

Implementing Land Registration Systems in Sri Lanka: Being Pragmatic

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Abstract

Land registration systems that define and identify the land rights, making it commercially and financially visible to the market are one key for the development of the country. However in developing countries the administrative framework for the registration of lands seems to be inefficient and ineffective in coping with the dynamics of the land markets. In Sri Lanka too as per the issues that can be experienced with regard to the land tenure, it could be presumed that the land registration system has not been effective in dealing with the development requirements of the country. Accordingly this study investigates and evaluates the land registration systems in Sri Lanka and has attempted to propose certain strategies in order to improve its effective implementation. In this regard one of the strongest claim made by the study is that the land registration system should enforce pragmatic decisions and strategies rather than relying on too standardized, bureaucratic and costly approaches.

Keywords: Land Tenure Issues, Land Registration, Implementation issues of Land Title Registration Projects, Pragmatic Decisions and Strategies

Introduction

Land is a natural resource while land with a secured property rights is an economic resource (Perera 2008). The nature of land rights and the way they are enforced have significant consequences for resource allocation and economic efficiency (Gershon 1999). Imagine a country where nobody can identify who owns what, addresses cannot be easily verified, people cannot be made to pay their debts, resources cannot conveniently be turned into money, ownership cannot be turned into shares, description of assets are not recorded and standardized and cannot be easily compared and the rules that govern property vary from neighborhood to neighborhood or even from street to street; you have just put yourself into the life of a developing country”(De Soto 2000). Accordingly the book of “Mystery of

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Capital” by De Soto 2000 recognizes that the people’s resources that are untitled or in other words informal which makes it commercially and financially invisible to the economy as “Dead Capital”. As a matter of fact in developing countries this so called Dead Capital accounts for more than 80% of its real estate sector. Particularly in the Asian Region the situation is shown in Table 1. It shows in Asia by year 2000, the “Dead Capital” in urban areas accounts to nearly 84% and 44% in rural lands. Accordingly the majority of both urban and rural land in Asia is held informally, leading to land ownership and tenure issues in the absence of properly defined property rights causing constraints to accrue the expected benefits of formal property.

Table 1 - Urban and Rural Dead Capital in Real Estate in Asia in 2000

	Urban		Rural
Total no of Dwelling (Millions)	101	Informality in Rural Area (%)	44%
Informal Urban Dwellings (Millions)	85	Value of informal Rural Area (TrillionUS\$)	0.59
Value of Informal Urban Dwellings (Trillion US\$)	1.75	Informal Rural Area (thousand hectares)	215,164

Source: Mystery of Capital, De Soto 2000

Further it creates asymmetry of information regarding allocation of land rights and promotes the segmentation of land markets constraining the volume of transactions and thus hindering efficient resource allocation. As a matter of fact the definition and the institutionalization of land rights have been an important issue for societies throughout history. In the developed world since the 1960s with the decolonization the governments became more conscious of the benefits of secure title to land, the need for improved land titling moved higher up the political agenda.(Dale and McLaughlin 1999). However the situation with regard to developing countries is rather unsatisfactory. Many developing countries including Asian countries are struggling to overcome these land ownership and tenure issues caused by informality of land rights.

Overview to the land tenure and its related issues in Sri Lanka; the need for land registration

In par with most other developing countries Sri Lanka too experiences issues on land tenure and access to titled land. The formation of Land Tenure in Sri Lanka is directly related with the human settlement pattern in the country. As a matter of fact there had been an indigenous population in Sri Lanka and in addition various

groups of persons from outside the country, have recognized settlements in the country at different periods of time, where such groups of persons have brought with them as is to be expected, their systems applicable to persons and property. Hence the system of land tenure in Sri Lanka was greatly influenced by the laws and customs governing persons and property. Accordingly by the sixteenth century AD there had been influence, respectively by the Buddhist, Hindu and Muslim religious practices and customs (Codrington 1947). From the 16th century AD onwards the country has been subject to various degrees of influence from the European nations; Portuguese from 1505, Dutch from 1656, and British from 1796. As a matter of fact the Sinhala Law was administered in the Kandian province after 1815. Islamic law was applied as a strict personal law to Muslims that also governs property inheritance of Islam. Tesawalamai (literal meaning laws of the land), which was personal law with a peculiar territorial limitation, applied to the Tamils domiciled in the Northern Province. The Roman Dutch law that introduced the private property rights on lands which prevailed as the formal legal system (introduced by the Dutch) was applied to the European inhabitants and the Sinhalese living outside the Kandian Provinces and the other communities when the special laws governing them were silent. Afterwards these laws that were in force at the commencement of the British rule have been expanded and amended timely by the British government under their English (Common Law) legal system. Further during the British period various land reform policies that includes land alienation, definition of land rights etc..were also introduced through ordinances such as Crown Lands encroachment Ordinance no 12 of 1840, Waste Land Ordinance of 1897 and so on. Later after independence various laws and enactments were introduced by the respective governments and land reform policies were brought up according to the prevailing political reforms . Some examples to quote are restriction on private property rights under socialists policies during 1970-1977 period and policy of regulating of land use under the liberalization economic policies etc. These laws and land reform policies enforced in different period of times shaped the pattern of land tenure in Sri Lanka. Hence presently the land tenure in Sri Lanka is influenced by legal pluralism with over 100 of enactments affecting on property. As a matter of fact firstly high fragmentation (both physical and legal) of land can be seen in Sri Lanka. Although the total land extent in Sri Lanka is around 65610km² It consists of 9 million land parcels; i.e 136.364 Land Parcels /Sq.km (UN-FIG Commission 7, 2006) and it is comparatively high when compared with countries with large land extent such as Australia 1.447 Land Parcels /Sq.km, and 44.297 Land Parcels /Sq.km in Indonesia etc.

Secondly unsolved land disputes, litigation and unclear tenure leading to land encroachment, misuse and disuse of land and so on have become the negative implication over the present land tenure pattern in Sri Lanka. For instance Table 2 shows the situation in legal redress for land disputes in selected District Courts within the Western Province. The cases remain unsolved for longer periods due to complicated land law pertaining to land rights. For instance most of the court cases at least last for more than 5 years and some cases long last for more than 30 years. During these periods these valuable lands remain underutilized. On the other hand since the “long period taken (sometimes over generations) in legal redress for land disputes” is a well known fact to the society, many are reluctant to bring their land disputes to Courts and rather would try to find their own ways and means to solve such issues. For instance via, forceful trespassing and evictions, informally compromising between parties through discussions, verbal agreements etc. These may cause various long term negative social and economical implications as the solutions brought up to the problems are not legally solid.

Table 2 -No of Court Cases Pending – Land Disputes

District Courts	No of years Pending					Unclassified	Total
	5	10	20	30	>30		
Colombo	877	194	62	2			1135
Mt Lavinia	472	49	1				522
Moratuwa	152						152
Homagama	238	144					382
Avissawella	677	426	605	145	24		1877
Panadura	389	72	5	8		8	482
Gampaha	841	362	235	5		3	1446

Source: Sri Lanka Study on Land Markets, Ministry of Lands, 2000

These complications in land tenure largely bottleneck the accruing of highest and best use of land causing market failures thus drawing back the development of the country. An example to quote is that the sustainable township program (STP) which deals with urban resettlement programs and liberalization of encroached land for urban development in the city of Colombo could not put one inch of liberated urban prime land into the market for investment due to its unclear title to land.

In this regard it is the contemporary thinking that the “land registration” is the only means to an end in solving these issues that relate with the land tenure. However these issues on the other hand highlight that the past attempts taken for land

registration in Sri Lanka have not been effective in securing property rights of the community in par with the experience of many developing countries as mentioned before. Hence improving the implementation of land registration systems that can effectively identify and define property rights precisely and thereby integrating it for the development of the country is an indispensable requirement under the presently expanding knowledge economy.

Literature review

There is a broad agreement in the literature that secure individual land rights will increase incentives to undertake productivity enhancing land related investment (Gershon 1999, De Soto 2000). There are three basic types of land registration systems (i) Private conveyance (ii) registration of deeds (iii) Registration of Title. Out of which the latter two systems are the most commonly used (Dale and Mc Laughlin 1999.) However the limitations of the deed registration system is well documented by authors as Simpson 1976, Dale and Mc Laughlin 1988. The basic shortcoming of the deed registration system is that by means it is for registering of legal documents rather than the title to the property. On the other hand Registration of Title seeks to make a definitive statement as to the nature and extent of title, the land being identified by reference to a map (Burdon 1998). In fact the Torrens System of title registration was developed in Australia in the mid 19th century (Simpson 1976). As a matter of fact during the latter half of the 20th century with the advocate of the international corporations there have been two major forces promoting land administration reforms. The first is the desire of countries to promote economic development by improving their land administration institutions and infrastructure. The second driving force is political and is more concerned with justice and the restitution of land rights. As a result there has been a greater trend of implementing Land Titling projects in many developing countries including Asia. However there have been certain criticisms on conventional titling system as to been too complicated, too accurate, too slow and too expensive so that they are less suitable for developing countries (Paul 2005, Thomas 2000). On the other hand land titling and registration projects in developing countries are invariably associated with individualization of private property using processes and mechanism imported from outside. This has arisen in part from a form of institutional imperialism: western consultations and aid organizations tend to export systems with which they are familiar (Anne et al, 2002). In particular the reason behind these argument was the failure of many Land Tiling Projects (except few projects) implemented in developing countries in spite of the billion of dollars spent by international donor agencies and the countries themselves. This has been the case of Sri Lanka as well; According to the evaluation made under the

Implementation Completion and Result (ICPR) report 2007 published by the World Bank, the Land Titling Project that was implemented with 5 million US Dollars under the World Bank funds has been “UNSATISFACTORY”. This has been a common situation in many developing countries in Asia and Africa except few cases of projects that could be implemented successfully.

Hence within the constraints and shortcomings of the current practice, bringing the land registration procedures in developing countries to a status of success is a challenging task. One of the emerging literature in this regard is to find alternatives and pragmatic approaches in the way of awarding property rights to communities, which then decide on the most suitable tenure arrangements (Klaus 1999). A fine example to quote would be the challenge in most developing countries to integrate these so called “modern” land administration systems with indigenous cultures and tenure systems for rapidly expanding informal sectors and institutions (see for e.g. De Soto 1989, 2000).

Objective of the study

According to the issues prevailing with regard to land tenure in Sri Lanka, it can be hypothesized that the land registration programs and projects implemented in Sri Lanka have not been efficient and effective in addressing the need of the present land market.

Hence the objective of this study is to

1. Provide an overview to the implementation of Land Registration system in Sri Lanka
2. Look for *pragmatic* ways and means to improve implementation of the present land registration system in Sri Lanka.

Methodology

In order to serve the purpose firstly the present institutional, administrative and legal set up of the land registration system and its evolution were looked into. Thereby the shortcomings of the present system were identified. Thereafter case studies from other developing countries and countries of transition in Asia have been looked into to analyze their experiences as to how they have overcome similar issues through pragmatic approaches. Finally within such framework certain aspects that can be brought up as pragmatic strategies have been identified (by analyzing the potentials of present land administrative framework of Sri Lanka) and proposed in order to improve the present system to reach its ultimate objective more effectively.

For this purpose, the study mainly used secondary data that had been obtained from various project reports, progress reports, enactments and other literature available with regard to the implementation of land registration in Sri Lanka. Further primary data were obtained with personal interviews held with the officials of the Sri Lanka Title Registration and related Services Project and Land Registrars office. In addition internationally published journal articles were used to seek case studies for land registration systems in other countries. Finally the data obtained have been analyzed descriptively.

Land registration system in Sri Lanka; tenure security and effectiveness of projects

This section of the paper analyses the present status of land registration process in Sri Lanka. Accordingly it discusses the evolution of registration of land and different methods applied in different periods of time and how far these procedures and programs are effective in terms of secure land rights, timely service to the community and so on.

The beginning of land registration in Sri Lanka

Before the Dutch and the British the land records were maintained in “Lekam Mitti”. The Dutch recorded land in “Thombus”. The system of registration of documents affecting lands was introduced in 1863 by the Land registration Ordinance No 08 of 1863 and it was done independent of the registration of title. In 1877 a trial to register title as an experiment was started under the Registration of Titles to Land No 05 of 1877, in southern suburbs (at that time) of Colombo namely Wellawatta, Kirullapane and Dehiwella. A special Commissioner was appointed to inquire into the claims in respect of the Surveyor General surveyed lands in these areas and in the process, while claims were inquired into land so affected and Certificates of Title were issued by the Registrar General. Although the intention was to implement the provisions of the Ordinance to the whole island it failed at the commencement since it was a very expensive one. Thereafter the previously started deed registration system was continued as the basic method of land registration system in Sri Lanka.

Registration of lands under the deed registration system

The deed registration system for registering of lands operate with three basic ordinances; . i.e Registration of Document Ordinance of 1927, Prevention of Fraud Ordinance 1980 and Notary Ordinance. Figure 1 explains the procedure in which the land transactions should be registered. Accordingly upon entering in to

contract by the parties (seller and the buyer of the land) the purchase consideration is certified with a written deed by a notary public in the presence of two witnesses. Thereafter upon the payment of the stamp duty by the parties to the contract the notary public will forward the deed to the Land Registrar for the registration of such deed.

The three areas where the title registration was implemented in 1877 (Wellawatta, Kirullapane and Dehiwella) that was later known as “special registration area”, the registration of a deed requires an annex; a plan prepared by a Licensed Surveyor with an affidavit by him certifying that he has prepared the plan correctly and truthfully. Then the plan and the deed are referred to the Surveyor General with a blank folio enabling him to enter particulars of the plan and send it back to the Registrar General who proceeds to make necessary entries in the register. Unlike in other areas in special areas there is always a plan accompanying the deed where the rest of the areas of the country do not need a survey plan for registration of deeds to the lands.

How far is tenure secured under the deed registration system?

There is a broad agreement both in literature and practice that an appropriate land recording system of the country is the key to secure such ownership to the land. Hence this section investigates how far the implementation of the deed registration system has secured the tenure of land to its owner. As mentioned before the deed registration system is governed by statutory laws introduced during the British period. i.e i) Registration of Document Ordinance No 08 of 1863 ii) The Prevention of Frauds ordinance of 1840 (that the deed should be duly attested by notary public and two witnesses) iii) Notaries Ordinance (Specify function and responsibilities of the notary sign to the deed) Refer Figure 1. As a matter of fact under the rule of “Accession” by the Roman Dutch Law land and the building is considered to be one unit in the registration process. As it appears this was a system that introduced during the British period as a temporary solution to the land registration procedures until a former registration system started. Yet this temporary system continued to operate since 1863 as the official system for registration procedures of land for more than a century (Also refer section 5.1 and 5.3). Hence currently it gives rise to many issues as mentioned follows.

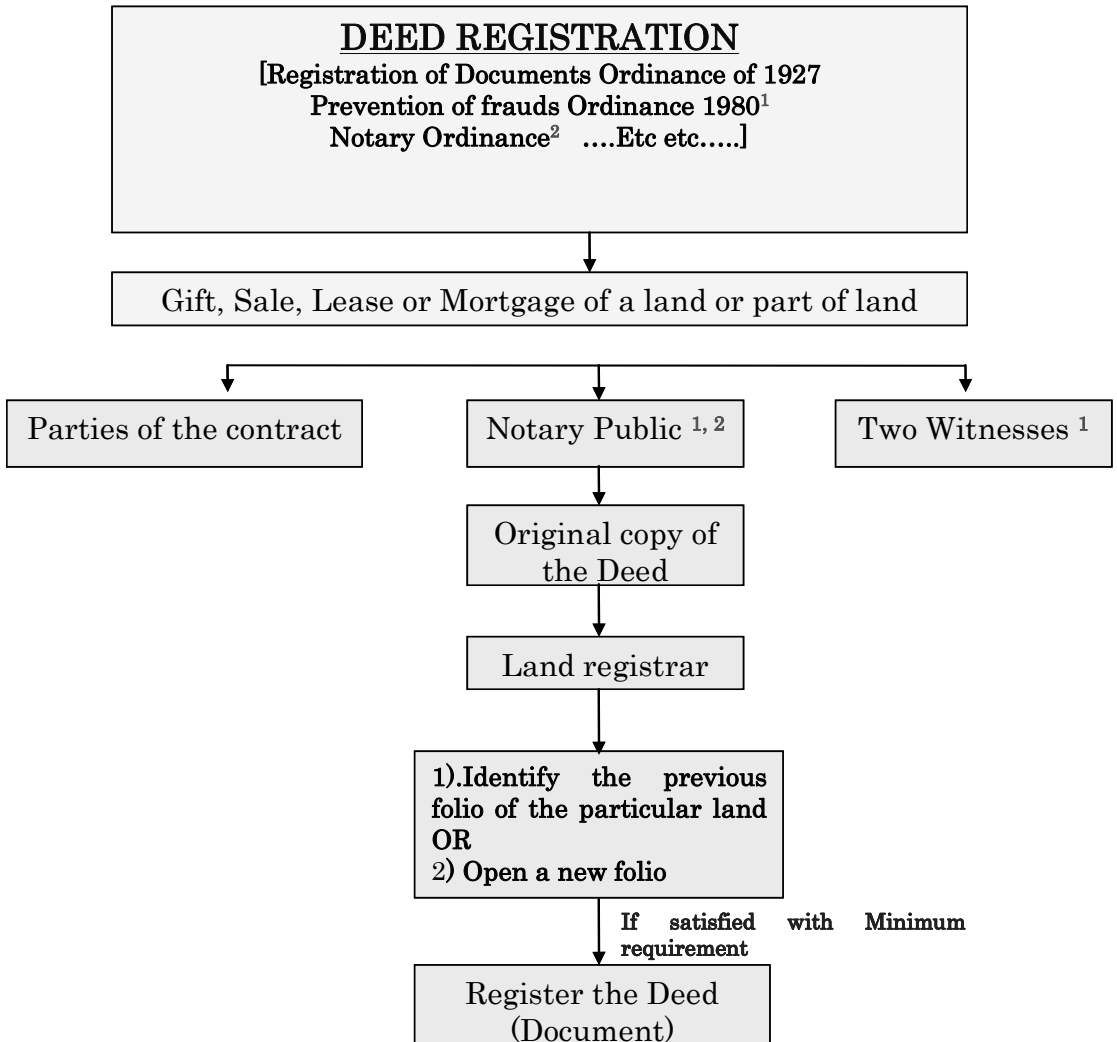
As it shows in Figure 1, firstly the basic logic behind a deed registration system is the registration of land transaction between parties. Hence presenting the survey plan to the land is unnecessary as the physical existence of the boundaries to the land is not a matter that is to be considered in this process. Therefore firstly fraudulent deeds and unclear boundaries of lands are the major issues with regard

to the tenure security of lands. Secondly the price stated in the registry would be the price that is declared by the parties involved to the transaction. Hence the real economic values to the land cannot be identified in the market procedures. Thirdly if the notary public did not mention the folio (Ref Figure 1) that the present land was previously registered there is a greater chance that the present deed may register as a new land. This often leads to ambiguity in land ownerships that leads to various indirect issues. E.g. disqualifying to obtain a credit or mortgage to the land and so on. (Interview with the Land Registration Department 2007, Colombo)

Registration of title

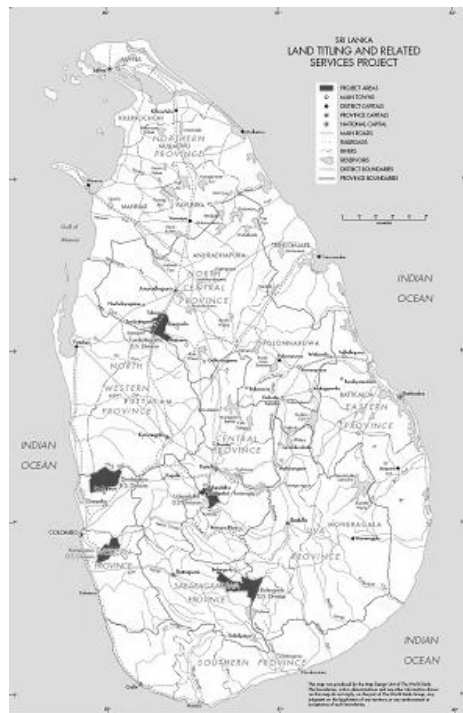
These shortfalls in the deed registration system identified the need of transforming the country's land registration system from one based on deeds to one based on registration of titles. This had been proposed several times by the recommendation of the Land Commissioners interim reports in 1955 and 1985 respectively. However the government of Sri Lanka could initiate its own land titling pilot project in 1996. By March 1998 a primary piece of legislation; the Registration of Title Act no 21 of 1998 (RTA) was adopted and begun a dialogue with the donor community on this subject. Given its established international experience with land administration projects the World Bank was a natural partner to turn to for assistance. Accordingly the Land Titling and Related Services Project (2001-2004) were started borrowing 5 million US Dollars as a Learning and Innovation Loan (LIL). The responsibility of the agency lied with the Ministry of Land Development and Minor Export Agriculture, Sri Lanka. The project areas were decided are shown in Figure 2. Primarily the project focused on rural areas of the country that would have been influenced by the World Bank Policy improving tenure security of farmers. As shown theoretically the system of title registration does not consists of fundamental issues of tenure security as the deed registration system. However the problem that many countries faces are the implementation issues. The prerequisites for successful implementation of a land titling Projects as recognized by the World Best Practices highlights that the projects that were able to implement titling projects successfully mainly had following infrastructure; Clearly define Land policies, One Implementing Agency, One legal code for land, effective technical principles, strong administrative and political commitments (UN-FIG 1999, Williamson et al 2000).

Figure 1: Procedure for deed registration system



Project procedures and implementation issues

Considering the project success of Sri Lanka Land Titling and related Services Project funded by the World Bank, the overall project evaluation by the Bank states that the project operation has been “unsatisfactory”. The overall results highlights that during the 3 year project period 22,637 land parcels were registered out of which 14,676 were state lands where only 5228 titles were issued. (ICRP report World Bank 2007) Also refer Table 3. Compared with the total land parcels in the country which is over 9 million the achieved target is totally negligible. The report identifies that the frequent lack of coordination among agencies, and the ultimate lack of institutional accountability was the central factor in the failure of the Project to achieve its objectives. As a matter of fact the project had to incorporate a wide range of institutional players; Land Settlements Department to look in to claims for land rights, Surveying Department for land surveying and cadastre mapping, Land Registrar General to issuance of title and a Project Coordinating Unit, Under the Ministry of Lands in coordinating the process (Figure 3).



In fact, changing the de facto control of the project from one institution to another during the implementation of the project, shifting persons in the lead positions in the implementing agencies were the major barriers for the initial project implementation. The “Institutional principle” under the Land administration best practices recognizes earlier highlights that there should be “One Institution” for the successful implementation of the project. Eg: In Thailand the most successful Land titling Project dealt with only one implementing agency (Department of Lands) with a country wide network of branch offices. Further fluctuating political situation such as changing of Ministers frequently was also another issue that the project had to undergo. For instance as a result of this, the key issues to amend in the RTA that had been identified in 1998 were under discussion until 2004. Further the titling project was implemented within the prevailing legal pluralism of the country. Again the world best practices highlights that under the legislative principle that it is needed to build the project under “one legal code”. As a matter of fact the dispute handling which is the major component of the Land Titling had to be done under the prevailing system of legal redress referring the cases to the district courts hence were not handled effectively. The land parcels for which land titles were issued were almost entirely those for which clarity of rights and security of tenure were already high under the existing system of registration of deeds. The cases with any sort of question about the status of land rights were not dealt with, but rather left unaddressed, merely referring them to the court procedures that were usually costly and time consuming. Further the subsequent increase of land value and the investment on land has not been significant after the titling as theoretically expected (ICRP Report 2007). The reason would have been that (i) the titles were issued to rural lands where the potential for investment would be lower (ii) the land that the titles issued were lands that already had a clear tenure. Hence changing the deed to title has not made any significant difference.

Table 3 – Current Status of Project Performance

Institutions Engaged	Dispute Handling	Total Time for a titling Certificate
Department of Surveying, Land Settlement Department Land Registrars Office Coordinated by the Project Coordination Unit (PCU) at the Ministry of Lands	NIL (None of the cases which involves land dispute has been handled so far in each of the areas)	At least 6 months for a land that has a clear title deed.

Source: Homagama Land Registration Project Office 2007

Initially the valuation procedures for land titling has been commenced with the aiming for the service by the Government Valuation Department. De Soto 2000 mentions “the only way to touch capital is if the property system can record its economic aspects on paper and anchor them to a specific location and owner.” However due to incapacities of staff this component has been cut down from the titling procedures. However even in Thailand the most successful Land Titling Project was also achieved this component to a lesser degree. At the termination of the World Bank funding in 2004 the titling project continues, as a National Government project from 1996 which named “Bimsaviya”, in areas that are declared by the Minister as the area for title registration. Accordingly further areas including Homagama, Moratuwa in the district of Colombo, have been taken under the title registration procedures. The administrative procedure for the present title registration is shown in Figure 3.

As a matter of fact according to the investigations made in the Homagama Title Registration branch (Table 3) it is shown that under normal conditions, for a land which has a clear claim for the title without dispute would take minimum 6 month period to issue a title. This is compared with the average time taken per title in other developing countries in Asia; 2.5 hours in Thailand, 14 days in Indonesia and 15-20 days in Karnata India. It is identified that if the entire country is to be completed under the present title registration procedures it takes nearly 140 surveying years (Sri Lanka Study of the Land Market, Ministry of Lands, 2000).

In view of the above it is evident that, from the land market point of view the benefits of title registration cannot be efficiently and effectively accrue under the present institutional, administrative and legal context. In this regard theoretically it is clear that what it basically needs is to re-engineer the institutional and the administrative set up for the title registration in keeping with the land market trends and to bring up a comprehensive legal code for land. However these remedies are long term that needs considerable time frame to work out where the land market trends are more dynamic and cannot hold constant until these ideal situation to be realized. For instance the Thailand Land Title Project; commenced in 1984 became a successful project as it was implemented after the World Bank had already been actively funding agricultural development in Thailand for approximately 20 years. Hence developing the present land titling project in Sri Lanka to an ideal situation would require extensive period of time. Hence the question is until such time how can we minimize the weaknesses of the present land titling system until such long term remedies are made; as merely waiting for the ideal system to come up years and years after would worsen the land market imperfections more seriously.

It is to remind that the success of the land registration system depends on how effectively and efficiently it could support the regularization of the land market for the development of a country. Hence the option remain for the present land titling project to overcome its present status by seeking ways and means of taking bold and pragmatic approaches and strategies (while working out the above mentioned long term remedies) in order to expedite the project completion there by achieving its ultimate objective. There are certain examples from countries around the world where pragmatic decisions, strategies and approaches had worked out successfully in order to bring up the countries land registration procedures more effectively and efficiently.

Experiences of other countries; being pragmatic

In this section it is expected to seek examples of pragmatic approaches and strategies taken by other countries in order to overcome similar implementation issues of land title procedures.

The Thailand Land Titling Project which began in 1984 is the largest land titling Project implemented and said to be the most successful project. Considering its experience, it shows that the basic factor of success behind this project was the pragmatic policies and the procedures implemented during the implementation of the project. The project was planned to be completed within 20 years. Hence some important pragmatic approaches taken are noted.

- I) **Legal Matters** -At the commencement of the project two vital changes to the land code 1954 were proposed. However the project was implemented prior to those amendments with the assumption that the laws would be amended and passed during the first year without the project being postponed until the law is being enforced.
- II) **Technical** – Survey and mapping area where map standards and survey accuracies were deliberately set at practically achievable level.
- III) **Administration** - As to expedite the decentralization of title deeds, placed the Provincial Governor as the authorizing officer on title deeds.
- IV) **Title certificates** - The Certification of Land Utilization (NS3 and NS3K) land registers and land transfers were upgraded (qualified title strategy) to full title deed (NS4) without a field survey. (Rattanabirabongse, et al. 1998).

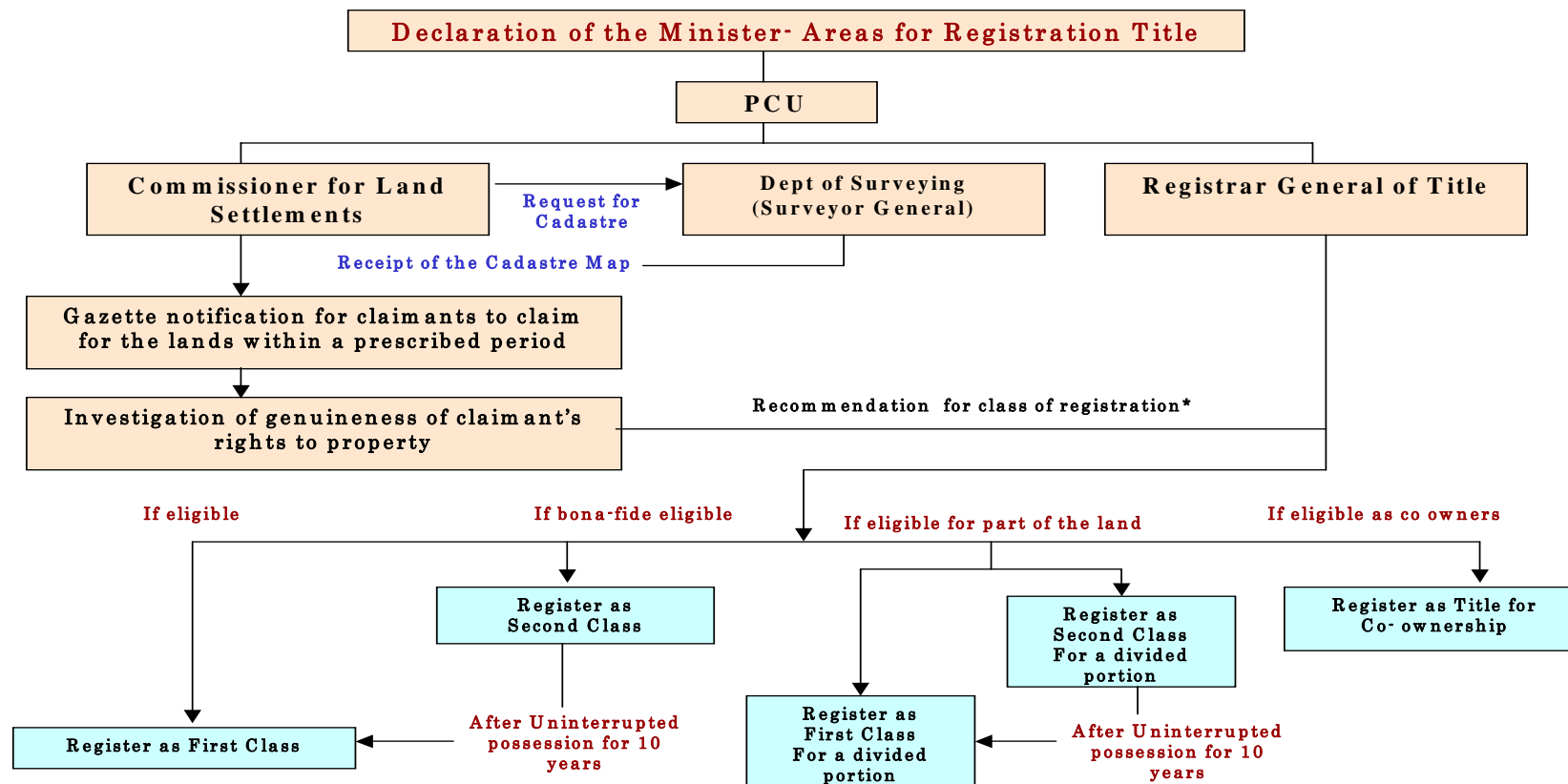
This Qualified Title Strategy was also applied in Malaysia and some parts of Australia and so on (Williamson et al 2001).

With regard to the decentralization of title registration procedures projects in Thailand, Indonesia, Lao PDR, Philippines are all decentralized. Among which Indonesia and Philippines have mobilized their local authority system in order to make their decentralization process more effective. Specially in Indonesia it is interesting to note that they have mobilize their land registration procedures, which are carried out by the local authorities while assessing the property tax to the titling procedures. This did not only enable them to achieve the project targets on time but also to implement fairly effective valuation system in the titling procedure. In this case it is to note that the very successful project in Thailand too experiences a great difficulty in valuation process. However, Indonesia achieved it fairly effectively as they integrated their local authority tax assessment system into titling procedures (Anne et al 2002).

There is evidence from countries like Peru (where informal land tenure issues are high) that benefits can accrue when laws are made to fit everyday life; Over a seven-year period, the Instituto Libertad y Democracia (ILD) a Peruvian non-governmental organization, identified informal institutional arrangements (particularly those governing informal property) that had come to be accepted by the rapidly growing informal sector in Lima. After analyzing legal and bureaucratic obstacles, which impeded formal recognition of informal property rights, the ILD drafted a series of institutional reforms, which incorporated informal proofs of ownership into the formal legal framework without threatening the security enjoyed by those holding informal property rights. Moreover, it designed an efficient registry system (Registro Predial) to register newly formalized property and subsequent transactions.

Analyzing the above it is shown that different countries have taken different approaches rather than merely relying on some standardized western approaches imported. Klaus and Binswanger 1999 state that humankind to land relationship varies across a country resulting in different land administration responses and what is best practice for one country may not be the best practice for the other. One alternative is to award property rights to communities, which then decide on the most suitable tenure arrangements.

Figure 3- Procedure for Title Registration In Sri Lanka.



* In case of dispute nature of claims the CTS may refer such case to the District Court having jurisdiction over the area.

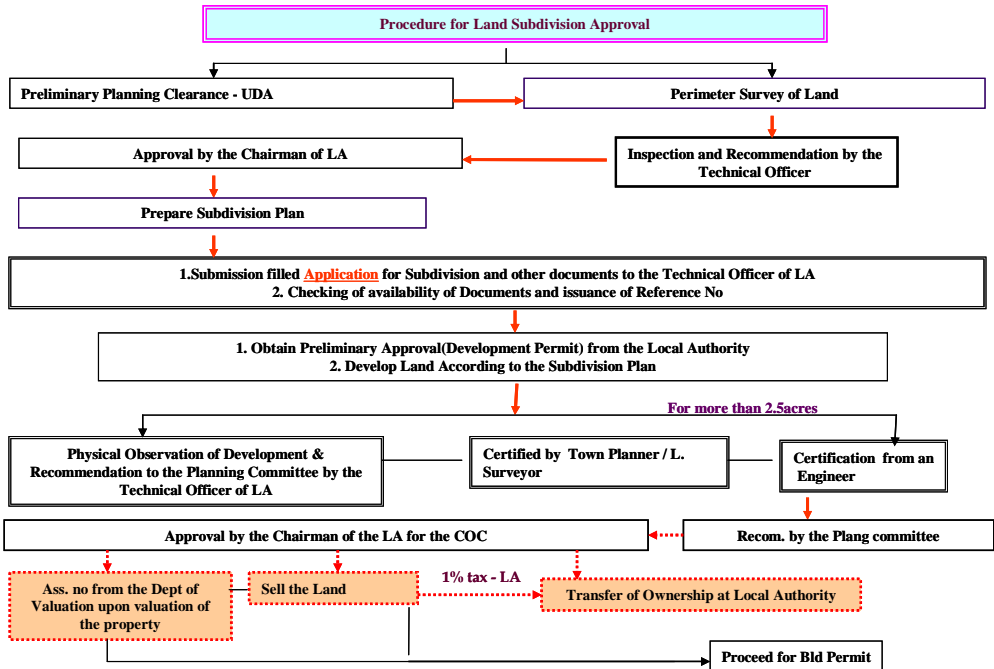
Source: Compiled by Author based on the Registration of Title Act no 21 of 1998

Some suggestions; intermediary solutions to expedite the titling procedures.

According to the previous analysis the author wishes to suggest certain pragmatic approaches that can be used in re-engineering the present land titling process. These potential solution were identified by studying the existing potentials of the present land administration system in Sri Lanka, taking into consideration the shortcomings identified in the present land titling procedures and the experience of other countries discussed in section 6.

- i) **Titling at the time of land development on a demand driven Basis via local authorities in tax assessed urban/suburban areas.** According to the present land subdivision approval procedures (refer Bottom shaded area in Figure 4) the local authorities (in Urban Development Authority declared areas) register the subdivided plots of lands in the registries of each Local Authorities upon a physical inspection on Land. This procedure is being implemented by the local authorities in order to recognize the properties within their jurisdictions. This registration is being done after a physical inspection on land by the technical officer of the local authority.
- ii) **Upgrade the Special Registration Area (Dehiwala, Wellawatta, Kirulapana areas)** mentioned in sec 5.1, which covers under the (old) Title Registration system under the Registration of Titles to Land No 05 of 1877 to the new title system without much technical work in field surveys and cadastre. This will be similar to the “qualified title strategy” implemented in Thailand, Australia and Malaysia.
- iii) **Mobilize and strengthen Samatha Mandala** to ease out resolving manageable land disputes and litigation with regard to private lands rather merely depending on long court procedures in District Courts. It was identified that one of the major project delays in title registration was due to the land disputes and various tenure related issues that arise during the course of project. The current procedure is to refer all such cases to the district court in spite of its magnitude, where such legal redress takes many months or years. In Sri Lanka Mediation boards play a major role in dealing with land related disputes. Hence it is suggested that the project should encourage and strengthen these boards so that they could handle a large part of the land related issues, as these Board members may have experience and credibility sometimes better than the bureaucratic officials.

Figure 4 – Registration of Land ownership in Local Authorities under Land Subdivision Approval Procedure in Urban



iv) Effective collaboration with Divisional Secretaries and Provincial Land Commissioners, who hold the power to regularize encroachments or formalize informal transactions with regard to state lands.

The Divisional Secretaries and the Provincial Land Commissioner hold the power to formalize the informal settlements upon the provisions made under the Land Development ordinance in no 19 of 1935 and Crown Land Ordinance no 08 of 1947 without causing much delay. Again similar to the Thailand’s case where they mobilized the power of Provisional Governors as the authorizing officer to grant title deeds the power of Divisional Secretaries and the Provincial Land Commissioners can also be effectively mobilized appropriately to possible cases rather relying on long delaying court procedures.

v) Mobilize Sustainable Township Program (STP)/REEL(Real Estate Exchange Limited) Project in order to deal with the land tenure issues regarding the informal settlements in the city of Colombo.

STP considered being the major self financing project launched in the city of Colombo with regard to urban lands; liberating encroached land by informal

settlers, by relocating them on high rise through putting the liberated land into urban development. Currently this project too has faced a great difficulty in putting these lands in to urban development due to various land tenure issues. As a result considerable extents of urban lands that were liberated and that can be liberated by REEL are left out being underutilized or encroached. Hence integrating land titling in Colombo with the REEL project would be a win-win situation for both projects.

Figure 5 elaborates conceptually how these proposals can contribute to expedite the present land titling project and thereby increase supply of land in the market with clear titles. However these strategies are outlined based on a blind review of the present land administration procedures in Sri Lanka. Hence this study proposes **further research** into these areas in order to assess the feasibility of these suggestions made in expediting the present title registration project in Sri Lanka.

Conclusions

Definition and the institutionalization of land rights have been an important issue for societies in dealing with the tenure security of land. In Sri Lanka land tenure pattern reflects the characteristics of legal pluralism in definition of land rights and has create land market imperfections due to unclear boundaries, disputes and litigation over land rights and so on.

It is largely accepted that “land registration” is the only means to an end in solving these issues that relate to land tenure. However the greatest challenge among all is how effectively these registration systems can be implemented specially in developing countries. The basic reason for this is that most of these systems are imported directly from outside and implanted locally within the existing institutional and legal frameworks. This has been one of the major factors for the failure of most of these systems.

In Sri Lanka too the Land Registration system has proven to be a failure with respect to the needs of a efficient land market. Firstly the deed registration system that emerged as a temporary solution of registering land until a proper Title registration system begun, continued as the system of land registration in Sri Lanka for more than 200 years. This is in-spite of several attempts taken to initiate a title registration system for Sri Lanka. As a result the security of tenure in land could not be efficiently and effectively achieved causing impediments to the land market and thereby to the development of the country.

Tenure issues over a long period under the deed registration system would have also affected this to a greater extent. In this regard looking at the experience of other countries shows that pragmatic and bold decisions have proved to be successful in their respective cases in overcoming the implementation issues of title registration projects. Accordingly this study too attempted to identify areas

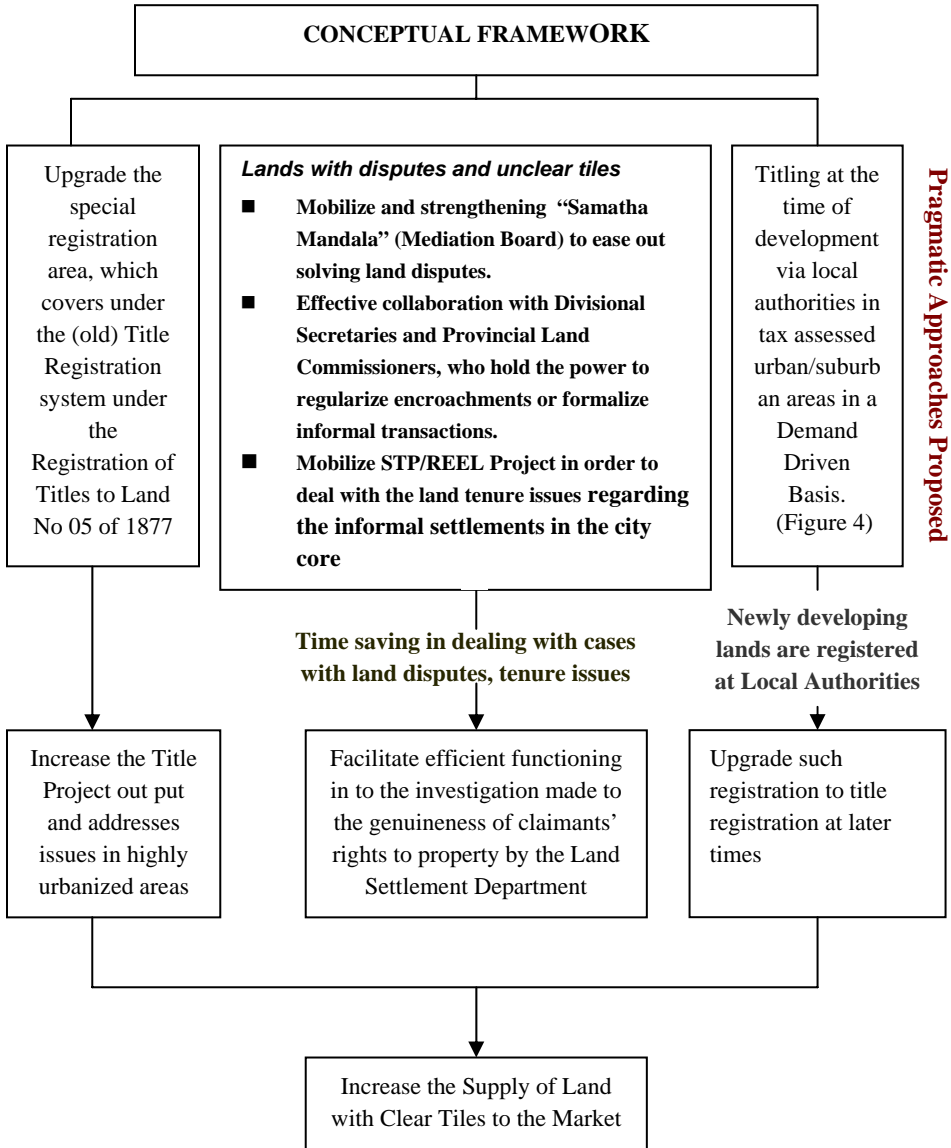
that the present land titling project can improve its effective and efficient implementation. The suggestions made are

1. Titling at the time of land development on a demand driven basis via local authorities in tax assessed urban/suburban areas.
2. Upgrade the Special Registration Area (Dehiwala, Wellawatta, Kirulapana areas under “Qualified Title Strategy”
3. Effective collaboration with Divisional Secretaries and Provincial Land Commissioners, who hold the power to regularize encroachments or formalization of informal settlements
4. Mobilize and strengthen Samatha Mandala to ease out solving manageable land disputes and litigation with regard to private lands.
5. Integrate with the Sustainable Township Program (STP)/REEL(Real Estate Exchange Limited) Project in order to deal with the land tenure issues regarding the informal settlements in the city of Colombo.

However these suggestions are more biased on expediting the title registration in urban areas and have been made based on a blind review of the present land administrative system of Sri Lanka. Hence further research is needed in analyzing the feasibility of these proposals and also looks for more options that would work out for rural areas of Sri Lanka as well.

However in 2001 the Title Registration Project was begun in Sri Lanka and continued to be implemented in a slow phase. At the outset the large number of institutional players, long delays in settling in cases with disputes in District courts and the bureaucratic procedures has been identified as the main cause for the low phase of the project. However the aggravated land

Figure 5 –Pragmatic Approaches Proposed to increase the efficiency of implementation of Land Registration System in Sri Lanka



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