquired through the agrarian reform) could be sold, rented, or mortgaged, laid the legal basis for a land market. By making the land owned by the *parceleros* subject to land market mechanisms, the usefulness of and need for title documents became more apparent. In addition, once the agrarian reform laws and regulations ceased to be effective and reform sector land became part of the land market, *parceleros* were at risk of losing their land if their ownership rights were not formalized with a title document. All adjudicated land in rural areas resulted in a restricted title (*título oneroso*), which became a clear title once the full price for adjudication had been paid (Cap. IV, Art. 19). Protection against claims by a third person to that land is attained by registering a title document.

The Ministry of Agriculture acknowledged the need to formalize landownership rights acquired through the agrarian reform process and in 1991 proposed the Proyecto Especial de Titulación de Tierras (PETT, see Section IV, A, 2). Titling activities under PETT, however, did not actually begin until 1993.

D. REGISTRO PREDIAL FOR RURAL PARCELS LAW (DL 667)

DL 667 (1991) creates a rural register to be included with the urban registers in the Registro Predial. Rural land includes all land located in rural areas or areas of urban expansion, where land is being used for agriculture, cattle farming, or forestry, or is not yet cultivated. With the exception of “Comunidades Campesinas y Nativas,” any individual, social group, or cooperative working the land directly may register land in the Registro Predial. Possession and ownership rights may be registered together with any contracts that “form, declare, transmit, modify, limit or extinguish” such rights (Art. 5).

The procedure and information required for initial registration in the Registro Predial vary according to the tenure status of the land. The following categories of tenure are recognized in the law:

1. State land

- arid land (*eriazos*) parcels not registered in the Registro de Propiedad Inmueble,
- abandoned parcels that have reverted to the state and are not registered in the Registro de Propiedad Inmueble,
- expropriated parcels that have not been adjudicated to a private party and are not registered in the Registro de Propiedad Inmueble, and
- parcels transferred in full title (*título gratuito*) to the state that have not been adjudicated to a private party and are not registered in the Registro de Propiedad Inmueble.

2. Private agrarian reform land

- parcels adjudicated to a private party in full title, but not registered in the Registro de Propiedad Inmueble,

- parcels adjudicated to a private party in restricted title (*título oneroso*) with a resolution canceling or forgiving the agrarian debt,
 - parcels adjudicated to a private party in provisional title without a resolution canceling or forgiving the agrarian debt,
 - parcels transferred to third parties by beneficiaries of the agrarian reform, but which are not registered in the Registro de Propiedad Inmueble, and
 - any of the parcels listed above which have been expropriated by the state in the past five years.
3. Rural parcels not affected by the agrarian reform and not registered in the Registro de Propiedad Inmueble.

Presumably, this last category includes all of the rural land not contained in groups (1) and (2) listed above. According to Thiesenhusen (1989, p. 10), the agrarian reform in Peru affected 39.3 percent of the total area of forest and agriculture land and 30.4 percent of the total number of farming families. The land under this third category should therefore include all of the remaining rural landholders who have either a title or a sales contract transferring the property into their name.

E. NATIONAL SUPERINTENDENCY OF REGISTRIES LAWS (No. 26366, No. 26434, AND DECRETO SUPREMO 04-95-JUS)

Law 26366 (1994) set up a national system for coordinating the registry offices throughout the country. This includes the Registers of Persons (*Personas Naturales*), Juridical Persons, Immovable Property (Registro de Propiedad Inmueble), Movable Goods (Art. 1), and various other registers. The Registro Predial is to be incorporated into the Registro de Propiedad Inmueble within a period of five years from the passing of the law, that is, by October 1999. The institutional structure of the Superintendency is laid out in the laws and described above in the section on institutional framework (IV, B).

In its Complementary Arrangements section, the law sets out the relationship between the Registro Predial and the Superintendency. The Registro Predial budget must be approved by the Superintendency and its authorization obtained to initiate activities in other regions. This section of the law also provides for an indemnity fund to cover damages resulting from errors perpetrated by the verifiers involved in the registration process in the Registro Predial.

If the information (for example, area, perimeter, boundaries) transmitted from the Registro de Propiedad Inmueble is not in accordance with the verified information received directly by the Registro Predial, it may be corrected through a signed Conformity Agreement (*Acta de Conformidad*). This must be signed by the property owner, the neighbors, and the verifier.

In December 1994, Law No. 26434 was passed which modified the eighth paragraph of the Complementary Arrangements section of Law 26366. This law requires that the Registro de Propiedad Inmueble transmit background information requested by the Registro Predial within a period of five days. It also deleted the requirement in the same paragraph that the written consent of property owners (*titulares de los predios*) be obtained before such information could be transmitted for rural parcels or land in informal settlements.

The statute (DS 04-95-JUS) that followed this law in February 1995 serves to regulate the nature, general function, and economic and personnel structure of the Superintendency (SUNARP). There appears to be an indirect recognition in both laws that part of their funding or technical assistance will come from the international community.

VI. OPERATIONAL PROCEDURES

This section will examine property formalization procedures, including the titling process and the registration of immovable properties (urban and rural) that fall under the legal jurisdiction of the Registro Predial. The previous section explained the legal basis for the Registro Predial; this section will describe how it actually works (see figure 3).

When the ILD was involved with the Registro Predial they adopted a pro-active approach which assisted with the compilation of documents, including titles, required for registration (see Section IV, E and F). However, the issuing of titles is not done by the ILD or the Registro Predial.

A. URBAN TITLING PROCESS

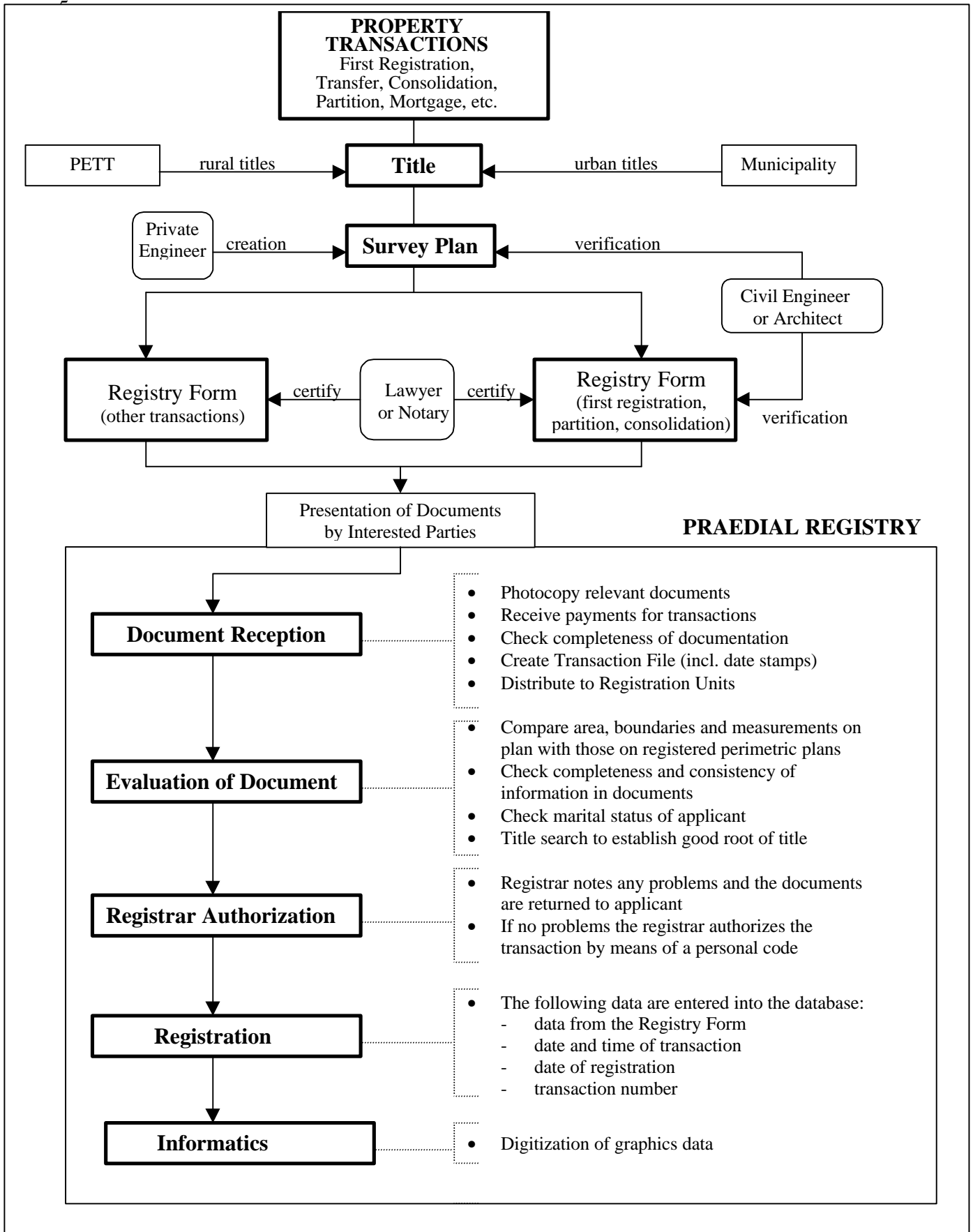
In the urban areas, the provincial-level municipality is responsible for issuing title documents for parcels in *pueblos jóvenes* (the majority of the urban parcels registered in the Registro Predial). The typical sequence of events in the (urban) titling process in Lima is as follows:

1. A group of families organizes an invasion of unused land, usually on the outskirts of metropolitan Lima (see Section IV, E, 1 for a description of how this is organized).
2. After a period of time (normally several years), the new *pueblo joven* is recognized by the Lima Province Municipality.²⁰
3. A census of the families is undertaken and a perimeter plan of the *pueblo joven* drawn up. The group's leadership organizes and implements the census and hires a private firm to draw up the plan.
4. The municipality reviews and approves the census and perimeter plan. After this approval, a resolution is passed recognizing the *pueblo joven* and incorporating the settlement into the municipality.²¹

²⁰ Until the 1970s, recognition was given by the Corporación Nacional de Vivienda (National Housing Corporation). During the military governments of the 1970s, this function was taken over by SINAMOS, then the Ministry of Housing. Since 1980, the provincial municipalities have been charged with this responsibility.

²¹ Since the municipality is essentially the owner of unclaimed land, it has the jurisdiction to title and transfer land rights in this area to private individuals or other entities.

Figure 3: Registration process at Registro Predial



5. The *pueblo joven* hires a private surveyor to draw a proposed subdivision plan (*plan proyecto de trazado y lotización*) showing the individual lots in the subdivision as well as the outside boundary as depicted on the perimeter plan. This is then submitted to the municipality, which verifies that the families in the census (see #3, above) are actually occupying (*posesión real y permanente*) their designated lots. If there are discrepancies between the plan and the field situation, the group leadership makes the necessary adjustments so that, for example, the streets are the required width as specified in the plan. If there are no problems, the subdivision plan is approved and the titling process moves forward.
6. Once approved by the municipality, three copies of the perimeter plan and the subdivision plan are sent to the Registro Predial or to the Registro de Propiedad Inmueble for registration (the municipality keeps the original plans). A few *pueblos jóvenes* are registered with the Registro de Propiedad Inmueble, but most are now registered in the Registro Predial. The Registro Predial carries out its own checks on the plans and, if acceptable, they are registered. The Registry keeps one copy of the plans and the remaining two are sent back to the municipality.
7. The municipality prepares a card (*ficha*) for each lot in the *pueblo joven* in order to record the information needed for the printing of individual titles.
8. The actual printing of the titles is done in another office (Development Division) because the Titling Department does not have the necessary facilities. The property titles are filled out and an original and two copies are made.
9. Each property owner comes into the Municipality Office and verifies the information on the property title, pays an 11-soles (approximately US\$5.00) regularization fee, and signs the title document.
10. Titleholders are strongly urged at this point to leave the title document in the Municipality Office so that it can be taken over to the Registry to be registered. There is another 11-soles fee for registration. Most families pay the registration fee and let the Municipality Office send the titles to the Registry.²²
11. The municipality sends several hundred titles at a time to the Registro Predial, which then registers them, normally within a week. The original title document and two copies are stamped as registered by the Registro Predial. The Registro Predial keeps one of the copies and sends back the original and remaining copy to the Municipality Office. The original title goes to the family occupying the lot and the copy stays in the municipality.

Although this regularization, titling, and registration (in the RPI) processes (steps ##3 through 11) should not require more than several months, it was taking several years in Lima. There were a variety of reasons for this: the lack of personnel in government offices; sometimes a staff person would not process a document in a timely manner; the community does not draw up the plans quickly, often due to lack of financial resources; or settlement leadership and families do not have the time to pursue and follow up on the paperwork.

²² Approximately 5% of the families do not register their titles through the municipality; the most common reason is lack of funds to pay the registration fee.

In 1991, an agreement was signed between the Registro Predial and the Lima Province Municipality to facilitate the bulk registration of property titles, but it was only in 1992 that the agreement was put into practice. The Registro Predial has a role in the regularization of the titles as it reviews the information on the title documents and checks it with the plans. Apparently, the Registro de Propiedad Inmueble used to take six months to review the documentation, whereas the process is done within one week in the Registro Predial.

B. RURAL TITLING PROCESS

The rural cadastral agency, PETT (Proyecto Especial de Titulación de Tierras), is responsible for regularizing rural properties and issuing titles, or facilitating their issuance, in this sector. The director of PETT sees this process as the culmination of the agrarian reform in Peru. Law 653 of 1991 abolished the 1969 Agrarian Reform Law (No. 17716), but it also provided for the completion of the procedures that were set in motion by the agrarian reform. Since the agrarian reform did not view titling and registration as central or essential to the process, many of the landholders affected by the reform do not possess clear registered titles.

At present, PETT is titling only agrarian reform sector land, but they plan in the future to include other agricultural land. The priority area is the coast and they expect to complete this by June 1995. The titling process is implemented at the departmental level through the subregional offices of the Ministry of Agriculture. Although we were not able to collect detailed information on this process, the following description represents the general process.

Titling is not done systematically, but relies on claimants' coming to the PETT offices to request titles. PETT personnel examine landholders' documentation and background information to determine their tenure status and whether or not the parcel is reflected on a cadastral map. A cadastral map is typically a plan approved by the now defunct rural cadastre office (PRONAC) and drawn as an overlay to the 1:25,000-scale cadastral sheets developed by PRONAC during the 1960s and 1970s. The cadastral parcel identifier (*código catastral*) is also apparently controlled and allocated from the central PETT office, but this was not confirmed. If a cadastral map exists for a parcel, then it must be obtained prior to registration. In either case, the map must be verified before it can be registered in the Registro Predial. This is done by agronomists or engineers who do a visual check in the field. There is some concern about the quality of the cadastral maps describing individual parcels as well as the fact that these maps are not geo-referenced.

PETT is directly involved in the titling process, and titles are required for registration of property rights in most circumstances. If a full or restricted title has been issued to the landholder or if fully adjudicated land has been sold to a third party, then title is a prerequisite for registration. However, where title was not issued, the resolution approving adjudication (*Resolución de Adjudicación*) may be substituted provided it is accompanied by a certificate from the Departmental Agrarian Unit (*Unidad Agraria Departamental*). PETT collects the background documents from the landholders and processes this information and issues titles. This process generally includes registering the titles in the property registry (either the Registro de Propiedad Inmueble or the Registro Predial) so that the title recipients receive registered titles. This is a critical step which is often excluded from the titling process in many other Latin American countries.

Titling of this agrarian reform land is occurring in departments all over the country; thus titles issued outside the Region of Lima are registered in the Registro de Propiedad Inmueble and not the Registro Predial. In fact, PETT provides both financial and personnel assistance to the Registro de Propiedad Inmueble in certain areas in order to facilitate the processing of the new titles.

PETT was one of the few agencies which expressed dissatisfaction with the Registro Predial. There is the perception among certain PETT personnel that the Registro Predial is less secure than the Registro de Propiedad Inmueble because it permits the registration of possession rights (rights to property occupied by the possessor that are not legalized with a title document). Ironically, this was seen as a major innovation in the late 1980s when the Registro Predial was being conceived (Forsyth 1990). At that time, it was viewed as an essential mechanism for formalizing land rights in the urban informal sector and giving these people access to mortgage credit (*hipoteca popular*). However, the number of possession rights and popular mortgages registered in the Registro Predial has been minimal in the past five years, which suggests that this issue has become largely irrelevant.

C. REGISTRATION PROCESS IN THE REGISTRO PREDIAL

This part of the operational procedures section will deal directly with the registration process as organized and practiced by the Registro Predial in the Region of Lima.

1. Jurisdiction of the Registro Predial

Since the Registro Predial is a registry that operates in parallel with the existing Registro de Propiedad Inmueble, it is important that there are clear legal and geographical jurisdictional boundaries between the two systems. Any overlap in jurisdiction can lead to duplication in landownership (that is, different owners with valid registration in separate registries), resulting in a decrease in tenure security. Although there are some reports of duplication, this does not appear to be a significant problem.

The legal jurisdiction of the Registro Predial is defined by law (see discussion on legislation DL 495 and DL 667, Section V, A and D), and in practice the Registro Predial extends its geographic (or spatial) jurisdiction by declaring an area under its jurisdiction. This means that once land in a certain area (for example, an agricultural valley or a *pueblo joven*) is declared to be within the jurisdiction of the Registro Predial, all properties already registered in the Registro de Propiedad Inmueble are to be transmitted to the Registro Predial and all subsequent transactions must be processed through the Registro Predial. The criteria for selecting which areas are to be included in the new Registry have changed over its five-year lifetime. Initially (1989–90), the Registro Predial worked only in urban areas around the City of Lima focusing on the surrounding informal settlements (*pueblos jóvenes*). In these cases, the geographical jurisdiction of the Registro Predial expanded settlement-by-settlement.

In 1993, Japanese development funds (administered by the World Bank and funneled through the ILD) financed a pilot project to expand the Registro Predial to additional urban areas as well as to certain rural properties in the Region of Lima. In many cases these rural properties were ex-cooperatives which had been parcelized, and priority was given to those areas where landholders already had title and were registered in the Registro de Propiedad Inmueble (see Graph 3 on p. 38).

The existence of well-defined tracts of land, either rural cooperatives or informal urban settlements, which contain many parcels for which titles are already in hand or easily obtained, has allowed the Registro Predial to quickly register many properties and to rapidly expand its geographical jurisdictional expansion with the Lima region.

2. Promotional campaign

The success of a titling and registration project depends to a large degree on the promotion that precedes the fieldwork and continues through the active life of the project. Promotion may take many forms (newspaper, radio, TV, etc.), but the primary method used by the ILD in Peru has been to work through local community groups. The promotional activity was most intense during the 1993–94 Japanese-funded pilot project. This activity has since ceased and we saw no evidence of promotional activities during our visit. Box 2 is a description, as related to this assessment team, of how the ILD and Registro Predial conducted their promotional campaigns in the rural sector under this pilot project.

Box 2 Titling and registration campaign in Palpa

The ILD staff together with the Registro Predial started its promotional campaign to register agricultural land in the Palpa Valley in August 1993. The promotion team searched out the agricultural leaders throughout the valley asking them to bring together all the small farmers in the valley for a meeting. They told the leaders and the farmers that the valley of Palpa was now under the jurisdiction of the Registro Predial and that they were going to title and register all parcels in the valley. In practice, however, the ILD campaign targeted the easiest properties to register, the parceled cooperatives. Many of the *parceleros* had title documents and were already registered in the Registro de Propiedad Inmueble. The registrations of these properties were transmitted in bulk to the Registro Predial. Out of the 26 cooperatives in the valley, 7 were registered in the Registro Predial very quickly because there were no problems with their documentation. At present, 4 cooperatives are still in the process of being registered.

The president of the Farmers Association in Palpa stated that the Registro Predial has not worked with other small farmers in the valley to regularize their documents. Some farmers had other types of title documents (not titles given out by the cooperatives), and some temporary workers had Possession Certificates to cooperative land. These farmers were ignored during the 1993–94 titling and registration campaign when Registro Predial staff were physically in the valley (apparently due to budget constraints). Once the pilot project was over, the staff withdrew from the valley and currently any registration transactions must be done in the Lima city office.

3. Registration documents

There are many different types of transactions that enter the Registro Predial and the application requirements differ a little in each case. One of the key instruments that has been used to simplify and standardize all transactions entering the Registro Predial is the use of registry forms. These standardized forms replace the *escritura pública* (deed), used in the Registro de Propiedad Inmueble, which must be drawn up by a notary. Five different forms

have been developed which cover all major transactions. The following forms are used (with the applicable transactions shown in parentheses):

- transfer form (sales, transfer of possession, exchange, *dación en pago*, *anticipo de legítima*, partition);
- encumbrances and charges form (common mortgage, popular mortgage, surface rights, servitudes, habitation rights, usufructuary rights, retainer rights);
- property modification form (consolidation, subdivisions);
- registration of lots and/or property rights to houses form; and
- Form A (personal or firm identification).

Form A must accompany all transactions except simple consolidations and subdivisions not involving transfer of ownership.

All forms, including Form A, must be signed by a lawyer or notary who certifies that:

- the signatures appearing on the form correspond to the persons who are involved in the juridical act, and
- this was done of their own free will.

The lawyer or notary also certifies to the veracity of the data contained in the form and the accompanying documents, the capacity of the involved parties, and the fulfillment of the pertinent legal norms. The possibility of using a lawyer in this capacity is an innovation of the Registro Predial, for only appointed notaries are allowed to fulfill this role in the Registro de Propiedad Inmueble. Understandably, there is some opposition (on the part of the notaries) to this move, but the extent and strength of the political pressure exerted by the notaries is unclear.

The property modification form and the registration of lots and/or buildings form must be signed by a civil engineer, agronomist, agricultural engineer, or architect who verifies that the data in the form correspond to the reality in the field (Law 495, Art. 12). This person also verifies that subdivided parcels are not less than the housing code minimum for dwelling or the agricultural parcel minimum as established by law.

4. Cadastral information

One of the claimed advantages of the Registro Predial over the traditional system is the existence of a cadastre²³ in the former, even though it does not in fact exist. Some cadastral information (for example, perimeter and subdivision plans) is being computerized within the Informatics Department of the Registro Predial, but there is no cadastre supporting the registry data. There is also cadastral information (but no cadastre) in the Registro de Propiedad Inmueble and in the Ministry of Agriculture's PETT for some rural properties. It is unclear who will be responsible for managing cadastral information and maintaining the cadastre in the long term.

²³ It is useful to review the attributes of a cadastre in order to reveal the shortfalls in the current cadastral arrangements. McLaughlin (1975, p. 60) defined a cadastre as follows: (i) a public record of interests in land, (ii) encompassing without exception all the legally recognized interests in land within a jurisdiction, (iii) based upon legally recognized and maintained cadastral parcels within which unique tenure interests exist, and (iv) constantly maintaining a cadastral record for every parcel of land.

The cadastre is a comprehensive system of records which is by definition integrated with the land registration system. The cadastre can be regarded as that part of the system which defines the spatial dimensions (where? how much?) of land rights, whereas the land registration system deals with the nature and the holders of land rights (who? what?). If these two subsystems are not connected, it becomes impossible to maintain the currency of the records. While the Registro Predial holds the potential to house and operate the two subsystems together, the cadastral component has not yet developed to the point where it is an integral part of the registry database.

Latin America has a long tradition of describing land parcels by referring to adjoining owners or parcels in an alphanumeric form, typically included in wordy deeds. In countries with a history of using a cadastre, the practice has been simply to refer to the relevant map to obtain spatial information. In other words, practitioners make use of a graphic depiction of the property to describe it. We believe that spatial information is more readily and more clearly described in a graphic form and, provided the cadastral data are available, should be used as a basis for describing parcels. Currently in the Registro Predial, the traditional practice of retaining alphanumeric descriptions is being continued, albeit in a more summarized fashion. This is not only difficult to maintain over time as changes occur due to parcel divisions and consolidations, but challenges the role of the cadastre as the descriptor of property parcels.

The requirement that the Registry agencies provide PETT with documentation (copies of plans) of new registrations to update their cadastral records (DL 667, Arts. 17, 18) is not being fulfilled. If PETT is accepted as the rural cadastre agency (this is arguable), then this inaction is leading to a lack of consistency between the cadastral information in the Registro Predial and in PETT. Some Registro Predial personnel feel that the registry should maintain the cadastre. The lack of enthusiasm for the Registro Predial within PETT may be explained by their perception that the Registro Predial is laying claim to what they perceive as their domain (the cadastre).

Apparently the cadastral code at PETT, which should be a unique identifier for each parcel in the country, is not being strictly allocated on a parcel basis. For example, the same cadastral code is being given for parcels held by the same owner. We received such information after our visit to Peru, so were unable to confirm it. If this is indeed true, then the implication is that the system is reverting once again to a person-based system as opposed to a parcel-based system. Since parcel identifiers are literally the key to managing a parcel-based system, this practice will eventually lead to problems with the management of the registry and cadastral information and with linking the two subsystems.

We were unable to assess the quality of the cadastral plans in the Ministry of Agriculture, but received unfavorable comments from rural community leaders as well as from a cadastral consultant working in Peru. Apparently, some of these plans were based on visual inspections and sketch plans which did not truly represent the shapes or sizes of rural parcels. The verification process built into the registration requirements is also based on only a visual inspection and cannot be regarded as a cadastral survey. In principle, the verification process is designed to check that the plan adequately represents the field reality. It is questionable whether this is possible in rural areas without at least some measurement.

The Graphics Section of the Informatics Department is currently computerizing paper cadastral plans. This is done by manual digitizing as well as through the use of coordinate geometry (CoGo). Where possible, they make use of the dimensions given on the plans. The

fact that two 486 personal computers and two trained individuals are dedicated to this work seems to indicate that it is a relatively high priority in the Registro Predial. No general index map is kept of what has been digitized or what is planned, though a record book of work completed is maintained. There is also no technical manual defining the procedures to be followed.

In general, the approach seems to be one that relies entirely on the software available, and the personnel in the Graphics Section appeared to be weak on such fundamental topics as coordinate systems and map projections. This lack of a broad educational basis tends to give rise to software-dictated solutions. There also does not seem to be any strategic plan or conceptual design for the integration of the textual registry data and the graphic data from the cadastral plans. Everyone in the Registro Predial recognizes this weakness and is in favor of integrating these two databases and creating a cadastre.

5. Procedures in the Registro Predial

Figure 3 (p. 27) provides a generalized view of the property registration process for all major transactions. In order to understand the details behind these generalizations, it is necessary to distinguish both between urban and rural transactions and between ownership rights and possession rights as well as to examine the different requirements within these different contexts. This section also describes the situation of those properties that were initially registered in the Registro de Propiedad Inmueble and were simply transmitted to the Registro Predial.

a. Urban land

Both possession rights and full ownership rights can be registered in the Registro Predial. Possession rights can be registered only on those urban lots (and buildings on the lots) which are located in *pueblos jóvenes* and which are in the process of being recognized and titled by the provincial municipality. In other words, the registration of possession rights is viewed as a temporary stage until full ownership rights are titled and subsequently registered. Although much of the earlier focus in the development of the Registro Predial was on the registration of possession rights, this has not been a popular option and registration of these rights has been negligible.

Applications for the initial registration of ownership rights to land and buildings must be accompanied by a title and the relevant registry forms. The registry forms must be signed by a registered (*colegiado*) verifier who confirms that the information on the forms is valid. Applications for possession rights also require supporting documentation, but further details on these are largely irrelevant given the infrequency of such applications.

Registry forms were specifically designed to simplify and facilitate the registration process in the Registro Predial. These forms contain general geographic and location information (region, province, district, settlement, sector, group, block, and lot name), street address, cadastral code, area, adjoining properties, building characteristics (number of floors, roofed area, building code, etc.), date of construction, and name of landowner. The verifier certifies that:

- the applicant retains valid rights of possession or ownership,
- the data on the form and plan (or sketch) are accurate, and
- the data presented conform with the current situation in the field (based on a visual field inspection).

When the applicant does not have a certificate of possession from the municipality, alternative documentation showing evidence of possession may be presented.

Possession rights registered in the Registro Predial may be used as collateral for a popular mortgage (*hipoteca popular*) (Art. 27). The term common mortgage (*hipoteca común*) is used for mortgages based on full property rights. Under the popular mortgage system, a mandator (*mandatorio*) is named in order to handle the sale of the property in the event that the borrower fails to repay his/her loan.

b. Rural land

The specific application requirements for each of the different registration cases (see Section V, D) are listed in DL 667 (Arts. 6–16). In general, a registry form signed by the competent authority (lawyer or notary) must be presented to the Registro Predial. Usually this must be accompanied by copies of supporting documents such as titles, resolutions, and the like.

When the claims are based on possession, evidence of the use of the parcel for a period of at least 5 years is required to support the application. If the possession is on state-owned land, then the applicant must have worked the land and possessed it in a direct, continuous, peaceful, and public manner for a period of at least 1 year prior to the application (DL 667, Art. 20). In the case of private land, the possession period is raised to at least 5 years. The time defined for adverse possession in the Civil Code is 10 years, but this may vary between 2 and 10 years depending on circumstances (Civil Code, Art. 2001).

The Registro Predial is required to notify all adjoining property owners (by mail) within a period of 30 days that an application has been received to register possession rights over a parcel. In addition, they are required to publicize this through a local newspaper. If no challenges or opposition to this possession are received within a period of 30 days (from the first day of publication), the Registro Predial will automatically register full ownership rights to the parcel in the name of the possessor (DL 667, Art. 23). This means that a possessor can acquire full ownership rights by adverse possession²⁴ (*uso capeon*) in a minimum period of 5 years and 30 days.

Procedures are also included in the law to deal with adverse possession over parts of a parcel (DL 667, Art. 25). Challenges to such prescriptive claims are transmitted to a land judge (*juez de tierras*), who deals with this through a judicial procedure culminating in a resolution. The resolution is sent to the Registro Predial where the possession rights are either transformed into full ownership rights (if the challenge is unfounded) or canceled (if challenge is successful).

In general, the following information must be presented to the registry for rural land parcels:

²⁴Adverse possession is a legal mechanism for acquiring full ownership rights through open, continuous possession and use of the land.

- registry form (same as in urban area),
- Form A (personal identification information),
- property title or resolution from the Departmental Agrarian Unit, and
- cadastral plan describing the dimensions of the parcel.

c. Registration transmittals from Registro de Propiedad Inmueble to Registro Predial

As the Registro Predial expanded its geographical jurisdiction within the Lima region, it focused on registering those properties that had already been registered in the Registro de Propiedad Inmueble. During its promotional campaigns, it encouraged property owners to request that the Registro de Propiedad Inmueble transmit their registrations to the Registro Predial.

On the one hand, targeting already titled and even registered properties rapidly increased the volume of registrations in the Registro Predial. On the other hand, some problems were encountered. For example, in some cases the information on registered settlement plans was not consistent with the information on the registered title. When this information is transmitted to the Registro Predial for registration, these problems are identified by their checking procedures. These problems are sometimes significant, particularly if new plans have to be drawn up. Since the families in the *pueblo joven* have already paid once for the defective plans, they are naturally reluctant to pay again.

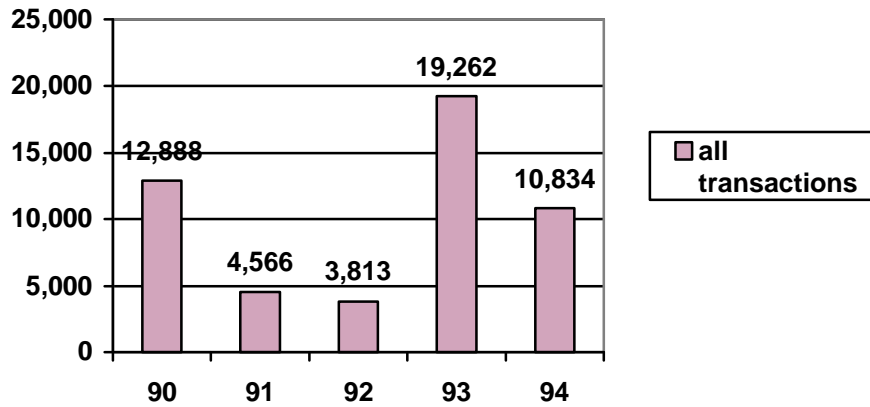
d. Levels of activity in the Registro Predial

Since the Registro Predial is computerized, summary statistics indicating the types and levels of activity can be extracted from the relevant databases. We were provided with a full set of statistics for the period 1 January 1990 to 15 March 1995. The statistics were divided into three sets since the data in the computer are separated into the three zones of operation (South, Central, North). Within each set, a full listing of all transactions was reported on an annual basis. Each listing included the alphanumeric transaction code (for example, I0301, T1004), the type of transaction (for example, Inscripción Derecho Propiedad de Lote, Traslado de Hipoteca Común), and the number of registrations for transaction type over the whole year. Because the statistics for 1995 were limited to the only two-and-a-half months, these were excluded from the analysis.

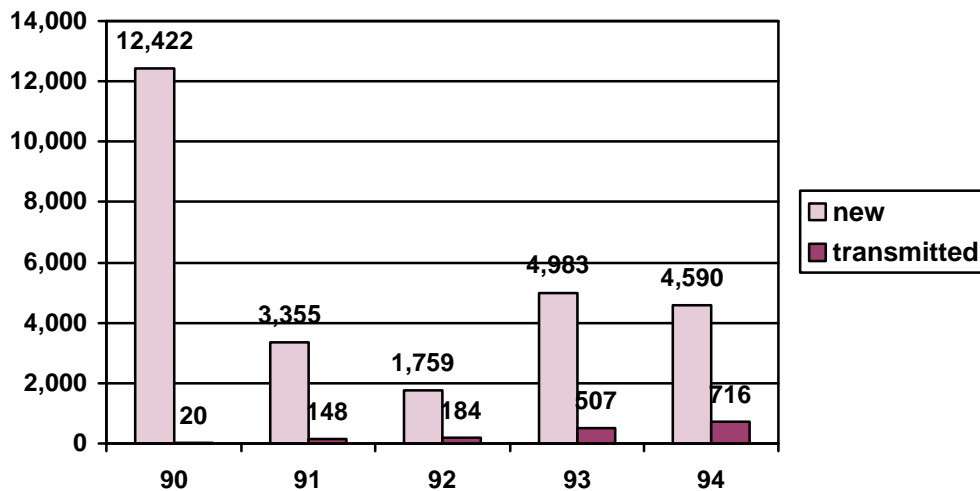
The first letter in the transaction code indicates whether the transaction relates to rural areas, urban areas, transmittances from the traditional registry to the Registro Predial, judicial decrees, cancellations, and rectifications. Graph 1 shows the total number of all types of transactions on an annual basis from 1990 to 1994. A total number of 51,363 transactions were registered over this period, with most (62%) activity in 1990 and 1993. The high level of activity in 1990 was generated by the first pilot project which focused almost exclusively on registering property rights in Metropolitan Lima.

This urban focus is further illustrated in Graphs 2 and 3, which show initial registration of properties in urban and rural areas, respectively. Of the 12,595 initial registrations in 1990, approximately 98 percent were in urban settlements surrounding the City of Lima.

Graph 1: Total registered transactions by year, 1990–94
(Total = 51,363)

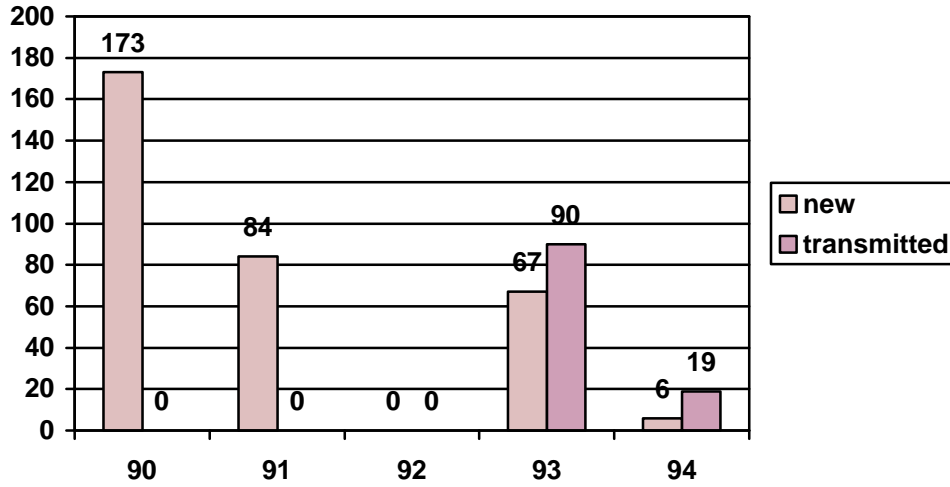


Graph 2: Initial registration of urban properties, 1990–94
(Total = 28,684)



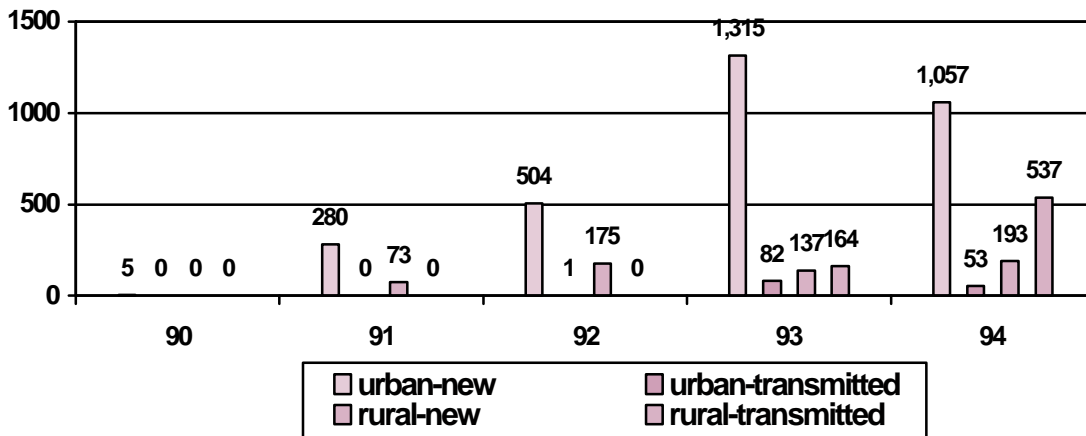
Graphs 1, 2, and 3 show a lull in registration activity over the period 1991–92 with slightly less than 8,400 total transactions. This was primarily due to a change in political administration marking the beginning of the Fujimori presidency. Economic reforms introduced by the new administration placed severe restraints on budgetary support for the Registro Predial, with the result that several key staff members resigned.

**Graph 3: Initial registration of rural properties, 1990–94
(Total = 439)**

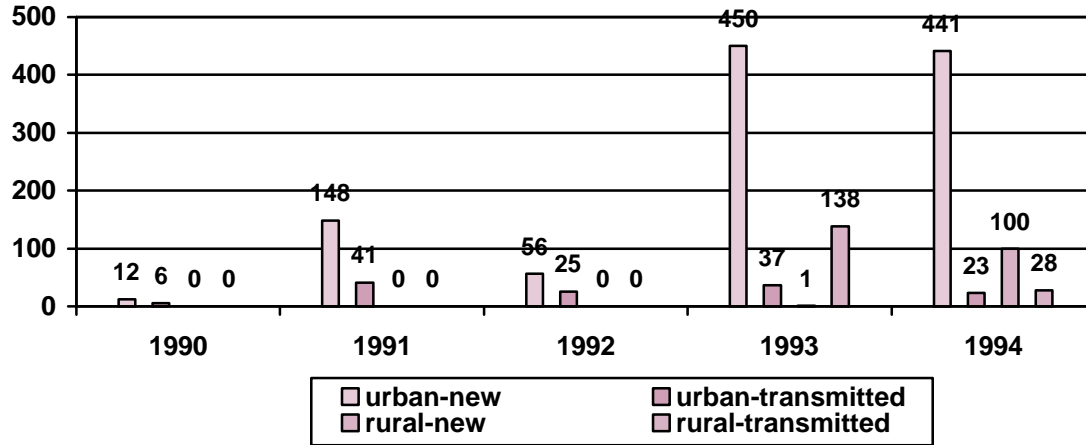


In late 1992, a second pilot project funded by the Japanese government (administered by the World Bank) was initiated prompting renewed activity visible on the graphs for 1993 and, to some extent, 1994. While the majority of transactions were still located in the urban areas, the pilot project was extended to rural areas to the north and south of Metropolitan Lima. In these rural areas, the project focused on agrarian reform land which had already been titled. Graph 3 shows that 57 percent of rural properties registered in 1993 were already titled and registered in the Registro de Propiedad Inmueble. In these cases the title documents were transmitted from the Registro de Propiedad Inmueble to the Registro Predial. A similar pattern can be observed for 1994 with the majority of initial registrations being based on transmittances from the traditional registry. While these transmittances were also done for urban areas, they were not nearly as widespread, constituting only about 11 percent of initial property registrations in the period 1993–94. This indicates a continued focus on unregistered urban lots typically found in the *pueblos jóvenes* around Lima.

**Graph 4: Property Sales, 1990-94
(Total = 4,576)**



Graph 5: Common mortgages by year, 1990-94
(Total = 1,506)



Graph 4 shows the number of property sales (*compraventas*) per year that were registered in the Registro Predial. This reflects property market dynamics for the years 1990–94. Not surprisingly, the large majority of registered sales (69%) are in urban areas. Activity has increased from a mere 5 registered sales in 1990 to a peak of 1,315 in 1993 and then lessened to a total of 1,057 in 1994. Graph 5 shows the number of common mortgages (as opposed to popular mortgages) per year for the period 1990–94. It reflects a similar trend to that shown in Graph 3. A portion of these mortgages (20%) were mortgages that had already been registered in the traditional registry and were subsequently transmitted to the Registro Predial.

The statistics obtained from the Registro Predial databases and summarized in these five graphs appears to be inconsistent with the ILD claim that over 150,000 properties have been registered over the first three-and-a-half years of the Registro Predial's existence. This significant difference is most likely due to how "registration of a parcel" is defined. As the discussion on the titling and registration processes (see Section VI, A and B) explained, when a *pueblo joven* or agricultural cooperative begins the titling process, a perimeter plan (showing the boundaries of the *pueblo joven* or cooperative) and a subdivision plan (showing the individual parcels within the perimeter) are submitted to the titling agency for approval. As part of the registration process, these plans are also submitted and registered in the Registro Predial. At that time, each parcel is given a "generated parcel code" (*código de predio generado*), whether or not that parcel is ever titled to a property owner or registered by the owner. The ILD apparently includes the assigning of these generated parcel codes to pieces of land as registration transactions. The Registro Predial database, on the other hand, apparently counts only those properties which have been actually registered to a property owner as registration of property rights.

While we have no reason to question the veracity of the ILD statistics, it is important to understand that different levels of formalization exist. When comparing the experience and results in Peru with those in other countries, it is essential to examine the starting and ending points of the formalization process in each case. In particular, do the processes include

adjudication (*saneamiento*), titling, and registration or only one of these formalization processes?

6. Hardware and software

Information in the Registro Predial for the Lima region is organized according to the geographic zone in which the parcel is situated. The three zones are North, East/Central, and South, and the staff as well as the supporting hardware is divided along these lines. Two independent local area networks (LAN) support the computerization functions within the Lima office, one for the south zone and one for the north and east zones (see Figure 4). Each LAN is supported by a server which deals with the data storage, file handling, and processing. The system makes use of a UNIX operating system. The Informatics Department of the Registro Predial also has a few additional computers dedicated to system administration and development.

The software used to enter and manage the registry data, known as Regis-P, was initially developed by the ILD. The earliest version of Regis-P was DOS-based, but it was subsequently converted to UNIX. Regis-P is built as a shell around a database management system called FoxBase. It provides a user-friendly interface in the form of a series of menus which allow the registry staff to enter all the data directly. Regis-P has evolved over time through in-house improvements implemented by personnel in the Informatics Department of the Registro Predial and presently appears to work effectively. On-the-job training is used to teach the software to new registry staff.

Other computer peripherals on these two networks include printers (large and small) and back-up tape drives as shown in Figure 4. Each tape stores approximately 525 megabytes. Back-ups are made on a daily, weekly, and monthly basis and a security copy of the weekly back-up is kept in a local bank.

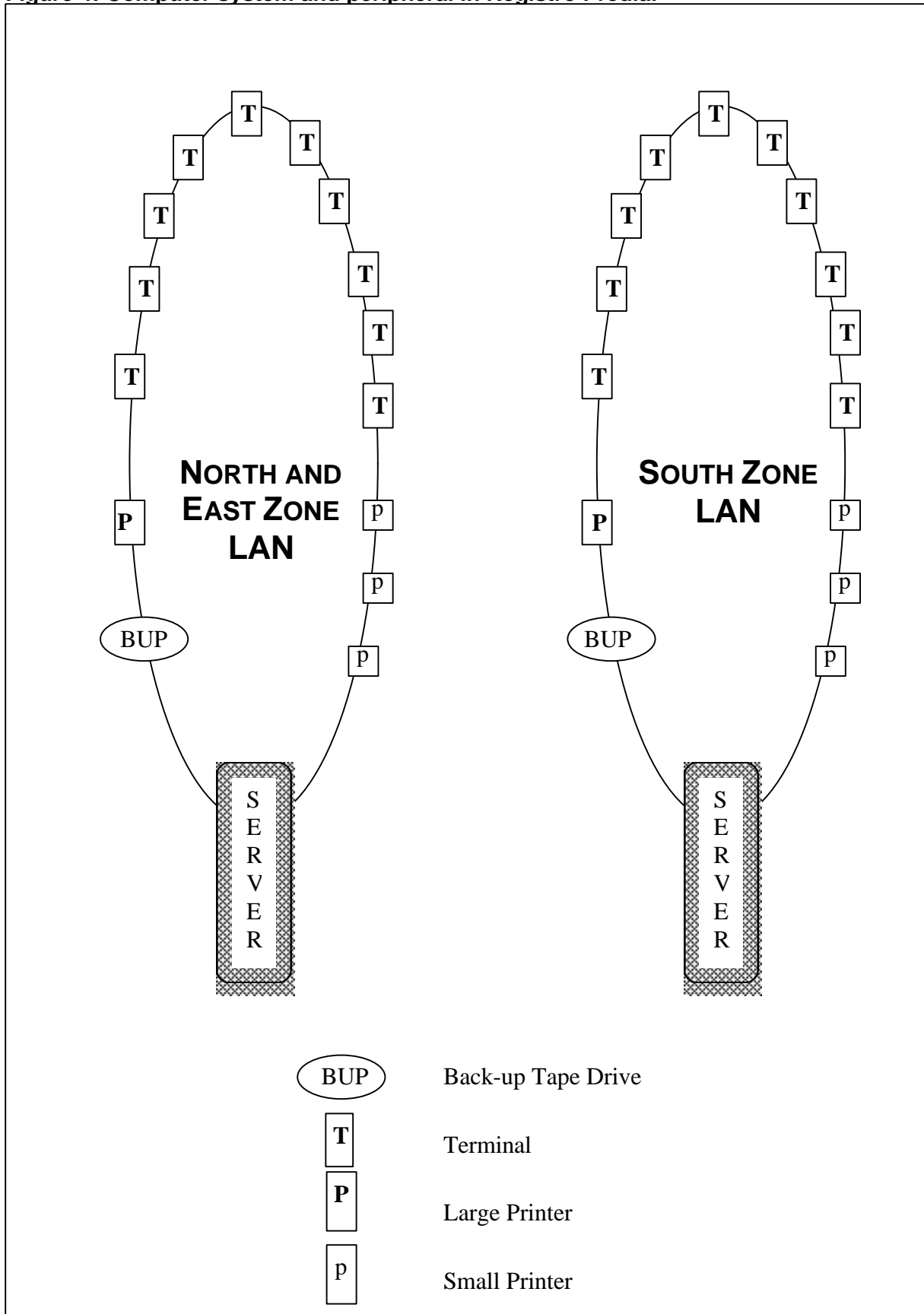
7. Registration certification (*constancias and copias literales*)

It should be clear from the above description that the Registro Predial does not issue titles nor does it issue copies of titles. The registry forms that have been designed are also meant to circumvent the need for complicated deeds. Part of the design of any registry must address the issue of what documents or certificates are to be issued by the registry office in response to users who require information on a particular parcel. In a purely manual system, it is conventional to duplicate the documents that had entered the registry office, but where the system is completely computerized, it is the data in the database that are most important. Furthermore, the computerized database allows for efficient searches and compilation of relevant data on a parcel or person basis. The Registro Predial in Peru makes use of two types of certificates for reporting on data in their digital archives.

The first type of certificate is called a *constancia*, which literally translates to documentary proof. Generally, a *constancia* is issued when a user requires only a short summary of the tenure status of a parcel. The information reflected on the *constancia* includes the name(s) of the current owner(s), parcel information (parcel number, cadastral unit, administrative location), and title number along with when it was registered.

When a user requires a more detailed description of the tenure history of a particular parcel, this is provided via a *copia literal*. This includes a description for every computerized transaction that has affected the parcel.

Figure 4: Computer system and peripheral in Registro Predial



This historical record is a transaction-by-transaction account, moving from the oldest to the most recent transaction (*asiento*). In addition to the information contained in the *constancia*, the *copia literal* contains details on the adjoining properties, all background documents and their numbers, a written summary of the description, and any other data that are recorded against that parcel (for example, mortgage value).

VII. CREDIT ACCESSIBILITY FOR REGISTERED PROPERTIES

The most commonly recognized benefit from the titling and registration of land, besides the tenure security bestowed on the property owner, is the use of those secure ownership rights as collateral to solicit credit. Formal lending agencies, such as banks, often require not only that property being used as collateral be titled, but also that the title be registered. In fact, the rationalization for the cost of titling and registration programs is that they put capital into the hands of persons with little wealth and low incomes, leading to increased investment and productivity by these families. In general, however, there appears to be minimal credit accessibility for low-income families in Peru, whether rural or urban.

A. FORMAL CREDIT ACCESSIBILITY IN PUEBLOS JÓVENES

Interviews with property owners in *pueblos jóvenes*, community leaders, and NGOs working with these urban communities confirmed that while families are anxious to acquire title to their land and generally agree to have these titles registered, their access to formal credit does not appear to increase significantly as a result of registration. Banks consider these properties to be of little value and, therefore, any income-producing activities in these areas to be high-risk investments. In addition, since small loans are involved, the transactions costs are high. Since 1990, a total of 1,218 mortgages have been processed on 28,684 urban properties registered in the Registro Predial (see Graphs 2 and 5). This means that only 4.2 percent of those urban families who have registered their title documents in the Registro Predial have obtained mortgage credit.

One source of formal credit that was evident in the *pueblos jóvenes* is the KARPA company. As mentioned previously, KARPA is a building supply company that sells basic construction materials (mostly bricks, cement, building rods, tiles, or bathroom fixtures) on credit to families in *pueblos jóvenes*. The credit line is actually extended by Orion, a financing company associated with KARPA.²⁵ When customers walk into a KARPA store and request credit for their purchase, KARPA employees assist them in filling out the forms. They then turn in the documentation to an ORION employee who has a desk in the store. Thus, both the purchase of materials and the credit line are done simultaneously.

In reality, the client signs two contracts: one with KARPA, and another with Orion. In addition, a mortgage is placed on the client's property. The loan is extended from Orion directly to KARPA, and the client pays Orion. The amount loaned is based on two factors: the

²⁵ Both KARPA and Orion are subsidiaries of CARSA.

value of the property, and the earning power of the property owner. Credit up to the value of the property is approved and the credit line can be renewed when most of the loan is repaid. KARPA clients usually have registered titles; if they do not have registered titles, they need a co-signer.

Loans are approved on the basis of one of three guarantees: a mortgageable property, a lien on a property (this requires a lawsuit to enforce), and a co-signer when property is not yet titled. The great majority of the credit loans are based on a mortgaged property.²⁶ KARPA staff claim that there has been only 1 percent default on loans. If a client is late on his/her payments, an attempt is made to collect the payment, then a notarized letter is sent, and finally the matter is pursued through a law suit.

Our visit to a newly opened KARPA store revealed that in a one-week period, 50 contracts had been drawn up and 10 credit lines had been approved for a total of US\$10,000. Of these 10, 9 were guaranteed with mortgages and 1 by a co-signer. The monthly payments vary from US\$34 to US\$208. The loans are paid in 13 fixed payments (an initial payment subtracted from the loan amount at the time the loan is approved and 12 monthly payments) in US dollars over a one-year period.

Credit for building materials is sorely needed in the *pueblos jóvenes* (and the convenience of obtaining credit for and purchasing the materials in one place, open seven days a week, is surely appreciated); however, the cost of this credit is very high. A comparison of the financed cost of certain items offered at the KARPA store with prices at other building supply stores revealed that KARPA customers were paying approximately double the price.²⁷

While KARPA is one of the few institutions in *pueblos jóvenes* offering formal credit to property owners with registered title deeds, this credit is tied to consumer products and comes at a high price. The lack of financial institutions in these neighborhoods makes these credit conditions “market competitive.” From 1994 to 1995, KARPA more than quadrupled the number of mortgage-based loans.

B. FORMAL CREDIT ACCESSIBILITY IN RURAL AREAS

After the dismantling of the Banco Agrario in 1990, there was minimal credit available to small farmers for production. In cotton-producing areas, cotton gin plants would advance some credit to cotton farmers in their locale backed by a contract that obliged the producer to sell his/her cotton harvest to the plant. A countrywide system of *cajas rurales* (rural-based savings and loan associations) was supposed to replace the Banco Agrario, but very few are actually functioning. Interviews with *parceleros* and other small farmers in the Region of Lima, as well as NGOs and bank officials, indicated that even though production credit for small farmers has increased in the last year, formal credit continues to be scarce.²⁸

²⁶As mentioned in the section on Institutional Framework, KARPA gives both financial and material support to the Provincial Municipality of Lima (the government agency that issues land titles to *pueblos jóvenes*) and the Registro Predial.

²⁷For example, 3/8-inch rods cost US\$5.72 each at KARPA and between US\$2.56 and US\$2.72 at other stores, pandereta bricks cost US\$258.70 per thousand at KARPA and US\$127.27 at other stores.

²⁸Estimates in the Valley of Cañete, a major cotton-growing area in the Department of Lima, put the proportion of small farmers with production credit at 20%.

Banks are reluctant to give credit to small farmers, even if they have registered title deeds, because they are considered high-risk producers. Since 1991, when the Registro Predial began to register title documents for rural properties, only 205 mortgage-based credits have been issued (see Graph 5). There appears to be no crop insurance or loan insurance in case of default. In addition, long-term credit for investment in the land or for machinery is practically nonexistent, and there appears to be no credit for the purchase of farmland. Banks that do offer individual credit prefer medium-sized farmers (farmers with more than 20 hectares of irrigated land) with the ability to produce highly rentable cash crops (for example, asparagus for export).

Most of the credit available is production credit from nonbank sources (such as cotton gin plants²⁹ or wholesalers) and is tied to a particular crop. Some credit sources not only ask for a mortgage but also put a lien on the harvest (*prenda agrícola*). The two main banks that do offer production credit to small farmers, Banco Wiese and Banco de Crédito, are doing it through solidarity groups (a voluntary group of farmers cultivating the same crop). These are very small, experimental credit programs. It appears that other commercial banks are becoming interested in extending credit to farm operations and that during 1995 the number of mortgage-based credit will double or triple over 1994.

Interviews with officials at Banco Wiese and small farmer solidarity groups disclosed an innovative attitude with regard to credit for small farmers. Production credit is offered to farmers grouped into solidarity groups; the loans are for one growing season and for cash crops such as cotton, fruit trees, and corn. An NGO³⁰ evaluates the solidarity groups and monitors the farmers. The administrative/transactions costs are split between the bank and the NGO.³¹ These costs do not include technical assistance or agricultural extension services; farmers are encouraged to obtain these services on their own.

Credit amounts for production are usually US\$5,000 or less. Material collateral for this credit includes the harvest itself and land (if the land is titled); the other type of collateral is the personal guarantee of each person in the solidarity group. Farmers do not necessarily need a registered title to their land in order to join a solidarity group and request credit. If a farmer does not have registered title to his/her land, however, s/he must deposit 20 percent of the loan in the bank as a guarantee. Box 3 presents a description of a farmer in a solidarity group. Capitalization credit for over US\$5,000 and/or for periods longer than one year is normally processed by and given to individual farmers who hold registered title and is based on mortgaged collateral.

Another interesting aspect of the banks' willingness to work with small-farmer solidarity groups is the banks' efforts to pressure input distributors to lower their prices for these groups. This type of triangulation between farmer groups, banks, and farm supply distributors is particularly interesting—and ironic, at this point in Peruvian agrarian development. Farmers find themselves, several years after dismantling their cooperatives, encouraged to group

²⁹The cotton gins in Cañete give out credit lines of US\$500–700 per hectare for cotton production; the loan is guaranteed with a lien on the harvest and a mortgage on the land.

³⁰CEPES is working with solidarity groups in Huaral, Solidarity in Chiclayo, CIPCA in Piura, and the Instituto Rural Valle Grande in Cañete.

³¹For example, CEPES in Huaral charges the solidarity groups a 3% fee.

themselves again in order to improve marketing and credit opportunities for individual farmers.

Banco Wiese officials indicate that they will process mortgages with either of the registries; however, they feel that each system has its advantages and disadvantages. Apparently, the Registro de Propiedad Inmueble, in spite of recent attempts to streamline its procedures, is not yet an efficient institution. A credit lien can take anywhere between 24 hours and 2 months to process. In contrast, the Registro Predial processes mortgages within a week. On the other hand, mortgages in the Registro de Propiedad Inmueble are apparently more flexible. For example, once a property is mortgaged, the lender can give out credit to the property owner for as long and for as many times as the lender wishes and the mortgage is not lifted. At the Registro Predial, the property is mortgaged for a specific amount and for a specified period. Therefore, in order to renew or extend a credit line, another mortgage must be processed.

Box 3 Solidarity groups in Aucallama

Juana belongs to a solidarity group of five *ex-yanaconas* in Aucallama (Huaral) which is receiving production credit from Banco Wiese to grow cotton under CEPES's oversight. Besides cotton (a traditional cash crop), Juana and her family grow nontraditional cash crops such as strawberries and asparagus as well as foods for household consumption. The group is talking about marketing their harvest together. At present they each sell their cotton harvest to a cotton gin plant as soon as it is harvested in order to pay off the loan. They feel that they could obtain a better price for their cotton if they sold their harvests together as a group.

Juana's family's land is titled and registered at the Registro de Propiedad Inmueble. However, since this area is now under the jurisdiction of the Registro Predial, Juana must transmit the registration from one registry to the other. This will entail a number of trips to the City of Lima since the Registro Predial does not have an office in the Huaral area.

An operational problem which has been encountered in the processing of credit applications is delays in finalizing the transmittal of registrations from the Registro de Propiedad Inmueble to the Registro Predial. Thus, although these properties are legally titled and registered, property owners find themselves in limbo when soliciting credit.

In summary, it would appear that banks continue to be reluctant to give out credit to small farmers because of the risk involved, even if the farmers have registered title. When bank credit is available, it is minimal and usually given out through an intermediary such as an NGO. In addition, significant requirements other than registered title are imposed. It is clear that these credit lines are experimental in the sense that they are small loans given under very controlled circumstances. The loan period for most of the credit is equal to the number of months needed to plant and harvest a crop. In addition, banks are requiring that small farmers organize themselves into solidarity groups under the supervision of an NGO. Very little long-term credit for farm improvement or machinery is approved, and there is no credit available for the purchase of land.

VIII. SIGNIFICANT ACHIEVEMENTS OF THE REGISTRO PREDIAL SYSTEM

Having described how the Registro Predial system and related institutions function, this section will outline the significant advantages and achievements of both the ILD campaign to create the Registro Predial and the Registro Predial system itself.

A. SIMPLIFICATION OF REGISTRATION SYSTEM

One of the most significant achievements of this system is the simplification of the registration procedures and the removal of unnecessary and unwieldy bureaucratic requirements. It is no easy task to implant a whole new registration process which challenges the role of those who hold a monopoly in the old system. McLaughlin and de Soto (1994, p. 312) state that more than 174 property laws and approximately 2,000 other laws were reformed to provide the legal framework for the Registro Predial.

There is no doubt that the Registro Predial functions more **efficiently** than the Registro de Propiedad Inmueble. Generally, the opinion of both officials and users was that most transactions are processed in less than one week. This has been made possible by the streamlining of requirements and the simplification of procedures as well as through the computerization of the data. It is important to realize that the benefits of the Registro Predial cannot be achieved through simple computerization. Computerization of an inefficient and ineffective system may lead to short-term efficiency gains, but will ultimately lead to failure.

The opening up of the validation process to lawyers in addition to notaries has removed a costly monopoly which acted as a disincentive against registering property. The role of the notary, as a public officer, is to provide public approval of private contracts (such as title documents) prior to registration in the Registro de Propiedad Inmueble. It was estimated that until several years ago, there were fewer than 50 appointed notaries in Metropolitan Lima. The resulting document is often a public deed (*escritura pública*) which is registrable. The Registro Predial specifically avoids the requirement of a notarized deed, which can be extremely lengthy and which uses legal jargon unfamiliar to the lay person. Instead, it makes use of standardized registry forms which require the certification of either a lawyer or a notary.

B. REDUCTION OF REGISTRATION COSTS

It appears that in the majority of cases, registration procedures, including registration of title documents and mortgages, are significantly less expensive in the Registro Predial than in the Registro de Propiedad Inmueble. It is difficult to compare the costs for the two systems because the procedures and basis for fees differ. For example, in the Registro Predial, there is a set fee for each type of transaction, while in the Registro de Propiedad Inmueble, the fee is often a percentage of the selling price when registering a property sale or of the mortgage amount when registering a mortgage.

One factor that increases registration costs in the Registro de Propiedad Inmueble is the required intervention by a notary public. The fees charged by notaries are considerably higher than the fees charged by the lawyers who intervene in transactions in the Registro Predial.

A caveat here is called for, however, because it should be noted that while the Registro de Propiedad Inmueble is fully self-supporting and receives no funds from the government, the Registro Predial does receive part of its budget from the Public Treasury. This allows the Registro Predial to subsidize the fees it charges its clients. In addition, most of the properties in the Registro Predial are first registrations of state properties, which are free.

C. ELIMINATION OF LINK BETWEEN PROPERTY TAX AND REGISTRATION

Another disincentive to registration that has contributed to property informality in Peru and elsewhere in Latin America is the requirement that property taxes be paid as a prerequisite to registration. The initial idea of this requirement was to use registration as a mechanism for enforcing payment of taxes. Unfortunately, the result in most cases is that neither system works, that is, taxes are not paid (for a variety of reasons) and land is not registered. In order to remove this dependency, the Registro Predial does not require tax payment as a prerequisite to registration. This is a significant improvement given that the property taxation systems in Latin America are generally fraught with problems.

D. MODERNIZATION OF INFORMATION MANAGEMENT

Much of the activity in any registry is concerned with the management of information. This includes the review of new information entering the registry, retrieval of existing information, capture of new information, processing and monitoring of documents, and archiving of information. The Registro Predial has implemented a computerized system which significantly improves the management of information. This has additional advantages in terms of providing greater security (protection of information from fire as well as corruption), reducing physical space requirements (manual archives occupy a great deal of space in traditional registry offices), and avoiding disintegration of paper documents through frequent use.

E. INCLUSION OF CADASTRAL INFORMATION

The **concept** of including a cadastre (containing spatial information for defining land parcels) in the Registro Predial offers advantages over systems where spatial and textual records are separated. When they are placed in different agencies, the integration of land tenure information depends on the mutual cooperation of the two agencies involved. Inter-institutional cooperation on a sustainable basis is difficult to achieve in most Latin American countries, and strategies that depend on this are consequently more risky. We have used the term “concept” here because there is no evidence that this integration has been achieved in the Registro Predial.

F. PROACTIVE APPROACH TO FORMALIZATION OF PROPERTY RIGHTS

Experience around the world shows that major reforms, such as those achieved in the implementation of the Registro Predial, do not occur without a champion. This is a person or institution (public or private) which takes up the challenge of change and responds with a missionary zeal that provides the energy or momentum required to accomplish the reforms.

Clearly, ILD has played this role and it is doubtful that the success to date would have been achieved without its early involvement. Part of this challenge involved giving titling and registration a high profile in the political debate about land, both at the level of senior government officials and at the level of persons on the street.

Unfortunately, because of the limitations on geographic coverage and the time and money constraints of a pilot project, there are still questions as to whether this effort could be sustained over several years in order to cover the whole country. The key question is whether this is due to lack of financial resources, the removal of political support at the highest levels, lack of interest by landholders, or the pilot nature of the work.

The involvement of community leaders and others at a local level also signals a welcome change from the top-down strategies that have been used previously throughout Latin America and elsewhere in the world. This is especially effective where there is a pre-existing administrative structure in a community and the community leaders have the full support of their constituents, as has usually been the case in Peru.

G. INTEGRATION OF REGISTRATION INTO TITLING PROCESS

The promotional campaigns undertaken by the ILD before and during the pilot project raised the awareness of the importance of both titling and registration and made the procedure more proactive. This stimulated titling campaigns by the agencies charged with this function (such as provincial municipalities, Ministry of Agriculture). The shift on the part of these agencies from merely handing out titles to encouraging and facilitating the registration of those titles may also be regarded as a major step forward. Certainly it underscores the importance of registration as a means of increasing protection of a titleholder's rights.

H. LINKAGE BETWEEN FORMAL CREDIT AND REGISTRATION

By focusing on improving the formalization process of informal property rights, ILD hoped to transform those property rights into working capital. Property can become productive capital once it is recognized as an asset and accepted as collateral for the purposes of obtaining credit. An efficient (in terms of time and transactions costs) registration system that documents and guarantees property rights facilitates the use of property as collateral for formal credit and thus the generation of capital based on property.

The ILD's efforts to formalize property rights, therefore, are based on the thesis that a necessary condition for formal commercial credit is property that can be used as collateral. For many credit institutions, collateral is based on registered property rights.³² Whether the ability to mortgage property is sufficient in order to obtain credit is dependent, of course, on many other factors. Some of the evidence we have gathered indicates that in spite of having registered their titles, many low-income families are unable to obtain credit, and the credit they are able to secure is tied to noncredit conditions.

³²Most commercial and/or formal credit institutions require not only that property be titled to the owner, but also that the title be registered. Some banks are giving credit lines to small farmers organized into solidarity groups, whether their titles are registered or not, which would seem to indicate that property mortgages are not always necessary to obtain formal credit.

At an operational level, a significant achievement of the Registro Predial system is the ability to quickly process mortgage transactions. These are normally done within a one-week period with a lawyer's signature and a minimum of documentation. In contrast, the same process at the Registro de Propiedad Inmueble apparently takes weeks, if not months, and requires the intervention of a notary public.

IX. SIGNIFICANT PROBLEMS

This section summarizes some of the more significant problems related to the Registro Predial system. These problems are related to the inability to expand the system and to the failure to institutionalize some of the basic concepts and reforms.

A. LACK OF GOVERNMENT SUPPORT

The Registro Predial has not enjoyed sustained support from senior government officials and, as a result, has not been able to maintain the momentum generated by the pilot projects. While this has not stopped the Registro Predial from slowly expanding its geographical jurisdiction within the Lima region, it has prevented the decentralization of the registry within the Lima region as well as the establishment of Registro Predial offices in the other twelve regions of the country.

Persons familiar with the work of the Registro Predial and the ILD have offered several explanations for the lack of government support. Since none of these can be confirmed, they will be mentioned as possible reasons for the inability to extend this new registration system beyond Lima.

- One explanation is that at the time the ILD was lobbying for and promoting its registration system, the ILD attacked the Registro de Propiedad Inmueble and thus offended a number of key government personnel. This has meant that the Registro de Propiedad Inmueble was not disposed to working with the new system and, until recently, was not open to collaboration with the Registro Predial. This situation is now changing, and a committee formed by staff from both registries was established early this year to explore ways of collaborating.
- Another explanation is that those *pueblos jóvenes* in the Lima area that were already registered in the Registro de Propiedad Inmueble have been reluctant to transmit their registrations over to the Registro Predial. In addition, some property owners feel that the Registro Predial, as a new and parallel registry, is not as legitimate as the traditional Registro de Propiedad Inmueble. Thus, when possession rights were sometimes incorrectly registered during the enthusiasm of the first year of operation, or every time there is a case of double registrations of a property (apparently this does not happen very often), skepticism about the system is voiced.
- The resistance by the public notaries to the Registro Predial is also often cited as a reason for its political difficulties.

B. FAILURE TO FORMALIZE POSSESSION RIGHTS

One of the main objectives pursued by the ILD in the late 1980s and early 1990s was the formalization of possession rights (rights to property, occupied by the possessor, that are not legalized with a title document). Law 495 (1988) put into law the concept of possession rights and outlined new procedures for the registration of not only ownership rights but also possession rights in the Registro Predial.

There is the perception among some government and banking personnel, as well as property owners, that the Registro Predial is less secure than the Registro de Propiedad Inmueble because it permits the registration of possession rights. Ironically, this was seen as a major innovation in the late 1980s when the Registro Predial was being conceived. At that time it was viewed as an essential mechanism for formalizing land rights and gaining access to mortgage capital. However, the number of possession rights registered in the Registro Predial has been minimal (only three transactions registering possession rights were processed) in the past five years, which suggests that this objective has not been achieved.

C. FAILURE TO SECURE CREDIT BASED ON POSSESSION RIGHTS (*HIPOTECA POPULAR*)

The focus of the ILD work in the late 1980s on registering possession rights was based on giving these property holders a basis for obtaining mortgage credit (see Art. 26–29 of Law 495). These mortgages were termed popular mortgages (*hipoteca popular*). Since serious problems were encountered with the registration of possession rights, few were registered. Therefore, few popular mortgages were obtained; in the period January 1990 to March 1995, only four popular mortgages were registered in the Registro Predial.

D. FAILURE TO LINK REGISTRATION AND CADASTRAL INFORMATION

There are many claims that one of the advantages of the Registro Predial over the Registro de Propiedad Inmueble is that the former is based on a cadastre. At this time, however, there is no cadastre in the Registro Predial (or in the Registro de Propiedad Inmueble). There are survey plans which have entered the Registro Predial as part of the required information for a particular transaction and some of these data have been computerized, but there is no integrated cadastre supporting the registry data.

The Graphics Section of the Informatics Department is currently creating digital plans from manual cadastral plans. This is done by manual digitizing as well as through the use of AutoCad. Where possible, employees make use of the dimensions given on the plans. The fact that two 486 personal computers and two trained individuals are dedicated to this work seems to indicate that it is a relatively high priority in the Registro Predial. No general index map is kept of what has been digitized or what is planned, though a record book of work completed is maintained. There is also no technical manual defining the procedures to be followed.

In general, the approach seems to be one that relies entirely on the software available, and the personnel in the Graphics Section appeared to be weak on fundamental surveying and cartography topics. There also does not seem to be any strategic plan or conceptual design for the integration of the textual registry data and the graphic data from the cadastral plans.

Everyone in the Registro Predial recognizes this weakness and is in favor of integrating this and creating a cadastre, but we were unable to find any plan for this move.

E. INABILITY TO DECENTRALIZE LIMA REGION OFFICE

The Registro Predial is designed to be an independent, decentralized office. While it has slowly expanded its geographical jurisdiction within the Lima region, it has not been able to decentralize its operation within the region with the exception of a limited-service office in Cañete.

When the ILD was able to obtain international financing for its property formalization program, it channeled funds to the Registro Predial and supported its activities. This permitted the Registro Predial to extend its geographical jurisdiction by sending teams of registrars and verifiers to areas beyond the City of Lima. Usually these were rural areas where properties already had title documents, and often they were already registered in the Registro de Propiedad Inmueble. A temporary office would be set up, usually in a provincial government office or a cooperative federation office, to collect title documents and encourage owners to transmit their registration from the Registro de Propiedad Inmueble to the Registro Predial.

Once the international project was finished, the ILD withdrew its support and the Registro Predial lost many staff persons. As a result, it was not able to set up permanent and decentralized offices outside the City of Lima.³³ Therefore, landowners living outside the City of Lima and now registered in the Registro Predial must travel to Lima for any transaction. The fact that there are branch offices of the Registro de Propiedad Inmueble in towns within the Lima region exacerbates the situation even further. This means that the decentralized Registro Predial model, and associated linkages to manage such a structure, has not been established in Peru.

F. INABILITY TO EXPAND BEYOND LIMA REGION

The Registro Predial, as mentioned previously, exists and operates only in the Region of Lima. It has not set up offices in any of the other twelve regions in the country. This is most likely due to the lack of government support for the Registro Predial. This means that the Registro Predial has not been able to fulfill its legal jurisdiction (informal and formal housing settlements and all rural property) at a national scale. Thus properties in these two categories outside the Region of Lima continue to be registered in the Registro de Propiedad Inmueble. We are not aware of any plans at this time to establish a Registro Predial in another region.

G. FAILURE TO ESTABLISH CREDIT INSURANCE (*SEGURO DE CRÉDITO*)

Another important objective of the ILD, when it was campaigning for the creation of the Registro Predial and the extension of credit opportunities to all property owners, was the establishment of credit insurance. A provision (Arts. 30 and 31) was included in Law 495 to authorize the granting of such credit insurance. Apparently, credit insurance is not available to

³³The Registro Predial was able to maintain only one small office in Cañete (south of Lima) with one staff person. This office is not autonomous, but rather must send all its registration transactions to the Lima office.

most small property owners. None of the persons we interviewed, including property owners, NGO personnel, and registration personnel, knew of available credit insurance. This is not surprising when one considers that credit agencies in general are not enthusiastic about extending credit to small property owners (even if they are titled and their title documents are registered), because they are considered risky ventures. Under these conditions, it is understandable that insurance agencies will also be reluctant to extend credit insurance.

H. OPERATIONAL PROBLEMS WHEN SOLICITING CREDIT BASED ON TITLE REGISTERED IN THE REGISTRO PREDIAL

While recognizing that the Registro Predial is more efficient in processing mortgages (one week, at most), banking institutions have encountered a number of operational problems when compared to the Registro de Propiedad Inmueble. At the Registro Predial, the property is mortgaged for a specific amount and for a specified period. Therefore, in order to renew or extend a credit line, another mortgage must be processed.

Another operational problem which has been encountered is delays in the transmittal of registrations from the Registro de Propiedad Inmueble to the Registro Predial. For example, when the registered titles of *parceleros* in Palpa (Huaral Department) were transmitted from the Registro de Propiedad Inmueble to the Registro Predial, a problem was found in the title documents and it took six months for the transmittal to be completed. In this case, the *parceleros* were in a type of limbo with regard to registration because they were no longer under the jurisdiction of the Registro de Propiedad Inmueble but neither were they registered in the Registro Predial. Processing of credit applications from these property owners were consequently put on hold.

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